Many physicians are licensed and carry on their practices through professional corporations. Until recent proposed amendments to the Medical Profession Act, the only shareholder of a professional corporation could be a registered practitioner – that is, a physician.

Similar amendments will be made to the Health Professions Act that will impact physicians once Schedule 21 to the act is proclaimed, expected to be early 2010.

However, recent proposed amendments to the Medical Profession Act will now allow non-voting shares of the professional corporation to be owned by:

1. The spouse or common-law partner of a physician
2. A child of the physician
3. A trust, all of the beneficiaries of which are the physician’s children

Allowing spouses and children to own shares of the professional corporation not only permits family members to participate in the growth and the value of the professional corporation, but also creates an opportunity for splitting income by paying dividends to the physician’s spouse and children.

However, there are significant business and income tax matters to consider if a physician wishes to add family members as shareholders in the professional corporation.

From a business perspective, family members will become shareholders of the professional corporation and become entitled to all the rights of shareholders pursuant to the Business Corporations Act. Those rights can be far-reaching, even in the case of a non-voting shareholder.

However, there are significant business and income tax matters to consider... . .

As well, while the legislation as currently drafted permits a trust to hold shares on behalf of children, the recent amendments further stipulate that once the child reaches the age of 18 years, the trust must transfer shares held by the trust within 90 days to that individual.

Accordingly, young adults will become shareholders of the professional corporation. This will expose the shares to creditors of the young adults and also the shares could be matrimonial property in the event of marital breakdown.

From an income tax perspective, care must be taken when issuing the shares so as not to create a taxable benefit to an individual being issued shares.

If the professional corporation shares currently have value, which will likely be the case, then it is not possible to simply issue non-voting shares to family members without creating a tax issue.

It will be necessary to reorganize the issued shares of the professional corporation in order to avoid that from occurring. This is a matter physicians should have their professional advisors carefully review.

While these amendments do create opportunities for physicians using professional corporations, care should be undertaken and thought given to any restructuring involving introducing family members as shareholders.

Before proceeding with any of these transactions, physicians should consult their accounting and legal advisors.
Bill 53 allows the ownership of Alberta professional corporations to expand. No longer must a professional own all the shares. The new rules will permit a spouse and children to own non-voting shares.

Furthermore, where the children are minors, their shares can be held within a trust (to be transferred to the child within 90 days of the child turning 18 years of age).

For physicians, this is very similar to the rules in Ontario. But it does stop short of what is permitted for physician neighbors in Saskatchewan and British Columbia.

The key potential benefit is straightforward – splitting income. The reality of a tax system where higher tax rates apply to higher levels of income is that dividing income often results in less tax than if one person was taxed on all the income.

Put simply, if adding a shareholder allows “income” to be transferred to another individual in a lower tax bracket by way of corporate dividends, there will generally be a tax savings.

Unfortunately, whether to incorporate or restructure an existing corporation is a bit trickier. Let’s work through some examples.

For those who have not already incorporated, some context is important. Splitting income should not be the only consideration. Most practising physicians in Alberta have incorporated to increase their capacity to save for retirement and other goals.

Other factors beyond splitting income do exist and include such wide-ranging considerations as a more effective means to pay health expenses or business-related debt, enhanced benefits from life insurance or even creating one’s own pension plan.

A physician’s financial advisor should help identify which factors are relevant to the physician’s circumstances (where the physician is now and his or her future goals) and conduct at least a preliminary analysis of the potential benefits.

This equips the physician to meet with his or her tax and legal advisors for further analysis and a recommendation on both his or her corporate structure and compensation plan. All of the above will have roles to play if or when the physician chooses to incorporate.

If both the physician and spouse are in the top tax bracket, transferring income does not generate tax savings. Perhaps less obvious, but quite prevalent, are scenarios where the spouse works for the medical practice. Generally speaking, converting salary to dividends is another scenario that has an uphill battle to proving worthwhile.

The new rules are most likely to be of benefit to those who already have corporations where amounts distributed from the corporation are being paid to a physician in the top tax bracket and could instead be paid to someone in a lower tax bracket.

