AISMA Doctor Newsline

A helpful resource for the practice business

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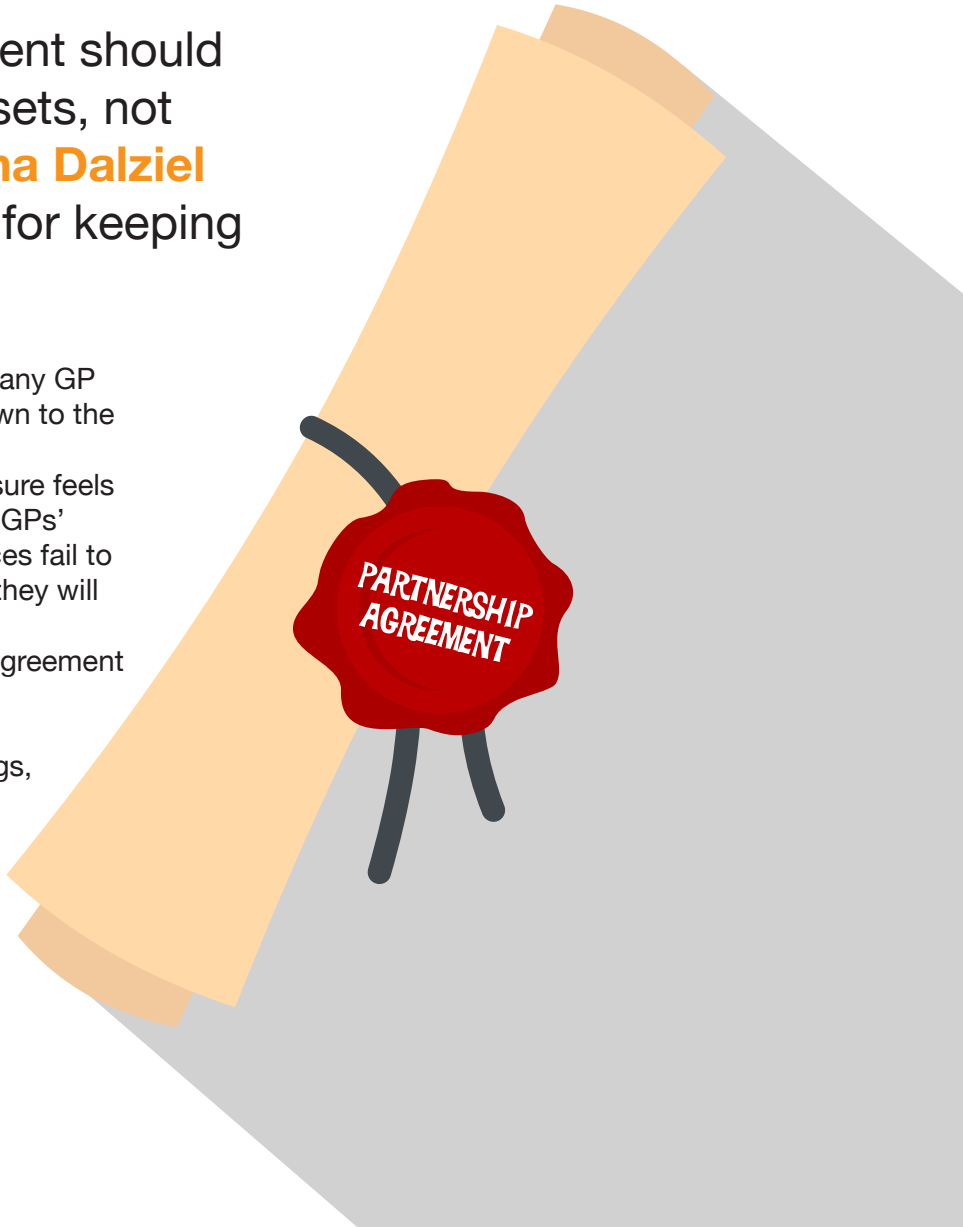
Protecting partners' assets

Follow these 7 rules to protect your business

Your partnership agreement should be safeguarding your assets, not putting them at risk. **Fiona Dalziel** gives her treatment plan for keeping yours financially safe



When you really drill down to the root of any GP partnership dispute, it always comes down to the same things - money and workload.

