

Incorporation: More Questions You Should Ask

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While there are approximately 8,500 dentists in Ontario, there are approximately 4,500 dentistry professional corporations (PC) registered with the RCDSO at end of 2010. In other words, more than 50 per cent of the dentists in Ontario are incorporated. This percentage does not include hygiene and technical services corporations. To determine if a PC is suitable for you, consider the following:

Who?

Regardless of whether you are the principal owner of your dental practice or an associate dentist, you can incorporate.

For principals, if you own more than one practice, you may choose to incorporate one PC for all locations, or incorporate separate PCs for separate locations. A dentist can have more than one PC. Also, consider whether a hygiene or technical services corporation, PC, or both, is more suitable in your situation. Often, the spouse is a dentist as well and both dentists can own the same PC or each can own separate PCs. These considerations should be addressed with your advisor vis-à-vis your financial situation before you incorporate.

Associates can incorporate and generate tax savings as long as they have taken steps to **avoid** the Personal Services Business (PSB) rules. The PSB rules were designed to deny employees who incorporated themselves the tax benefits of incorporating. If these rules apply, the tax benefit of incorporating would be significantly reduced since such a corporation (PSB) would not enjoy the low corporate tax rate of 15.5 per cent and tax deductions for expenses would be very limited. You should discuss your circumstances with your advisor to determine the steps necessary to avoid the PSB rules when incorporating. Your advisor should also review the potential tax consequences and impact on your PC if you have an associate agreement with non-competition and/or non-solicitation clauses.

Why?

There are tax benefits for dentists with professional corporations. If you answer yes to the following questions, then a PC may be to your advantage:

- Will your annual profit (i.e., billing less business expenses) exceed \$128,000?
- Do you have a stay-at-home spouse, a spouse that makes little or no income, or will your spouse have children in the next few years?
- Will you have adult children going to university?
- Do you have parents who make little or no income?
- Do you have business debts (not including student loans)?
- Are you planning to sell your practice soon and want to enjoy the lifetime capital gain exemption of \$750,000?

Although you may qualify for the lifetime capital gain exemption when selling a practice, there are some exceptions. A review of your personal tax history before incorporating might reveal that incorporation is not beneficial for you.

When and What to Consider?

- The incorporation date cannot be backdated since authorization must be obtained before you begin to operate your associateship or practice through your PC. It is always better to plan ahead; allow at least six to eight weeks to get everything in place.
- Although there are exceptions, a PC should exist at least 24 months before your intended sale of a dental practice.
- When selling your practice and in spite of the lifetime capital gains exemption, you may have to pay some taxes on the sale (minimum taxes). Since such taxes may be refundable to you over the following seven years if you have income and/or taxes to pay, you should have a tax plan beyond the sale date of your practice.
- Consider adding your family members to the PC in order to utilize a portion of their lifetime capital gains exemption. Although the incorporation process takes only a few weeks, these issues should be considered before you incorporate and/or start negotiating with purchasers of your practice.

Other Issues

With the introduction of the Harmonized Sales Tax (HST) at 13 per cent in July 2010, you might have to pay HST on the transfer of certain assets from your dental practice to your PC when incorporating.

Consider double wills. For an Ontario resident, the probate fees are 1.5 per cent for an estate in excess of \$50,000. If your PC shares are worth \$1,000,000, you will save more than \$14,500 on probate fees by having a second will.

A special election should be filed with the tax department if you wish to have a tax-free transfer of assets from your dental practice to your corporation. A late filing could result in a penalty of up to \$8,000. If no such filing is done, you could face an unexpected tax bill if and when the tax department reviews your file.

Consider an employment contract. This permits your PC to deduct and pay your beneficiary \$10,000 in tax-free money at time of your death.

Summary:

When a dentist incorporates, a PC may yield tax savings. However, consideration should be given to future plans, timing and past tax history to determine if a PC is appropriate for you. Proactive planning and corporate structuring will result in less tax and will avoid unnecessary revisions to a poorly established or poorly timed professional corporation.