

The taste of tax

Reversionary pensions,
share buy-backs and
restructuring

Redchip
Plan to succeed

Acis.



Restructure rollovers: Tips and traps

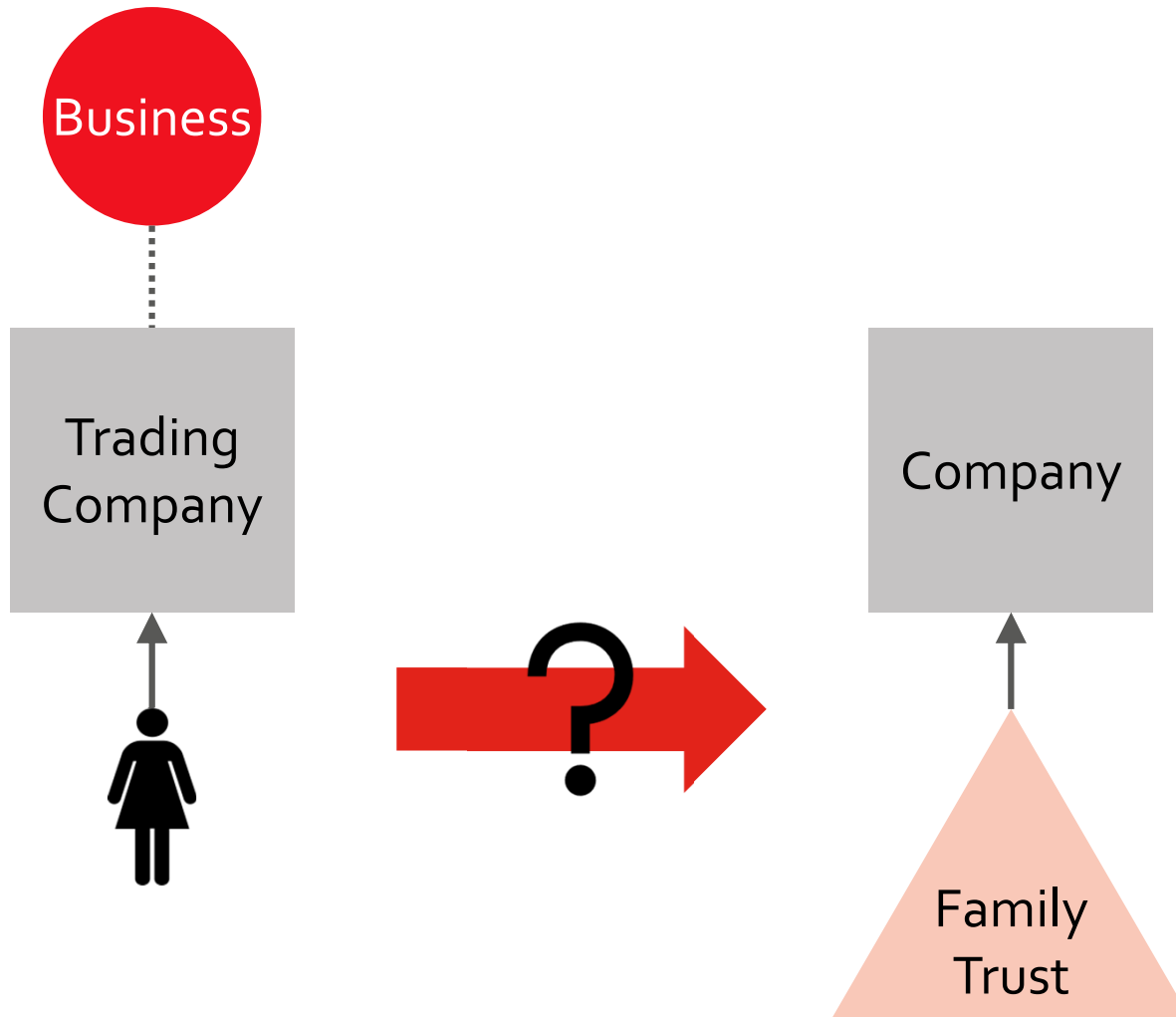
Trung Vu

Scenario 1

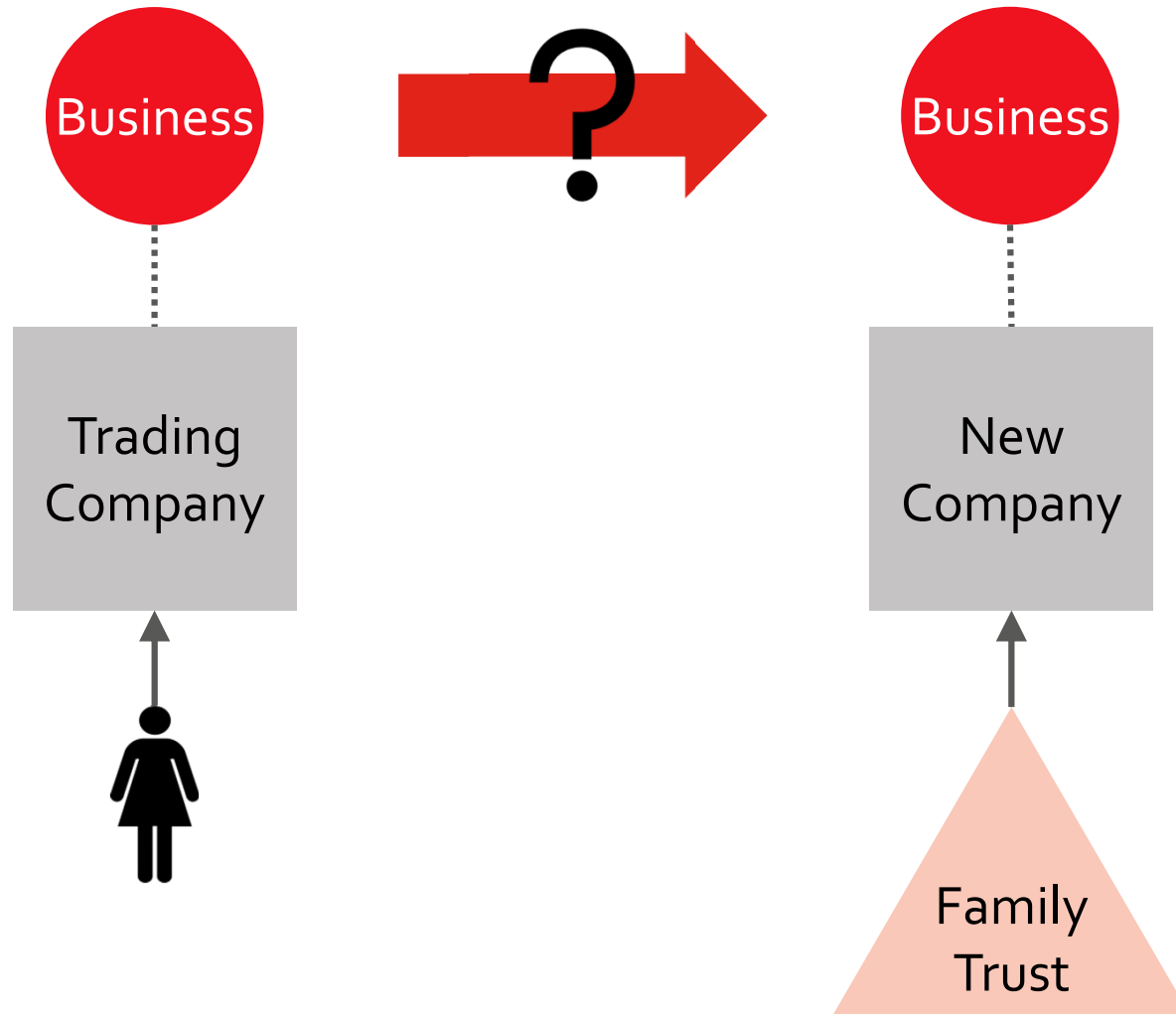
Facts:

1. Trading Company
 2. 100% owned by Individual
- Restructure to Company wholly owned by Family Trust?

Structure



(A) Asset Sale



Div 328-G Requirements

Div 328-G Small Business Restructure Rollover

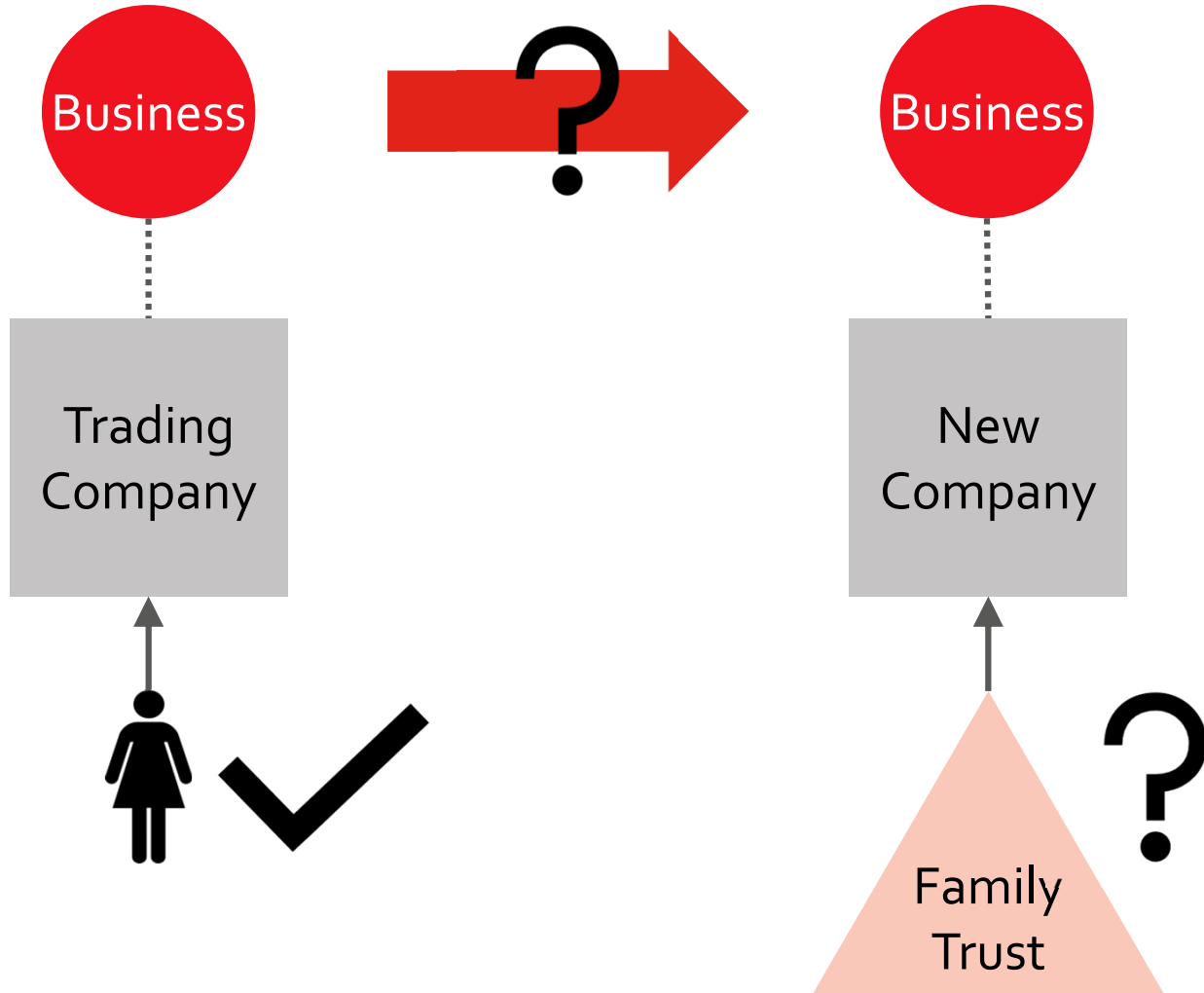
- Transfer – ✓
- Active asset – ✓
- Genuine restructure – LCR 2016/3 – ✓
- No change in economic ownership – ✗

Section 328-430(1)(c)

the transaction does not have the effect of materially changing:

- (i) which individual has, or which individuals have, the ultimate economic ownership of the asset; and*
- (ii) if there is more than one such individual--each such individual's share of that ultimate economic ownership;*

'Individual' Test



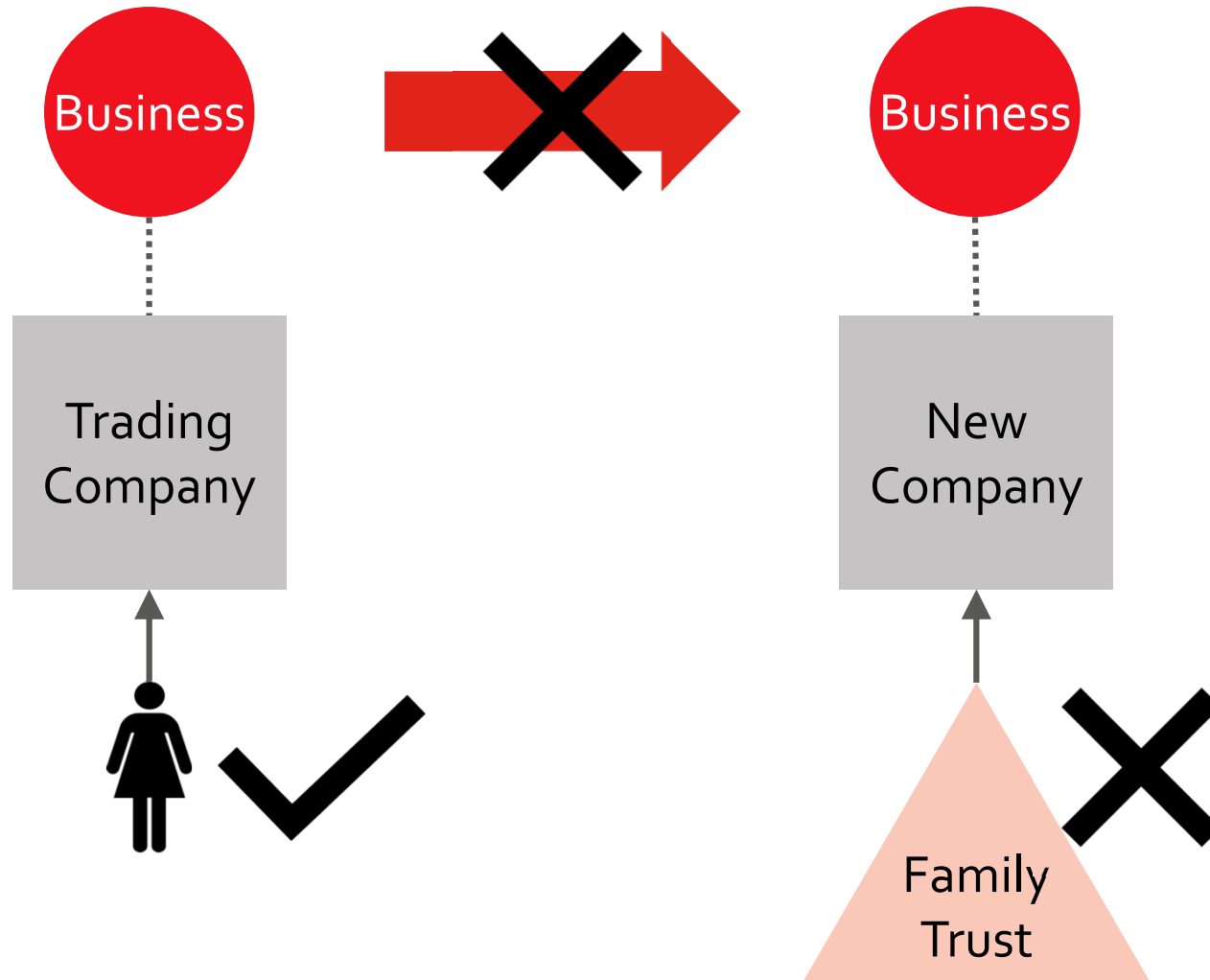
Section 328-440

For the purposes of paragraph 328-430(1)(c), a transaction does not have the effect of changing the ultimate economic ownership of an asset, or any individual's share of that ultimate economic ownership, if:

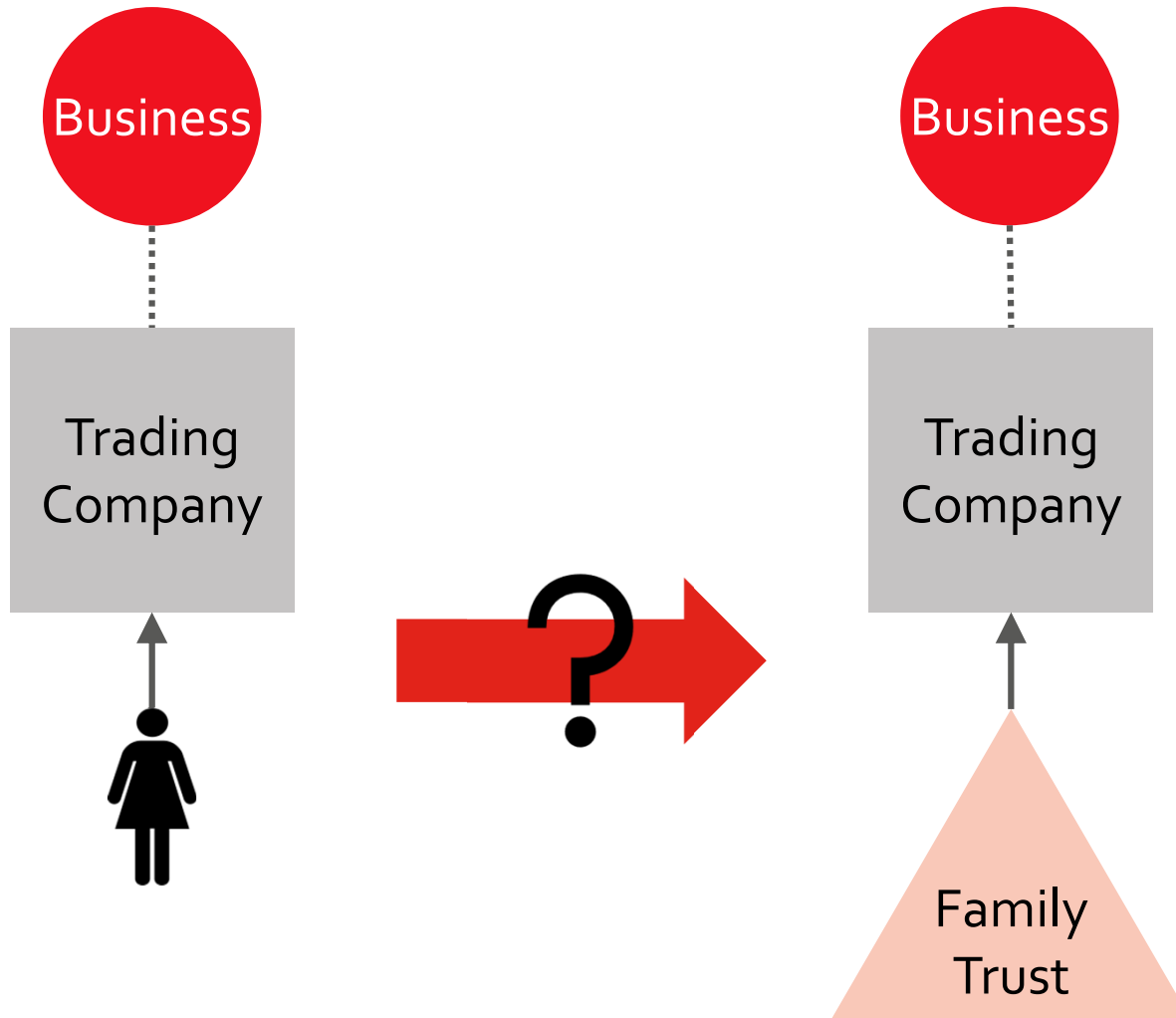
(a) either or both of the following applies:

- (i) just before the transaction took effect, the **asset was included** in the property of a non-fixed trust that was a family trust;
- (ii) just after the transaction takes effect, the **asset is included** in the property of a non-fixed trust that is a family trust; and ...