And yet, in a time when workload pressure feels like a dark, unyielding presence in many GPs' minds, it is astounding that many practices fail to pay attention to the document to which they will refer if everything falls apart.

Not having an up-to-date partnership agreement puts the business at risk financially.

The Partnership Act 1890 would be the default position and, amongst other things, this Act assumes that if the partnership is dissolved, then profits are divided equally, whatever the workload or who owns what.

As I see it, there are seven rules for making sure the partnership agreement keeps the partnership financially safe.

1 Review and update the agreement regularly

Review the agreement annually. The flurry of coping with a change in the practice means the agreement may have been impacted without anyone realising.

Don't assume that your own wording will be adequate. A lawyer may be an additional cost, but is alert to wording with potentially harmful legal ramifications.

2 Leaving the partnership

If your agreement is updated, the death, retirement or departure of a partner may not mean the automatic cessation of the partnership.

Define the terms for dissolution of the partnership and how the partnership could expel a partner and for what. This could include erasure from the GMC register or fraud against the practice.

A departing partner is likely to have financial assets and liabilities tied up in the practice. Make sure your agreement defines how a partner will be paid out.

As well as the possibility of a substantial capital account, a partner will have a tax liability which might run on for several months if, say, a partner leaves just after the start of a financial year.

3 Profit shares

Your agreement should define percentage shares of profit based on sessional commitment.

If you still set a period of working up to parity, the agreement should also demonstrate the exact percentages payable over the defined period both to the new and existing partners. This is best done as a table.

4 Remunerated external roles

External roles, involving as they do both money and workload, can lead to partnership misery. Minimally, your agreement should define how outside earnings are treated. Ideally, agree (and record) your criteria for accepting an external role.

This might include defining what information should be provided in advance (remuneration, time out, length of contract, starting date) and the forum for the decision.

What if the earnings are less than the cost of covering the absence? How do you balance this against the cost of an unhappy partner? A CCG role which barely covers the cost of a locum might re-energise a flagging partner.

5 Absence

Holiday allowances must be defined and fairly allocated, but absence for other reasons is more likely to risk dispute and unexpected costs, especially locums.

The agreement should minimally define sickness, maternity/paternity and sabbatical entitlement, and associated financial arrangements.

Make sure the agreement clarifies what happens if absence amounts to a large number of days cumulatively over a defined period, as opposed to one extended period.

For how long will the partnership sustain full drawings and cover the cost of locums?

I knew a practice where the agreement did all this, but the absent partner had no locum policy and eventually had to pay the cost of locums to the practice personally.

Your agreement should also define the financial arrangements if existing partners are paid as locums or temporarily increase their partnership share to provide absence cover.

6 Premises

I recently heard of a practice in England where the retired senior partner owned the premises, as none of the newer partners could afford to buy into the property on joining the practice.

The retired partner now wanted to sell the building. But the partnership had shrunk in number and the existing partners could not afford to buy him out. The practice agreement did not make provision for this.

Changes in partnership share may also have implications for the value of share of property.

7 Expenses and tax

Your agreement should define how tax and expenses are treated. Nobody wants to find they were expected to save personally for their tax when they thought the practice held it back.

Equally, define what are personal and practice expenses.

Your AISMA accountant, your solicitor and the BMA are all able to provide advice on making sure your partnership agreement is working for you.

Fiona Dalziel runs DL Practice Management Consultancy

Digital tax is coming for GPs - so start discussions with your accountant

Following his previous *AISMA Doctor Newsline* article (Winter 2016-17) about Making Tax Digital, **James Gransby*** gives an update on where we are now with quarterly tax returns

The deckchairs have been truly shuffled by the Government and some uncertainty thrown in for good measure over its Making Tax Digital for Business (MTDfB) plans.

Its vision is to have a digitised tax system that is more effective, efficient and easier for taxpayers. This concept has not changed.

