Professional inc.Tax benefits of professional incorporation

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Professional corporations can provide some significant tax advantages, depending on the professional's business. Let's review some of the advantages, benefits and opportunities as to when incorporating a professional practice makes sense.

Who can incorporate?

While the rules vary by province (and territory), practicing members of most professions, such as law, medicine, engineering, architecture or accounting, can choose to incorporate. Under such an arrangement, the professional is an employee of the professional corporation, which, itself, carries on the business of the professional practice.

No escaping malpractice

Professionals are reminded that the mere act of incorporating a professional practice will not absolve the professional from personal liability in the case of malpractice. In other words, a doctor cannot hide behind her corporation to avoid a malpractice lawsuit. On the other hand, the use of a corporation can indeed provide limited liability with respect to normal business dealings, such as trade payables, office space lease liabilities and bank loans that haven't been otherwise personally guaranteed.

Restrictions on corporation's activities

The legislation of most provinces restricts the activities that the professional corporation may carry on and limits the business of the corporation to the practice of the profession or "activities ancillary to the practice." That being said, the provinces generally permit the investing of surplus funds earned by the practice to be left in the corporation and be invested therein, providing a potentially significant tax deferral (discussed below).

Reasons to incorporate

There are various tax reasons why a professional may wish to incorporate: to realize an absolute tax savings, the potential for significant tax deferral, and in limited circumstances income splitting opportunities with a spouse/partner or adult children, or perhaps to ultimately take advantage of the lifetime capital gains exemption on the first $883,384[1] of gains on the sale of the practice (assuming this is permitted and feasible in the professional's province). Let's examine each of these opportunities in more detail.

[1] 2020 amount.

Tax savings

It may be possible for an absolute tax savings to be realized if non-deductible or even partly deductible expenses are paid for by the corporation as opposed to personally by the professional. To illustrate this, let's assume that Dr. Parker has a life insurance policy to provide for his family in the case of untimely death. His annual premiums total $1,000. Let's assume:

- Dr. Parker lives in Ontario in 2020 and pays tax at a marginal rate of 53.53% on ordinary income and 47.74% on dividends.
- The corporation is a Canadian Controlled Private Corporation (CCPC) that can take advantage of the small business deduction on its first $500,000 of active business income and pays tax at a rate of 12.2% on this income.

If Dr. Parker is not incorporated, he would have to earn about $2,150 ($1,000 divided by (1 minus 53.53%) from his professional practice in order to be able to pay the $1,000 insurance premium.

Now, assume Dr. Parker's practice was incorporated and the $1,000 insurance premium was paid by his corporation. In this case, to avoid a shareholder benefit issue, the corporation would be both the owner and corporate beneficiary of the policy. Upon Dr. Parker's death, the death benefit, less the adjusted cost basis of the policy, would be credited to the professional corporation's notional "capital dividend account" and could then generally be paid out as a tax-free dividend to the estate.

Unless the bank required the insurance policy as collateral for a loan, the insurance premiums paid on the policy would not be tax deductible to his corporation. If the corporation earned $2,150 of income, it would have $1,888 [$2,150 times (1 minus 12.2%)] after tax to pay the insurance premiums. After paying the $1,000 annual premium on the life insurance policy, the corporation would have $888 ($1,888 minus $1,000) that could be distributed to Dr. Parker as a dividend. Dr. Parker would pay 47.74% tax on the dividend, leaving him with $464 [$888 times (1 minus 47.74%)]. In this example, having the corporation pay the annual life insurance premium instead of paying it himself, results in an annual savings to Dr. Parker of $464.

This tax saving would also apply to partially deductible expenses, such as meals and entertainment that are incurred for business purposes of the corporation.

Tax deferral

The use of a professional corporation has often been heralded as a great tax deferral mechanism, provided the professional "does not need all the cash" and can afford to leave some money in the corporation for investment purposes. The reason this works is that the professional corporation initially pays tax on its first $500,000 of corporate income at the preferred small business tax rate (the "SBD Rate").[2] Since this rate is substantially lower than the top marginal personal tax rate, there can be a significant tax deferral by leaving the after–tax corporate income inside the corporation as opposed to paying it out as a dividend immediately.

To illustrate this, let's take a look at an example of a dentist who earns $1,000 of professional income personally versus inside her professional corporation. The example assumes the $1,000 qualifies for the small business tax rate (say, 12.2%) and that the professional would otherwise be in a top personal marginal tax bracket of 53.53%

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[2] Associated corporations share this $500,000 limit.

The example below shows that, in both cases, about the same amount ($465 if income earned personally vs. $459 if income earned by corporation) would remain after tax.

Professional income earned personally by dentist

Description	Amount
Income	$1,000
Personal tax (at 53.5%)	(535)
After tax cash	**$465**

Professional income earned by corporation

Description	Amount
A) Income	$1,000
B) Corporate tax (at 12.2%)	(122)
Net income, distributed as dividend to shareholders	$878
Gross-up (15%)	132
Taxable dividend	$1,010
Personal tax (at 53.53%)	(541)
Dividend tax credit[3]	122
C) Net personal tax	(419)
Table Text (Total Row)	**$459**

The advantage of earning the money inside a professional corporation is that there is a timing difference as to when the tax is paid.