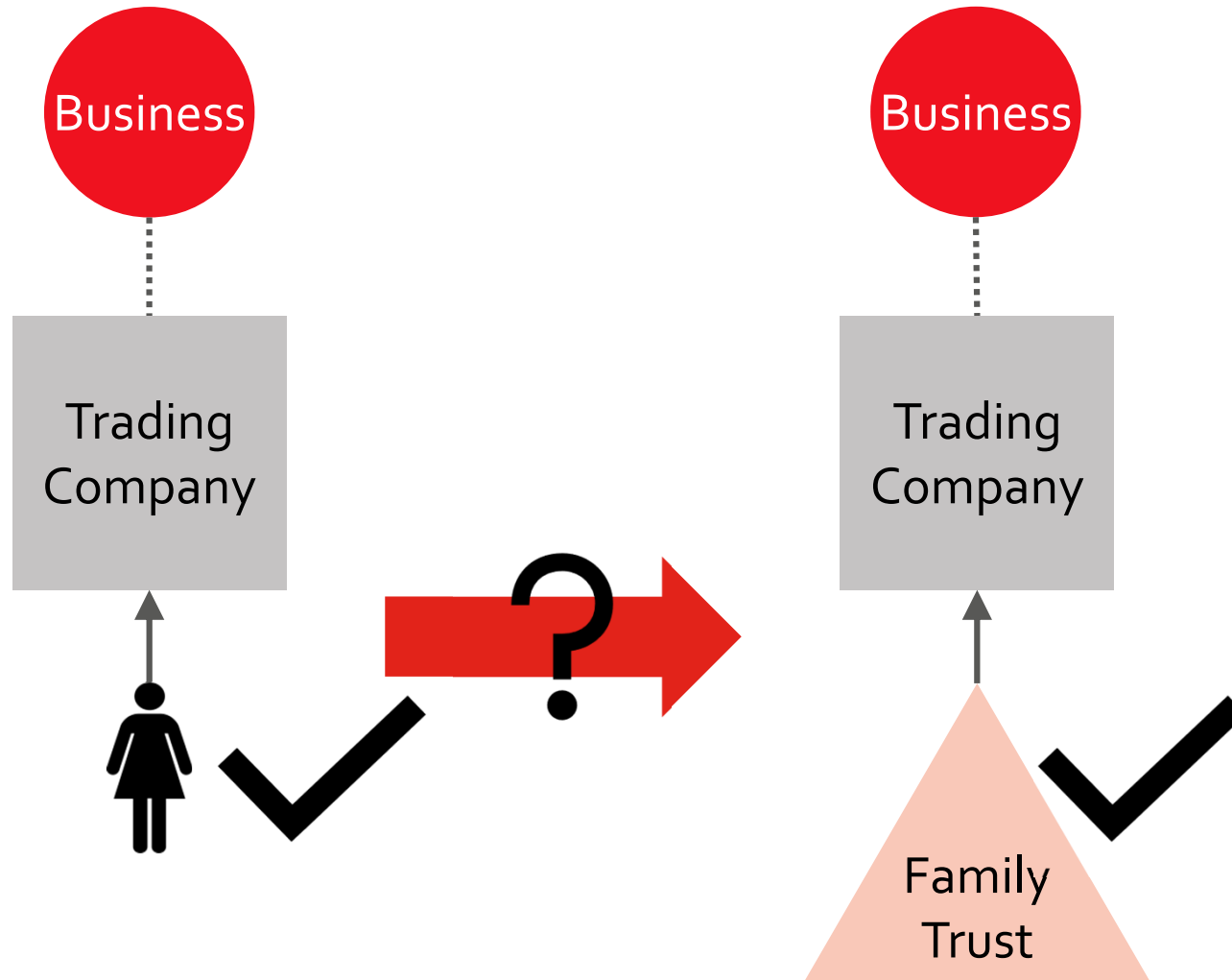
Ultimate Economic Ownership Test



(B) Share Sale



Ultimate Economic Ownership Test



Div 328-G Requirements

Div 328-G Small Business Restructure Rollover

- Transfer – ✓
- Active asset – ?
- Genuine restructure – LCR 2016/3 – ✓
- No change in economic ownership – ✓

Section 328-430(1)(d)

(d) the asset is a CGT asset (other than a depreciating asset) that is, at the time the transfer takes effect:

(i) if subparagraph (b)(i) applies--an active asset; or

(ii) if subparagraph (b)(ii) or (iii) applies--an active asset in relation to which subsection 152-10(1A) is satisfied in that income year; or

(iii) if subparagraph (b)(iv) applies--an active asset and an interest in an asset of the partnership referred to in that subparagraph;

Section 328-430(1)(b)

(b) each party to the transfer is an entity to which any one or more of the following applies:

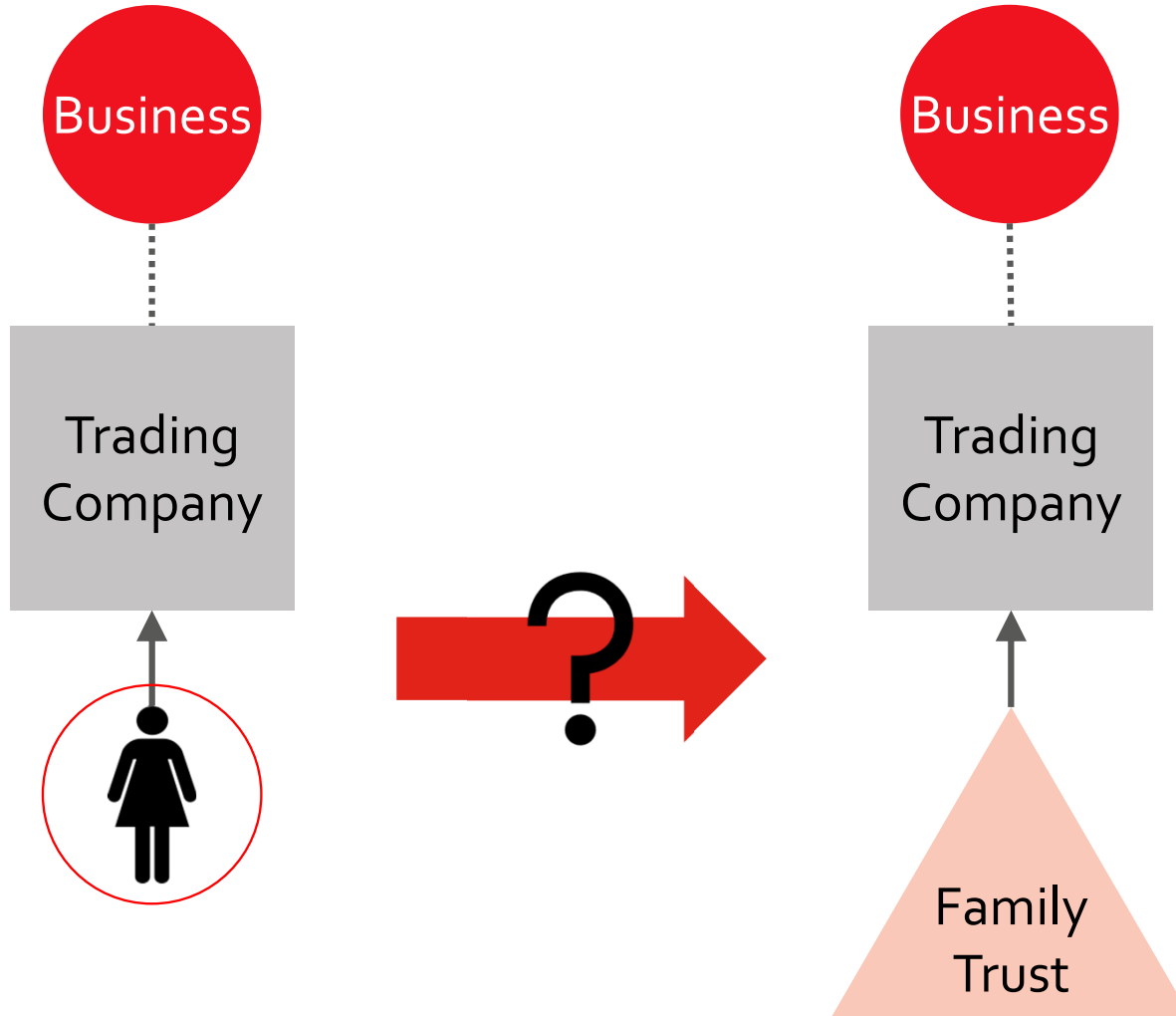
(i) it is a small business entity for the income year during which the transfer occurred;

(ii) it has an affiliate that is a small business entity for that income year;

(iii) it is connected with an entity that is a small business entity for that income year;

(iv) it is a partner in a partnership that is a small business entity for that income year;

Active Asset



Section 328-430

Section 328-430(1)(b)(iii)

(iii) it is connected with an entity that is a small business entity for that income year;

Section 328-430(1)(d)

(ii) if subparagraph (b)(ii) or (iii) applies--an active asset in relation to which subsection 152-10(1A) is satisfied in that income year; or

