



REPORT

Your Lawyer's Role in Creating Practice Value

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As your medical practice grows, you should maintain a focus on establishing maximum value at retirement. The Capital Gains Tax (“CGT”) rules provide considerable concessions for small business proprietors, which includes medical practitioners and specialists. A retirement income stream generated by the sale proceeds from your business is an opportunity worth exploring.

A solicitor may be able to assist in this process. The following are some of the areas in which a lawyer’s assistance may provide additional value:

Employment Contracts with Staff

Good staff ensure the smooth operation of any business. Appropriate employment contracts should be provided to all staff. Employment contracts do not need to be lengthy documents. A lawyer can assist in providing a succinct but clear employment arrangement, which may well include restraints over employee’s leaving and potentially attracting key patients or customers.

The employment contracts should clearly set out the length of the employment contract, which may be ongoing subject to a specified minimum notice period for termination. The restraint could cover not only approaching patients (which may be more relevant for other medical practitioners leaving) but also that key employees are not to approach certain suppliers for a specified period.

Premises

The medical premises may be owned by the medical practitioner, leased from an unrelated third party or leased from a related entity.

Ultimately, the terms of the security of tenure need to be clearly spelt out to ensure that there is ongoing certainty that the medical practice may be conducted from the particular premises.

A solicitor’s assistance in this regard is important for a number of reasons. One of those is reviewing the amount of the lease payments (i.e. rent). An aspect that is often overlooked

in relation to leases is any make good obligation. That is the obligation on a tenant to return the premises to a particular state at the end of the tenancy.

A make good obligation can trigger considerable financial cost at the end of a lease. It is important for any commercial tenant to review the terms of a lease prior to signing that lease to ensure there is full understanding of what the costs may be at the end of the term of that lease.

Options to renew a lease create certainty that if the premises prove to be appropriate, then the tenant may continue to occupy those premises by exercising an option to renew. If a business is of more value at a particular site, then ensuring the business can remain at that location is obviously very important to ensuring a maximum value is attained on sale. Therefore, factors relating to occupancy of the premises need to be considered and legal input is appropriate.

Brand / Logo

Many businesses are now establishing considerable value through their brand name or particular logo. That is the means by which the public immediately recognise the relevant business.

Trademarks can be an important mechanism to protect a particular brand. Such a trademark may well provide an asset for a business. The medical practitioner may arrange for registration of a trademark which provides a protection mechanism that prevents other users from using exactly the same image. This registered trademark can then provide an asset that over the course of time can grow in value and be sold to a potential purchaser of a medical clinic. It provides additional protection and additional value for the medical practice.

Tax Compliance / Documentation

Most medical practices of considerable size will, throughout operation, have undergone considerable structuring to ensure the most tax effective outcomes are achieved for the various practitioners and their family members.

Such tax structuring is generally subject to potential Australian Taxation Office (“ATO”) scrutiny. Therefore it is prudent for all persons in business to review the tax arrangements to obtain confidence that, if there were any ATO review, the arrangements would stand up to such examination.

A common structure involving general practitioners involves a service agreement. That service agreement will involve a mark-up arrangement, in turn realising profits that may be

distributed to family members of the relevant medical practitioners. Again, any mark-up arrangements will potentially attract ATO audit activity. Therefore, a lawyer's assistance in ensuring that ATO guidelines have been satisfied is a prudent measure.

Any ATO audit can involve significant cost and resources of management. Any internal review done in preparation is frequently time well spent to ensure that the ATO examination can be promptly dealt with and the ATO then move on to their next tax review.

Relationship between Practitioners

The lawyer's assistance is also appropriate in determining what precisely is the legal arrangement or relationship between the various medical practitioners. That relationship may be entirely independent of each other, the practitioners could be "partners" in a partnership or any number of alternative arrangements.

Perhaps most importantly amongst medical practitioners is the terms under which they enter and exit from the practice. In particular, what if any notice must be given if one medical practitioner wants to exit from the practice. Further, what conditions are there around that exiting medical practitioner leaving with patients or other valuable assets of the medical clinic? These issues ought to be addressed between the medical practitioners and it is appropriate that they be raised with a lawyer to ensure that they can be properly documented.

Conclusion

Your relationship with your lawyer should be one where you feel the lawyer is a valued contributor to your business. Ensure you have such a lawyer.

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Cowell Clarke provide advice in relation to all aspects concerning medical practices nationally.