AUDIT • TAX • ADVISORY

Healthcare newsletter

Winter 2021

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Welcome to the Winter 2021 MHA Healthcare Newsletter

> We know that as this season approaches you will all be very, very busy and worried about workload pressures ever increasing with Flu and Covid vaccines to roll out and treatments for those hit by these viruses and all the other diseases that are also likely to be exacerbated in the coming months.

We are, like all patients, very grateful for all your hard work and efforts and so this newsletter is a little break away from the clinic pressure and an eye on the financial aspects that may crop up over the next few months.

We have a summary of the key points from the Chancellors budget, most likely to impact the sector. With Christmas approaching we review the things to be aware of from a tax perspective when looking at how to treat your staff.

An article by Neha Shah From Capsticks, with a timely reminder with many partnerships changes happening about the importance of keeping your partnership deed up to date.

A look at the pros and cons of incorporation for either private work or full GP contracts.

Finally, a reminder of those tax allowable expenses that should not be missed in order to reduce those January tax payments where possible.

MHA Healthcare team

Christmas is coming

With Christmas rapidly approaching many practices will be looking to see how they can reward staff for their loyalty and dedication through what has been, and continues to be, a very difficult time.

Some practices may be looking to reinstate a Christmas party or similar event others may be looking at making gifts to staff. Before proceeding it's important to be clear on the implications for tax and national insurance. We will therefore look at the rules regarding staff entertaining and trivial benefits, which provided they are not breached can avoid the need for reporting to HMRC and preparing P11d forms together with the resulting tax liability for the employee and national insurance liability for the practice.

Social functions and parties

In order to be exempt from reporting to HMRC a partly or similar function, including online or virtual parties must:

- Be open to all your employees
- Be annual, such as a Christmas party or summer barbecue
- Cost £150 or less per person

What if we have multiple surgeries?

If your practice has more than one location, an annual event that is open to all staff based at one location still counts as exempt. Similarly, if events are arranged by departments they are still exempt provided every member of staff is able to attend one of them.

What is included in the cost and how is it calculated?

The cost of attending the event should be £150 or less per person. The £150 should include the VAT and include any associated costs such as transport or accommodation. The total cost of the event is divided by the number of people attending the event to calculate the cost per person. There is no limit on the number of guests each employee can bring. However, most employers will limit the number of guests in order to control costs.

If the cost of the event exceeds £150 then a taxable benefit arises on the full amount, not just the amount by which it exceeds £150. If two events are organised and together they exceed £150 then a taxable benefit arises in respect of only one of the events provided the other is below £150 per person(s). The £150 exemption can be used by the practice against the event which is most beneficial from a tax point of view.

What happens if we exceed the limit?

If you do exceed the limit of £150 per person, the practice has 2 options. It can declare the benefit to HMRC on the employee's form P11d resulting in tax and national insurance liabilities. Alternatively, the practice can enter into a PAYE settlement agreement with HMRC where the practice agrees to pay the tax and national insurance liability on the grossed up value of the benefit. PAYE settlement agreements must be applied for before 6 July after the end of the tax year in which the benefit arose.

Trivial benefits

You do not need to pay tax on benefits for your staff if all of the following apply:

