

# The SAS Test (Small – Active – Significant)

## Small Business Capital Gains Tax Concessions

### Step I: Are you Small?

**\$2 million Annual Turnover Test**  
The net aggregated turnover of your business and entities that are either *\*affiliates* or *\*connected entities* cannot exceed \$2m. Subdiv 328-C You must be

- \*Carrying on a business*, and have
- \$2m aggregated turnover:** s 328-115

Three turnover tests:  
(1) Previous year turnover; or  
(2) Current year likely turnover; or  
(3) Actual year turnover.

**\$6 million Maximum Net Value Asset Test** s152-15  
The *\*net value* of your CGT assets and entities that are either *\*affiliates* or *\*connected entities* cannot exceed \$6m. Special rules for partnerships.

Which assets are in?	Which assets are out?
<b>Included assets</b>	<b>Excluded assets</b>
All CGT assets are taken into account, unless explicitly excluded. s152-20(1)	Assets for personal use and enjoyment, life insurance and super-annuation. s152-20(2)

### Step II: Are you Active?

**Active asset – owned by you and is:** s152-40

- Used or held ready to use in the course of *\*carrying on a business* by you, your *\*affiliate*, your spouse or child under 18 years, or a *\*connected entity*, or
- An intangible asset (e.g. goodwill) inherently connected with you *\*carrying on a business*, or your *\*affiliate*, your spouse or child under 18 years or a *\*connected entity*.
- Shares: provided 80% of market value of the company are *\*active assets*, s152-40(3)

**Active for how long?** s152-35

- Owned for >15 yrs only need active for 7.5 yrs (e.g. 30 yrs - 7.5 yrs)
- Owned for < 15 yrs need 50% of ownership period (e.g. 6 yrs - 3 yrs)

The asset does not need to be an active asset just before the CGT event.

### 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.

**1<sup>st</sup> alternative:** s152-10(2)(a)  
**for individuals - 20% test**  
You are a *\*CGT concession stakeholder* in the object company or trust

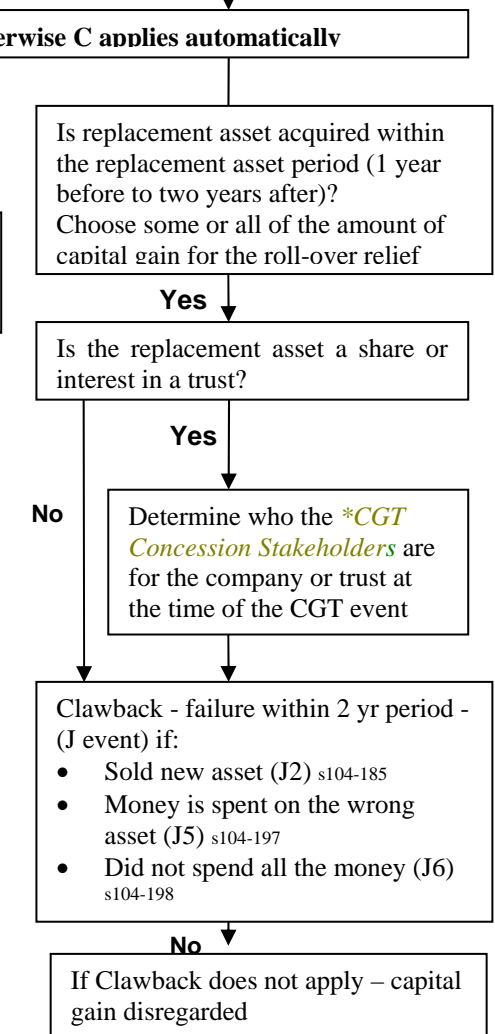
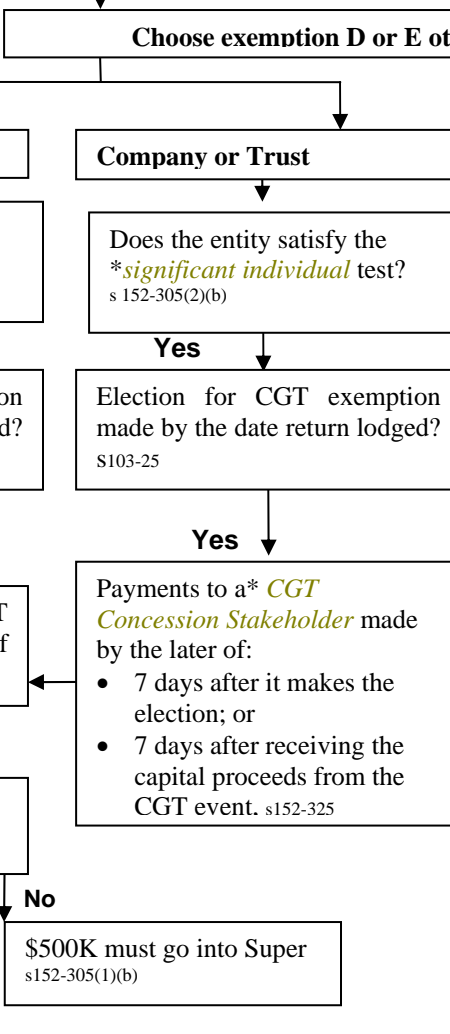
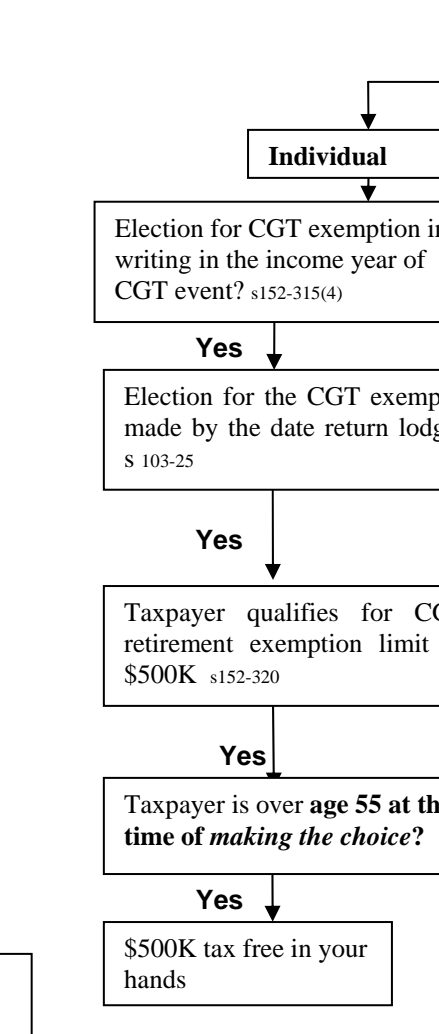
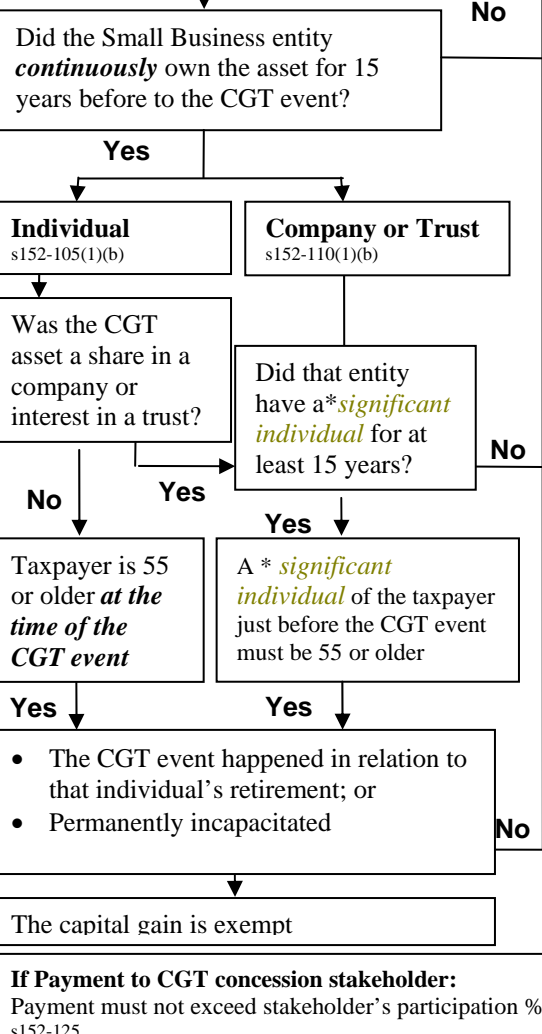
**2<sup>nd</sup> alternative:** s152-10(2)(b)  
**for interposed entities - 90% test**  
*\*CGT concession stakeholders* together must have a *\*SBPP* in the interposed entity (the taxnaver) of at least 90%