It will mean GP practices will be required to make quarterly submissions to HM Revenue and Customs (HMRC) and will also result in significant changes to the way they will interact with tax offices as digital reporting and digital tax accounts become a reality.

What has changed from the previous proposals?

HMRC announced on 13 July 2017 that the roll-out of MTDfB is to be pushed back to April 2019 for all businesses and instead of launching with Income Tax first, then VAT, then Corporation Tax - it will now begin with VAT reporting in April 2019, followed by Income Tax and Corporation Tax in April 2020.

This means that dispensing GP practices will now have to commence quarterly reporting from April 2019 and non dispensers from April 2020.

A reminder of what HMRC is proposing:

- Digital records - Businesses will be required to maintain their records on software (or apps) that are compatible with HMRC's interfaces. Any firms still keeping records manually, or using a spreadsheet such as Excel, will need additional software to meet the requirements.
- Quarterly reporting and the year-end declaration - While it was widely publicised that the Government was looking to scrap the annual tax return, it now appears that it will simply be replaced – with four quarterly 'updates' and one final year-end declaration.
- Voluntary pay-as-you-go - Businesses will be able to opt into a pay-as-you-go system for the collective payment of taxes. It has been stated that quarterly tax payments will not be made mandatory during this Parliament. However, the cashflow effect of this being introduced could be very damaging when it happens.

Why is it changing?

- HMRC's aim is to reduce the burden for taxpayers and provide greater certainty over tax bills through direct prompts from HMRC.

- Businesses will not have to wait until the end of the year to know how much tax they will pay.
- Tax payers will be able to send and receive information from HMRC at the click of a button with alerts to help businesses with advice and queries.
- It will make it easier for businesses to comply with their reporting obligations and deliver accurate information to HMRC.

Who will Making Tax Digital apply to?

At this stage, the MTDfB proposals apply to sole traders and partnerships, including LLPs - and so GP practices will certainly be caught by this.

It will also apply to individual GPs who undertake self-employed work such as working as a GP locum or appraiser, and also includes those who own any buy-to-let properties.

How will Making Tax Digital work?

MTDfB will not require affected GP practices to file four tax returns every year. Instead, the practice will send summary data to HMRC about their business each quarter, or more often if they prefer.

The summary data will consist of total income and total expenditure, with the expenditure broken down into categories, such as staff costs,and property expenditure.

Businesses will need to send this information from online accounting software. HMRC has confirmed that it will not be providing its own bookkeeping/ accounting software and that the use of 'digital record keeping software that links to and updates business's digital accounts with HMRC' will be mandatory, except for taxpayers who are exempt from MTDfB. Typically this would be those with incomes below £10,000, which would still capture most buy-to-let landlords.

However, the update provided by the Government on 13 July 2017 appears to suggest that the exemption has been raised from £10,000 to £85,000 for all businesses, but this is not entirely clear and we will need to await legislation for clarity.

Here are a few details of note, as specified by HMRC, during this consultative phase:

- The business won't have to keep any additional paper records.
- Businesses will be able to continue to use spreadsheets to record receipts and expenditure, which they can then link to software to automatically generate and send their updates to HMRC. Most assumed this was going to be the case anyway.
- If the business is registered for VAT, one report may cover both income tax and VAT reporting requirements.
- HMRC believes that the cash basis of accounting should be extended to larger businesses, as this will be simpler for them to use.

It has suggested doubling the current entry threshold, which matches the VAT registration threshold – so a business would be able to begin using the cash basis of accounting if it has income below £166,000, using today's VAT registration threshold.

This will not be of benefit to most GP practices as they will have incomes above this level and will have to continue to account for their figures on the accruals basis.

The move to cloud accounting

All businesses need to move with the times. Taking bookkeeping onto a digital platform has never been about MTDfB, but about GP practices maintaining their ability to compete in an increasingly complex bureaucratic environment.

Achieving this is in part about having up-to-date financial information to ensure opportunities that arise can be exploited in a timely manner, and executed in a way suitable to the practice's financial position.