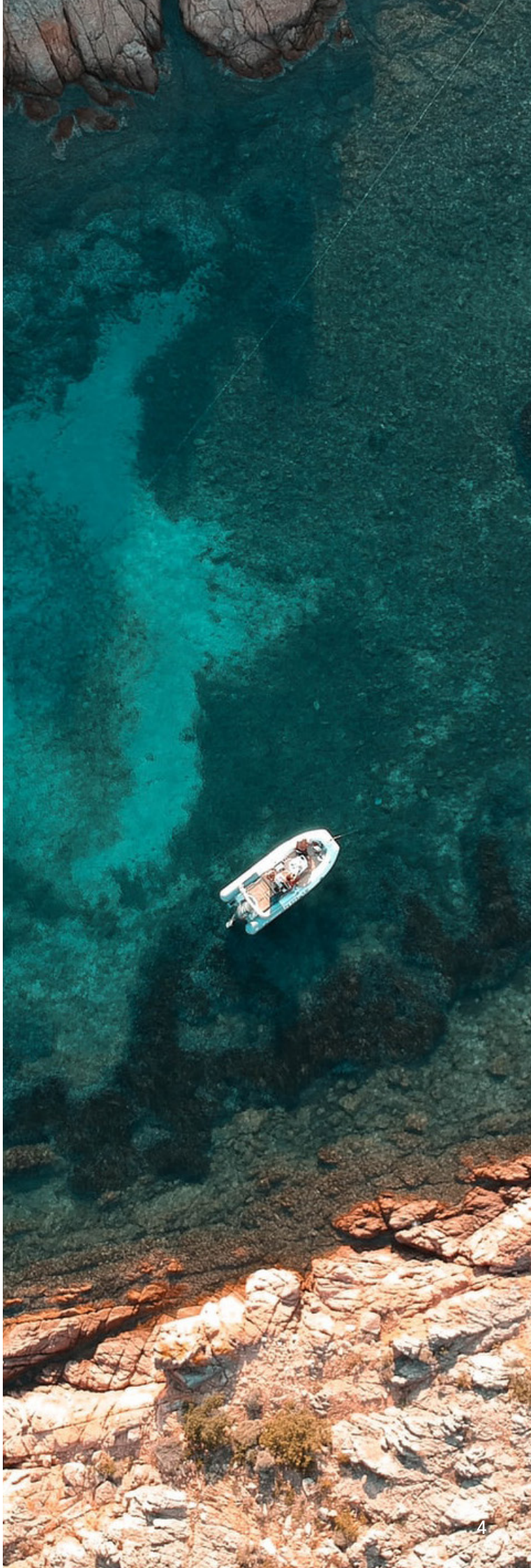
1. it cost you £50 or less to provide
2. it isn't cash or a cash voucher
3. it isn't a reward for their work or performance
4. it isn't in the terms of their contract

The trivial benefit exemption can be used to provide modest gifts to staff and this can include non-cash vouchers such as store cards.

If you breach the rules for trivial benefits, then again as for staff entertaining you will have to report the benefit to HMRC or see whether it could be covered by a PAYE settlement agreement. Not all benefits can be dealt with through a PAYE settlement agreement.

Salary sacrifice arrangements

If you provide entertainment or trivial benefits as part of a salary sacrifice arrangement, they will not be exempt and you will need to report them on the employee's form P11d.



Budget update

Prior to the Budget on 27th October there was much speculation that there could be reform of the taxation of wealth or capital gains, or additional taxes to help the change to a greener economy following the damp squib of the spring Budget.

When Rishi Sunak delivered his budget, none of these were mentioned. It seems that the tax raising measures announced earlier this year including the corporation tax increase to 25 percent from 1 April 2023, combined with the inflation impact of the freezing of personal allowances and rate bands, and the new health and social care increases, meant the Treasury felt there was little need to raise additional taxes in this budget.

The main tax announcements which Mr Sunak did make that may be of interest to the reader can be summarised as:

- Confirmation that the 1.25% Health and Social Care Levy mentioned a few months ago will be introduced from 6 April 2022 via an increase to National Insurance Contributions, before becoming a freestanding levy from 6 April 2023.
- From 6 April 2022, the dividend tax rates will also be increased by 1.25%. The basic rate dividend tax will increase to 8.75%, the higher rate dividend tax will increase to 33.75% and the additional rate dividend tax will increase to 39.35%. The main and savings income tax rates remain unchanged. These rate increases will further impact the tax efficiency of using dividends as a profit extraction method from limited companies.
- The new digital reporting under Making Tax Digital for Income Tax has been delayed until April 2024. As a part of this, following consultation one major change is to basis periods, so that business profits would be charged to income tax as they arise from month to month, rather than the current rules based on accounting periods. This will also come into full effect for the 2024/2025 tax year, with a 2023/24 transitional year. It should be noted that partnerships with turnover exceeding £10,000 will be required to join from 6 April 2025
- The 30-day time limit for reporting capital gains on the sale of residential property and for payment of the tax has increased to 60 days from Budget day. This is a welcome extension of the time limit which was proving to be very onerous for both clients and advisors.
- The temporary increase in the limit of Annual Investment Allowance (AIA) of £1 million per annum will be extended from 31 December 2021 to 31 March 2023 to align with the end dates of the super-deduction and special rate allowance. This measure will be of benefit if you are investing in qualifying plant and machinery in the period to 1 April 2023. It will particularly help those that are not eligible for the super-deduction which is only available to companies subject to corporation tax. It enables the cost of qualifying expenditure on plant and machinery, up to the limit of £1 million, to be offset against taxable profits in the year of expenditure.
- The AIA is expected to revert back to the permanent level of £200,000 from 1 April 2023. Transitional provisions will apply where businesses have a chargeable period that spans the date of reversal to the AIA limit by apportioning the periods before and after the change in rates. The transitional rules will need to be considered to ensure opportunities to maximise the AIAs available are not overlooked.
- Between 1 April 2021 and 31 March 2023 (extended in the Budget from 31 December this year), expenditure on new plant and machinery qualifies for a 130% super-deduction. Expenditure on assets in the special rate pool, such as integral features in buildings and certain cars will benefit from a 50% first year allowance. As mentioned above, the super-deduction will only be available to entities liable to corporation tax and so excluding partnerships and sole trades.

Expenses for Medical Professionals

During your working life, sometimes you will incur expenses for things you need for your job that your employer will not reimburse. These things might only be needed for your job and nothing else. In instances like this, you may feel out of pocket however HMRC allows you to claim tax relief on certain expenses you incur. For medical professionals it is good to know there are various work expenses they can claim against their income to receive tax relief. This relief could be worth 45% of taxes paid for additional rate taxpayers, 40% for higher rate taxpayers and 20% for basic rate taxpayers.

What are the rules for claiming expenses?

There are rules in place as to what expenses can be claimed. The general rule is that expenses must be incurred wholly, exclusively and necessarily in the performance of the duties of the job.

You are unable to claim tax relief if your employer reimburses you or you go out of your way to buy an item for work that your employer already provides. The time limit to make claims for expenses incurred is generous.

Expenses should be claimed within four years of the end of the tax year in which the expense was incurred for the course of employment. This means you can currently go back to the 2017/18 tax year and claim any unclaimed work-related expenses. Expenses above £2,500 must be claimed through self-assessment however claims below this amount can be claimed using the online services provided via the Government Gateway.

What are the common healthcare expenses?

1 Professional fees and subscriptions

Professional fees and subscriptions can run into the thousands for medical professionals especially if you are sitting your exams.

HMRC allow you to claim tax relief on membership fees and annual subscription so long as they are included on the HMRC approved professional bodies or learned societies list. The BMA, GMC, RCGP along with many other medical bodies are included on this list.

HMRC also allow medical professionals to claim tax relief on exam costs, HMRC has put together a list of exams they have identified as qualifying for tax relief, this list includes exams from the Royal College of Anaesthetists to exams from the Royal College of Surgeons. The list however is not exhaustive and other exams may qualify for tax relief, so it is best to seek advice if you are unsure.

2 Clothing and equipment

Tax relief can be claimed on expenditure on cleaning, repairing, or replacing specialist clothing. This includes items such as theatre shoes, scrubs and hospital uniforms.

There are various small items that last for less than two years that medical professionals must replace or repair in the course of employment.

The cost of this equipment can be claimed against income to receive tax relief. Stethoscopes, loupes and otoscopes are just a few examples of what can be claimed.

