

New Professional Corporation Rules in Alberta

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Are you engaged in a profession that allows you to operate your business as a professional corporation?

As an accountant, lawyer, doctor, dentist or other eligible professional, you will be interested in the amendments to professional corporation rules set out in the *Professional Corporations Statutes Amendment Act, 2009*. The Alberta government has opted to join other jurisdictions – British Columbia and Ontario, for example – to expand the permitted ownership requirements for professional corporations established under the *Legal Profession Act* (lawyers), *Medical Profession Act* (doctors), *Health Professionals Act* (other health professionals, including dentists, chiropractors, physiotherapists and optometrists, for example) and *Regulated Accounting Profession Act* (accountants). Effective March 1, 2010, these amendments will allow certain individuals related to professionals to hold non-voting shares in professional corporations.

Alberta law currently permits only members of each respective profession to hold shares in professional corporations. This allows the owners of professional corporations access to certain tax planning options. The *Professional Corporations Statutes Amendment Act* amends the existing rules to allow non-voting shares of a professional corporation to be issued to the spouses, common-law partners, children or family trusts of professionals. This opens up further opportunities for tax savings by allowing income and capital gains splitting with spouses and children. “Kiddie tax” rules aside, it would be possible under the new regime, for example, for a dividend to be paid to a non-voting shareholder which, assuming no other source of income for that shareholder, could be received tax-free to a maximum of over \$35,000 for a non-eligible dividends, or a maximum of around \$70,000 for eligible dividends. This would provide tax advantages to the family unit over paying all income out of the corporation to the professional only.

While these amendments, once proclaimed into force, will bring Alberta’s professional corporation rules more in line with other Canadian jurisdictions, Alberta’s regime will still have several shortcomings:

- Holding corporations belonging to the professional are not eligible to be shareholders of a professional corporation
- Only family trusts having minor children of the professional qualify. Where a family trust includes other beneficiaries such as spouses, siblings or nieces and nephews of the professional, such family trusts do not qualify as shareholders

In order to take advantage of these changes to the professional corporations regime, the articles and bylaws governing existing professional corporations might require amendment to address existing organizational and share structure limitations. For instance, professional corporations were previously only allowed to issue shares to regulated professionals, and in many instances may have only one class of shares, or only classes of voting shares. New non-voting share classes would have to be created to allow the professional corporations to issue shares to eligible family members.

Where there are multiple shareholders, we strongly recommend that a shareholders agreement be put in place addressing how shares will be treated on death of a shareholder, marital breakdown, or other events that might affect the professional corporation.

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