Note that if the dentist were to earn the $1,000 of professional income inside her corporation, the $419 of tax on the dividend (C) is not payable until the $878 dividend is paid out. In other words, if she doesn't need the money immediately, it can be retained and invested inside the corporation and personal tax can be deferred until the amount is paid out as a dividend. Note that because of the wide difference in personal and corporate tax rates that exists provincially in Canada, the advantage of the deferral differs by province and may vary from about 33% to 42% on income taxed at the small business rate and left inside the corporation.

What about income above $500,000? Historically, the traditional advice is that the professional should not retain more than $500,000 inside the corporation since it would face a high rate of corporate tax. As a result, professionals were often encouraged to "bonus down" to this $500,000.

This rule of thumb, however, may no longer be valid given the enhanced dividend tax credit now available on income from private companies subject to full corporate tax rates and personal tax rates. To elaborate, the 38% gross up on “eligible” dividends applies not just to public companies but also to private companies that have active business income above the $500,000 small business limit (the SBD Limit) and that pay tax at full corporate rates not eligible for the small business deduction. Dividends paid from private companies from income taxed at the higher, full corporate tax rates are considered “eligible” dividends and are grossed up by 38% with the enhanced dividend tax credit available to reflect the higher level of corporate tax paid by the corporation on this active income.

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3 In 2020, the federal dividend tax credit is 10.38% (9/13 times 15%) of the dividend, and the Ontario dividend tax credit is 2.9863% of the taxable dividend.

The net result is that even though the total tax paid on income not eligible for the small business rate but taxed inside the corporation at the higher rate and then paid out as an eligible dividend may be slightly higher than the personal tax otherwise paid on a "bonus," there is still a significant tax deferral associated with leaving such funds in the corporation. The cost of the extra tax and value of the deferral varies by province and is dependent on how long the funds can remain in the corporation before needed. As a result, specific tax advice is warranted here.

Access to the SBD Rate is limited in certain circumstances. The federal SBD Limit is reduced for corporations with over $50,000 of certain types of passive investment income in the previous year, and reaches zero once $150,000 of this investment income is earned in the previous year.[4] Essentially, where there is a certain level of investment income in a corporation the tax deferral available on ABI will be limited to the difference between the personal tax rate on ordinary income and the general corporate tax rate on ABI (income that is not eligible for the SBD Rate.) For further information see CCPC Tax Planning for Passive Income.[5]

Other considerations also need to be taken into account in determining the optimal salary dividend mix from the professional corporation. These could include paying sufficient salary or "earned income" to permit the professional to maximize his or her RRSP contributions. For example, a professional may have to pay herself at least $154,611 of salary in 2020 to maximize her $27,830 RRSP deduction for 2021. Of course, whether a business owner should be contributing to an RRSP altogether is another matter, and is discussed in the report "The Compensation Conundrum."[6]

Income splitting

There may be income splitting opportunities available to professional corporations. Income splitting could be achieved by employing the professional's spouse or common-law partner in the practice. The spouse could assist with billing and handle general office duties. In addition, the professional's kids could be hired with the caveat that they be paid a "reasonable" salary commensurate with their workload, age and responsibilities.

In provinces that permit non-professionals to be shareholders, more sophisticated techniques may be employed such as paying dividends out of the professional corporation to a non-working spouse or partner who may be able to use the basic personal amount and dividend tax credit to shelter these dividends from tax. Some provinces also permit family trusts to hold shares. Provided that certain conditions were met, the professional income of the incorporated professional could be shared with the members of his or family who are beneficiaries of the trust.

Due to the Tax on Split Income (TOSI), however, it will generally not be possible to split income with family members using a professional corporation unless the family members are sufficiently involved in the business, or the professional is at least 65 years of age. Further information is available in the report "The updated CCPC tax proposals."[7]

Other planning opportunities

Non-calendar year-end

A professional corporation can choose a non-calendar year-end. By selecting a late year-end (July 6 or later), the professional corporation can take advantage of the 180-day rule, which allows the corporation to pay a bonus to the owner and still claim a deduction in the corporation's current tax year while deferring the payment to the owner by 180 days so that it is not taxed until the following calendar year.

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4 The provinces (other than Ontario and New Brunswick) and territories have also implemented this measure.

5 The report "CCPC Tax Planning for Passive Income" is available online at cibc.com/content/dam/small_business/day_to_day_banking/advice_centre/pdfs/business_reports/ccpc-passive-income-en.pdf.

6 The report "The Compensation Conundrum" is available online at cibc.com/ca/pdf/small-business/compensation-conundrum-nov-13-en.pdf.

7 The report "The updated CCPC tax proposals" is available online at cibc.com/content/dam/small_business/day_to_day_banking/advice_centre/pdfs/business_reports/private-corporation-tax-changes-en.pdf

For example, by choosing a July 31st year-end, a corporation can declare a bonus on July 31, 2020, and pay it within 180 days (e.g., in January 2021), thus deferring personal income tax on the bonus to the next calendar year.

Advanced strategies

Finally, once the professional corporation has been established, it's now possible to consider additional tax planning opportunities and vehicles such as individual pension plans, retirement compensation arrangements and more complex corporate-owned life insurance solutions. Setting up and maintaining a professional corporation requires knowledgeable legal and accounting advice. The tax benefits may be worth the cost and detail.

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