The cost of PPE cannot be claimed as a work-related expense. Your employer should provide you with PPE or reimburse you for the cost of PPE purchased.

3 Courses

Training courses are expensive and medical professionals have to do various courses as part of their continuing professional development.

Employers often pay towards the costs of these courses however sometimes there may be a course you think would be good for your continuing professional development. HMRC see these courses as you investing in yourself and your career progression, therefore the cost of these courses cannot be set against your income to receive tax relief.

4 Travel and overnight expenses

If you are required to travel for work by your employer you may be able to claim tax relief for the cost of travel, the money you've spent on food or overnight expenses. You cannot claim the costs of your normal travel to and from work unless you are travelling to a temporary place of work. If you are reimbursed by your employer for these costs, they will not be tax-deductible. There are approved milage rates set by HMRC which you can use to calculate the amount of tax relief you are due for your business mileage. These are as follows, you cannot claim costs separately for the maintenance of your vehicle.

Approved mileage rates

	First 10,000 business miles in the tax year	Each business mile over 10,000 in the tax year
	45p	25p
	24p	24p
	20p	20p

If you are away for work and are staying overnight you can claim tax relief on expenses you've incurred during the course of your stay.

Examples of what you may be able to claim are as follow.

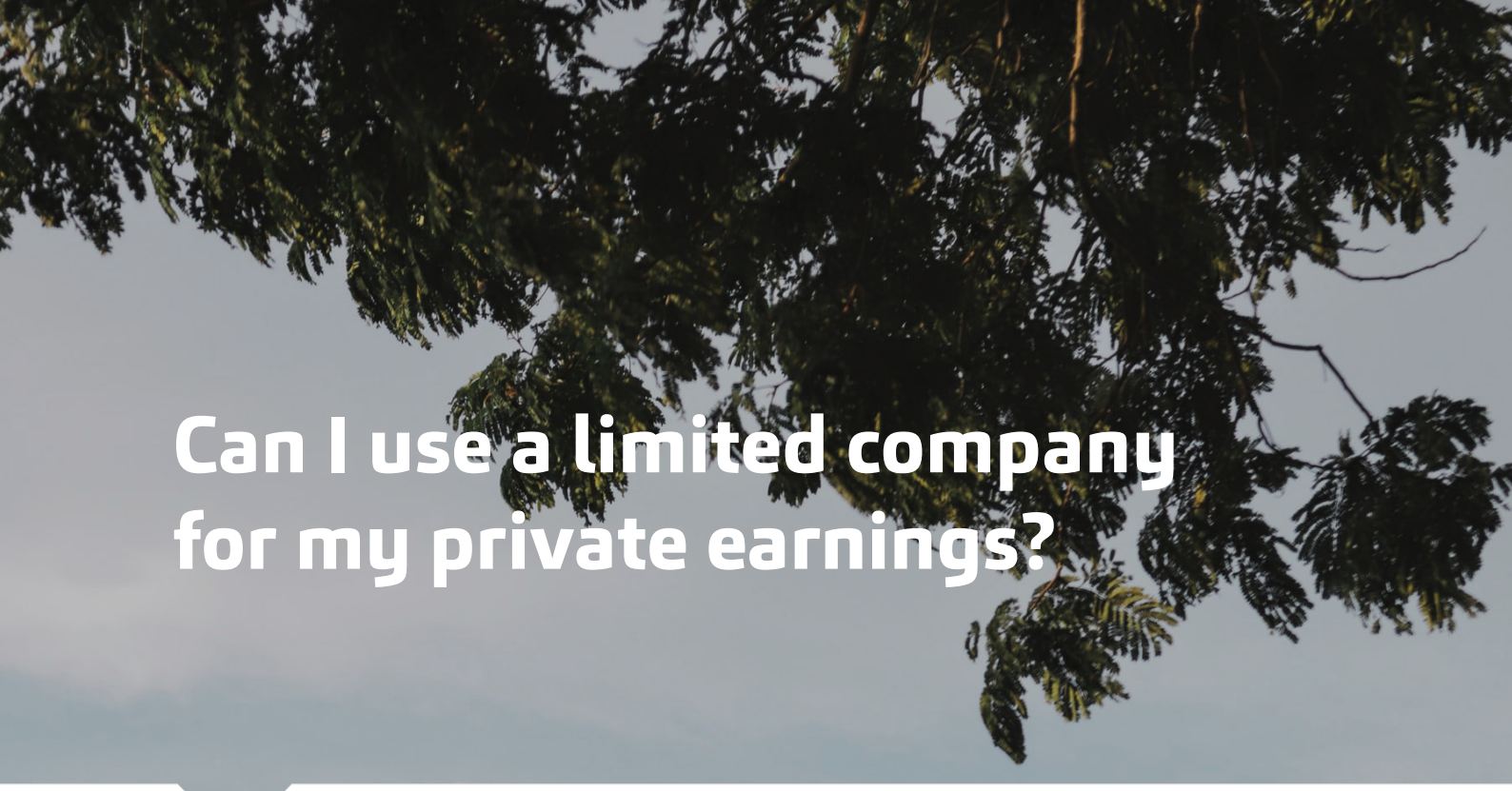
Public transport costs

Hotel accommodation if you must stay overnight

Food and drink

Congestion charges and parking costs

Expenses you can claim may seem straightforward however there may be certain expenses that may fall into the 'unknown' category.



Can I use a limited company for my private earnings?

There is a possibility that you could use a limited company for your private earnings, however there are pros and cons that must be considered very carefully. A limited company is a separate legal entity and one of the main advantages is that of 'limited liability.' A shareholder's liability is limited to the amount of investment in the shares. The requirement for personal indemnity, however in the healthcare sector reduces such a benefit.

