Wealth
Management

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Wealth planning for health-care professionals – Starting out on your own

On July 18, 2017 the federal government released a consultation paper proposing a number of strategies which target private corporations with regards to income splitting, multiplication of the lifetime capital gains exemption, holding a passive investment portfolio inside a private corporation, and converting a private corporation's regular income to capital gains.

Generally, effective for 2018 and later taxation years, the government has proposed to limit income sprinkling to family members receiving "reasonable" compensation from a private corporation. The proposed measures extend the tax on split income rules (often known as "kiddie tax") to adults and limit the multiplication of claims to the lifetime capital gains exemption.

The government is also seeking input on possible measures to eliminate the tax advantage of investing undistributed earnings from an active business in a private corporation. If enacted, these measures may result in a disincentive for investing passively within a corporation.

The strategies discussed in this article may be affected by the proposed measures in the consultation paper and the accompanying proposed legislation. If you are an owner of a private corporation you should consider the potential impact of the proposed measures and discuss the implications with your qualified tax advisor.

Whether you are a new graduate, working as an associate, running your own practice or approaching retirement, tax, financial and retirement planning will always play a key part at every stage of your career. As your personal, professional and financial situations evolve, you should ensure that you've done appropriate planning to help you achieve your goals and objectives throughout the different stages of your professional life. This article addresses the relevant issues you may face when you have practiced as an associate for a few years, observed different practice options and are ready to own your own medical or dental practice.

This article outlines several strategies, not all of which will apply to your particular financial circumstances. The information in this article is not intended to provide legal or tax advice. To ensure that your own circumstances have been properly considered and that action is taken based on the latest information available, you should obtain professional advice from a qualified tax advisor before acting on any of the information in this article.

Practice options

You have been working as an associate for a few years and have gained some experience in your field of expertise. Now you are ready to consider being a practice owner. Do you have the option of buying into the existing practice you are working in and becoming a partner in that practice? Do you want to start practicing on your own either by creating a practice from scratch or buying an existing practice? The practice arrangement you choose should be compatible with your personality, personal goals, preferences and financial constraints.

Partaking in the ownership of a practice means that in addition to your normal duties, you will also have to become involved with the business and administrative side of running a practice. You will need to become familiar with financial planning, ways to raise capital, office management, and more. You may also deal with issues such as, hiring of staff, billing arrangements, regulatory requirements, structuring your practice (which may involve the use of a corporation(s) or partnership), cost-sharing and shareholder arrangements.

Buying into a practice or partnership

Perhaps the existing physician or dentist you are working with hired you because they are retiring and have been grooming you to succeed their practice or perhaps you want to join a group of physicians or dentists with an existing practice who are looking to expand. In either case, depending on the sale agreement and the organizational structure of the practice, you will either become a partner by buying an interest in the partnership or you will become a shareholder by acquiring shares of the professional corporation.

Starting your own practice

If you have gained sufficient experience in your medical or dental field and observed different practice styles from your years as an associate, you may be ready to start your own practice. The benefit of creating your own practice is that you are in control of the practice philosophy and the scope of the practice. However, you may face some challenges, both financially and administratively, in making this transition including identifying a desirable location to set up your practice, securing financial support (obtaining loans), leasing space, hiring staff, purchasing or leasing equipment, purchasing inventory and supplies, furnishing your office, obtaining computers and business software systems, opening accounts with vendors, and building a patient base.

Purchasing a practice

If you want control of your own practice but do not want the burdens of a start-up, you may consider purchasing an existing practice. Some of the main advantages of purchasing an existing practice are that you can anticipate the income and operating expenses of the existing practice; there is an active patient base which means that you can expect to earn income immediately; and, the staff are already familiar with the practice's operating systems so you do not have to hire and train new employees. The disadvantages, however, of purchasing a practice include higher financing costs, unknown staff or patient conflicts, potentially outdated equipment and the potential for the loss of existing patients due to the transition.

Different business structures

As an unincorporated individual, you can structure your practice either as a sole proprietor (owning your practice assets directly) or as an individual partner with a participating interest in a partnership. Alternatively, you can form a corporation and operate your practice through the corporation. The setup of a sole proprietorship and the formation of a partnership are relatively simple and inexpensive, whereas corporations are more costly to create and maintain. You should note that if you decide to operate your practice as a sole proprietor or if you are a partner of a partnership, you have the option of transferring your practice or partnership interest to a corporation at a later date, potentially on a tax-deferred basis.

The practice may be structured and operated in one of three ways, the features of which are summarized in the following table.