Section 152-10(1A)

(1A) The conditions in this subsection are satisfied in relation to the CGT asset in the income year if:

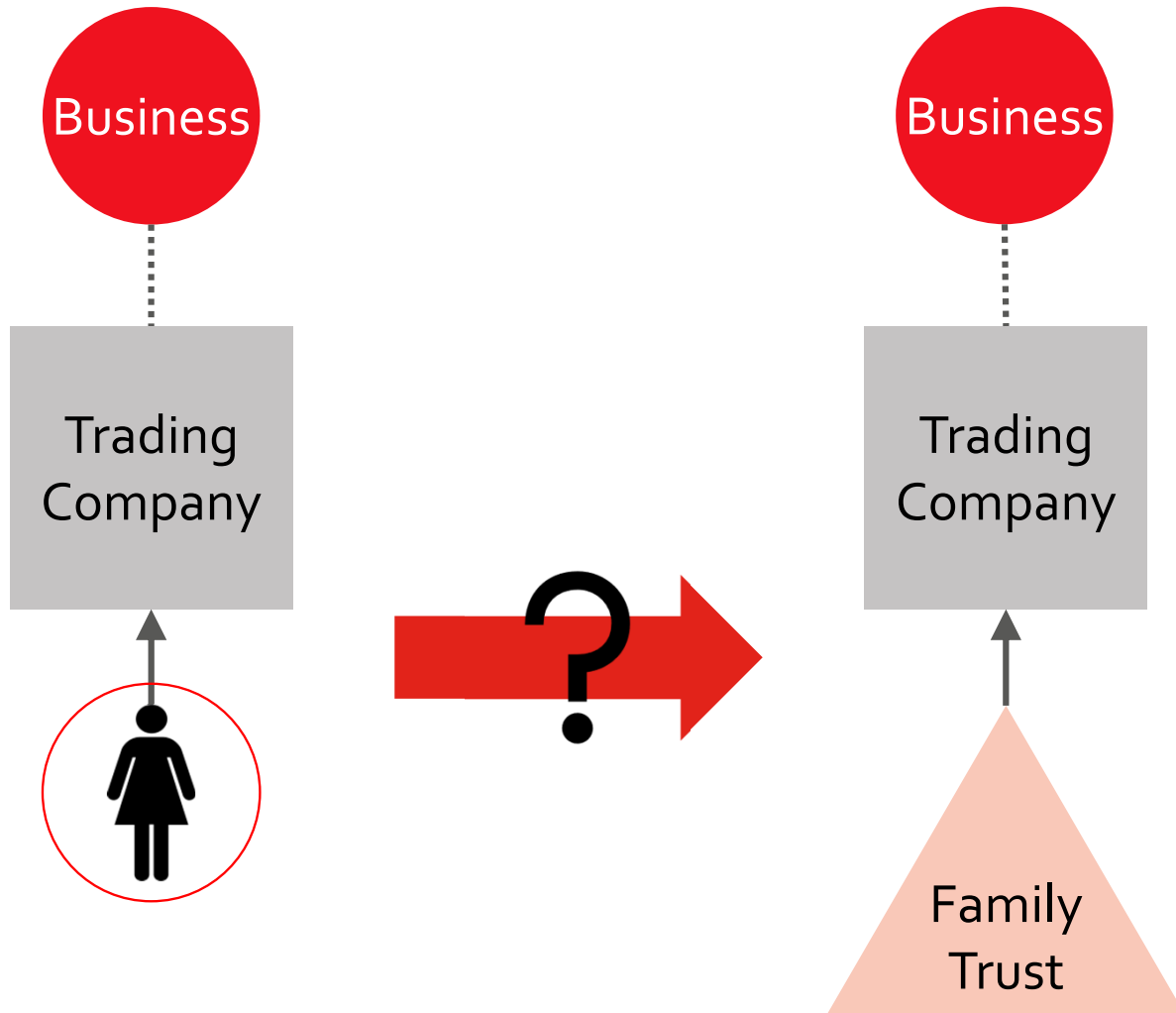
- (a) your affiliate, or an entity that is connected with you, is a CGT small business entity for the income year; and
- (b) you do not carry on a business in the income year (other than in partnership); and
- (c) if you carry on a business in partnership--the CGT asset is not an interest in an asset of the partnership; and
- (d) in any case--the CGT small business entity referred to in paragraph (a) is the entity that, at a time in the income year, carries on the business (as referred to in sub-paragraph 152-40(1)(a)(ii) or (iii) or paragraph 152-40(1)(b)) in relation to the CGT asset.

Section 152-40(1)

- (1) A CGT asset is an active asset at a time if, at that time:
- (a) you own the asset (whether the asset is tangible or intangible) and it is used, or held ready for use, in the course of carrying on a business that is carried on (whether alone or in partnership) by:
 - (i) ...
 - (ii) your * affiliate; or
 - (iii) another entity that is * connected with you; or
 - (b) if the asset is an intangible asset--you own it and it is inherently connected with a business that is carried on (whether alone or in partnership) by you, your affiliate, or another entity that is connected with you.

Inherently Connected

- A thing might be regarded as inherently connected to a business when it is a permanent or characteristic attribute of the business, e.g. goodwill or trade debtors
- Thing = shares
- Attribute of the business = X



Section 328-430(1)(b)

(b) each party to the transfer is an entity to which any one or more of the following applies:

(i) [it is a small business entity] for the [income year during which the transfer occurred];

(ii) ...

(iii) ...

(iv) ...

Section 328-110

(1) You are a small business entity for an income year (the current year) if:

(a) you carry on a business in the current year; and

(b) one or both of the following applies:

(i) you carried on a business in the income year (the previous year) before the current year and your aggregated turnover for the previous year was less than \$10 million;

(ii) your aggregated turnover for the current year is likely to be less than \$10 million.

(4) You are also a small business entity for an income year (the current year) if:

(a) you carry on a business in the current year; and

(b) your aggregated turnover for the current year, worked out as at the end of that year, is less than \$10 million.

Section 328-430(1)(d)

(d) the asset is a CGT asset (other than a depreciating asset) that is, at the time the transfer takes effect:

(i) if subparagraph (b)(i) applies--an active asset; or

(ii) ...

(iii) ...

Section 152-40(3)

A CGT asset is also an active asset at a given time if, at that time, you own it and:

(a) it is either a share in a company that is an Australian resident at that time or an interest in a trust that is a resident trust for CGT purposes for the income year in which that time occurs; and

(b) the total of:

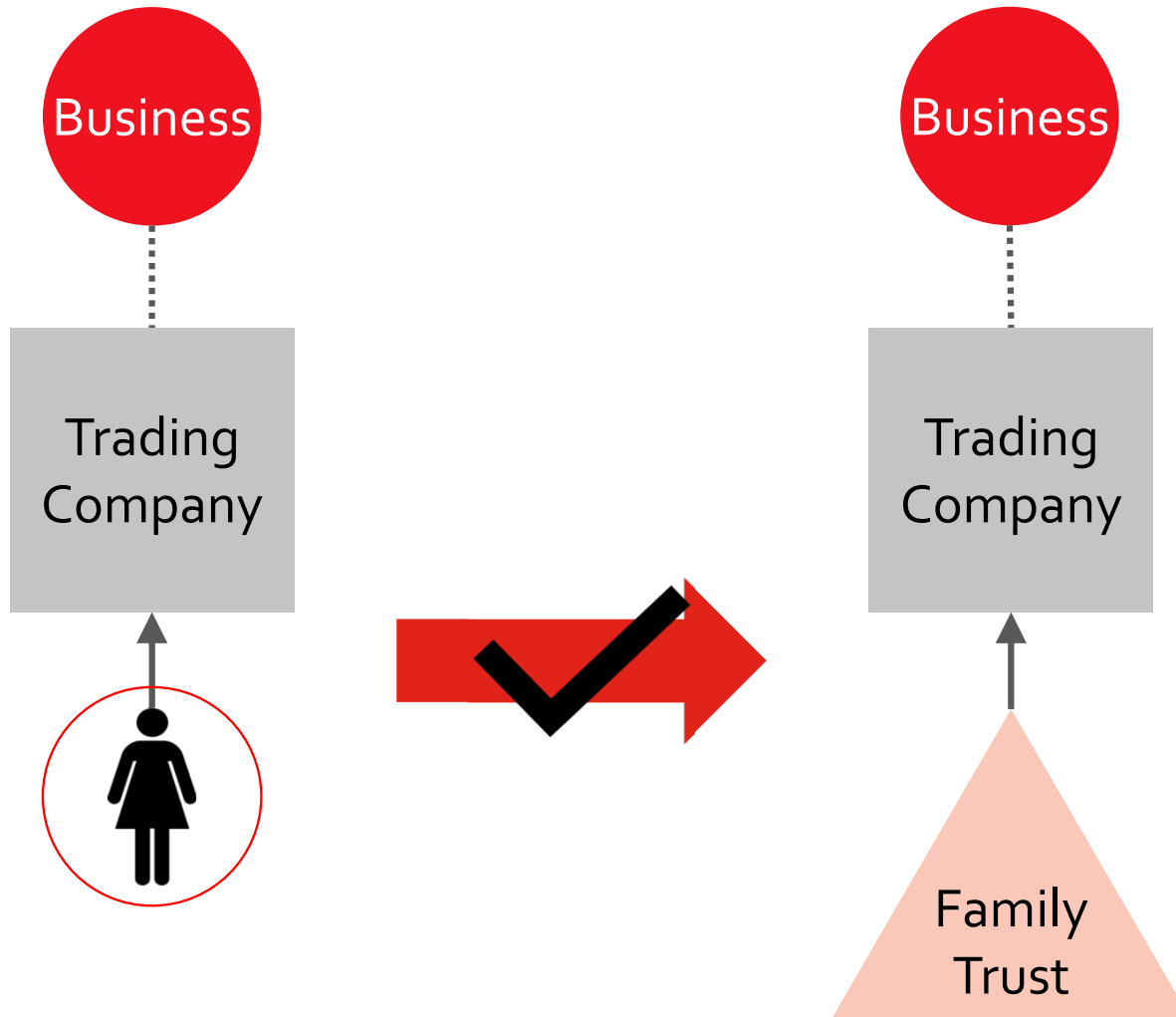
(i) the market values of the active assets of the company or trust; and

