The SAS Test (Small – Active – Significant)

Small Business Capital Gains Tax Concessions Step I: Are you Small? **Dictionary** Active asset: An asset used, or held ready to use, in the course of carrying on a business and not otherwise excluded, e.g. financial instruments, s152-40. \$2 million Annual Turnover Test **\$6 million Maximum Net Value Asset Test** s152-15 The *net value of your CGT assets and entities that The net aggregated turnover of your Affiliate: An individual or company that acts, or could reasonably be expected to act, business and entities that are either are either *affiliates or *connected entities cannot according to the taxpayer's directions or wishes or in concert with the taxpayer for the affairs of the business of the individual or company. s328-130 *affiliates or *connected entities cannot exceed \$6m. Special rules for partnerships. Spouses or children under 18 years are not automatically affiliates. (However, they are exceed \$2m. Subdiv 328-C You must be affiliates for the purpose of the active asset test) s152-40(1A). Which assets are in? Which assets are out? • *Carrying on a business, and have **Included assets Excluded assets** • \$2m aggregated turnover: s 328-115 Carrying on a business: All CGT assets are Assets for personal use Three turnover tests: Significant commercial purpose taken into account, and enjoyment, life Systematically with a view for profit (1) Previous year turnover; or Whether the business is organised in a business like manner, TR 97/11 unless explicitly insurance and super-(2) Current year likely turnover; or Holding passive assets can never constitute a business (e.g. renting a property) MT 2006/1 excluded. s152-20(1) annuation. s152-20(2) (3) Actual year turnover. CGT Concession Stakeholder: s152-60 Yes Yes a) A *significant individual with at least 20% voting power, income and capital distribution of company or trust; or Step II: Are you Active? b) A spouse of a *significant individual with some *SBPP in the company or trust greater than zero. Active asset – owned by you and is: s152-40 Connected Entity: depends on control s328-125 An entity is connected with another entity if one of them controls the other or if both are Used or held ready to use in the course of *carrying on a business by you, your *affiliate, your controlled by the same third entity. Different entities have different control tests: spouse or child under 18 years, or a *connected entity, or *distribution rights control rule s328-125(2)(a) OR Company An intangible asset (e.g. goodwill) inherently connected with you *carrying on a business, or your voting power control rule s 328-125 (2)(b), *affiliate, your spouse or child under 18 years or a *connected entity. Partnership *distribution rights control rule s328-125(2)(a)(ii) Shares: provided 80% of market value of the company are *active assets, \$152-40(3) Trust (excl. * distribution rights control rule s328-125(2)(a) discretionary trusts) Qualitative /the influence of trustee test OR Discretionary Trust quantitative / the pattern of distribution test in Active for how long? s152-35 the preceding four income years s328-125(3), (4) 1. Owned for >15 yrs only need active for 7.5 yrs (e.g. 30 yrs - 7.5 yrs) distribution rights control rule s328-125 2. Owned for < 15 yrs need 50% of ownership period (e.g. 6 yrs - 3 yrs) A taxpayer controls an entity where the first entity beneficially owns, or has the The asset does not need to be an active asset just before the CGT event. right to acquire the beneficial ownership of the entity with the right to receive 40% of the distribution of either (a) income; (b) capital; or (c) the net income or a partnership (any 40% is enough). Step III: Are you Significant? Is the CGT asset a share in an Australian resident company or an interest in a resident trust? If no, skip Step III. If yes, one of the following two tests must be fulfilled, depending if you hold the asset direct or through interposed entities. Net value: Market value of the entity's CGT asset minus liabilities and provisions. Significant individual: An individual is a significant individual in a company or trust if they have a small business participation percentage ('SBPP') in the company or trust 2nd alternative: s152-10(2)(b) **1st alternative:** s152-10(2)(a) Or of at least 20% (direct and indirect). s152-55 for interposed entities - 90% test for individuals - 20% test *CGT concession stakeholders together must Small Business Participation Percentage (SBPP): s152-65 You are a *CGT concession stakeholder in have a *SBPP in the interposed entity (the SBPP is used to measure whether a taxpayer has a sufficient ownership interest in a the object company or trust taxpaver) of at least 90% company or trust (viz, a 20% or more interest) to be considered a *significant individual m (ignore redeemable shares / use the lowest percentage of various interests) s152-70 **CGT Retirement Exemption** 15 Year Exemption 50% Reduction **CGT Rollover Exemption** Subdiv 152-B Subdiv 152-C Subdiv 152-D Subdiv 152-E 100% capital gain exemption Do nothing and get the 50% capital 100% capital gain exemption up to two years automatic deferral \$500K (lifetime limit) gain exemption No Did the Small Business entity Choose exemption D or E otherwise C applies automatically continuously own the asset for 15 years before to the CGT event? Is replacement asset acquired within Yes Individual **Company or Trust** the replacement asset period (1 year before to two years after)? Choose some or all of the amount of Individual **Company or Trust** Election for CGT exemption in Does the entity satisfy the s152-105(1)(b) s152-110(1)(b) capital gain for the roll-over relief writing in the income year of *significant individual test? CGT event? s152-315(4) s 152-305(2)(b) Yes Was the CGT Is the replacement asset a share or Yes Yes asset a share in a Did that entity interest in a trust? company or Election for CGT exemption Election for the CGT exemption have a*significant interest in a trust? made by the date return lodged? made by the date return lodged? individual for at Yes No least 15 years? Yes No No Determine who the **CGT* Yes **▼** Yes **↓** Yes Concession Stakeholders are Taxpayer is 55 A * significant for the company or trust at Payments to a* CGT or older *at the individual* of the taxpayer Taxpayer qualifies for CGT the time of the CGT event Concession Stakeholder made just before the CGT event time of the retirement exemption limit of by the later of: must be 55 or older CGT event \$500K s152-320 7 days after it makes the Yes Yes Clawback - failure within 2 yr period election; or (J event) if: 7 days after receiving the Yes The CGT event happened in relation to Sold new asset (J2) s104-185 capital proceeds from the that individual's retirement; or Taxpayer is over age 55 at the Money is spent on the wrong CGT event. s152-325 Permanently incapacitated No time of making the choice? asset (J5) s104-197 Did not spend all the money (J6) No Yes The capital gain is exempt No

Percentages:

A spouse with a *significant individual with participation of >0% in the company satisfies the *CGT concession stakeholder 20% requirement. >0%:

20%: A*significant individual is one with at least 20% voting, income or capital distribution of the company or trust s152-55

40%: A taxpayer directly controls a company if it has 40% of the distribution of income, capital, or net income of the partnership (called the control percentage).

hands

\$500K tax free in your

\$500K must go into Super

80%: Shares and trust interest to be 80% or more of the total market value of the assets in the company or trust to satisfy the *active asset test, s 152-40(3).

90%: To satisfy basic conditions: 90% of the *SBPP in the interposed entity must be held by *CGT concession stakeholder. Furthermore, there must be a*CGT concession stakeholder in the *active asset, s152-10(2)(b).

gain disregarded

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If Clawback does not apply – capital

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If Payment to CGT concession stakeholder:

Payment must not exceed stakeholder's participation %