Features of Different Business Structures

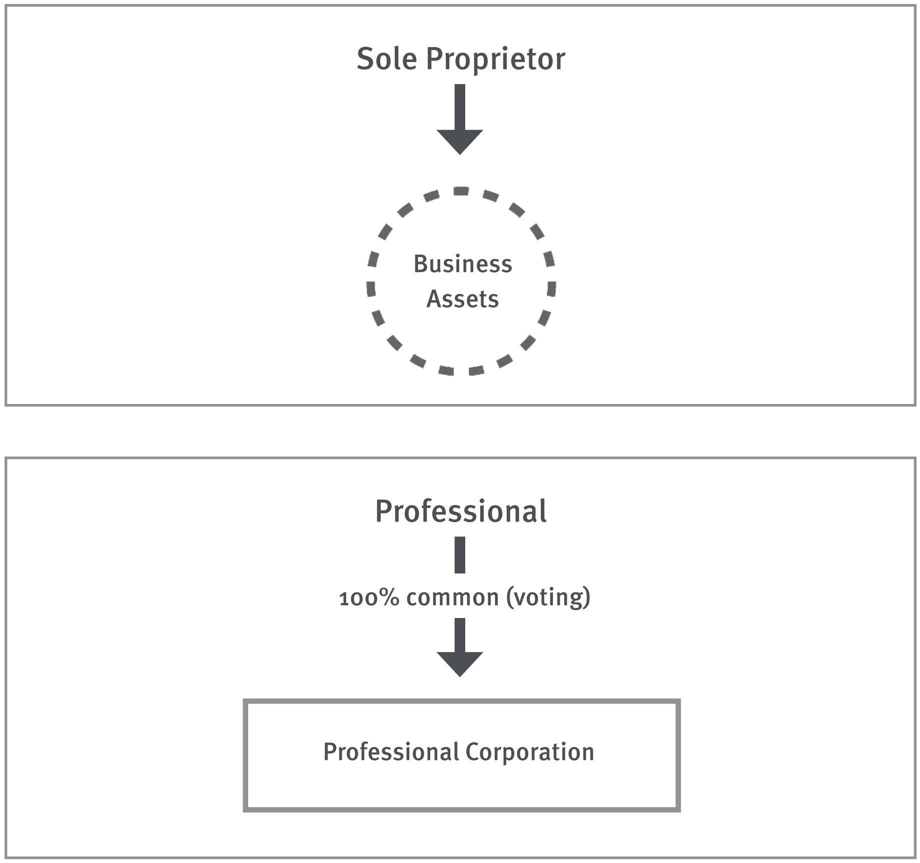
	Sole Proprietorship	Partnership	Professional Corporation (PC)
Legal entity	No distinctions drawn between the owner and the proprietorship.	A business relationship between two or more persons. It is not a separate entity.	A corporation is a legal entity, distinct from its shareholders.
Legal feature	No one particular body of law governs this type of structure.	The three criteria essential to the existence of a partnership are: 1) the existence of a business, 2) carried on in common by the partners, 3) with a view to profit.	A PC is a legal entity which must be incorporated under the appropriate provincial legislation.
Level of control	Direct personal control.	Shared with partner(s).	Direct personal control if sole shareholder or shared with other professional shareholders.
Legal liability	The individual is personally liable for the debts of his/her sole practice.	Joint and unlimited liability among the partners for the debts of a general partnership. This liability extends to the personal assets of each partner. Partner in limited liability partnership is generally not liable for acts and omissions of other partner.	Shareholders enjoy limited liability protection but the professional is jointly and severally liable with the PC for all professional liability claims made against the PC.
Licensing	The individual must be licensed by the relevant professional governing body such as the College of Physicians and Surgeons or the College of Dental Surgeons in the province in which they operate.	Each professional working on behalf of the partnership must be licensed.	The PC must be certified by the relevant professional governing body (i.e., obtain a "Certificate of Authorization" or license/permit).
Tax year	Income is reported on a calendar year basis (i.e., December 31 year-end).	Partnerships with at least one member who is an individual or a PC must have a December 31 year-end.	The PC has its own fiscal year which may differ from the calendar year. A PC which is a corporate partner of a partnership must have a December 31 year-end.
Taxation	Taxed personally.	Partner's share of profit is taxed personally.	Salary paid by the PC to the individual is taxed personally. The PC's taxable income (after deducting salary and other allowable expenses) is taxed at the corporate level at corporate rates. The PC's after-tax income can be distributed to the individual as a taxable dividend.