(ii) the market value of any financial instruments of the company or trust that are inherently connected with a business that the company or trust carries on; and

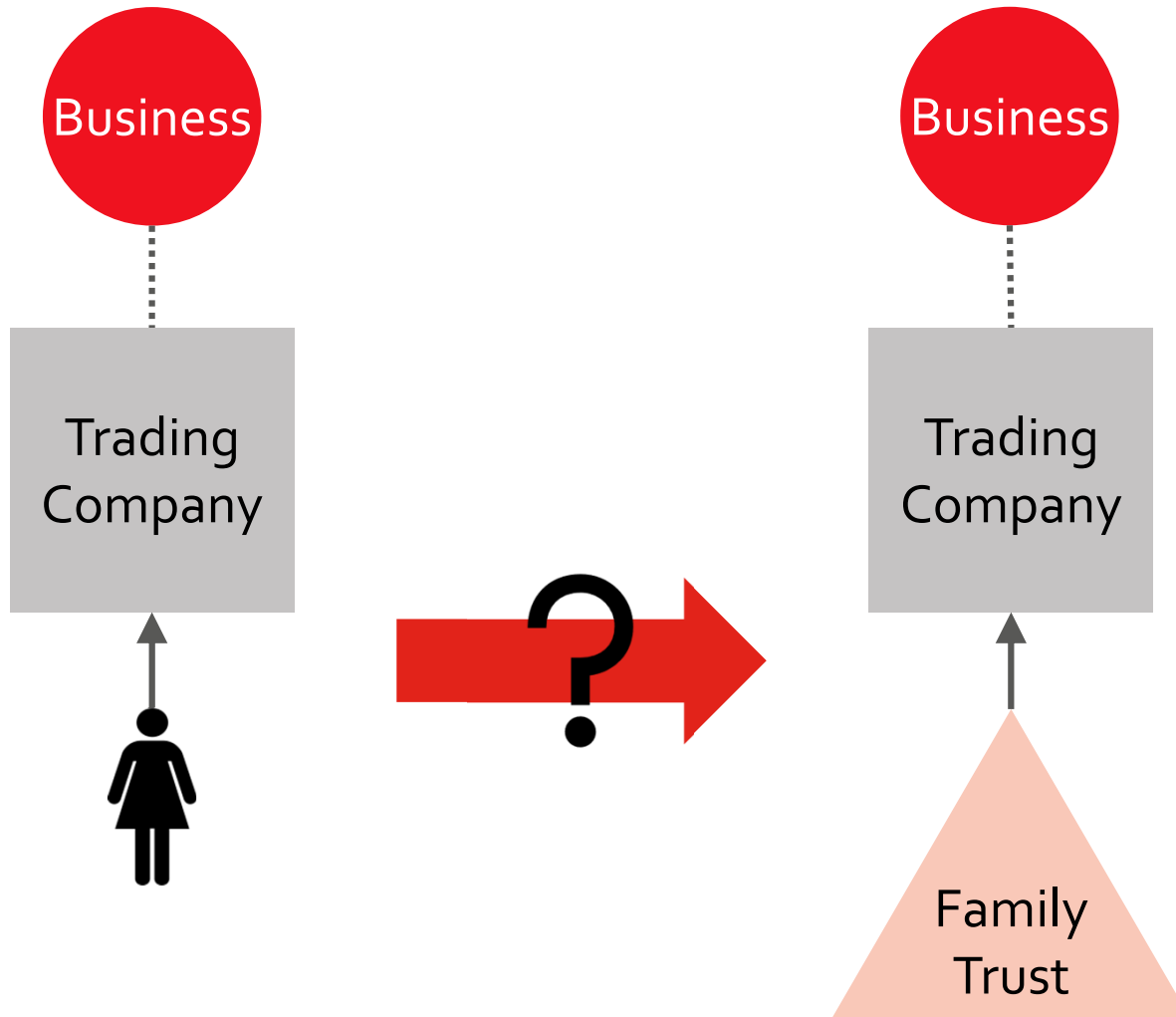
(iii) any cash of the company or trust that is inherently connected with such a business;

is 80% or more of the market value of all of the assets of the company or trust.

