

Uncover sleeper tax concession-ruiners & Post-election outlook, tax planning

May-June 2022

Presented by:



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Overview

- Tax planning and other issues
- ATO focus on:
 - Professional firms
 - Anti-avoidance rules for trusts
- Post-election tax outlook
- Sleeper concession-ruining features in your business

Why we're here

The background features a dark teal color on the left side, transitioning into a lighter teal on the right. Two prominent diagonal lines, one dark teal and one light teal, run from the bottom-left towards the top-right, creating a sense of movement and depth.

How we help you

1. Put money in your pocket
2. Prevent money leaving your pocket
3. Help you sleep well at night

Tax planning

The background features a dark teal color on the left side, transitioning into a lighter teal on the right. Two prominent diagonal stripes, one in a darker shade and one in a lighter shade, run from the bottom-left towards the top-right, creating a dynamic, modern aesthetic.

Tax planning

- Not merely as approach 30 June
- All year round
- Looking forwards, rather than backwards

Why do we tax plan?

- Appropriately minimise tax
- Manage cash flow
- Defer or bring forward income

Corporate & business tax planning

- 30% or 25%?
- Franking rate
 - Determined independently of tax rate
- Transactions
 - Model tax & commercial outcomes
 - Decisions
- International dealings
 - Transfer pricing
 - Significant Global Entity

Corporate & business tax planning

Your options

- Issue confronting your business
- Usually two options:
 1. Do nothing
 2. Do something
- Costs and consequences of each

ATO focus

Professional firms

Trusts

Professional firms

Allocation of profits

- Accounting, architecture, engineering, financial services, law, medicine, management consulting, other
- Issue: Splitting profit across related parties
- Not referring to sole-operators
 - Can't split profit anyway
- How derive profit?
 - Leverage off professional staff
 - Very little of profit might come from equity-holders' personal effort

Professional firms

Allocation of profits

- ATO focus on equity-holders' personal effort contribution to profit
 - Claim proportion should be assessed to equity holder
- No precedent basis
 - 20%? 40%? 60%? None?

Professional firms

Allocation of profits

- Practical Compliance Guideline 2021/4
 - From 1 July 2022
 - Whom ATO will review, who gets free pass
- Six qualifying criteria
- Risk assessment framework
 - Three risk assessment factors
 - Green/Amber/Red zones
- ATO searching for a test case
- Cost of moving to the Green zone?

Appointing trust income

Anti-avoidance, section 100A

- Renewed ATO focus
 - After a lull of several decades
- Intended for misuse of trusts
- Draft pronouncements only
 - Much industry feedback
 - Nexia submission
- Expect changes in finals
- Discussions

Appointing trust income

Anti-avoidance, section 100A

- Appoint trust income to a beneficiary
 - But someone else gets the benefit of underlying funds
 - Purpose of reducing tax impost
- Agreement, arrangement, etc
 - Defined broadly
- Targeted promoted schemes in 1970s
 - But everyone has trusts nowadays
 - All can engage in targeted mischief

Appointing trust income

Exceptions to s100A

- Income appointed to minors
 - eg, \$416 tax-free
- Agreement, arrangement, etc:
 - Entered into in ordinary family or commercial dealing
 - Process, not outcomes or terms

Appointing trust income

Anti-avoidance, section 100A

- If breach s100A:
 - 47% assessed to trustee
 - 50% penalty
- Unlimited amendment period

- If beneficiary entitlement paid out, and they keep it, generally no problem

Adult children

Acceptable reasons for pay down entitlement

- Pay HECS/HELP debt
- Buy car
- Child actually keeps the money
- Board set-off

Adult children

Definitely a s100A problem

- Child's entitlement liability on trust's balance sheet
 - Journal over to parents' loan account
- Parents draw cash from trust
 - Recorded in balance sheet as paying out child's entitlement liability
- Pay out child's entitlement, child pays cash to parents as a gift
 - Was the plan when income appointed to child
 - Even if child not really aware

Adult children

Might be a s100A problem

- Child does not call upon their entitlement:
 - Remains liability in the trust
 - Parents take the money
 - Loan to parents

Adult children

Example 1

- John and Mary already in 47% tax bracket
- Appoint \$100,000 trust income adult child, Celia
- Celia at uni, has no other income
- Pay her tax bill of about \$25,000
- \$75,000 remainder entitlement owing to her
- John and Mary take the money

Adult children

Example 1

- Extract from trust's balance sheet
- John and Mary get benefit of \$75,000
- Would be only \$53,000, if had appointed \$100k income to themselves
 - ie, 47% tax

Balance sheet	\$
Assets	
Loan to John/Mary	75,000
Liabilities	
Celia's entitlement	75,000

Adult children

Example 1

- Issues to consider:
 - Was there an arrangement, etc?
 - Someone else benefit? (Yes)
 - Tax reduction purpose?
- Ordinary family or commercial dealing?
 - Process, not outcomes
 - John/Mary's use of funds an indicator of process? eg
 - Buy a sports car?
 - Emergency medical treatment?