There may also be tax savings from operating through a company. If structured in the correct manner, there may still be opportunities to bring a spouse or other family members in as shareholders to utilise dividend and savings allowances and lower rate tax bands. National insurance is not payable on dividends, which can provide a further saving, although the alteration of dividend tax rates and the removal of the dividend tax credit in 2016 has altered this position to a degree. If the income is not actually required, then additional savings can arise by leaving the money in the company and extracting it as capital when the company is wound up. All the necessary hoops need to be jumped through, and there may be significant extra cost in doing so, but all these things can add up to considerable savings, albeit under the current capital gains tax regime.

On the downside there are more administrative burdens by operating through a limited company. Accounts need to be filed with Companies House, annual returns of officers and shareholders need to be submitted as well as corporation tax returns made to HM Revenue and Customs (HMRC).

All this inevitably leads to higher accountancy costs, so it must be understood that any tax savings should outweigh any extra costs incurred, otherwise there is little point in the venture

In addition, there is considerable exposure to HMRC attack. They are keen to stamp out what they perceive as disguised remuneration (typically tax advantages obtained through loan arrangements). It is also important to steer around the agency rules. These require companies to deduct employee tax and national insurance from a worker's pay where it is considered that the company is providing staff as opposed to medical services. There is also a VAT risk in this area as the supply of staff is a fully VATable provision and an additional 20% would therefore need to be charged. Worker employment status also needs addressing; the IR35 rules impose employee tax and national insurance where HMRC deem a contract of service style arrangement to be in place. From 2017, heightened compliance requirements were introduced in this area where the services being provided are to public service organisations.

Another consideration is the pension position. By operating through a limited company, income ceases to become pensionable in the NHS Pension Scheme. For some this may be an advantage because of potential pension tax charges (Annual or Lifetime Allowance), for others a disadvantage. It is therefore important in such cases that a suitably qualified and experienced specialist Independent Financial Adviser is involved so that a full appreciation is gained. As can be seen, there may be significant advantages of operating through a limited company, but there are also a number of potential risks that should be mitigated as far as possible. This may involve putting appropriate contracts and/or service level agreements in place. This is not as straightforward an area as many may believe.