Div 328-G – Satisfied



(C) Share Sale – Div 152

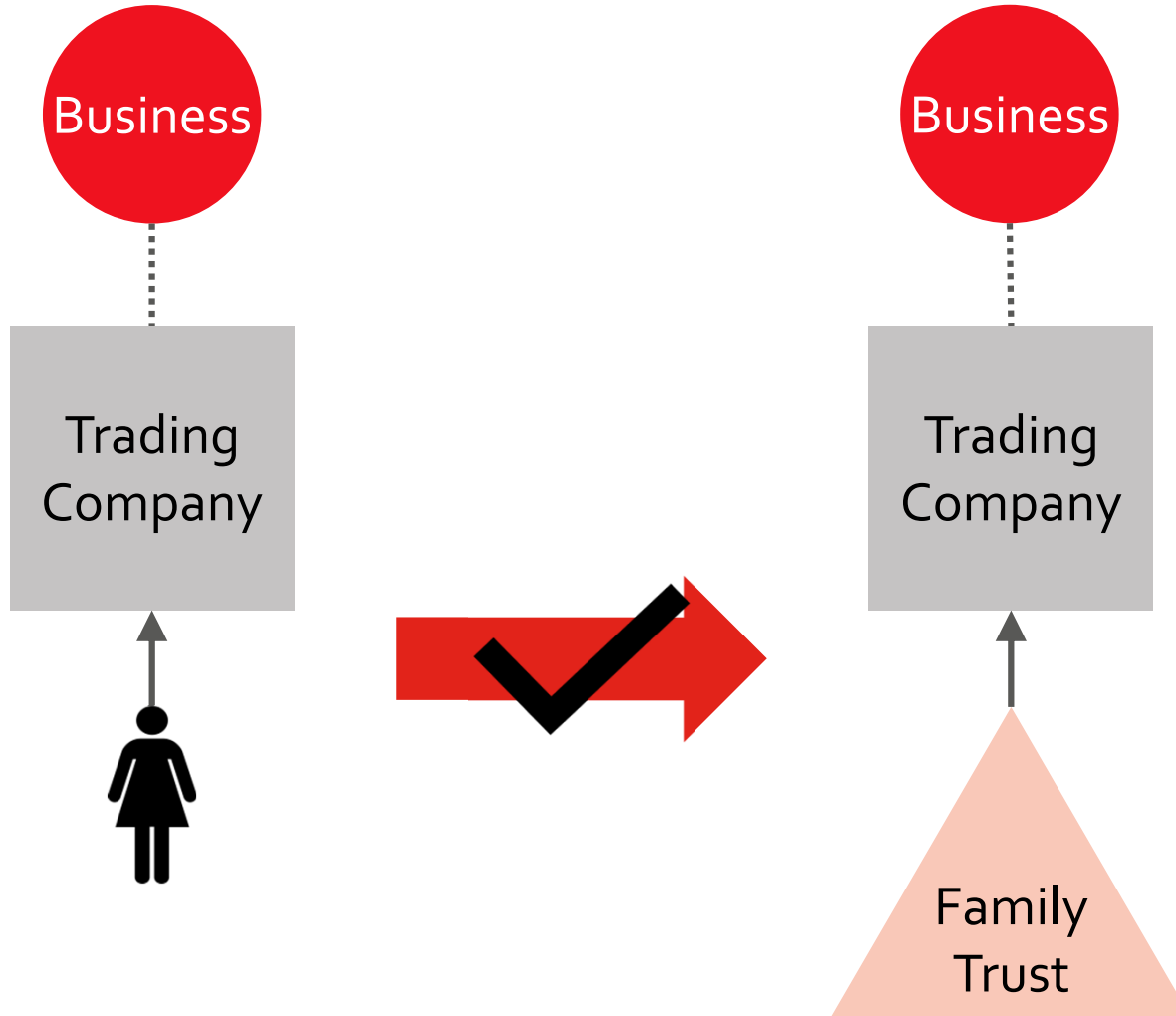


CGT Small Business Concessions

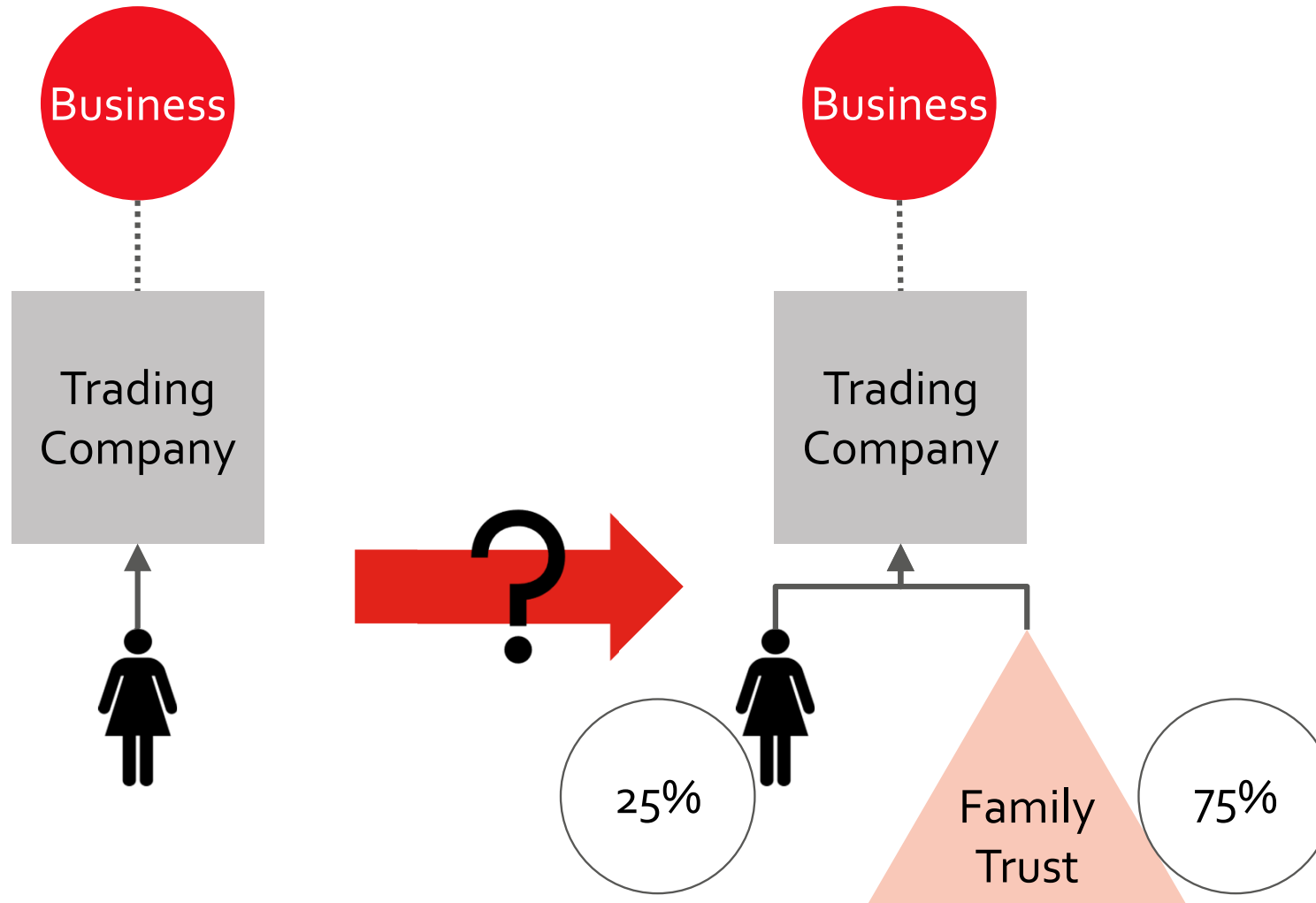
\$900K capital gain

1. CGT Discount – \$450K
 2. Active asset reduction – \$225K
 3. Remaining – \$225K:
 - Retirement exemption? – 53 years?
 - 15-year exemption? – 55 years & in connection with retirement?
 - Div 152-E Rollover?
- Restructure to Company wholly owned by Trading Trust

15-year or Retirement Exemption



Replacement Asset Rollover



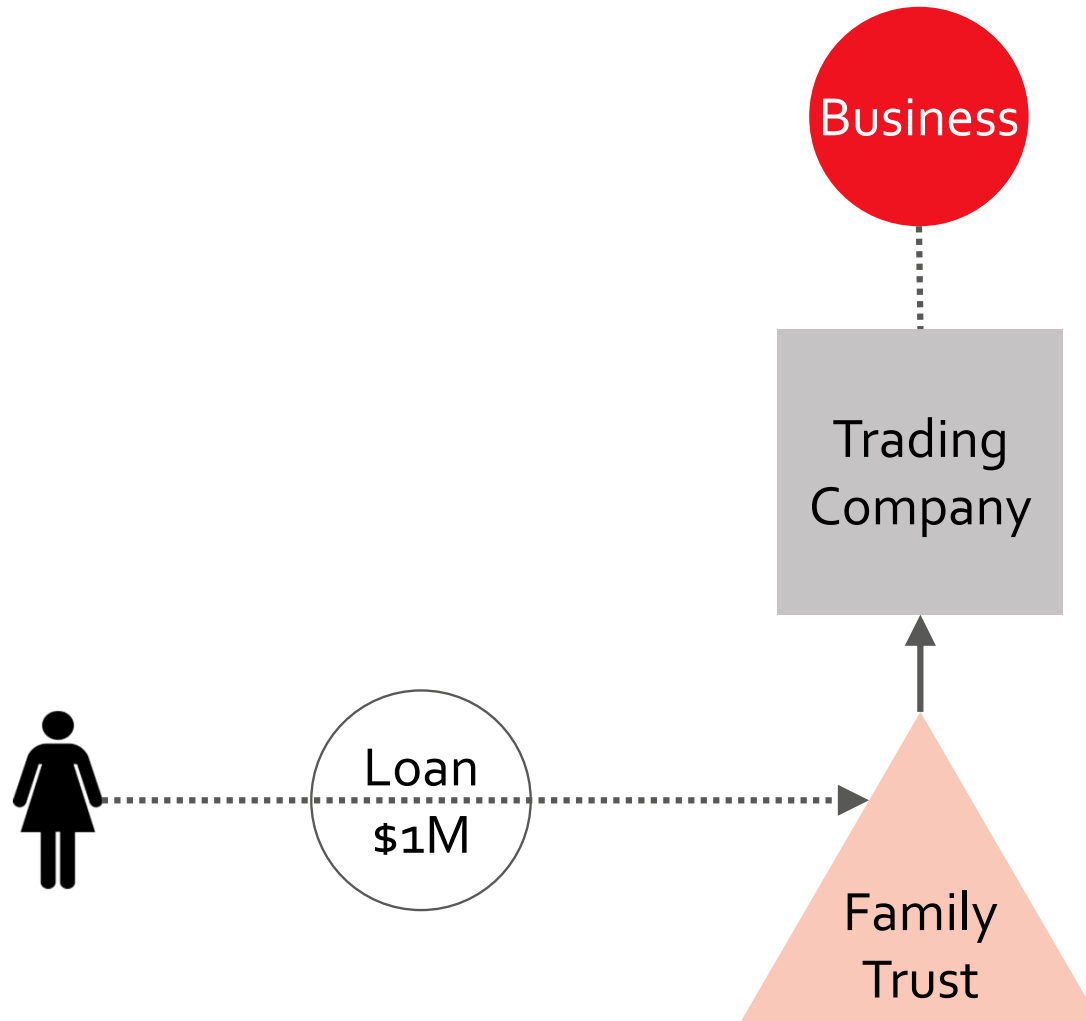
Section 152-410

You can choose to obtain a roll-over under this Subdivision for a capital gain if the basic conditions in Subdivision 152-A are satisfied for the gain.

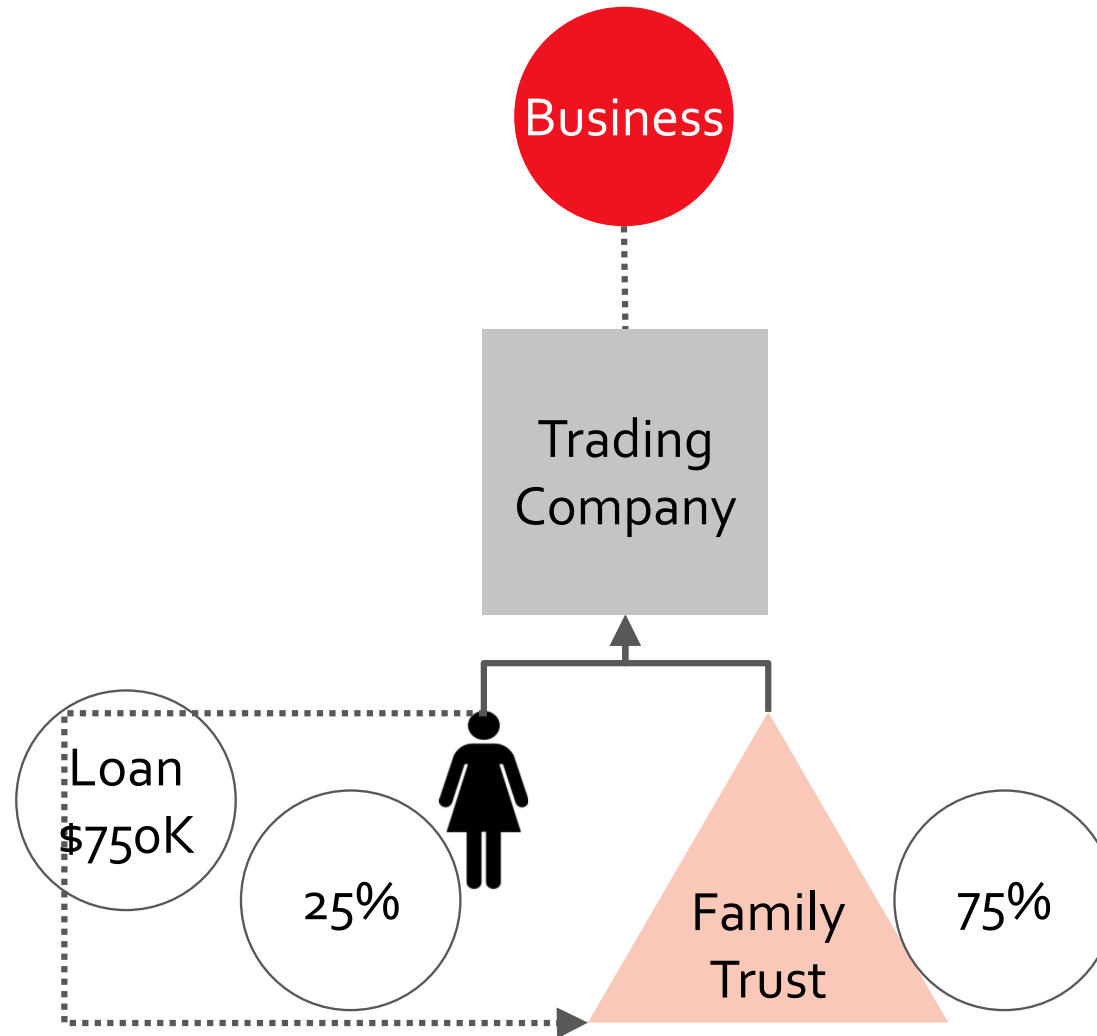
However:

- (a) CGT event J5 happens if, by the end of the replacement asset period, you do not acquire the asset or incur the expenditure (see section 104-197);
- (b) CGT event J6 happens if, by the end of the replacement asset period, the cost of the replacement asset or the amount of fourth element expenditure incurred (or both) is less than the amount of the capital gain that you disregarded (see section 104-198).

