

EXPOSURE DRAFT

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Inserts for
**Treasury Laws Amendment (Measures
for a later sitting) Bill 2018: improving
the small business CGT concessions**

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1.		
2. Schedule #	The first 1 January, 1 April, 1 July or 1 October to occur after the day this Act receives the Royal Assent.	
3.		

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Schedule #—Improving the small business CGT concessions

Income Tax Assessment Act 1997

1 Section 152-5

Omit:

The 3 major basic conditions are:

- (a) the entity must be a CGT small business entity or a partner in a partnership that is a CGT small business entity, or the net value of assets that the entity and related entities own must not exceed \$6,000,000;
- (b) the CGT asset must be an active asset;
- (c) if the asset is a share or interest in a trust, there must be a CGT concession stakeholder just before the CGT event, and the entity claiming the concession must be a CGT concession stakeholder in the company or trust or CGT concession stakeholders in the company or trust must have a small business participation percentage in the entity of at least 90%.

substitute:

The 2 major basic conditions are:

- (a) the entity must be a CGT small business entity or a partner in a partnership that is a CGT small business entity, or the net value of assets that the entity and related entities own must not exceed \$6,000,000; and
- (b) the CGT asset must be an active asset.

Additional basic conditions must be satisfied if the CGT asset is a share in a company or an interest in a trust.

2 Subsection 152-10(2)

Repeal the subsection, substitute:

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1 *Additional basic conditions for shares in a company or interests in*
2 *a trust*

3 (2) The following additional basic conditions must be satisfied if the
4 *CGT asset is a *share in a company, or an interest in a trust, (the
5 ***object entity***):

- 6 (a) the CGT asset would still satisfy the active asset test (see
7 section 152-35) if the assumptions in subsection (2A) were
8 made;
- 9 (b) if you do not satisfy the maximum net asset value test (see
10 section 152-15)—you are carrying on a *business just before
11 the *CGT event;
- 12 (c) the object entity is carrying on a business just before the CGT
13 event;
- 14 (d) either:
- 15 (i) the object entity would be a *CGT small business entity
16 for the income year; or
- 17 (ii) the object entity would satisfy the maximum net asset
18 value test (see section 152-15);
- 19 if the following assumptions were made:
- 20 (iii) the only CGT assets or *annual turnovers considered
21 were those of the object entity, each affiliate of the
22 object entity, and each entity controlled by the object
23 entity in a way described in section 328-125;
- 24 (iv) each reference in section 328-125 to 40% were a
25 reference to 20%;
- 26 (e) just before the CGT event, either:
- 27 (i) you are a *CGT concession stakeholder in the object
28 entity; or
- 29 (ii) CGT concession stakeholders in the object entity
30 together have a *small business participation percentage
31 in you of at least 90%.

32 (2A) For the purposes of paragraph (2)(a), assume that:

- 33 (a) subparagraph 152-40(3)(b)(ii) only covers a financial
34 instrument of a company or trust if the company or trust:
- 35 (i) holds the financial instrument as *trading stock; or
- 36 (ii) holds an *Australian financial services licence, and the
37 financial instrument is issued in the course of carrying
38 on a financial services business (within the meaning of
39 the *Corporations Act 2001*) covered by the licence; or

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- 1 (iii) is an authorised representative (within the meaning of
2 Chapter 7 of the *Corporations Act 2001*) of a person
3 who holds an Australian financial services licence, and
4 the financial instrument is issued in the course of acting
5 as that authorised representative; or
- 6 (iv) holds a licence (within the meaning of the *National
7 Consumer Credit Protection Act 2009*), and the
8 financial instrument is issued in the course of engaging
9 in a credit activity (within the meaning of that Act)
10 authorised by the licence; or
- 11 (v) is a credit representative (within the meaning of the
12 *National Consumer Credit Protection Act 2009*) of a
13 licensee (within the meaning of that Act), and the
14 financial instrument is issued in the course of acting as
15 that credit representative; and
- 16 (b) subparagraph 152-40(3)(b)(iii) only covers cash of a
17 company or trust that the company or trust holds as trading
18 stock; and
- 19 (c) paragraph 152-40(3)(b) does not cover an asset that:
20 (i) is a share in a company, or an interest in a trust, (the
21 *later entity*); and
22 (ii) is held by the object entity directly or indirectly
23 (through one or more interposed entities); and
- 24 (d) subparagraph 152-40(3)(b)(i) also covers each asset that:
25 (i) is held by a later entity covered by subsection (2B); and
26 (ii) is, for that later entity, an asset of a kind referred to in
27 subparagraph 152-40(3)(b)(i), (ii) or (iii), as modified
28 by paragraphs (a), (b) and (c) of this subsection; and
- 29 (e) subject to paragraph (c) of this subsection, all of the assets of
30 the object entity included all of the assets of each later entity;
31 and
- 32 (f) for the purposes of paragraph 152-40(3)(b), the *market value
33 of an asset held by a later entity were the product of:
34 (i) the asset's market value apart from this paragraph; and
35 (ii) the object entity's *small business participation
36 percentage in the later entity.
- 37 (2B) For the purposes of paragraph (2A)(d), this subsection covers a
38 later entity if:
39 (a) you were a *CGT concession stakeholder of the later entity
40 just before the *CGT event; and
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- (b) either:
- (i) the later entity would be a *CGT small business entity for the income year; or
 - (ii) the later entity would satisfy the maximum net asset value test (see section 152-15);
- if the following assumptions were made:
- (iii) the only *CGT assets or *annual turnovers considered were those of the later entity and of the entities referred to in subparagraph (2)(d)(iii);
 - (iv) each reference in section 328-125 to 40% were a reference to 20%.

3 Application of amendments

The amendments made by this Schedule apply in relation to CGT events happening on or after 1 July 2017.