

# SUCCESSION PLANNING UNDER ATO MICROSCOPE:

## WHAT PRIVATE BUSINESS OWNERS NEED TO KNOW

The demographic reality is stark: 80% of private business owners in Australia are over 50 years old. As the largest intergenerational wealth transfer in history unfolds, the ATO has made one thing crystal clear: they're paying very close attention.

The following is an understanding of where careful planning can work in line with the ATO's succession planning focus areas for private wealth groups.

### WHY SUCCESSION PLANNING IS ON THE ATO'S RADAR

Succession planning isn't just about passing the baton. It's a complex intersection of business decisions, asset realisation, restructuring, and wealth transfer. Each of these elements carries significant tax implications, and the ATO has identified specific risk areas where they're seeing non-compliance.

The numbers: 271,700 private groups controlling 1.3 million entities and \$4.4 trillion in net assets. With most of these groups led by individuals approaching retirement, succession events are happening at an unprecedented scale. An estimated \$3 to \$5 trillion in assets are being transferred from Baby Boomers to the next generation.

According to the ATO's private rulings and compliance work, they're seeing a "material increase" in arrangements involving private group restructures as part of succession plans. Their message is clear: they understand succession planning is complex and necessary, but they're scrutinising how it's being executed.

## THE FOUR COMMON SUCCESSION PATHWAYS (AND WHERE TAX RISK LIES)

### 01 Business Decisions

Will you continue operations, sell to a third party, cease trading, or merge with another business? Each path has different tax treatments, and mischaracterising your approach can be costly.

### 02 Restructuring

Moving assets between entities to prepare for sale or transition is legitimate, but the ATO is watching for artificial arrangements designed purely for tax benefits rather than genuine commercial purposes.

### 03 Asset Realisation

Selling business assets or the business itself triggers tax events. The critical question: are you dealing with capital assets or trading stock? Getting this wrong (particularly in property-rich businesses) can mean the difference between CGT and income tax treatment.

### 04 Wealth Transfer

How you move wealth to the next generation matters. Using concessionally taxed vehicles, trusts, or superannuation in ways that stretch beyond their intended purpose will attract scrutiny.

## TWO KEY AREAS THE ATO IS ACTIVELY TARGETING

### 01 Pre-CGT Asset Claims: Prove It or Lose It

The ATO presented a telling example: a family business with a holding company registered in 1982, owning a land and business company from 1984 and a plant company from the same year. On paper, these look like pre-CGT entities. Assets acquired before 20 September 1985 are exempt from capital gains tax.

But here's the catch: just because the company was registered before the CGT start date doesn't mean the assets are pre-CGT.

## The questions the ATO will ask:

- When was the land actually acquired?
- Has equipment been replaced or upgraded since 1985?
- Can you document the original acquisition dates?

The burden of proof is on you. One experienced tax adviser cautioned that "to the extent that there's been a change of ownership in the company of more than 50 per cent, or if there's been amendments to the trust deed which might mean there's been an effective change of ownership, then suddenly that asset may no longer be tax-free.

The ATO knows that some advisers are being overly creative with pre-CGT claims, and they're prepared to dig deep. Make sure you have contemporaneous records to support any pre-CGT claims, or risk losing the exemption entirely.

## 02 Back-to-Back CGT Rollovers: Commercial Purpose Matters

CGT rollovers are valuable tools for restructuring. They allow you to defer tax when changing business structures for genuine commercial reasons. The problem? Some taxpayers are using one rollover purely to access another, creating chains of transactions with no purpose other than tax avoidance.

## What the ATO considers high risk:

- Multiple interdependent rollovers executed in quick succession
- Intermediate steps that serve no purpose except enabling the next rollover
- Arrangements that artificially increase asset cost bases beyond market value movements
- Structures that facilitate CGT relief in circumstances not intended by the legislation

The ATO has flagged they'll be releasing a draft Practical Compliance Guideline on this issue, distinguishing between genuine commercial restructures and artificial schemes.

## The test is simple:

If the primary or only utility of your restructure is to access tax concessions, you're in the danger zone.

## THE MOLONEY CASE

About a decade ago, the Moloney family group restructured their Victorian freight business, Mt Noorat Freighters, for succession purposes. The restructure involved a \$3.5 million sale of the business from one family trust to another. They obtained an independent valuation, and because the figure came in under \$6 million, the trust beneficiaries claimed small business CGT concessions that effectively reduced the tax to zero.

The ATO didn't accept it. Their valuers assessed the business at \$10.6 million — nearly three times higher — and the dispute escalated. The Moloneys appealed, new valuations were obtained on both sides, and the case eventually landed before the Administrative Appeals Tribunal in 2024.

The AAT sided with the Moloneys, accepting their \$3 million valuation and rejecting the ATO's position entirely.

They won. But it took years, substantial legal costs, and the kind of rigorous expert evidence and documented negotiation process that most business owners aren't prepared for when a review begins.

### THE REAL LESSON:

Not that the ATO always gets it wrong - they don't. But when your planning is genuinely commercial and properly documented, it holds up, even under serious scrutiny. The Moloneys could demonstrate real bargaining, real process, real substance behind the numbers.

## WHAT GOOD SUCCESSION PLANNING LOOKS LIKE

The ATO isn't saying you can't plan. They're saying your planning needs to be grounded in genuine commercial and family objectives, not purely tax-driven.

What holds up	What draws scrutiny
Documented commercial rationale	Restructures where the only identifiable purpose is tax reduction
Valuations supported by evidence of genuine negotiation	Independent valuations without evidence of real bargaining
Pre-CGT claims backed by acquisition records and asset registers	Pre-CGT claims unsupported by contemporaneous documentation
Rollovers used for genuine structural change, not to chain into the next concession	Multiple interdependent rollovers with no standalone commercial purpose
Consistent arm's length terms, even between related entities	Related party transactions priced below what an arm's length party would accept
Planning begun before the exit event	Sudden flurry of activity immediately before a sale

## THREE ACTION STEPS FOR BUSINESS OWNERS

### 01 Start early

A restructure executed three years before a sale reads very differently to one executed three months before. If you're thinking about succession the time to start is now, not when a buyer appears.

### 02 Get quality advice

Choose advisers who understand both the law and the ATO's compliance priorities. Aggressive advice might sound appealing, but it can cost you more in the long run. The ATO is working with the Tax Practitioners Board to address advisers who facilitate non-compliance or provide high-risk advice that doesn't align with the ATO's views.

### 03 Tell the story

Why you're making decisions, what alternatives you considered, what commercial outcomes you're targeting. All of it. If you end up in a review, this documentation is important. The Moloney case showed that demonstrating genuine arm's length bargaining requires more than just getting a valuation.

## THE BOTTOM LINE

Succession planning is one of the most important transitions you'll make as a business owner. Done properly, you can legitimately minimise tax while achieving your commercial and family objectives. Done poorly, or with arrangements that prioritise tax avoidance over substance, you're likely to face a lengthy and expensive dispute with the ATO.

The message from the ATO is clear: they understand succession planning is necessary and complex. They're willing to work with taxpayers who are making genuine attempts to comply. But artificial arrangements that exploit technical provisions to eliminate tax on substantial business sales? Those will be challenged.

As we navigate this unprecedented wealth transfer, the winners will be those who plan early, document thoroughly, demonstrate genuine commercial purpose, and ensure substance matches form.