Step 1 – Transfer & Vendor Finance



Step 2 – Transfer & Replacement Asset



Section 104-197: CGT Event J5

- (a) you have not acquired a replacement asset (the replacement asset), and have not incurred fourth element expenditure in relation to a CGT asset (also the replacement asset); or
- (b) the replacement asset does not satisfy the conditions set out in subsection (2).

Section 104-185(9): Fourth Element Expenditure

You incur fourth element expenditure in relation to a CGT asset if you incur capital expenditure that is included, under subsection 110-25(5), in the fourth element of the cost base of the asset.

Section 110-25(5)

The fourth element is capital expenditure you incurred:

- (a) the purpose or the expected effect of which is to increase or preserve the asset's value;*
or
- (b) that relates to installing or moving the asset.*

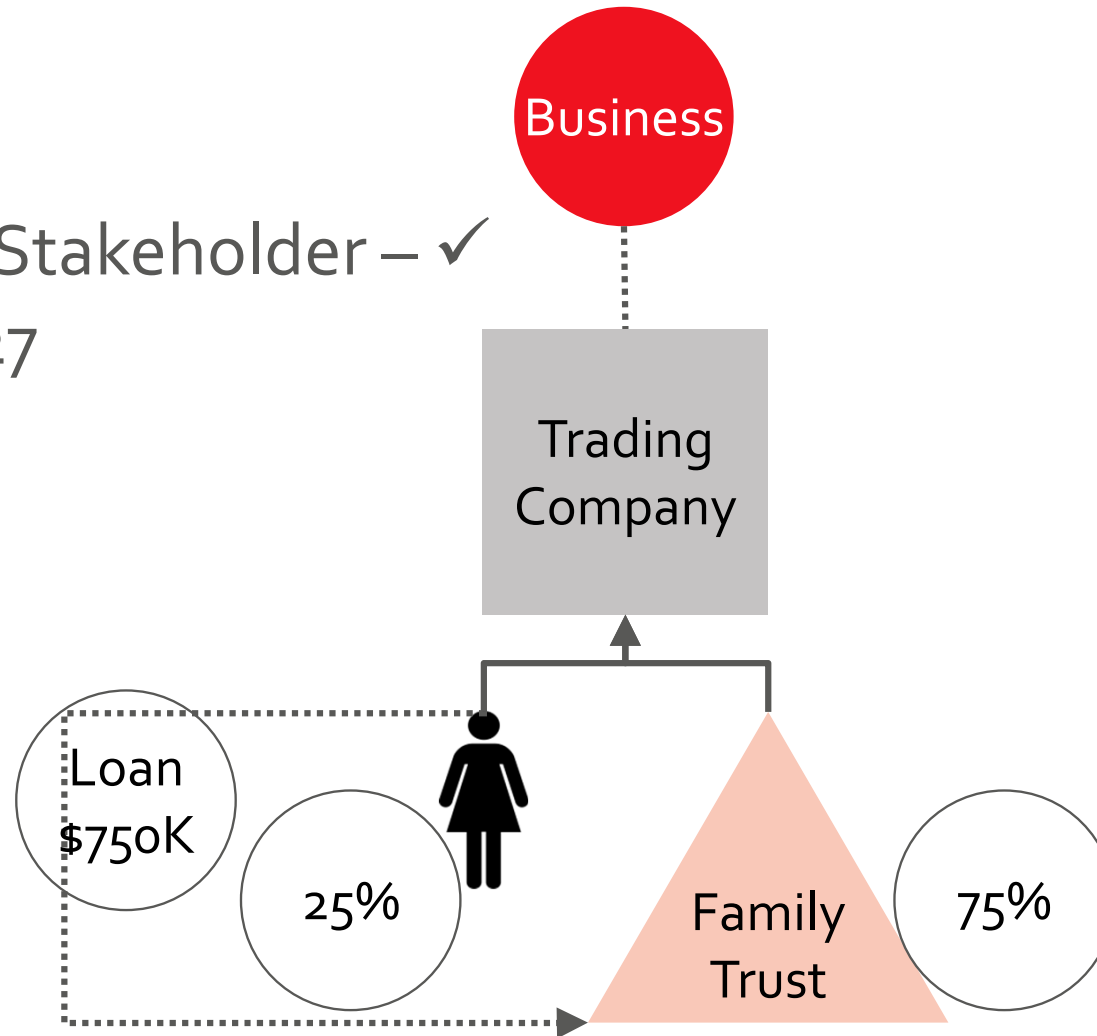
Section 104-197(2)

The conditions are:

- (a) the replacement asset must be your active asset; and*
- (b) if the replacement asset is a share in a company or an interest in a trust:
 - (i) you, or an entity connected with you, must be a CGT concession stakeholder in the company or trust; or*
 - (ii) CGT concession stakeholders in the company or trust must have a small business participation percentage in you of at least 90%.**

CGT Event J5 – satisfied

- Active Asset – ✓
- CGT Concession Stakeholder – ✓
- PR 1051497522727



Section 104-198: CGT Event J6

(1) CGT event J6 happens if you choose a small business roll-over under Subdivision 152-E for a CGT event that happens in relation to a CGT asset in an income year and:

(a) by the end of the replacement asset period, you have done either or both of the following:

(i) acquired a replacement asset (the replacement asset);

✓

(ii) incurred fourth element expenditure in relation to a CGT asset (also the replacement asset); and

X

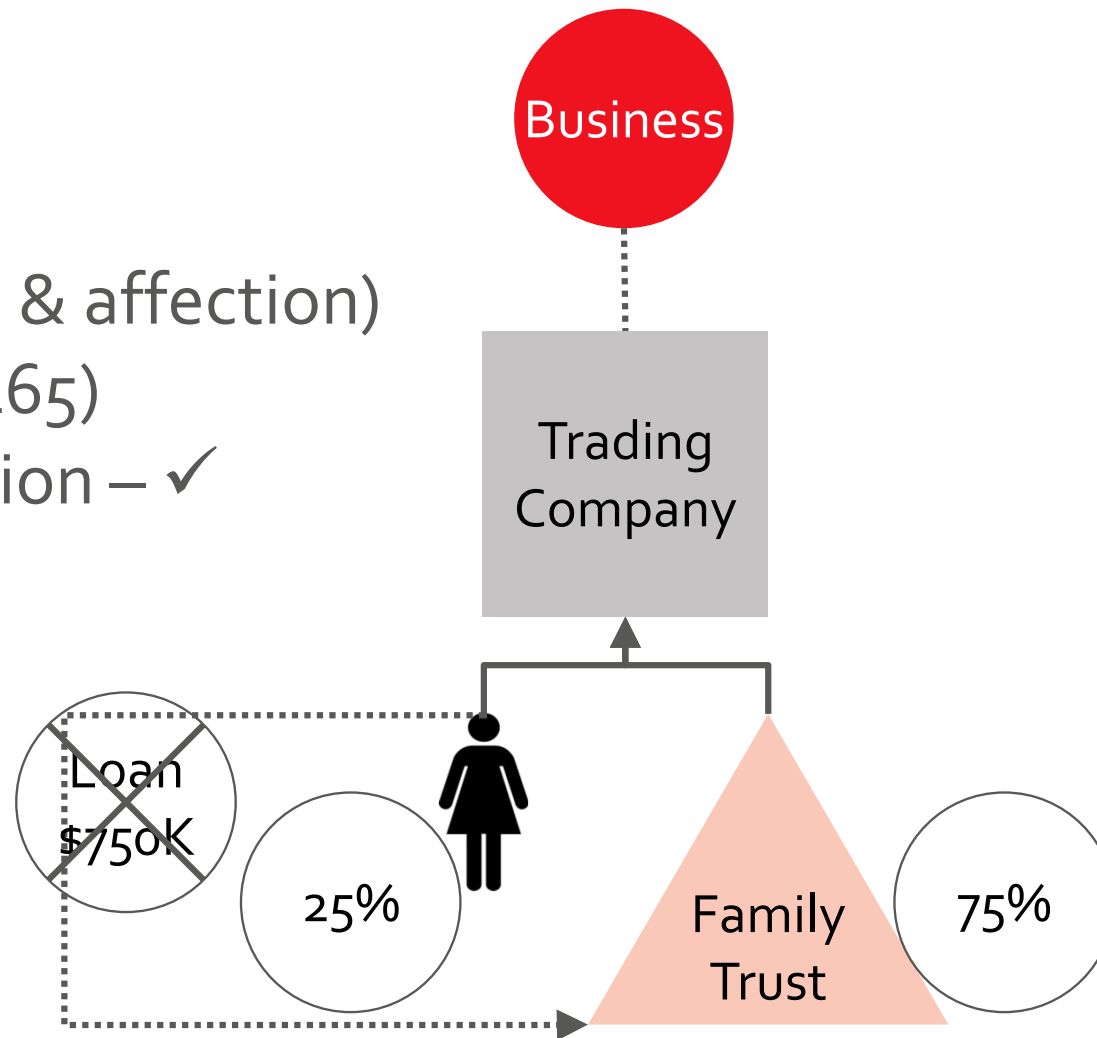
- (b) at the end of the replacement asset period, the replacement asset is your active asset; and ✓
- (c) if the replacement asset is a share in a company or an interest in a trust, at the end of the replacement asset period:
- (i) you, or an entity connected with you, are a CGT concession stakeholder in the company or trust; or (25%) ✓
 - (ii) CGT concession stakeholders in the company or trust have a * small business participation percentage in you of at least 90%; and N/A