If you require all the funds from your practice for personal spending, from a tax perspective, you should generally be indifferent to running your practice as a sole proprietorship or through a corporation.

Which practice option is right for you?

The following figures illustrate possible business structures that you may wish to consider when setting up your practice.

A. Sole Proprietorship vs. Professional Corporation

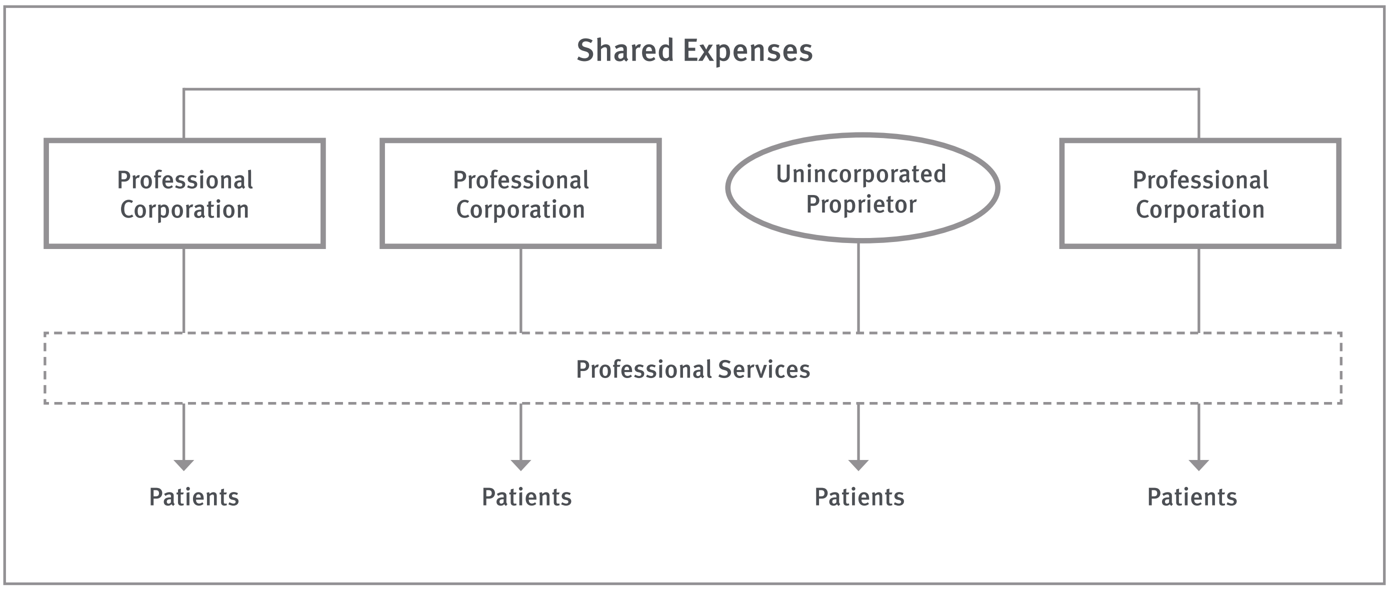


When you start your practice from scratch, you can become a sole proprietor or a shareholder of your own professional corporation (PC). If you are operating as a sole proprietor, the taxable income you earn (i.e., revenues less tax deductible expenses) is considered professional income and taxed in your hands in the year it is earned. If you operate your practice through a PC, the taxable income earned is taxed in the corporation. You may wish to draw a salary from the corporation or receive a dividend distribution from the corporation as remuneration, both of which would be taxable to you personally in the year it is received. If you require all the funds from your practice for personal spending, from a tax perspective, you should generally be indifferent to running your practice as a sole proprietorship or through a corporation.

The above diagrams also illustrate the possible structures available if you were to purchase an existing practice. Where the existing practice is set up as a corporation, the transaction can be structured as an asset sale or a share sale. If the vendor is selling you the assets of the professional practice, you can either make the purchase as an individual or you can first incorporate your own PC and then buy the assets. If the vendor is selling the shares of a PC, you can either purchase the shares and become the sole shareholder, or if you already have your own PC, you may wish to have the corporation buy the shares from the vendor and subsequently merge the two PCs together to form one corporate entity.