GP practices going down the route of using cloud based accounting systems will need to ensure they are compatible with MTDfB.

Practices should either talk to their software provider, or AISMA accountant, to ensure that the method they are currently using for keeping records will not cause a headache when it is time to submit information digitally.

If you are considering a cloud accounting package for your practice, you should make sure:

- The package is user friendly and straightforward to operate.
- Your chosen package is compatible with HMRC.
- The package provides the ability to accurately report on the period required.

What do you need to do?

Even though the deadline seems far away now, getting things in place sooner rather than later is heavily encouraged and so starting to talk to your AISMA accountant, if you have not already, would be a positive move.

COMMENT

GP workload makes it never a dull moment for an AISMA accountant

Deborah Wood, vice chairman, AISMA

Once upon a time the summer months tended to quieten down the workload for accountants dealing with the GP sector. But not so anymore.

In my opinion this is a good thing as it means our ever-busier clients trust their AISMA accountants to assist them with managing a mounting range of business issues.

Just like your own AISMA member firm, our specialist team has been happy to discuss many queries recently, covering a wide range of topics. Here is a sample:

- **When is an out-of-hours provider really an out-of-hours provider so far as the NHS Pension Scheme is concerned?**

This meant getting to grips with the type of business entity structure adopted by the provider and the type of contract they were operating under. We also needed to know if employees were included in the pension scheme via the independent provider organisation model, the classic APMS provider model, or the traditional out-of-hours provider model.

- **What does the impact of Primary Care Home (PCH) mean for practices across a CCG area?**

This involved collaboration to extend GP access via hubs, integrated care and provision of new services, working with a federation to assist with its governance arrangements and preparing financial models to help with bidding for additional community services.

It also meant understanding what federations need to do to comply with the implications of holding contracts and sub-contracting services to their collaborating practices, GPs or other service providers.

- **How can GPs mitigate exposure to inheritance tax for themselves and their families?**

This included explaining the new changes from April 2017 that introduced a residential nil rate band and the transitional arrangements to 2020.

- **Has the practice obtained all the income it should have?**

We have helped practice managers and partners recognise the available income streams including locally negotiated enhanced services and CCG schemes. And we have benchmarked their performance against expected averages.

- **Will Making Tax Digital (MTDfB) apply to my practice?**

Since the general election, we have been following the changes that HM Revenue and Customs (HMRC) has made to its MTDfB plans.

And we have been helping clients move towards online digital cloud-based accounting systems that, when the rules eventually come into place, will mean they will be used for preparing regular quarterly management information.

- **Why has the CCG starting deducting tax and NIC from the payment to my limited company?**

As a result of the changes to the IR35 legislation from April 2017, where a worker provides services to a public-sector body, we have looked at the positions of:

* individual locum GPs
* GPs who provide services via their own companies
* GPs on the boards of CCGs and
* practices who engage with GP-owned limited companies for provision of services.

We have considered the HMRC on-line tool checker and the tax impact of classification of a source of income for service provision as self-employed or employed.

- **We need an independent expert to provide a report to assist in an arbitration hearing regarding a partnership dispute.**

This involved working with a fellow AISMA member firm to review detailed accounting records. We prepared a summary for the court to explain the accounting and tax treatment of certain transactions and confirm if payments were correctly classed as drawings or should be partnership expenses.

- **We merged with another practice on the 1 April, what do we do with the old partnership bank account?**

After a merger we have found a lot of transactions need to be reviewed to ensure they have been allocated to the correct practice. It can take several months to get to a clean edge with a previous bank account before any final funds are available for distribution.

So, as you can see, the increasing complexities of GPs' financial affairs means life as an AISMA accountant is varied with many differing questions and queries to respond to.

