IT 25 - Incorporation of medical practices

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TAXATION RULING NO. IT 25

INCORPORATION OF MEDICAL PRACTICES

F.O.I. EMBARGO: May be released

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REFERENCE NO:	SUBJECT REFS:	LEGISLAT. REFS:
I 1071744	MEDICAL PRACTICES - INCORPORATION MEDICAL PRACTICES - AMA NON-MEMBERS MEDICAL PRACTICES - SHAREHOLDERS MEDICAL PRACTICES - ACCOUNTING MEDICAL PRACTICES - SUPERANNUATION CONCESSIONAL REBATE - MEDICAL	159P

OTHER RULINGS ON TOPIC : IT 119

PREAMBLE The following advice issued to branch offices concerning the approach to be taken in relation to the incorporation of medical practices.

RULING 2. Where a company is incorporated in accordance with the by-laws of the N.S.W. Branch of the AMA, and the effect of incorporation is to do nothing more than reduce the amount of income a doctor might earn by the amount of an appropriate superannuation cover, incorporation of medical practices should be accepted for income tax purposes.

Medical practitioners who are not members of the AMA

3. One of the problems which had to be faced in the consideration of the question of incorporation of medical practices was the ability of patients to obtain reimbursement under the Health Insurance Act in respect of fees paid to medical practice companies. Following advice from the Attorney-General's Department in the context of the AMA proposals the Department of Health advised that there was nothing in the Health Insurance Act which would prevent the payment of medical benefits in respect of services provided by a medical practice company where, amongst other things, the personal responsibility of the medical practitioner to decide that medical services are reasonably necessary for the adequate medical care of patients is maintained.

4. The Department of Health has recently advised that the same principles would apply to the incorporation of medical

practices by practitioners who are not members of the AMA. For income tax purposes, incorporation of medical practices by practitioners who are not members of the AMA will be permitted where the constituent documents accord with the by-laws of the AMA approved for these purposes and maintain the personal responsibility of the medical practitioner or practitioners involved.

Shareholders in practice companies

5. One of the requirements for the acceptance of incorporation is that only registered medical practitioners can hold shares in the practice company. In some cases where sole practitioners are seeking to incorporate it has been said that other medical practitioners are unwilling to accept the responsibility of shareholding in the practice company and approval is being sought for other persons including relatives of the medical practitioner, whether qualified or not, to hold shares for the benefit of the practitioner.

6. It is understandable that a medical practitioner may not wish to be a shareholder in a medical practice company where he plays no part in the professional services provided by the company. For this reason no objection will be taken to incorporation where the medical practitioner concerned is unable to obtain the consent of another medical practitioner to be a shareholder and another person holds shares for the benefit of the practitioner involved. This is subject, of course, to there being no diversion of income to the other person as a result of the shareholding.

Date of effect

7. As a general rule acceptance of incorporated practices will apply only to incorporations effected subsequent to the advice to the solicitors acting for the AMA giving approval to the proposed arrangements, i.e. 6 November 1980. There may be some isolated cases where incorporation carried out prior to that date conforms to the basis upon which incorporation is now accepted and there are objections or appeals outstanding. These cases may be decided in the light of their own facts.

Basis of accounting

8. Because medical practitioners who incorporate their practices will retain personal accountability for medical services provided by the company, the personal nature of the services rendered by the medical practitioners will not differ in incorporation from that extended by them in partnership or in sole practice. Accordingly returns for practice companies should be lodged on a cash basis.

9. The situation is markedly different from the radiologist company where many staff are employed and the annual turnover is usually substantial. The radiologist company is more akin to the Henderson situation and the earnings basis of determing assessable income is clearly appropriate.

10. There is a question of the treatment of amounts collected subsequent to incorporation in respect of accounts sent out prior to incorporation. Strictly speaking it would seem that these amounts should be included in the assessable income of the medical practitioner concerned. No objection need be taken, however, if they are returned in the practice company.

Superannuation benefits

11. The question arises as to the expression "appropriate superannuation cover". This refer to cover provided by both pension and lump sum funds. Provided the particular superannuation arrangements otherwise conform to the requirements of this office the benefits on retirement may be payable either as a lump sum or by way of pension.

Existence of service companies

12. In a considerable number of cases service arrangements have been entered into by medical practitioners per medium of companies and trusts. The arrangements generally comply with the official guidelines in this area and have been approved in branch offices for income tax purposes.

13. The existence of an acceptable service arrangement, whether entered into prior to or subsequent to incorporation, will not preclude approval to the incorporation of a medical practice company in accordance with the established principles.

Other professional taxpayers

14. Should any approach for approval of incorporation be made by other professional taxpayers who, up to now, have not been given approval for incorporation, e.g. dentists, physiotherapists, etc. the matter should be referred to this office for consideration.

COMMISSIONER OF TAXATION