

Changes to the taxation of Limited Liability Partnerships (LLPs)

The British Medical Association's GP Committee (GPC) has obtained and issued the following advice from professional tax experts. This may affect Personal Medical Services (PMS) partnerships established as LLPs.

This advice is for general use and does not replace the necessity for GP partnerships to seek professional, individually tailored advice for any matters relating to tax.

Introduction

The Government intends to make significant changes to the taxation of partnerships and partners therein from 6 April 2014. The draft Finance Bill 2014 (www.gov.uk/government/collections/finance-bill-2014) was published on 10 December 2013 and contained further detail on the proposals.

Salaried Members

Under current legislation, all partners in a Limited Liability Partnerships (LLPs), known as 'members', are regarded as self-employed for tax and NIC purposes. From 6 April 2014, certain partners in LLPs will be regarded as 'salaried members'. Salaried members will be taxable as employees. This means that the LLP will be required to pay 13.8% employers' NIC on most remuneration paid to salaried members.

There will be lesser effect on the NIC payable by the salaried members themselves, who will be required to pay 12% employees' NIC on some of their earnings, rather than the 9% Class 4 NIC which is payable by self-employed individuals. In addition, the LLP will be required to deduct income tax and employees' NIC from the salaried member's remuneration and pay this to HMRC through PAYE, along with the employers' NIC due. This will impact cash flow.

Income tax and NIC may also be payable on benefits received by salaried members and in certain circumstances where a company underlies the partnership or where the individual hold shares in a company which is a member of the LLP, as legislation which relates to employment related securities will apply.

An individual will be treated as a salaried member if all three of the conditions below are met:

1. At least 80% of the individual's remuneration is 'disguised salary', which is defined as fixed remuneration or variable remuneration which varies by a measure other than by partnership profits, or where the variation based on partnerships profits is unlikely to occur (e.g. where a profit share will only be reduced if the partnership were to become insolvent).
2. The individual does not have significant influence over the affairs of the LLP. This relates to managing the partnership itself, rather than having responsibility for a particular area of the partnership's business.
3. The individual's capital contribution is less than 25% of the disguised salary which is expected to be paid in the tax year. For example, an individual is entitled to receive a fixed profit share of £40,000 per annum. They also received a percentage share of partnership profits if profits exceed a certain level and they receive a further £10,000. The disguised salary is the £40,000

fixed income, so this condition will be met if their partnership capital is less than £10,000 (£40,000 x 25%). They will only be a salaried member if all three conditions are met.

If any of the above conditions are not met, the individual will not be classified as a salaried member and so will continue to be taxable as a self-employed individual. However, targeted anti-avoidance measures may apply in certain cases where changes are made so that individuals will not be taxable as salaried members, which are intended to apply where those changes have no real commercial effect.

If you think your practice may be affected by these changes, GPC strongly recommends that you seek advice from your practice accountant.

For any general queries, please contact info.gpc@bma.org.uk.