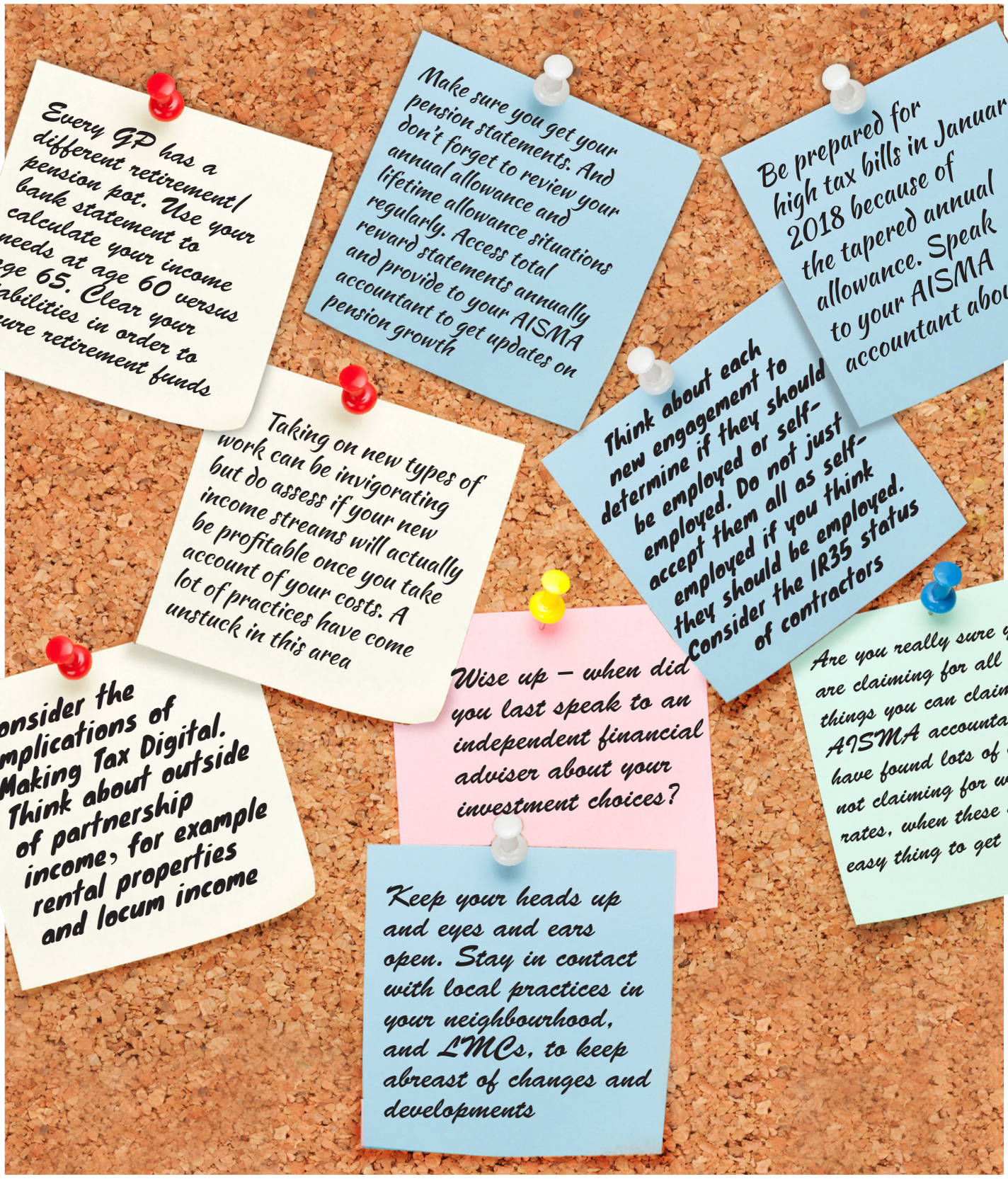
This of course all goes on alongside the more typical involvement in preparing the annual partnership accounts, tax and superannuation calculations, and considering whether to reduce the 31 July 2017 tax payment on account.

We have also been liaising with Primary Care Support England (PCSE) on behalf of practices when incorrect deductions have been made for superannuation and to confirm arrangements when partners reach their retirement date.