Let’s assume a physician’s yearly lifestyle requirements necessitate a salary of $120,000 and non-eligible dividends of $130,000. Redirecting $100,000 of the dividends to his or her spouse (assuming the spouse has no other income) would reduce income tax by approximately $10,000 per year.

While that may sound compelling, what follows are some examples of important considerations to keep in mind.

1. $100,000 (before-tax) is being transferred from the physician to his or her spouse. Will it be spent the same way? In this particular example, roughly half of the tax savings occurs in the first $30,000 of dividends earned by the spouse.

2. Generally speaking, “kiddie tax” rules prevent these tax savings.
The above examples are intended as information only – to provide a sense of context for what the new rules might mean for a physician.

I encourage physicians to seek out professional advisors who can dig deeper into their realities and help ensure they get the most from their professional corporation under the new rules.

Second reading of Bill 53, Professional Corporations Statutes Amendment Act, 2009


Mr. Greg Weadick (Progressive Conservative, MLA for Lethbridge-West): Mr. Speaker, I am pleased to rise and move second reading of Bill 53, the Professional Corporations Statutes Amendment Act, 2009.

Before us today we have proposed legislative revisions to four acts involving three ministries. If passed, these changes will extend non-voting share ownership of professional corporations to immediate family members. These professions include doctors, dentists, chiropractors, optometrists under the Health Professions Act and the Medical Profession Act; lawyers under the Legal Profession Act; chartered accountants, certified management accountants and certified general accountants under the Regulated Accounting Profession Act.

The proposed legislation deals with the extension of share ownership and does not change the professional corporation structure. Professionals will continue to maintain full responsibility for the services of their corporation, and of course they will continue to be held personally liable for the professional services they provide.

If passed, family members eligible to own non-voting shares will include spouses, children and common-law partners. Same-sex couples are also covered in this legislation. The proposed changes do not extend share ownership quite as broadly as in British Columbia; however, they will allow professionals to pay dividends to immediate family members, which will improve the professionals’ ability to income-split with their families.

Restricting share ownership to immediate family members limits Alberta’s exposure to aggressive tax planning, which increases as more individuals become eligible to hold non-voting shares.

Mr. Speaker, the revisions before us will bring the share ownership of these professions more in line with professional corporations in other western provinces. Let us not kid ourselves. Every profession looks at their counterparts in other jurisdictions and asks: what about us? This isn’t just about levelling the playing field among provinces; it’s also about levelling the playing field right here in our own backyard.

These revisions will also bring doctors, lawyers, accountants, dentists, optometrists and chiropractors more in line with other Alberta corporations. Family members can already own shares in other corporations, including engineers, architects and veterinarians. This change will simply allow professionals and their families to enjoy the same benefits.

You know, when I read over any proposed legislation, whether I’m sponsoring a bill or even before my time as an MLA, I always ask myself: who would be against this, and who would have a beef with what’s being proposed?

Mr. Speaker, I suppose some Albertans could be concerned with Bill 53 since they might think this is a case of the rich getting richer at a time when government revenues are down. I have no reservation in tackling the argument head-on.

Government has determined that the benefits associated with extending share ownership to non-professional family
members outweighs the estimated $1 million in reduced personal income tax revenues.

These changes will better align Alberta’s professional corporations with neighboring provinces and with other corporations operating within Alberta. This will improve the attractiveness of Alberta and help encourage professionals to practise and do business in our province.

Mr. Speaker, these proposed legislative revisions are about being fair. They’re about levelling the playing field among other corporations within Alberta, and they’re about levelling the playing field between Alberta professional corporations and their counterparts throughout western Canada.

Mr. Hugh MacDonald (Alberta Liberal, MLA for Edmonton-Gold Bar): When we are considering through this legislation allowing income-sharing with their spouse and children by members who have a registered professional corporation, we have to have a good look at this and at what exactly it means for the bottom line of the province.

But before we do that, Mr. Speaker, if we look at a doctor, for example, who has registered as a professional corporation, that individual can transfer shares, if this bill becomes law, to a spouse or child and, as I understand it, reduce the income tax that is required to be paid.

The amendments also clarify that non-voting shareholders – for example, a spouse or a child of a registered member of the professional corporation that has had shares transferred to them – have no liability in the business of the corporation.

