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SUCCESSION PLANNING AND EQUITY STRUCTURING SERIES

Succession planning checklist for construction business owners

A change in ownership is one of the larger decisions a construction business owner will make, whether two partners are separating or the business is passing to the next generation or to key staff.

This checklist sets out the commercial, tax and structural questions our team works through with owners before a change in ownership. The checklist is drawn from Part 2 of our Succession Planning and Equity Structuring Series.

Each item is written so you can tick it off once it is settled. Section 1 applies to any change in ownership, and sections 2 and 3 cover the two situations discussed in the masterclass.

Watch the series

Both sessions in the Succession Planning and Equity Structuring Series are available to watch on YouTube.



Part 1: Bringing People In
[Watch Part 1]



Part 2: Breaking Up, Handing Over and Selling Up
[Watch Part 2]

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01	Before any change in ownership
☐	The shareholders agreement has been read recently and still reflects how the business operates today, including what happens when a shareholder leaves.
☐	The business structure has been reviewed to confirm it can support the change, including whether a business trading through a discretionary trust should restructure into a company first and what stamp duty that restructure would carry in your state.
☐	The effect of the change on your QBCC/iCare/BPC licence and on home warranty insurance eligibility has been checked, particularly where company funds will be used for the transaction.
☐	The commercial and tax questions are being worked through with your accountant before a lawyer is briefed to draft the legal documents.

02	When two partners are separating
☐	The partners have written down what each of them expects from the separation, in a heads of agreement or term sheet, before the lawyers are involved.
☐	The division of the business has been agreed, covering contracts, client relationships, staff and the brand as well as cash and physical assets.
☐	The partners have agreed how the business will be valued, whether by an agreed price, reference to comparable businesses, by one independent valuer or by a separate valuer for each party if the parties are still not on the same page.
☐	The method and assumptions for measuring work in progress (WIP) and other significant value drivers have been agreed before the valuation is calculated.
☐	The funding and tax structure of the buyout has been planned before the transaction, because the tax outcome depends on how the buyout is structured and the structure cannot be changed after the event.
☐	A plan is in place to release the exiting director from personal guarantees, bank accounts, contracts and director responsibilities.
☐	Staff, clients and suppliers are being kept informed during the separation, and the timeline is being kept as short as the agreement allows, so the value of the business is protected for both parties.

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03	When the business is passing to family or key staff
☐	The successor's role, responsibilities and measures of performance have been defined, including the personal liability for certain company tax debts that comes with becoming a director.
☐	The successor has been brought into decision-making, including the financial side of the business, several years before the planned handover.
☐	The tax consequences of the transfer have been worked through, because handing shares to a family member still has tax consequences even when the shares are given rather than sold.
☐	The funding of the buy-in has been settled, through bank finance, vendor finance or a mix of both, and any vendor finance loan is documented on commercial terms with a defined term, regular repayments and interest.
☐	Ownership is set to transfer in stages against milestones that are measurable, achievable and within the successor's control, rather than milestones tied to revenue.
☐	Voting rights and roles have been agreed for any owner who keeps a shareholding after stepping back, and for any arrangement where a family member and a key staff member are both coming into ownership.
☐	The succession plan has been connected to your estate planning.
☐	A strategic plan sets out where the business is heading and how each key person will be involved, so every party to the succession is working from the same plan.

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When to involve your accountant and your lawyer

Most of the work in a change of ownership is commercial and tax work, and settling those questions before the lawyers start drafting usually makes the legal work shorter.

Step	What happens
1. Commercial terms agreed	The parties settle who keeps what, how the business is valued and how the buyout is funded, with your accountant or advisory team helping to keep the discussion objective.
2. Tax and structure planned	The tax outcome and the structure of the transaction are planned before anything changes hands, because the structure cannot be changed after the event.
3. Legal documents drafted	Your lawyer formalises the agreed terms in the shareholders agreement, the sale documents and any loan agreement.

Talk it through with our team

If you would like to talk through how the checklist applies to your own business, we offer a free consultation with either our tax and compliance team or our advisory team, depending on where you would like to start.

Tax and compliance: our team can work through your structure, your shareholder arrangements and the tax position of a change in ownership with you.

Advisory: our team works with owners on strategic planning, preparing a business for sale, cash flow planning and incentives for key staff.

Book a free consultation: book online | 1300 233 723

This checklist contains general information only and does not take your circumstances into account. Changing the ownership of a business has legal, tax and commercial consequences that differ from one business to the next, so advice specific to your business should be obtained before acting on any of the matters this checklist covers.