



SBR vs Liquidation

A practical comparison -- with a worked \$200,000 ATO
debt example



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Two paths through serious ATO debt

Dear Director,

When ATO debt has reached the point where the company can't pay it down through ordinary trading, two formal options usually come into focus: Small Business Restructuring (SBR), or voluntary liquidation.

They are not the same path. They have very different costs, very different approval requirements, and very different outcomes for the director.

This explainer walks through what each one is, runs the numbers on a worked \$200,000 ATO debt example, and lays out when each option tends to be the right call -- and when it doesn't.

What is Small Business Restructuring (SBR)?

SBR is a formal restructuring process introduced in 2021. It allows an eligible small company to keep trading while it negotiates a binding restructuring plan with its creditors -- usually involving paying creditors a percentage of what they're owed (often around 20 cents in the dollar) in full and final settlement.

The key features:

- The company must have less than \$1 million in total liabilities to be eligible.
- A registered Small Business Restructuring Practitioner is appointed.
- The director stays in control of the business throughout (this is the key difference from voluntary administration).
- A plan is drafted, put to creditors, and they vote on it. Creditors representing more than 50% of the dollar value of debt must accept.
- If accepted, the plan is binding on all creditors. If rejected, the company typically moves into liquidation.

SBR keeps the business operating in the same entity -- the company doesn't die. It restructures and continues.

What is voluntary liquidation?

Voluntary liquidation -- formally a Creditors' Voluntary Liquidation (CVL) -- is the orderly winding up of the company by a registered liquidator.

The key features:

- The directors resolve to wind the company up.
- A registered liquidator is appointed and takes control.
- The liquidator collects and sells the company's assets, investigates the company's affairs, and distributes any proceeds to creditors in legal priority order.
- The company is then deregistered. Debts that remain unpaid die with the company (subject to the Director Penalty Notice rules for PAYG, GST, and SGC).
- Where the business itself has ongoing value -- a customer base, brand, work in progress -- the director or a third party can buy those assets back from the liquidator at fair market value, and continue trading the business through a new entity.

Liquidation ends the company. The business -- the work, the customers, the equipment -- can continue, separately, if the maths supports it.

Diagram 1 -- The decision at a glance

\$200,000 Tax Debt

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Two paths from here:

PATH A -- Small Business Restructuring (SBR)

Total cash required: ~\$60,000

ATO approval required: yes

Outcome: company continues, debt restructured

PATH B -- Voluntary liquidation, with optional buy-back

Total cash required: ~\$40,000 (to buy assets back)

ATO approval required: no

Outcome: old company wound up; business may continue in a new entity

Diagram 2 -- How debt pressure leads to either path

Debt pressure builds (overdue ATO, missed BAS, GIC growing, recovery action looming)

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Director reaches a decision point:

PATH A -- ATTEMPT RESTRUCTURE

- > Engage an SBR practitioner.
- > Draft a restructuring plan.
- > Put it to creditors and the ATO for vote.
- > If approved: company continues, debt restructured.
- > If rejected: typically rolls into liquidation anyway.

PATH B -- CLOSE AND RESET

- > Appoint a registered liquidator.
- > Old company wound up; debts dealt with by the liquidator.
- > Business assets sold by the liquidator at fair market value.
- > Director or third party can buy assets back through a new entity.
- > Business continues in the new structure.

Worked example -- \$200,000 ATO debt

To show what each path actually costs, here's a worked example.

The situation:

- ATO tax debt: \$200,000.
- Estimated business assets and stock: \$40,000.
- Business type: service-based (limited tangible assets, value mostly in customer relationships and ongoing work).
- Major creditor: ATO.

This is a common shape. The ATO is the dominant creditor, the business has limited assets to fund a restructuring proposal, and the director's question is whether to spend money trying to keep the company alive or wind it up cleanly and continue the business through a new entity.

Cost comparison -- side by side

Upfront practitioner cost

- SBR: \$15,000
- Liquidation: included in the process

Ongoing administration fees

- SBR: \$5,000+
- Liquidation: none for the director

ATO settlement (assume 20% offer accepted)

- SBR: \$40,000
- Liquidation: not required

Total cash required

- SBR: \$60,000+
- Liquidation: ~\$40,000 to buy the business back

ATO approval required

- SBR: yes -- the ATO must support the proposal
- Liquidation: no

In this example, the SBR path requires roughly 50% more cash up front than liquidation -- and even then, only proceeds if creditors (especially the ATO) approve.

When SBR works -- and when it doesn't

SBR is the right call when:

- The company's lodgement and compliance history is strong (BAS in on time, super up to date).
- Creditors -- especially the ATO -- have a reasonable view of the director and the business.
- The business is viable going forward, with a clear plan to fund the proposed payments.
- The cost of running the SBR process is small relative to the debt being restructured.
- There's enough cash (or financing) to fund both the practitioner fees and the settlement payments.