If you earn professional income as an unincorporated sole proprietor, the taxable income is taxed at your individual marginal tax rate. If the professional income is earned in your PC, the taxable income would be considered active business income for tax purposes. Active business income is subject to the general corporate tax rate, at both the federal and provincial levels. If the taxable income earned is below the business limit, there is a deduction that reduces the tax rate at the corporate level, known as the small business deduction. The small business limit for 2016 at the federal level is $500,000 and the provincial business limit is $500,000 (except for Manitoba where the limit is $450,000 and Nova Scotia where the limit is $350,000). The amount of taxable income on which a corporation can claim the small business deduction is capped at the corporation's business limit. The business limit must be allocated between corporations that are associated with each other in a taxation year.

B. Cost Sharing Arrangement between Sole Practitioners

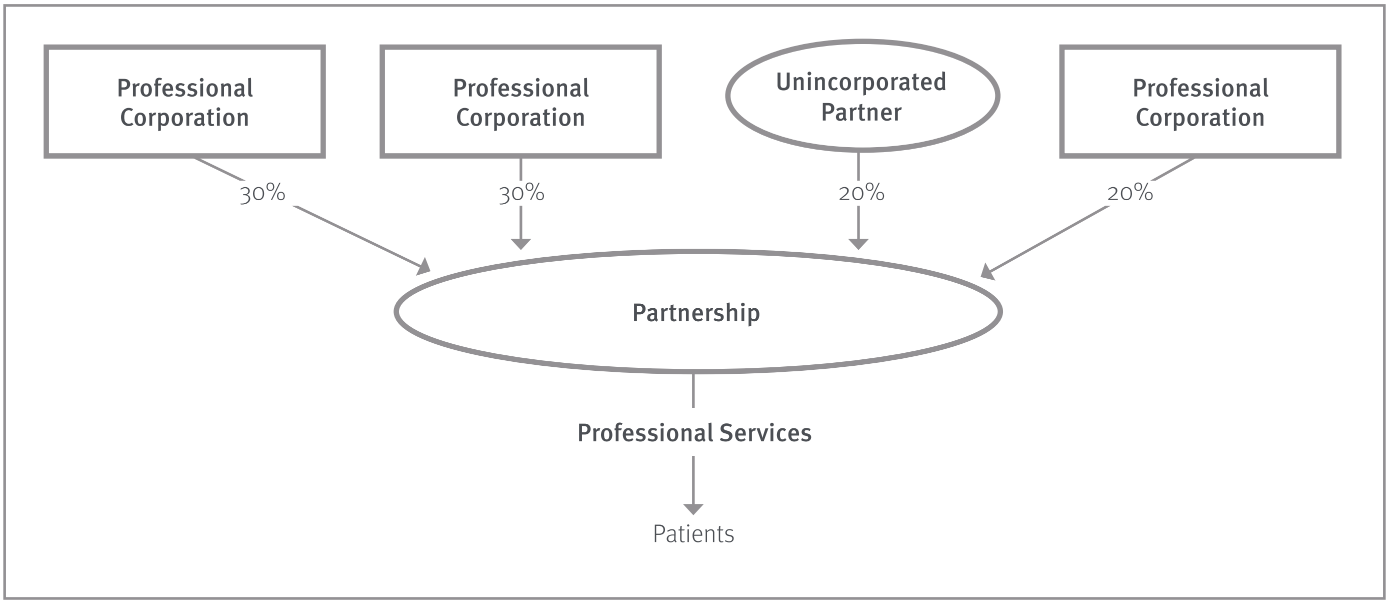


Cost sharing arrangements are very common in the dental and medical professions due to commercial and tax advantages. Under a cost sharing arrangement, the professionals earn their own revenues, but split costs for things such as facilities, staff, and other common costs. This arrangement allows the group of professionals to share the administrative and office costs as well as certain capital expenses, such as major equipment or office renovations. This arrangement also provides the professionals with most of the advantages of an individual practice, while benefiting from economies of scale resulting in less overhead per practitioner. These cost sharing arrangements are distinct from partnerships as they do not possess the three required elements of a partnership established by the courts. The elements of a partnership are: 1) the existence of a business, 2) carried on in common by the partners, 3) with a view to profit. In most cost sharing arrangements, the business is not carried on in "common". Each professional carries on their own activities for their own benefit. There is no splitting of profits but only a sharing of costs.

Under this structure, each professional controls their own PC and in the case of the unincorporated proprietor, the professional acts as a self-employed individual. Each incorporated proprietor or PC is entitled to a small business deduction on their own taxable income. Depending on the province, each PC that earns net professional income below the business limit is subject to tax at a low rate of 10.5% - 18.5% on that professional income.

