Dental Practice Incorporation 2015/16

Many dental practices will no doubt have considered the advantages of incorporation. This article aims to set out the key considerations you should consider when looking at the prospect of incorporating your dental practice.

Key advantages and incentives

Tax savings

The primary reason for dentists to incorporate is due to the potential tax savings available to a corporate entity.

The examples below give an indication of the 2015/16 tax savings that may be achievable for a two partner practice.

Profits	£30,000	£50,000	£100,000
Tax and NI payable	£	£	£
As partners	3,302	9,102	25,580
As company	2,776	6,776	18,106
Potential saving	526	2,326	7,474

The extent of the savings is dependent on the precise circumstances of the partner's tax positions and may be more or less than the above figures. The examples are computed on the basis that the partners:

- Share profits equally
- Have no other sources of income
- Both partners take a salary of £8,060 from the company with the balance (after corporation tax) paid out as a dividend.

Protection of personal assets

A company normally provides limited liability, thus protecting an individual's personal assets in the event of the practice running into financial difficulties. If a shareholder's shares are fully paid he cannot normally be required to invest any more in the company. However, banks often require personal guarantees from the directors for borrowings. The advantage of limited liability will generally apply in respect of liabilities to other creditors

National Insurance

The rate of employees' NIC is 12%. In addition, a 2% charge applies to all earnings over the NIC upper earnings limit (which is £42,385 from 6 April 2015). The rate of NIC for the self-employed is 9%, and 2% on profits above £42,385 from 6 April 2015. All NI contributions can be avoided by incorporating, taking a small salary up to the threshold at which NI is payable and then taking the balance of post-tax profits as dividends.

Capital gains

Incorporating will involve transferring at least some of your assets (most significantly goodwill) from your existing practice into your new company. This can create significant capital gains although there are mechanisms for deferring these gains until any later sale of the company. The transfer of goodwill may create a significant capital gain although there is a mechanism for deferring the gain until any later sale of the company if the business is transferred in exchange for shares in the company. If goodwill is sold to the company for cash or debt on or after 3 December 2014, individuals will be prevented from claiming Entrepreneurs' Relief (ER). Capital gains tax will be payable on the gain at the normal rates of 18% or 28% rather than 10%. Following consultation, the legislation will be revised to allow ER to be claimed by partners in a firm who do not hold or acquire any stake in the successor company.

We will need to discuss in detail with you the most appropriate mechanism for your practice.

Stamp Duty Land Tax (SDLT)

There may be SDLT charges to consider when assets are transferred to a company. Goodwill and debtors do not give rise to a charge, but land and buildings may do so.

Key disadvantages

No analysis of the position would be complete without highlighting the disadvantages of incorporation.

NHS contract change

The biggest concern for practices when considering incorporation is understandably in connection with the NHS contract. As a result of incorporation, the new business entity will be required to be the NHS contract holder and specialist legal advice should be obtained to ensure a smooth transfer to the newly formed company.

This process may also lead to the local CCG wanting to renegotiate contracted UDA rates and units.

Privacy

Details of the directors and shareholders are filed on the public register held by the Registrar of Companies at Companies House. The annual accounts also have to be made available on public record at Companies House - although these can be modified to minimise the information disclosed.

Raising personal finance

Following incorporation it is likely that a director loan account will have been created following the transfer of goodwill and assets from your existing practice. As the loan account is tax free it is likely that you will supplement your earnings with cash from this source, thus avoiding any unnecessary income tax charges. As a result of the above, lenders will usually base borrowings on an individual's "taxable income", being salary and dividends – NOT repayment of a director loan account and therefore this could reduce the amount of finance available to an individual. It is not always easy to persuade a lender that the dentist and the company are one of the same.

Superannuation

The amount of NHS pension a dentist will receive in the future may also be impacted if a practice with an NHS contract is incorporated.

For superannuation purposes, a dentist would need to draw out sufficient income from the company, either in the form of salary or dividends, to ensure the appropriate entitlement to the NHS pension scheme. This may lead to an increase in the income tax liability and therefore defeat a key incentive for incorporation in the first place.

Compliance costs

The annual compliance requirements for a company in terms of administration and accounting tend to result in costs being higher for a company than for a sole trader or partnership. However this depends on the current structure of your existing practice and the number of partners and any expense sharing arrangements. Annual accounts need to be prepared in a format dictated by the Companies Act and, in certain circumstances; the accounts need to be audited by a registered auditor.

Dividends

If you will require regular payments from your company, we will need to set up a system for you to legally pay dividends.

Transactions with the business owners

A business owner may introduce funds to and withdraw funds from an unincorporated business without tax implications. When a company is involved there may be tax implications on these transactions.

Director's responsibilities

A company director may be at risk of criminal or civil penalty proceedings e.g. for late filing of accounts or for breaking the insolvency rules.

There may be a number of good reasons currently for considering use of a company as part of a tax planning strategy. However, as you can see from this article, there are many factors to consider. We would welcome the opportunity to talk to you about your own specific circumstances.

Please do not hesitate to contact your local specialist for more information.

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