**15 Year Exemption**  
Subdiv 152-B  
100% capital gain exemption

**50% Reduction**  
Subdiv 152-C  
Do nothing and get the 50% capital gain exemption

**CGT Retirement Exemption**  
Subdiv 152-D  
100% capital gain exemption up to \$500K (lifetime limit)

**CGT Rollover Exemption**  
Subdiv 152-E  
two years automatic deferral



#### 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.

**Affiliate:** An individual or company that acts, or could reasonably be expected to act, 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  
Spouses or children under 18 years are not automatically affiliates. (However, they are affiliates for the purpose of the active asset test) s152-40(1A).

#### Carrying on a business:

- Significant commercial purpose
  - Systematically with a view for profit
  - Whether the business is organised in a business like manner, TR 97/11
- Holding passive assets can never constitute a business (e.g. renting a property) MT 2006/1

#### CGT Concession Stakeholder:

 s152-60

- A *\*significant individual* with at least 20% voting power, income and capital distribution of company or trust; or
- A **spouse** of a *\*significant individual* with some *\*SBPP* in the company or trust greater than zero.

#### 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 controlled by the same third entity. Different entities have different control tests:

Company	<i>*distribution rights control rule</i> s328-125(2)(a) OR voting power control rule s 328-125 (2)(b).
Partnership	<i>*distribution rights control rule</i> s328-125(2)(a)(ii)
Trust (excl. discretionary trusts)	<i>* distribution rights control rule</i> s328-125(2)(a)
Discretionary Trust	Qualitative /the influence of trustee test OR quantitative / the pattern of distribution test in the preceding four income years s328-125(3), (4)

#### distribution rights control rule

 s328-125

A taxpayer controls an entity where the first entity beneficially owns, or has the 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).

**Net value:** Market value of the entity's CGT asset minus liabilities and provisions. s152-20

**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 of at least 20% (direct and indirect). s152-55

#### Small Business Participation Percentage (SBPP):

 s152-65

SBPP is used to measure whether a taxpayer has a sufficient ownership interest in a company or trust (viz, a 20% or more interest) to be considered a *\*significant individual* (ignore redeemable shares / use the lowest percentage of various interests) s152-70

Basic Conditions

Four Concessions

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



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