The registered member of the professional corporation still has full liability and must carry liability insurance for his or her business. That’s noteworthy, and that is important.

If we look at the general corporate income tax rate for Alberta, it’s 10 per cent. If we look at Ontario’s, it’s significantly higher, at 14 per cent. Again, if we compare it to BC’s, our rate is slightly less than BC’s. BC’s is 11 per cent. So I think we’re competitive already – that is my point – with or without this legislation at this time.

Mr. Jonathan Denis (Progressive Conservative, MLA for Calgary-Egmont): Now, going back a little way here, professional corporations, or PCs as people have mentioned them, not referring to the political party, Mr. Speaker, were created in the late 1970s to allow some professional groups to take advantage of tax benefits.

Now, in turn, these tax benefits made Alberta a more attractive choice for needed professional groups, most notably chartered accountants, certified management accountants, certified general accountants, doctors, dentists, chiropractors, optometrists and, yes, even lawyers.

Bill 53 would further enhance Alberta’s business climate for these professionals and could possibly prompt more professionals to establish themselves in Alberta. This could mean more doctors helping to deliver patient care and reduce wait times. This could also mean more accountants, ensuring that Alberta corporations remain competitive on the world stage, and again all three accounting designations apply. This could also mean more lawyers supporting the legal process and providing counsel to Albertans.

After all, Mr. Speaker, this would mean that a professional could rest assured knowing that their family could benefit from investment in this particular professional corporation, as is the case with any other corporation, as I mentioned.

To be clear, family in this bill refers to spouses, children, common-law partners, and does include same-sex partners, as the Member for Lethbridge-West noted.

In addition to matching more closely with other provinces’ legislation, Bill 53 also brings professional corporations closer in line with other private corporations, as I mentioned earlier. To give you an example, the family of an individual working in a corporation like an investing firm or an oil company are certainly allowed to own shares in that corporation. Why should it be any different with a professional corporation?

Bill 53 would extend this allowance to professional corporations on a fair and a competitive basis. It’s true that changes made by Bill 53 will result in a decrease of tax revenue by about $1 million. I’d argue for the aforementioned reasons that this is arguably money well forgone.

Ms Bridget A. Pastoor (Alberta Liberal, MLA for Lethbridge-East): I think that this is a bill that certainly should go forward if for no other reason than it keeps us competitive with the other provinces in this country. I would suspect that as we go forward with this, many of the other provinces will try to catch up, which then levels the entire country, and then TILMA, of course, would be irrelevant in that conversation.

The sectional analysis on this bill is that it really is the same for every profession that has been mentioned, which is the health profession, the legal profession, the medical profession and the regulated accounting profession. Even within these professions some others have been mentioned that would fall under these.
Clearly, this is a bill to enhance the tax advantage in this province. One of the areas that I think we have to work on in this province is to attract and keep our physicians. This bill may come forward, particularly in that area.

Mr. Hector Goudreau (PC, MLA for Dunvegan-Central Peace, Minister of Employment and Immigration): I agree as well with the Member for Lethbridge-West that it is important to provide a level playing field for professional corporations and that the playing field is consistent across professional corporations.

I’m confident that these proposed legislative revisions accomplish this. These revisions extend non-voting share ownership to immediate family members.

This will allow professionals to pay dividends to family members, which will improve the professionals’ ability to split income with their families.

Bill 53 comes, no doubt, with a price tag. There are tax revenue implications associated with the implementation of Bill 53, and those are estimated to be around $1 million per year.

Mr. Speaker, I believe this is a price worth paying as it creates the level playing field along with tax-planning benefits that many others can currently access.

Mr. Darshan Kang (Alberta Liberal, Member for Calgary-McCall): This is a good bill. The amendments will allow Alberta to remain competitive with British Columbia, particularly in light of TILMA, and with Ontario.

Without this first step in allowing more flexibility of tax planning for professional corporations, these corporations could move their business to other provinces to take advantage of these tax perks allowed there.

So this will benefit lots of corporations, and they will probably stay in Alberta because we are creating an environment where they don’t have to move.

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