For GP partnership to operate fully through a limited company then further considerations need to thought through.

There is the possibility that NHS England will require the contract to be put out to tender and thus the potential loss of this contract altogether, so early discussions with the local area team to understand the position is important. If the contract can be brought into a company then the above tax and pension positions are slightly different. As it is very unlikely that you would be able to leave all of your profits in the company, in place of drawings you would be declaring dividends out of post corporation profits and these dividends then form part of your personal tax liability and also form the basis on which pension contributions and pensionable pay are calculated.

Whilst there is still likely to be some savings from this in terms of both tax and pension contributions, the tax savings would be marginal and reduced pension contributions will result in lower final pension positions, although may reduce the possible pension tax charges discussed above. The tax savings are lessened as only NHS family members are permitted to be shareholders in such companies and thus unless spouses and children already work in the NHS the sharing of dividends would not be possible.

Very few such GP limited companies exist at the present time and thus it must be assumed that the potential risks and additional administrative and information being on public record outweigh any potential benefits from tax and pension positions.

> There still is the potential for a practice to operate a limited company alongside it's core NHS activities and thus avail itself of some of the advantages. Care needs to be taken over registration and confidentiality issues and also to ensure that contracts are correctly commissioned in the name of the company and not just diverted from the partnership.

In all cases when considering the appropriateness of using a limited company specialist accounting, legal and financial advice should be sought in advance.

Keeping your partnership deed up to date

It is thought that a vast majority of GP partnerships do not have a deed in place, or rather worryingly believe that they have a deed but it is not actually valid, and they are therefore a 'partnership at will' governed by the Partnership Act 1890. This article will discuss the importance of having a current, effective and valid partnership deed in place and how doing so can help you avoid the pitfalls of a partnership at will.

When do partnerships need to update their deed?

If you have a valid and effective partnership deed in place, the retirement, death or the expulsion of a partner will not invalidate the deed. Rather the terms of the deed will simply continue to bind the continuing partners. However, this would be an opportune time to review your deed and ensure that it correctly reflects the way the partners want to operate their business.

The legal trigger for updating your partnership deed is when a new partner is intending to join the partnership. If a new partner joins the partnership without being bound into the deed, the addition of that new partner will make the deed invalid. This remains the case even if the new partner is joining the partnership on a probationary period, as they will be considered a partner to the outside world.

This is because a partnership is a personal relationship and everyone in the partnership needs to be on board with the arrangement.

What if we forget to update our partnership deed?

It is essential to have a valid deed in place for two reasons.

The first is to protect the stability of the business and to regularise the partnership by providing written evidence of agreement between the Partners. The deed will be written evidence of the terms upon which the partners wish to operate their business and will provide certainty and clarity to the partners.

The second reason is to ensure that the partnership is not operating as partnership at will. A partnership can exist without a deed in place but it will then be regulated by default statutory provisions under the Partnership Act 1890 ('the Act'). This is known as a 'partnership at will', which is an inherently unstable business arrangement. This is especially the case for GPs who operate in such a heavily regulated sector.

Reliance on the Act to govern the partnership can render partners vulnerable because the default provisions provide little security for a GP partnership operating in the complex NHS world. The greatest pitfall of a partnership at will is that this arrangement can be dissolved at any time by any partner serving immediate notice, without the need to provide any justification in support of such notice.

This can not only create insecurity for the business as well an individual partner, it can also have serious adverse consequences by putting your NHS Contract at risk. This is because upon dissolution, the business has to be wound up so that all of the partnership assets are sold, the staff are made redundant and the NHS Contract will automatically terminate. In a situation of conflict within the partnership, partners could find themselves 'held to ransom' by a disaffected partner.