It is very important that a cost sharing arrangement is not viewed as a partnership. Otherwise, you will have to share the small business deduction benefits amongst the partners. This could significantly reduce the tax benefits of incorporating.

C. Partnership - Unincorporated Proprietor vs. Incorporated Partner



Under this structure, you can be an unincorporated partner or you can form your own PC and have it be a corporate partner of the partnership. Because partnerships do not pay tax, the partnership's income will flow through to the partners who will then report their share of the partnership's taxable income on their respective income tax returns. If you are an unincorporated partner, your share of the partnership income is reported on your personal income tax return as partnership income and taxed at your marginal tax rate. If your PC is a corporate partner, it will report its pro rata share of the professional income on its corporate tax return. As the professional, you can either draw a salary from the PC or receive a distribution from the PC in the form of a dividend, both of which are taxable in your hands in the year of receipt.

There are "specified partnership income" rules in the Income Tax Act that are designed to prevent the multiplication of the small business deduction where an active business is carried on as a partnership with corporate partners. The result of the application of these rules is that a group of corporate partners must share one small business deduction in respect of the partnership income. For example, if the partnership has net professional income of $1,200,000 and your PC's share of the income is 25% ($300,000), then only $125,000 will qualify for the small business deduction federally and $125,000 will qualify provincially $112,500 if in Manitoba or $87,500 in Nova Scotia), calculated as your 25% share of the small business limit. The remaining allocated partnership income will be taxed at the general corporate tax rate of between 26% - 31% depending on the province of residence. The PC is still entitled to the full business limit, so additional active professional income of up to $375,000 federally and $375,000 provincially ($337,500 if in Manitoba or $262,500 Nova Scotia) could be earned by the PC from other sources and could still qualify for the small business rate.

Financing

Whether you start your own practice, buy into a partnership or buy out an existing owner, you may need help with financing the start-up costs or purchase price of your practice.

If you are starting out on your own, you will need to prepare a business plan to present to the lending institution. The typical business plan includes a current balance sheet and projected financial performance, an income statement and a cash flow analysis. A solid business plan will help you identify how much you need to borrow, how to allocate resources, and opportunities for growth.

If you are buying into an existing practice, structuring the buy-in is usually the most important part of the arrangement. The existing partners or shareholders may either expect you to pay up-front for the partnership interest or PC shares or allow you to pay for same over a few years with interest.

Whether you are borrowing for the buy-in or purchasing an existing practice, the lending institution will want to know the value of the practice and review the projected financial statements to determine how much financing to provide you for the purchase. Alternatively, the seller may wish to assist you with vendor-financing.

The expense to obtain a valuation will often be well worth the cost, especially if the value of the business is determined to be far less than the price you had planned to offer prior to obtaining the valuation.

Valuation

Depending on what it is you are purchasing, whether it be an interest in a partnership, shares of a corporation or assets of a business, the valuation of your target purchase is based on a number of factors. As such, before determining a purchase price, you should obtain a valuation of the target business or assets from an independent third party that is qualified to do business valuations.

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Due diligence

If you are planning on buying into a practice or partnership or purchasing an existing practice, you will need to research the entity's viability and develop a business plan. The benefits of knowing what you are purchasing will likely outweigh the costs of researching the target practice.

Shareholders'/partnership agreement

If you are planning on joining other professionals in a group structure, you should ensure you understand the terms and conditions of the shareholders' agreement or partnership agreement and are in agreement prior to finalizing the deal. A shareholders' agreement is an agreement among some or all of the shareholders of a corporation, which among other things, set out the rules relating to the governance of the corporation, dividend policies, funding requirements and dispute resolution. The shareholders' agreement may also contain a buy-sell provision dealing with exit strategies upon the occurrence of an agreed-upon sale event. A partnership agreement is a contract between two or more persons, including corporations, which defines the partnership and the rights and obligations of the partners. It is recommended that you have a lawyer review the agreement to provide you with the right guidance.

Seek the right advice

While the next step for an experienced medical or dental professional may be to operate their own business, you may not have the legal, accounting, or practice management background required to run the practice. The fees you pay professional advisors may help you save money and reduce your risks in the long run as they may be able to better engage in reviewing and negotiating contracts, and tax planning for your circumstances. Also, a good practice management consultant can help you establish efficient systems and educate you on how to run a dental or medical practice. Lastly, consider engaging a qualified financial planner to have a comprehensive financial plan prepared which should address all aspects of your financial affairs, including cash and debt management, tax and investment planning, risk management, and retirement and estate planning.

Please contact us for more information about the topics discussed in this article.