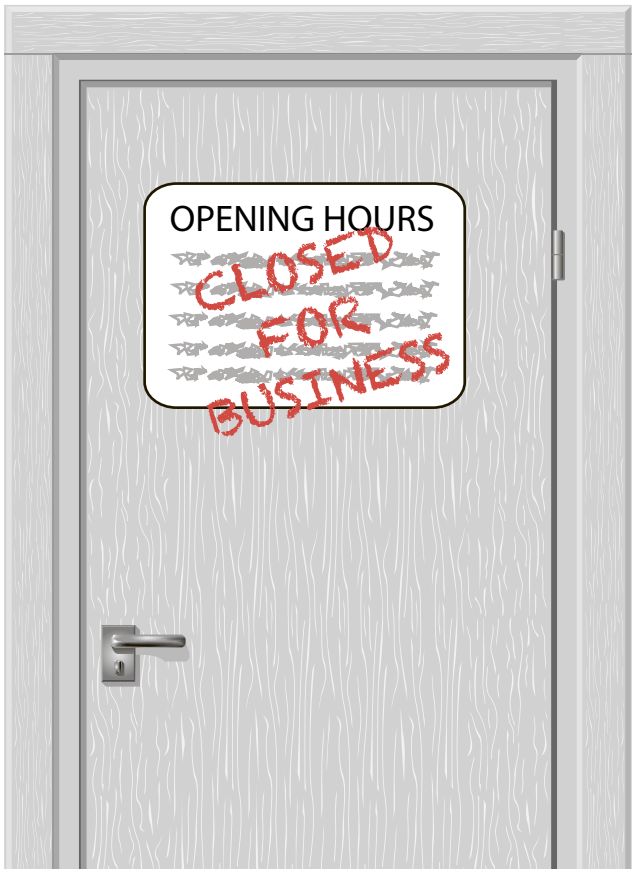
Please keep your queries coming too, so that your AISMA accountant can provide you with their expertise.

In this way our association can continue to demonstrate the value of having an AISMA member firm on board with up-to-date advice and relevant information at a time of uncertainty and great change for the primary care sector.

Topical snippets from AISMA accountants



What to consider if you have to wind the practice up



Practice closures are sadly increasingly prevalent - **Alison Oliver** offers some useful legal pointers to those GPs affected

Nearly 100 GP practices closed in 2016, a 114% increase from 2014, according to a report in The Guardian[1] earlier this year.

Some commentators attribute this to an increased workload combined with a lack of resources, or a failure to target available resources in the most effective way.

The widely reported recruitment crisis is also a factor, with practices having difficulty recruiting successors to take over as partners retire.

RCGP chair Prof Helen Stokes-Lampard is reported by the newspaper as saying: 'Too many practices are being forced to close because GPs and their teams can no longer cope with the ever-growing patient demand without the necessary funding and workforce to deal with it.'

When closing a practice there are inevitably some important legal issues to be aware of.

Terminating the NHS contract

If a contractor intends to cease to deliver services altogether, it will be necessary to terminate the practice's contract with the NHS in accordance with the contract terms.

A contractor can terminate a GMS or PMS contract by serving six months' notice on the NHS. An APMS contract can generally only be terminated by the contractor if the NHS has failed to make payments due despite being given a 'late payment notice' by the contractor.

For all types of contract, the contract can be terminated where both the NHS and the contracting practice agree. In these circumstances, the NHS and contractor will have to agree the date when the contract terminates.

The contractor is under an obligation to cooperate with the NHS to enable outstanding matters relating to the contract to be concluded and to enable patients to be transferred to one or more other practices.

All property, equipment, drugs and so on belonging to the NHS must be returned to the NHS when the contract terminates.

What happens to the patients?

If a contractor terminates its contract, the NHS will need to consider how to meet its obligations to provide access to a GP for the practice patients. They may do this in one of two ways:

- Re-commissioning the service so that a new provider takes over the practice; or
- Dispersing the patients around nearby practices.

The NHS will sometimes issue a short-term temporary contract to another provider while it undertakes a full procurement exercise to secure a more long-term successor provider.

