

Incorporating your NHS Practice

Should GPs abandon their partnership status in favour of the limited liability offered by incorporating as a limited company or a limited liability partnership (LLP)?

Daphne Robertson of DR Solicitors and **Aimi Bullock** of Primary Care Business Solutions examine these business vehicles and the different accounting treatment and legal issues.

What is a Limited Company (Ltd Co)?

A company is a separate legal entity with rights and obligations distinct from those of its members. Your partners would become directors and shareholders in the Ltd Co. A company is regulated by its articles of association. However this regulatory regime (e.g. the two-tier structure of directors and shareholders and the disclosure requirements at Companies House) make the traditional and informal NHS partnership structure very attractive.

The expression “limited” refers to the limited liability of the members or shareholders (the terms are interchangeable) for the company’s debts on liquidation. If the company is wound up as insolvent then each shareholder is only liable for the amount which remains unpaid on his shares even if there are many thousands of pounds owed to creditors. This is in direct contrast to your Partners being personally liable for all the debts and liabilities of the practice.

The popularity of limited liability companies as a business medium can be attributed to one thing: the availability of limited liability for the shareholders. However, the two main disadvantages are (1) a company’s public disclosure of much of what it does and (2) the complex regulatory regime. For this reason, the partnership business vehicle, remains attractive for NHS practices.

What is a limited liability partnership (LLP)?

The key behind an LLP is to give NHS practices the protection of limited liability, while preserving the flexibility of the partnership structure. As such, LLP’s can best be described as a hybrid of a company and a partnership.

The LLP is a distinct legal entity, as opposed to the partners and, like a company, the LLP owns the practice assets rather than the partners. Just as with a shareholder in a limited company, an LLP member’s liability will be limited to the value of his shares in the LLP. An LLP is very much like a company in that it must be registered at Companies House. Rather like company directors, an LLP has a special class of members called “designated members” who assume special responsibility for the running of the LLP.

Tax treatment of NHS companies and NHS LLPs

LLP: In an LLP, profit allocation and the tax regime work in the same way as a partnership; there is no tax saving for converting from a traditional partnership arrangement to that of an LLP, just the costs of conversion! A point worth noting is that, like a ltd co., an LLP's accounts are on the public record at Companies House – do you want your patients checking up on your business financials?

Ltd co: For limited companies the position is different. Tax savings have been quoted in the region of £13k for a single-handed practitioner and £2.6k per partner for a three partner NHS practice. There is also the possibility of paying contributions into the NHS pension scheme based on dividend income.

Remember that practice income belongs to the ltd co and the ltd co pays tax on profits generated at a lower rate than individuals. The directors / shareholders need remunerating and this is done via salaries, dividends or a combination of both. Under current tax legislation dividends do not attract NI and only attract a personal tax liability for the recipient if they fall into the higher rate tax band making them more tax efficient than salaries and the self-employed tax regime.

So should you incorporate or not?

Consider profit allocations. Under a partnership regime, items can be allocated as prior shares with the balance split in the profit share ratio. A Ltd Co's profits, if distributed as dividends, are paid out strictly in accordance with shareholdings, being in the old partnership profit share ratio. This leaves no opportunity for paying items such as seniority to particular individuals unless they are paid as salaries, which would be expensive currently attracting 12.8% NI. Alternatively a complex share capital structure could be put in place allowing certain income items to be paid out in a different ratio to the main shareholdings.

A similar issue arises with expenditure incurred personally. Usually this is included on the partnership tax return and allocated against that particular doctor's practice profits. It is just not possible to deal with this through a Ltd Co.

A Ltd Co must file annual statutory financial statements at Companies House. These are then on public record allowing anyone to obtain a copy of your practice results for as little as £2. There is the potential to file abbreviated accounts, which publish restricted information, but this does mean that two sets of financial statements are prepared.

How does your practice currently operate when decisions need to be made by voting? One-person-one-vote or is voting weighted in accordance with profit share ratio? In a Ltd Co voting rights follow the shareholdings, which would mostly likely be in the old partnership profit share ratio. This is a potential area

that could cause conflict. Or do you have a shareholders agreement in place dealing with this? There is the possibility that weighted voting rights give rise to the argument that there is a “deemed sale of goodwill” which is prohibited at law, as it would in the traditional NHS partnership set-up?

What about the surgery building? It is more tax efficient to hold property personally allowing for business asset taper relief to be claimed against any gain. Ownership of surgery would stay with the doctors rather than be transferred to the company. The Ltd Co would then rent the surgery from the doctors. A formal lease agreement would need to be in place.

Your staff would need to be formally transferred to the new entity as their employer is changing and legal advice will need to be taken to ensure this is undertaken correctly.

Finally, what will the change of trading vehicle mean for the practice’s GMS / PMS contract with the PCT? Will this change in business vehicle give the PCT a reason to terminate the contact and put it out to tender?

Conclusion

The above issues highlight just some of the issues for consideration surrounding incorporation without even touching on the extra administration that comes with a Ltd Co and how the logistics of superannuation will work! As you can see the opportunity to save tax and pay superannuation contributions on dividends has the potential to be just too complicated (and expensive in terms of professional fees) for partnerships to consider incorporating. However there could be potential for single-handed GPs to benefit.

Please do contact us if we can be of further assistance to you.

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