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GP Provider Organisations

What types of Organisations should GP Providers consider?

Many GPs are used to trading in partnerships. To a large extent, this has come about because historically GMS and PMS contracts have favoured partnerships and some of the benefits available to other professions (notably the favourable tax treatment of "goodwill" for incorporation into a company limited by shares) have not been available to GPs.

The forthcoming wave of GP Providers, however, is much more likely to - and should - consider afresh the type of organisation through which it will practice.

The main issues that will determine which structure is best for a particular provider are:

- Protection from liabilities
- Governance/administration issues
- Tax
- Pension status

The following sections run through each of the issues above.

Protection from liabilities

In a "normal" partnership, each partner is liable for the partnership debts. So if a partnership's overdraft cannot be repaid and other partners lack the wherewithal, a partner may need to repay the overdraft himself. Likewise if the partnership is subject to a legal claim an individual partner may have to pay a substantial proportion from personal funds.

A "limited company" is usually either a company limited by shares or a company limited by guarantee. In the event of a claim against the company the loss to any shareholders is limited to the amounts they have agreed to invest in its shares and/or any amounts they have guaranteed. Also if the shareholders have lent money to the company they may not get that returned. However, their loss is limited to amounts invested/guaranteed and not to potentially so-called personal "Doomsday" claims against the shareholders unless the shareholders have been fraudulent or can be shown to have made a personal commitment opening themselves up to such a claim.

A "Limited Liability Partnership" or LLP is similar to a limited company in that it provides liability protection for its members; however it is treated for tax purposes like a "normal" partnership.

An Industrial and Provident Society "IPS" is an organisation conducting an industry, business or trade, either as a co-operative or for the benefit of the community.

A "Community Interest Company" (CIC) is a new type of company designed for social enterprises which want to use their profits and assets for the public good.

In general, a Provider intending to carry out its activities with an intention of generating a profit will probably tend towards a LLP or a company limited by shares. A Provider seeking to reinvest any surpluses for the benefit of the community or future care, is likely to use a CIC, IPS or a company limited by guarantee possibly with charitable status.

Governance/administration issues

A partnership is relatively free to set its own rules as long as they do not contravene the general laws of the land, e.g. employment legislation. This provides great flexibility and the ability of partners to join and leave with (usually) little difficulty. If any difficulties are to be avoided, however, there is still the need for a well-drafted partnership agreement to be in place setting out all the partners' rights and obligations.

A company limited by shares has more restrictions placed on it: since it provides its members with greater personal protection (via the limited liability) and as those dealing with the company in theory may face a greater risk, the law deems that the company needs to subscribe to certain rules in order to protect its creditors.

Limited Liability Partnerships "LLPs", being effectively "incorporated partnerships", share some characteristics from each of the above: they are able to be flexible with arrangements between partners and are not bound by the Companies Acts, but they do need to meet some regulations including the requirement to file accounts with the Registrar of Companies. The accounts are therefore available for public inspection.

An Industrial and Provident Society "IPS" exists within a regulatory framework that is generally recognised as being due for an update. There are particular rules on the activities that can/cannot be undertaken and how any surpluses should be dealt with.

A Community Interest Company "CIC" is intended to be easy to set up, with all the flexibility and certainty of a limited company form, but with some special features to ensure it is working for the benefit of the community. These special features are likely to include restrictions on the distributions of any surpluses (profits) made.

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Tax

For most GPs, income tax on partnership earnings may not be easy to understand, but at least there is some familiarity! In effect, the partnership accounts are prepared and profits are divided amongst the partners in agreed percentages. Some adjustments are made for tax purposes (for instance, the way in which tax can be claimed in respect of certain assets to be used in the business long term), each GP's personal expenses such as car fuel, courses are claimed, and the resulting net taxable profits are submitted on the GP's self assessment tax return. The tax is payable when the profits arise, whether or not the GP has actually been able to withdraw all the net profits from the partnership. The top rate of income tax plus National Insurance Contributions "NIC" will from 2014/15 be 47% (in fact there is a slice of earnings that can in effect be taxed at 62%).

Importantly, if premises are owned by the partners and used in the business without the partners receiving rent, then as long as certain conditions are met a partner can sell his share and pay at most 10% Capital Gains Tax on any growth in value since he purchased his share.

The tax treatment for an LLP follows the above.

For a company limited by shares, however, the tax position can be more complicated – but more advantageous also. The company's profits are calculated and liable to Corporation tax. As long as the shareholders in the company do not have interests elsewhere that are "associated" for tax purposes, the company's profits (on 2016/17 rates) will be taxed at 20%.

If the shareholder (GP) is paid a salary by the company he will pay income tax on that salary plus employee's NIC: the company will pay employer's NIC. The company will however get tax relief for the salary plus the employer's NIC. If the shareholder also receives a dividend, he will pay no tax on the first £5,000. Above that level, he will pay 7.5% on any dividends that do not take him above the higher rate tax threshold (£43,000 in 2016/17); then 32.5% tax until he enters the highest effective rates of tax with the income of over £100,000.

While there can be good tax reasons for holding the business premises within a company, there is a risk of suffering "double taxation": that is, the company may have to pay corporation tax on any gain in its value on sale at say 20%, with the shareholder potentially paying 32.5% or more income tax when the sale proceeds are distributed – compare this with the less than 10% bill when owned personally.

So as can be seen, the position with a limited company is more complex than with a partnership, but with careful planning there may be tax savings to be made.

CICs are liable to corporation tax in the same way as "normal" companies.

Industrial and Provident Societies are companies for tax purposes. The key differences lie in the treatment of 'share and loan interest paid' by a society and, for those societies carrying on a trade, the treatment of dividends paid.

Pension status

In order to enable its members and staff to achieve NHS Superannnuation Scheme benefits, a GP Provider Organisation will need to be a recognised NHS "Employing Authority".

The benefits are clearly that staff and GPs can be members of the (very attractive) NHS Superannnuation Scheme. That said, there are instances where this may be less attractive.

First, it may not be necessary to offer the scheme to attract staff and when the Organisation will be competing on cost and other bases with other private sector organisations in tendering for the services, the savings on the employer element of the contributions may be significant.

Second, though this will only apply to a minority of GPs, the higher earning/longer serving GPs are at risk of breaching the pension Annual Allowances/Lifetime Allowances introduced from the 2011/12 tax year and so having earnings not subject to the NHS Superannnuation Scheme may be attractive to some GPs.

The following sets the types of organisation eligible or not to be an Employing Authority:

Eligible to be an Employing Authority:
Partnership
Company Limited by Shares
Community Interest Company "CIC"
Limited by Shares Not eligible to be an Employing Authority:
Limited Liability Partnership "LLP"
Company Limited by Guarantee
Community Interest Company "CIC" Limited by Guarantee
Industrial and Provident Society