Appointing trust income

Renewed ATO focus

- ATO not actively administered s100A for many years
- 2014 fact sheet
 - General, limited guidance
- Draft pronouncements
 - TR 2022/D1 – Commissioner’s views
 - PCG 2022/D1 – ATO compliance approach
- Retrospective?
- Taxpayer Alert TA 2022/1 – children >18
- *Guardian v CoT* [2021]

Appointing trust income

Draft Practical Compliance Guideline

- PCG 2022/D1
 - Draft only
- Whom ATO will review, whom they'll leave alone
- From 1 July 2022
- Nexia ATO submission
- Conversations

Appointing trust income

Draft Practical Compliance Guideline

- Risk zones:
 - **White** – pre 1/7/14, exceptions
 - **Green** – okay scenarios
 - **Blue** – on surface, can't tell if breach s100A, need to review further (eg, Example 1 earlier)
 - **Red** – highly likely to breach s100A

Appointing trust income

Past, future

- Some past practices might require re-evaluating for future
- Goal:
 - Be in **Green** zone, or
 - In **Blue** zone, with explainable/arguable circumstances as not breaching s100A

Adult children

Appoint income – they're entitled

- Child entitled to call upon payment anytime
- Are you prepared for that?
- If child has problems, consider carefully

Post-election tax outlook



Stage 3 tax cuts

From 1 July 2024

- L-A-W law
- Expensive
- Enacted before pandemic
- Not accompanied by any wider reform

Income range (\$)	Marginal rate (c)
0 – 18,200	0
18,201 – 45,000	19
45,001 – 200,000	30
200,001+	45
Add the 2% Medicare levy	

Superannuation guarantee

1 July 2022

- 10.5% (up from 10%)
- \$450 threshold abolished
- Future:

From	SG %
1 July 2022	10.5%
1 July 2023	11.0%
1 July 2024	11.5%
1 July 2025	12.0%

- Factor into negotiated employee remuneration

Announced measures in limbo

No action or Bill lapsed

- 120% deduction for eligible training expenditure
- 120% deduction for digital adoption expenditure
- 30% refundable tax offset for digital games expenditure
- Reform definition of tax residency for individuals and companies
- Patent box regime
- Division 7A reform (private company loans)

Made it to the Senate

Still “alive”

- Regime for share economy platforms (eg, Uber, Airbnb) reporting to the ATO on their users
- Remove \$250 self-education deduction threshold

Promised tax measures

- FBT exemption for electric cars
 - From 1 July 2022
 - Below fuel-efficient threshold
 - \$79,659 for 2021-22
- Limit debt deductions for multi-nationals
 - 30% of profits
 - From 1 July 2023
- OECD's global 15% minimum tax
- Legislation required

Tax reform?

"I want to have a proper look at the tax system across the board."

Jim Chalmers

Generous tax concessions
upon business sale

Sleeper ruiners lurking *now*

The value equation

Goal upon exiting your business

- Extract the maximum value



- Much more to it than sale price

Business tax concessions upon sale

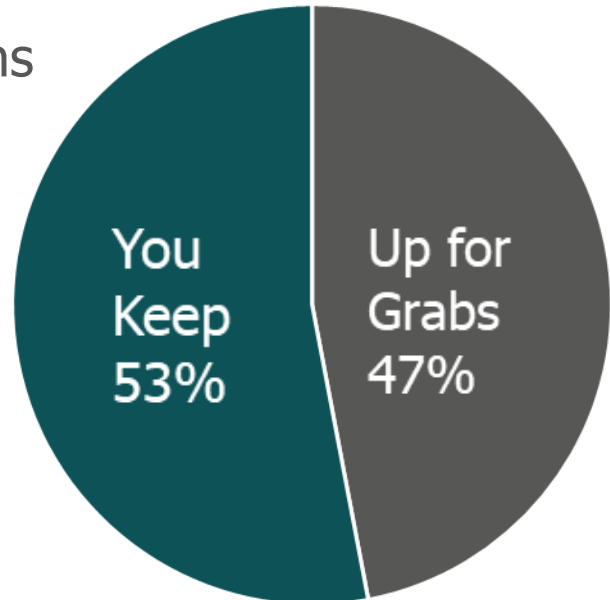
- 50% general discount
- CGT small business relief
- Pre-CGT (pre-1985)

