

TOP 10 CONSIDERATIONS IN PROFESSIONAL PRACTICE STRUCTURING

Gone are the days when professional practices were restricted to the traditional partnership structure. Regulatory changes in most professions have allowed professionals to choose from a range of practice structures. Here are the top 10 considerations in structuring a professional practice.

1

What structures are available in your profession?

Professional regulations often limit the types of available structures in particular professions. For example, only a natural person may become a liquidator. The laws that regulate your profession should be the starting point in choosing an appropriate structure for your practice.

2

Will you be working alone, or with other professionals?

If there are multiple members of the practice, a sole trader or discretionary trust structure will not be appropriate. Other structures are more suitable for multiple members.

3

Is asset protection a priority?

The asset protection needs will depend on the risk profile of the practice and professionals. Identify who are the 'at risk' individuals in your structure. What will happen to their assets if the business cannot pay its debts? What happens if they are sued for negligence?

4

How will professionals enter and exit the practice?

Consideration should be given to how easy it is for professionals to enter and exit the practice, and how interests can be transferred. For example, if you start a practice as a company, it is easy to issue or sell shares and appoint new directors. On the other hand, you would need to completely restructure a sole trader practice if new professionals were to join. It is best to think about the future of your practice, and get it right from the start.

5

What are the taxation implications?

Income tax, Capital Gains Tax, and Stamp duty are high priorities when choosing an appropriate structure for a professional practice. Each type of structure has distinct tax implications. The income of a business is made up of different components, including a combination of income from work undertaken by the personal exertion of professionals and income generated by the business structure (e.g. by employees). The chosen structure must be efficient from a tax perspective. Capital Gains Tax is a significant consideration in restructuring.

6

Am I choosing a structure only for tax avoidance purposes?

Tax laws prohibit structures which are only devised for tax avoidance purposes. To ensure that your chosen structure is upheld by the courts, it must be able to be justified by other reasons, such as asset protection.

7

Do you need to split income?

Some structures provide scope for splitting income. This can be particularly useful when a professional's partner earns less income, attracting less tax liability. The ATO have released guidelines relating to income splitting within professional services firms. What is clear from these guidelines is that the ATO focuses on the income of individual professional practitioners rather than the practice itself. Practices falling within the relevant criteria are classified as low risk or high risk. If classified as low risk, the practice is less likely to be audited.

8

Do you need to restructure?

Choosing a professional practice structure is not just a decision principals make when they initially set up the practice. The structure must be continuously reviewed to ensure that it is tax effective and maximises asset protection. For principals in existing practices, the challenge becomes how to move out of one structure into another with minimal transaction costs.

9

Does my practice contain 'goodwill'?

Goodwill is a single piece of property and an intangible asset which encompasses a range of elements related to the reputation of a business. The goodwill is attributable to a combination of factors, such as the locality of the business, the way the business is conducted, and the personality of those who conduct it. Capital Gains Tax can be triggered by the transfer of goodwill which is inevitable in a restructure. Some professional practices do not have goodwill, as the value of the business is solely attributed to the personal reputation of the professionals.

10

How will the structure influence your business name and job titles?

You must ensure that the name of your practice is not misleading. For example, if your firm has the word 'partners' in its name, the practice must be set-up as partnership. Likewise, you could not promote the principal of a firm as a 'partner' if they are actually a 'director.'

Kym Butler is highly experienced in professional practice structuring. His has assisted a wide range of practices, including law firms, medical practices, accountancy firms, and veterinary practices. He has advised new practices in choosing an appropriate structure, and established practices considering a restructure.

If you require assistance with structuring your professional practice, please call (02) 49 29 7002 or email us at contacts@butlers.net.au.