Bespoke solutions

One size does not fit all when it comes to working out which business structure is best for a particular practice, as Clive Lawrence explains.

There are now several business structures under which dentists can practice. The first point to make, very clearly, is that neither solution is best for every practice. All an advisor can or should do is work with their clients and their other relevant advisors to find the solution that best delivers the requirements of that practice.

The considerations are frequently complicated and involve weighing the pros and cons. The purpose of this article is to give an outline of some of the principal considerations that arise in coming to the right decision. These are guidelines only and specific advice on the individual circumstances is necessary in each case. But what are the options?

Sole tradership - Here a dentist will simply trade on his or her own account in a familiar manner. He or she is liable for all the debts and liabilities of the practice, including any uninsured loss, without limit. There is therefore no protection for the individual dentist from commercial or liability risks. The dentist is taxed as an individual and has few filing and regulatory responsibilities.

Limited company - A dentist has the option to transfer their practice to a limited company or simply to incorporate a new practice as a limited company. This is the tried and tested commercial structure for doing business and has the principal benefit of limited liability. In other words, the company is a separate legal entity from the dentist, and the liabilities of the company are not those of the dentist themselves, therefore giving some protection against commercial risk and uninsured claims.

This does not mean that it will eliminate every liability arising against the individual. Exceptions to the ‘shield’ it provides may arise if, for instance, a dentist does not fulfil their statutory duties as a director. In addition, where banks or other creditors take security from the dentist for the liabilities of the company, it avoids limited liability working in relation to the debt.

The disadvantages of this can arise from the extent of disclosure, which is required by the regulations governing the filing of accounts and other information relating to the business, including earnings levels, with which some professionals are uncomfortable.

A limited company is taxed at Corporation Tax rates on its profits and the dentist’s earnings from it are taxed again, either under PAYE for salary or as dividends where applicable. Depending on both the dentist’s individual circumstances and their levels of earnings, this can be used to create tax advantages or can cause tax disadvantages. Tax advice therefore is a necessary component of any decision to incorporate as a limited company.

Dentists working together Expense sharing - This is the ‘standard’ business structure that is put in place to organise the practice of dentists who work together in the physical sense of sharing a surgery, but keep their businesses and earnings essentially separate.

The dentists agree to share (and frequently to own in common) accommodation and equipment or facilities. They jointly employ staff and share management functions, agreeing to pay their agreed proportion towards the common expense of outgoings. Most dentists will pay laboratory and other fees directly, but maintain a business structure for their practice themselves and retain all earnings from their own dental practice after those costs are paid and the share of common outgoings has been deducted. Each participant will deal with taxation in his or her own right as an individual on the basis of his or her own earnings.

This business structure has to be seen as a hybrid form, but essentially is a form of partnership. The extent of that partnership and the exact consequences will depend on precise circumstances in each case, and a broad range of conclusions is possible. In any event, the dentist practising in this way has unlimited liability for all commercial risks and uninsured losses.

Advantages of an expense-sharing agreement include the flexibility that is available to a group of dentists with different practices to differentiate between their respective contributions and earnings. Essentially, each dentist remains independent and in control of his or her own practice.

Exit routes for practitioners, however, are difficult, in that most expense-sharing arrangements will restrict its participants from freely leaving and taking their practice with them, and so will give an option to the other participants to purchase the practice from the departing partner. That can lead to a difficult exercise in balancing the rights and expectations of both the leaving and the remaining parties.

Partnership - An orthodox ‘unlimited’ partnership operates largely like an expense-sharing arrangement in practice, but proceeds on the clear understanding that all participants are involved in the same business. In that way, it differs conceptually from an expense-sharing arrangement. There is more sharing of information, responsibility and accountability between partners.

In a partnership which is not a Limited Liability Partnership, the partners have unlimited liability of the same nature as that which exists in an expense-sharing arrangement. A formal partnership format allows less flexibility and outright self-determination to the practitioners in it than an expense-sharing arrangement; however, procedures on exit can be greatly simplified as a...
departs or deceased partner is selling that partner’s ‘share’ in the overall business to the remaining partners, rather than looking to sell an individual business belonging to that partner. Provisions such as the use of life insurance to create funds for use in paying for partnership ‘shares’ released on involuntary departures (such as on death) can be more easily accommodated into a partnership structure. The differential between the earnings of individual partners from their ‘own’ practices can be more difficult to accommodate. However, careful drafting can be used to place the partners largely in the same position (and the same relative positions amongst themselves) as would be arrived at in an expense sharing arrangement.

A partnership will complete a Partnership Tax Return, but each partner is individually liable for his or her own tax on the basis of his or her earnings as an individual from the partnership.

Limited Liability Partnership (LLP) - An LLP operates day to day largely in the same way as an ‘ordinary’ or ‘unlimited’ partnership, but with some differences. The main difference is limited liability. The LLP is a separate legal person from the partners participating in it and the liabilities of the LLP are not therefore the liabilities of the constituent partners. Exceptions to this position can arise in the same way as with limited companies.

The members of the LLP (who are equivalent to partners in a partnership or directors of a company) have statutory duties similar to those of company directors, and also the LLP must file statutory information and accounts. This therefore can lead to a limited extent of publication of the earnings and profits of the LLP and of its constituent members. There are different levels of limitation on the reporting required depending on the turnover of the LLP and until the turnover of the LLP is in several million pounds, the disclosure required is not extensive.

An LLP has the same benefits in relation to ongoing management and entry and exit as those benefits afforded by a partnership. In the LLP context, those benefits are also increased by the fact that the party which pays the departing partnership is no longer the other partners but the LLP itself. The partners are therefore in less of a situation of risk amongst themselves as well as to the outside world. The downside may be for the departing partner if the LLP does not have the funds required to pay him or her out.

Limited company - Dentists can choose to practice together in a limited company. The benefits, and downsides, are similar to those discussed above in the context of the sole practitioner. When more than one dentist is involved in a company, they would usually enter into a Shareholders Agreement taking effect between all the dentists involved, each of whom would usually be both a shareholder and a director of the company. This would deal with largely the same issues and concerns as those which would be covered in a Partnership or LLP Agreement and avoid the simple majority rule which otherwise obtains within a company from compromising the interests of individuals. That also permits the limited company to provide comparatively straightforward routes to entrance and exit for participants through the sale and purchase of shares.

A limited company can also be the best business structure where there is any mixture in ownership or business participation terms between dental professionals and people who are not dental professionals. A body corporate can conduct a dental practice so long as the majority of its directors are dental professionals, and a limited company therefore can provide a medium for diverse forms of dental business.

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