CGT small business relief

- 15-year exemption
- 50% reduction
- Retirement exemption (\$500k lifetime limit, pp)
- Roll-over

Between 0% and 47%

- Many different conditions
 - Just before sale
 - Period of time



- Integrity rules
- Think about this: $\$4 \text{ million} \times 47\% = \1.88 million

Sell assets vs sell shares/units

- Companies, unit trusts
- N/A to discretionary trusts
- Deal with different commercial issues
- Tax borne can be quite different

Pre-CGT businesses

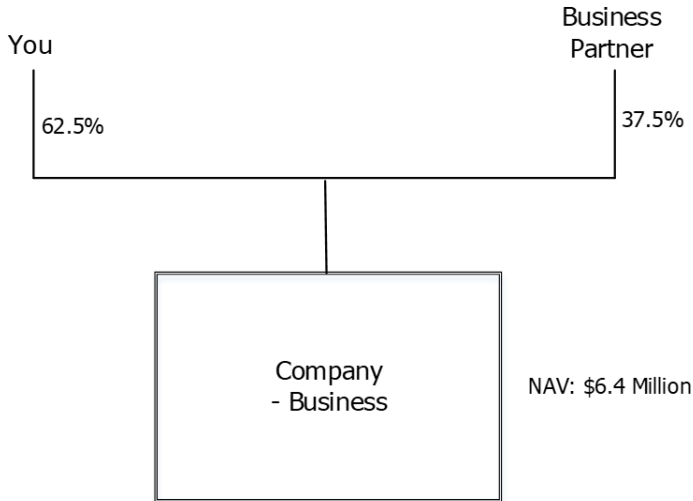
- Can become post-CGT
 - Changes over time
 - 50%+ change underlying ownership
- Market value cost base

CGT small business relief – select conditions

- \$6 million net asset value (NAV) / \$2 million turnover
 - Incorporates related parties
- Active asset
- Additional for shares/units
- Concession-specific

\$6 million net asset value

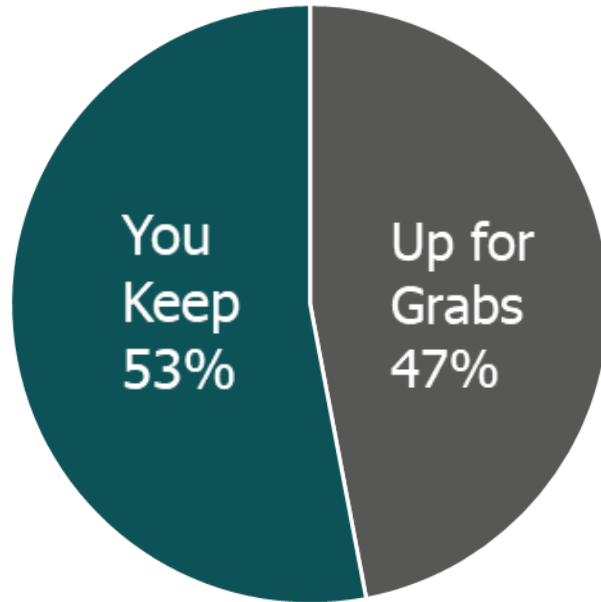
Example 2



- Sell business or sell shares:
 - Breach \$6m NAV limit
- No small business relief concessions

Remember this?

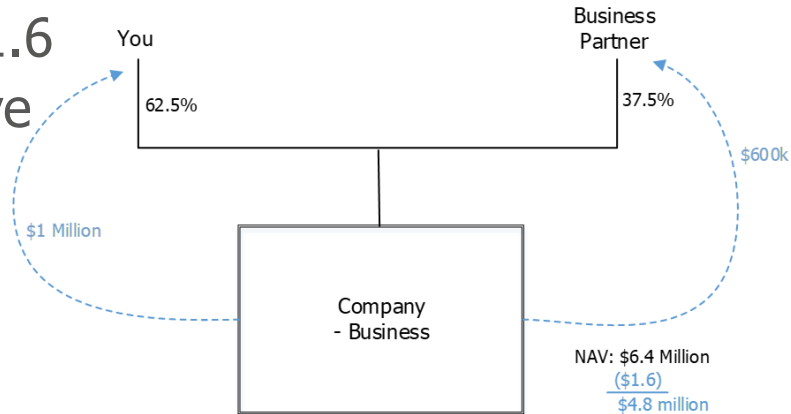
Example 2



\$6 million net asset value

Example 2

- Before sale, declare \$1.6 million dividend (if have retained profits):