A recent example that we worked on involved Drs A, B and C who practiced in partnership together without a Deed. This meant that they were operating as a 'partnership at will'. Dr A (a disaffected partner) served notice of dissolution on Drs B and C as well as serving notice with immediate effect on NHS England to terminate the partnership's GMS Contract (both of which are possible under a partnership at will). Dr A then refused to rescind both notices unless his (rather unreasonable) demands for payment of his share in the property, capital and undrawn profits were met. This led to 12 months of stressful, expensive and time-consuming litigation to forge a deal with Dr A whilst trying to save the GMS Contract. If a Deed had been in place, then all this could have been avoided.

What's involved in the process?

A well-drafted partnership deed should address the key issues necessary to ensure the partnership operates smoothly.

It must include the nature of the partnership's business and its name, the sharing of profits and losses, the investments to be made as the capital of the partnership, decision making and the management of the partnership, leave provisions, resolution of partnership disputes, restrictive covenants, what happens if a partner retires or dies and CQC obligations (to name a few).

Summary

A deed is crucial for all GP practices, not least to stabilise the partners' working relationship by having a written document to evidence how their business should operate but also to avoid being a partnership at will.

The writer, Neha Shah is a Partner in the Primary Care team and specialises in advising on a range of transactional and regulatory matters in the primary care sector.

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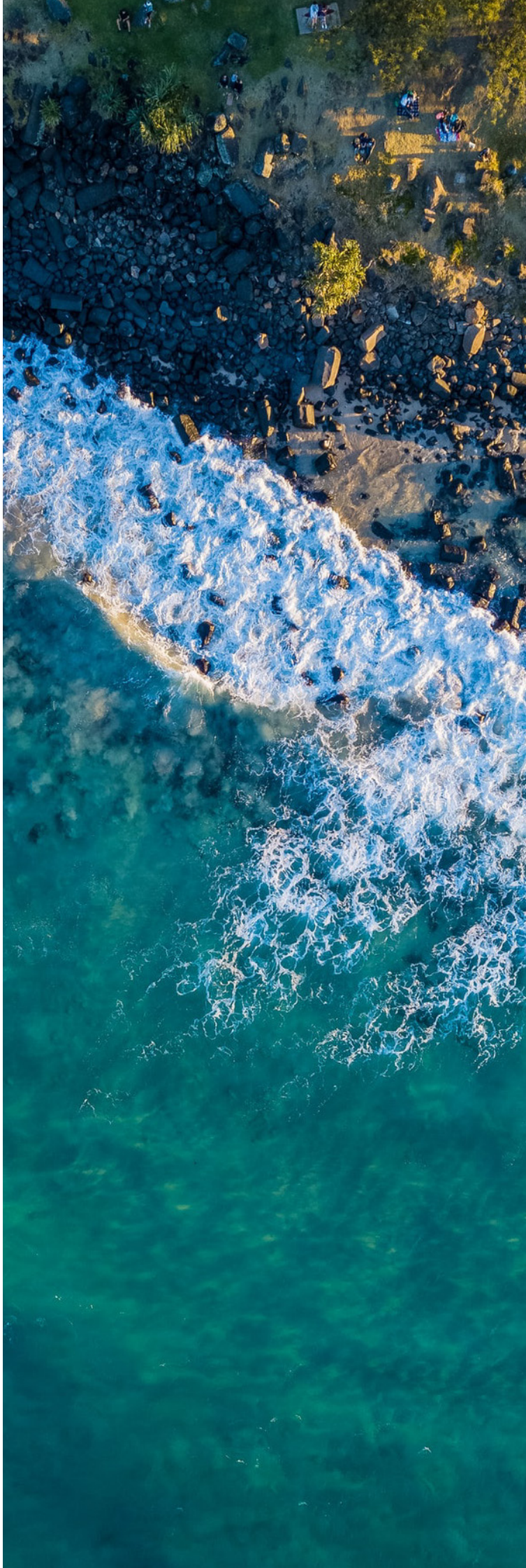

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