Current NHS policy is not to issue new GMS or PMS contracts. This means that any new provider will be offered an APMS contract.

Winding up the practice

If a new provider does not take over provision of the services at the practice following termination of the contract, the practice will have to be wound up.

As GP contractors are independent contractors to the NHS and not part of the health service, it is the contractor's responsibility to wind the practice up and this could result in significant liabilities for the contractor.

These include:

1 Premises liabilities

The contractor's entitlement to rent reimbursement or notional rent will cease when the NHS contract terminates. However, the contractor's liabilities in respect of the premises will not necessarily terminate at the same time.

If the premises are leased, the contractor's liabilities to the landlord as a tenant are separate from the NHS contract. The lease will need to be terminated or otherwise dealt with in accordance with the lease terms.

Some leases have break provisions enabling the tenant to terminate the lease at certain points in time or in certain circumstances, but some do not.

If the lease is terminated, the contractor is likely to be under an obligation to restore the premises to the state it was in when the contractor moved in. This could involve un-doing adaptations made to the premises, re-decorating and undertaking repairs.

Former partners of the contractor who remain parties to the lease could also find themselves liable to the landlord.

If there is no written lease, this does not necessarily mean that there is no tenancy and the contractor may still have ongoing obligations to the landlord.

If the premises are owned and subject to a mortgage, the premises owners will remain liable to the lender for mortgage repayments.

2 Employee liabilities

If a new provider takes over the service or a substantial part of it, employees may transfer automatically to the new provider under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE).

However, if patients are dispersed between different practices or if there is a gap before a new provider takes over the practice, TUPE may not apply. In these circumstances, the contractor may have to make practice employees redundant.

3 Liabilities to suppliers

The contractor is likely to have a number of ongoing contractual arrangements with suppliers of goods and services to the practice (including self-employed locum staff). Again, these liabilities are separate from the NHS contract, and each arrangement will need to be terminated in accordance with its terms.

Where an arrangement does not have express termination provisions, 'reasonable notice' must be given. Failure to terminate such arrangements correctly could result in claims for breach of contract. There may also be termination penalties associated with some arrangements.

4 Liabilities to customers

Similarly, if the contractor provides services to other parties, such as a local NHS trust, these arrangements will also have to be dealt with separately from the NHS contract in accordance with the relevant terms.

It is important that contractors take legal advice in advance of terminating the NHS contract in order to understand their legal position in respect of the above matters. Contractors should also discuss their plans with their accountants at an early stage.

Other options

It will, in most cases, be preferable for contractors to explore options other than terminating their NHS contract, as the potential liabilities in winding up a practice can be considerable. Other options might include:

- Merging with neighbouring practices in order to share workload and enjoy some economies of scale
- Having discussions with some of the providers in the market who are actively seeking to take over practices, or
- Joining an accountable care organisation in your area if there is one.

All of the above require careful consideration and expert legal and financial advice should be sought before pursuing them.

Ward Hadaway is a top 100 law firm with a national reputation for its work in the healthcare sector. Alison Oliver is an associate solicitor

This article provides general information only and should not be relied on as legal advice.

[1] *'Record number of GP closures force 265,000 to find new doctors'; The Guardian, 7 April 2017.*

Time to give yourself a pre-Budget check-up

The new autumn Budget is on its way on 22 November – but before you take action to try and outmanoeuvre what the Chancellor is bringing in next year, **Phil O'Connell**** highlights some key financial areas to target now

Most measures announced in the new autumn Budgets will in future take effect from the following April.

An annual 'Spring Statement' from 2018 onwards, expected to be less detailed than the previous autumn versions, will bring the UK into line with most other countries by limiting detailed reviews of fiscal policy to one each year.

Commentators always try to second-guess what the Chancellor will do. Many of us will remember queues at petrol stations as people rushed to fill their tanks ahead of a predicted duty rise at midnight on Budget day.

But things are a bit more sophisticated now. Technology can enable some changes to be made more or less instantaneously and any attempts to act before other changes are enacted are often stymied by 'anti-forestalling' measures.