- \$4.8m + \$1m = \$5.8 million
 - Assuming no other assets that count
- Now below \$6m NAV
- If satisfy all other conditions for CGT concessions:
 - Prevent money leaving your pocket

Opportunity & risk

Example 2

- Discover over \$6m NAV after sale – **too late**
- Discover/act just before sale – **anti-avoidance risk**
- Discover/act well before sale – **minimise risk**

Active asset condition

- Used in carrying on a business >50% time owned
- Shares/units
 - 80% rule, by value
 - Used in cob
 - Point in time

Concession denied?

Two near misses, two hits

- Sell shares, review underlying assets
 - >80% used in cob?
- Assets not used in cob? Main culprits:
 - Surplus cash
 - Debit loans
- One, two, strike, and again

Non-business assets, liabilities

- Sell business by selling company/unit trust
- Must extract non-business assets beforehand. eg:
 - Investments
 - Loans to related parties
 - Other assets unrelated to business
- Quantify consequences:
 - Income tax, CGT, GST, transfer duty
- Also, remove loans from related parties

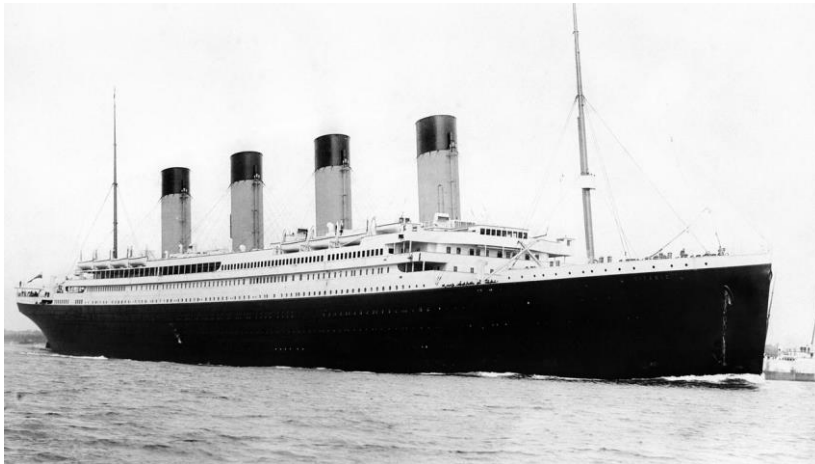
Help *us* help *you*

Nexia Business Concession Review

Business Concession Review

- Suitable anytime in business lifecycle
- Identify currently present concession-ruiners. eg:
 - Legal/equity structure
 - 50% discount
 - CGT Small business relief
 - Pre-CGT status
- Asset protection
- Non-business asset extractions

Business Concession Review



Business Concession Review

- Results so far...

Business Concession Review

Pricing

- Tailored to your business
 - Identify potential concession-ruiners
 - Discuss with you
- Resolve solutions, remedial action
 - Separate body of follow-on work
 - After your approval
- Implementation

Ideal timing

- Tax advice – before sale/transaction
- Groom business for sale – 2 years minimum
- Business Concession Review – anytime (ie, now)

Again, how we help you

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Tax audit insurance

- Professional fees, legal, valuations, etc
- Audits, enquiries, investigations and reviews covered:
 - Income tax
 - R&D Tax Incentive
 - Employer Obligation Reviews
 - SMSFs (cover available separately)
 - Record Keeping
 - Capital gains



- GST/BAS
- Payroll Tax
- Fringe Benefits Tax
- WorkCover/Workers Compensation
- Plus many other lodged returns

Tax audit insurance

- Does not cover tax liabilities, penalties, interest, etc
- Dealing with a Director Penalty Notice:
 - Issued stand-alone – not covered
 - Arising from audit/review process – covered

Conclusion

- Numerous tax planning opportunities
- Trusts and s100A anti-avoidance – will be ongoing discussion
- New government elected
 - Some tax policies taken to the election
 - Tax changes may emerge
- Your business might contain sleeper concession-ruiners
- Business Concession Review gives peace of mind
- Talk to your trusted Nexia advisor

Your feedback

You will soon receive an e-mail with a link to a short online feedback form

Please let us know what you think of this session

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