SBR struggles when:

- The ATO is the dominant creditor and the company has poor lodgement or compliance history.
- The proposal offers creditors less than they'd reasonably get in a liquidation.
- The business has limited tangible assets, making the proposal hard to fund.
- The director's track record on previous payment plans is weak.

The ATO has been increasingly willing to reject SBR proposals where the underlying compliance history doesn't justify the discount. A rejected SBR usually rolls straight into liquidation -- which means the practitioner fees were spent without changing the outcome.

When liquidation tilts the maths

Liquidation -- often paired with the director or a related entity buying the business back from the liquidator -- tends to be the better path when:

- The ATO is the dominant creditor, and the lodgement history won't support a successful SBR proposal.
- The business is service-based with limited assets (the buy-back price is therefore modest).
- The director has the cash, or can fund, the buy-back at fair market value.
- A clean reset gives the new entity a much better foundation than dragging restructured historic debt into the future.
- The Director Penalty Notice exposure on PAYG, GST, and SGC has been managed correctly (see the dedicated Director Penalty Notices template).

A properly run CVL with a buy-back is a recognised, legal commercial outcome. The asset purchase is at fair market value, transparent, and signed off by the liquidator -- all the cash paid by the new entity goes back to creditors. It is not the same as illegal phoenixing.

About buying the business back

If liquidation with a buy-back is the path under consideration, it has to be done correctly to avoid being treated as illegal phoenix activity.

Done properly:

- The company is wound up through a registered liquidator.
- The liquidator takes control of all the assets.
- The assets are independently valued at fair market price.
- The liquidator offers the assets for sale -- often to the open market.
- If the director (through a new entity) wants to buy them back, they pay full fair market value, in cleared funds, like any other arm's-length buyer.
- Every dollar paid for the assets goes back to creditors.
- The liquidator signs off that the transaction was at arm's length.

Done badly -- by transferring assets to a new entity for nothing, or below fair value, before liquidation -- it is illegal phoenix activity, and the director is exposed to ASIC banning, personal liability, and creditor-defeating disposition claw-backs. The 'Phoenixing Explained' template covers this in detail.

How to read this for your situation

Three questions usually decide which path makes more sense:

1. What's the lodgement history?

If BAS, PAYG, and SGC have been lodged on time, an SBR proposal has real legs. If lodgement is well behind, the ATO is much more likely to reject the proposal -- and a Lockdown DPN may already have hardened personal liability regardless of which path is chosen.

2. What's actually in the business?

A service business with \$40k of assets and value tied up in customer relationships behaves very differently to a manufacturing business with \$400k of plant. The cost-to-recovery ratio shifts the maths heavily.

3. What's the director's cash position?

SBR needs more upfront cash than liquidation in most service-business scenarios. If the cash isn't there, SBR isn't really on the table -- regardless of how attractive it looks on paper.

The answer is rarely the same for two different businesses. It's a working-the-numbers conversation, not a default position.

Doug's practical view

Small Business Restructuring can work well -- where compliance history is strong, the ATO supports the proposal, and the business has the cash to fund both the practitioner and the settlement.

Where the ATO is the dominant creditor and the business has limited assets (which describes most service businesses with significant tax debt), restructuring proposals are often rejected. The practitioner fees are spent and the company ends up in liquidation anyway.

In those cases it is sometimes more practical to liquidate the company cleanly, buy the business back from the liquidator at fair market value, and continue trading through a new entity -- with the historic debt left properly behind in the wound-up company.

The right answer is the one the numbers actually support. We work through both with you before recommending either.

The Nature of Our Role

Resolve provides administrative support, coordination, and acts as your point of contact. We are not licensed to provide financial, legal, or investment advice -- where that's needed for your matter, we coordinate the right specialist practitioners (registered Small Business Restructuring practitioners, registered liquidators, accountants, solicitors) around you.

That way you get the experience and firepower of a full team -- with us holding the whole picture together so nothing falls through the cracks.

SBR is the right call when the maths actually support keeping the company alive. Liquidation with a buy-back is the right call when the maths support a clean reset. The mistake is choosing one before the numbers are run.

— Resolve Business Solutions -- Over 35 Years Helping Australians Through Financial Distress

Next Steps

Director, if you've got serious ATO debt and you're trying to work out whether SBR or liquidation is the right path, the answer needs the actual numbers from your situation -- not a generic one.

Whenever you're ready, you can:

- Reply to this email
- Call us directly on 0499 499 899
- Email us at advisor@resolve.net.au

We'd rather work the numbers with you now than have you spend \$20,000 on a process that the ATO was never going to approve.