So, rather than trying to second-guess the Chancellor - who will probably be preoccupied with Brexit anyway – let's concentrate first on what we already know. Or think we know.

For instance, from 6 April 2016, taxpayers have enjoyed a 'nil rate band' for dividend income of £5,000, so no tax is paid on dividends received up to that amount, regardless of the marginal tax rate of the recipient.

It is expected that the nil rate band will reduce to £2,000 from 6 April 2018, so for GPs with their own companies, it would be sensible to review your dividend strategy before that date.

Similarly, all those with a total income below £150,000 have a 'personal savings allowance' (£1,000 for basic rate taxpayers and £500 for higher rate payers). As almost all savings income, such as bank interest, is now paid gross, no tax will be due on interest received within these limits.

Therefore, depending on overall income levels, it may be beneficial for spouses or civil partners to consider transferring interest producing investments to take advantage of these allowances.

One note of caution, however. Although, as we have seen, it is possible to receive reasonably significant amounts of dividends and interest with a zero tax rate, this income still counts towards 'total income' for measures such as the restriction of the Personal Allowance when annual income hits £100,000 and the restriction of the Annual Allowance for pension inputs once you hit the £150,000 level.

Therefore, for example, the voting of a £5,000 dividend will still increase the overall tax burden by up to £1,000 if other taxable income, like practice profits, is between £100,000 and £123,000.

With effect from 6 April 2017, tax relief is being restricted on finance costs (including mortgage interest and fees) relating to residential property. These restrictions, which are being phased in over four years, do not apply to commercial property or furnished holiday lets.

So, this might be one factor to take into account when considering the nature/mix of a property portfolio. Remember that the lower and higher Capital Gains Tax rates applied to disposals of residential property are 18% and 28% respectively, as opposed to now being 10% and 20% respectively for other property disposals.

In the 2017-18 tax year, every individual with taxable income below £100,000 is entitled to a personal tax allowance of £11,500. With the dividend and savings allowances mentioned above (and also a 0% starting tax rate of up to £5,000 for those with a low level of non-savings income) it is theoretically possible for an individual with the right mix of income sources to have total income of £22,500 without paying any tax at all.

There will be very few circumstances where exactly the right criteria are met to allow this to happen, but this emphasises the point outlined above that taxpayers, especially those liable at the higher or additional rates, should consider transferring income producing investments to a spouse or civil partner with lower income.

Since January 2013, if an individual or his/her partner claims Child Benefit and either or both of them has annual income in excess of £50,000, the higher earner will suffer a clawback of benefit via the self-assessment system.

Once that individual crosses the £60,000 income threshold, all of the benefit will end up being repaid. It is possible to elect not to receive Child Benefit, but a nil claim form should still be completed to ensure that NIC credits towards state pension are accrued (where not otherwise accrued), and to ensure an NI number is allocated to the child at age 16.

Making charitable donations or, in the right circumstances, personal pension contributions can reduce total income for the purposes of calculating any Child Benefit clawback. The same logic holds good for those approaching the £100,000 threshold where the personal allowance starts to be lost.

But please bear in mind that, with various Annual Allowance and Lifetime Allowance pitfalls awaiting the unwary, proper advice should always be sought before making additional pension contributions.

Yes, I will use the 'P' word – Pension! There is always speculation before every Budget. Will the Chancellor, say, restrict tax relief to basic rate and, therefore, should I top-up my pension savings by making a Personal Pension payment prior to any such move?

Well, no Chancellor has done anything quite that radical yet, but several of them have succeeded in making pension planning a lot more complicated!

Many people struggle to find definitive advice in this area and you can understand why. Medical professionals are unlikely to thank their advisers if they pay an extra lump into a pension, only to find that this has caused problems in terms of Annual Allowance and/or Lifetime Allowance charges!

Then again, paying some extra tax down the line does not necessarily mean that pension top-ups are bad value.

This whole area probably merits several articles of its own, so all I can really say here when it comes to pensions is to tread carefully - but don't use complexity as an excuse to ignore the subject.

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