(d) the total (the amount incurred) of the following, in relation to each replacement asset that satisfied paragraph (b) and, if applicable, paragraph (c), is less than the amount of the capital gain that you disregarded:

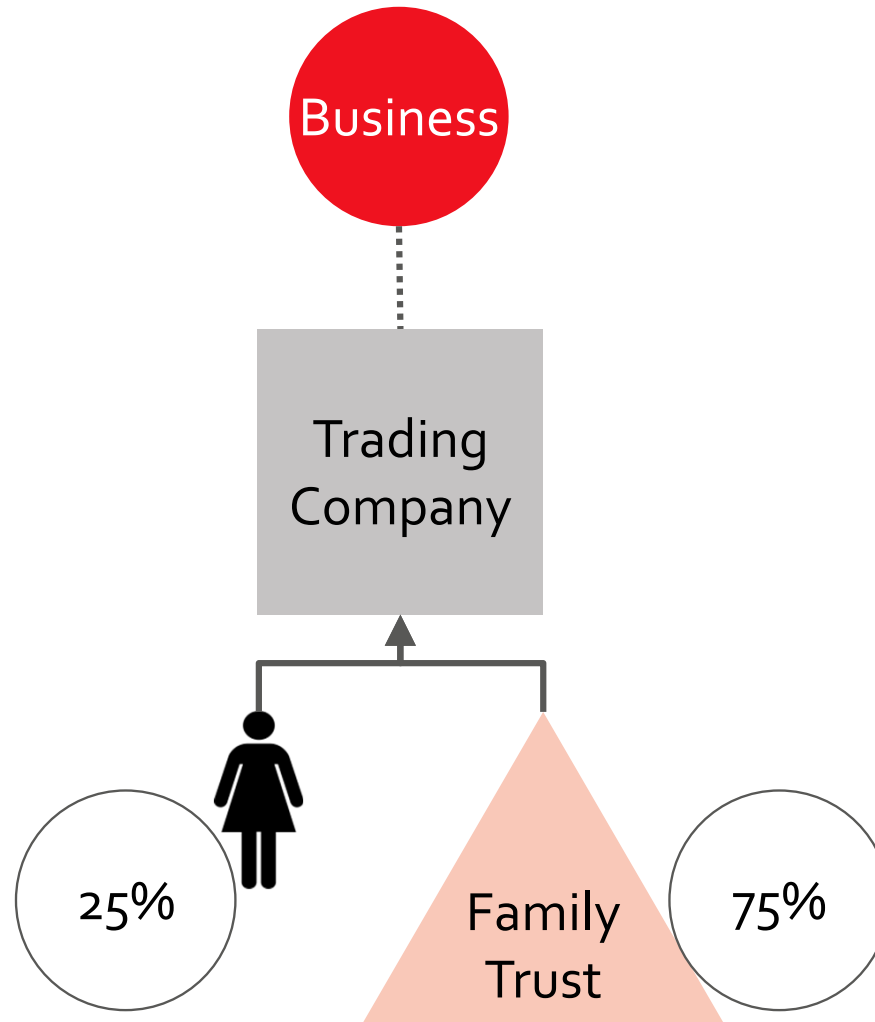
- (i) the first element of the cost base; (25%) X
- (ii) the incidental costs you incurred (which can include giving property, see section 103-5); N/A
- (iii) the amount of fourth element expenditure incurred. N/A

\$750K Loan

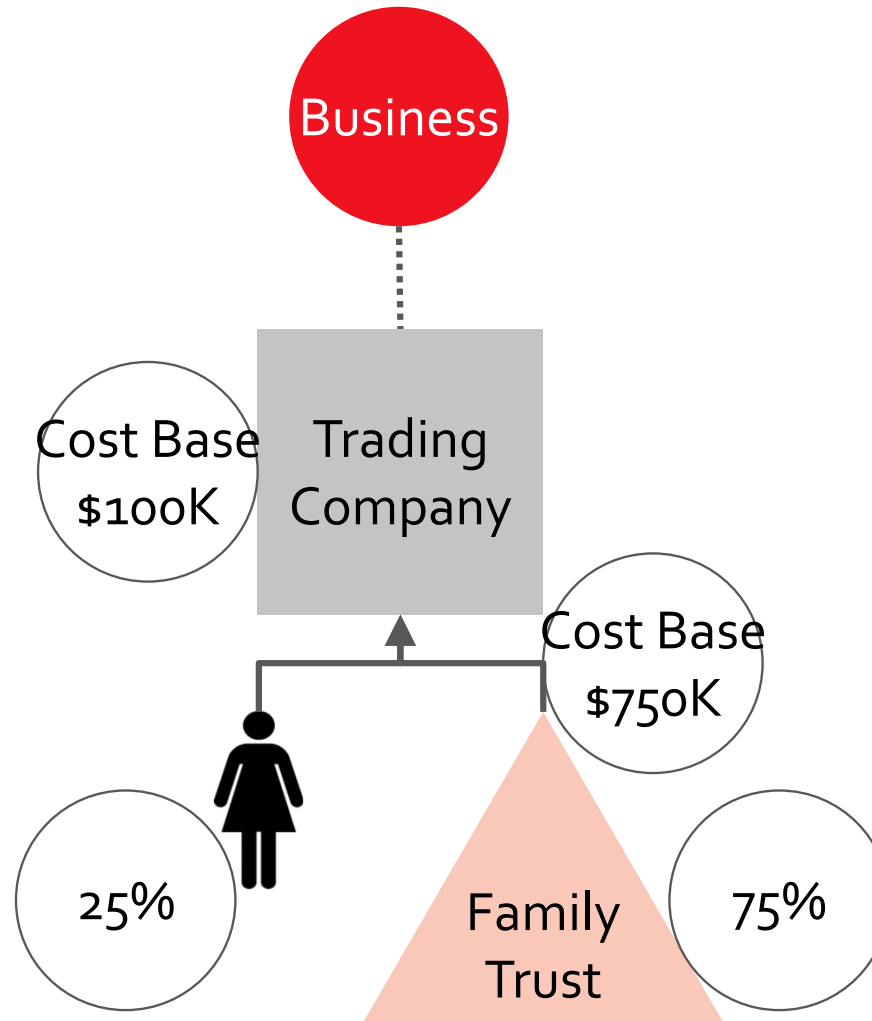
- Forgive – ✓ (love & affection)
(PR 1051178964465)
- Capital contribution – ✓



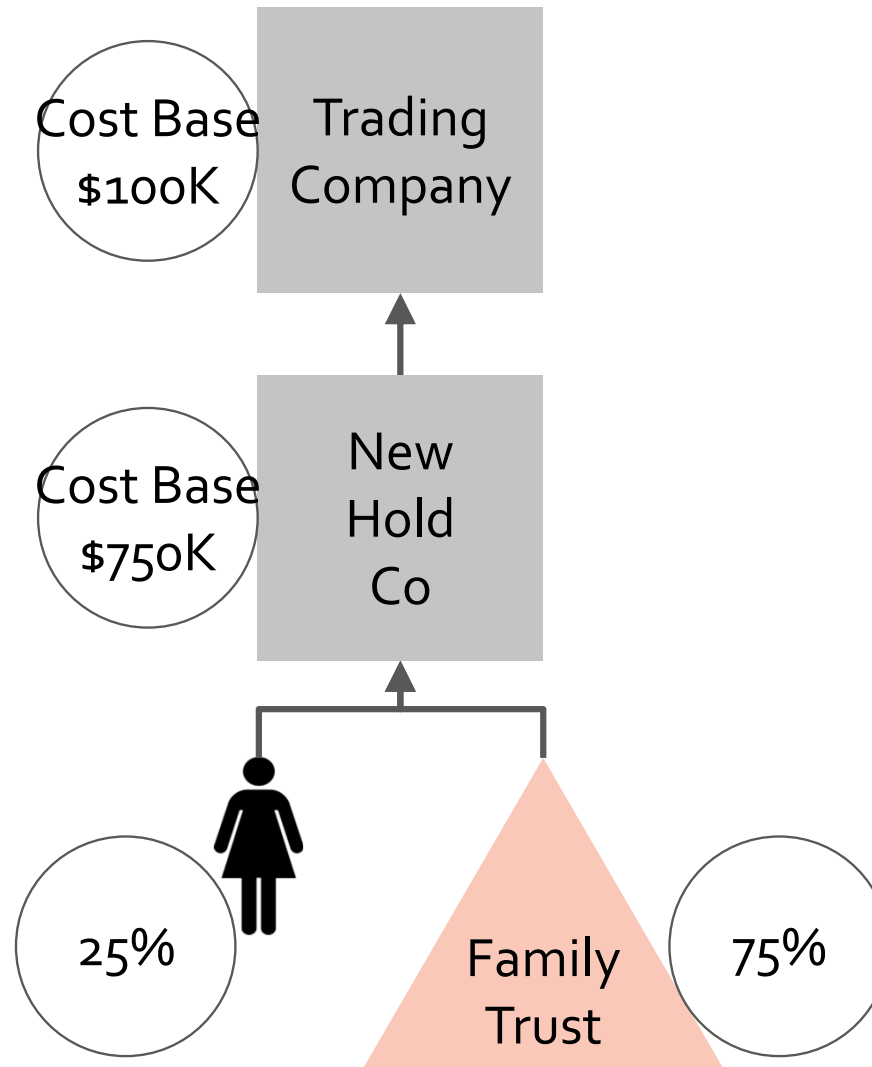
Final Structure



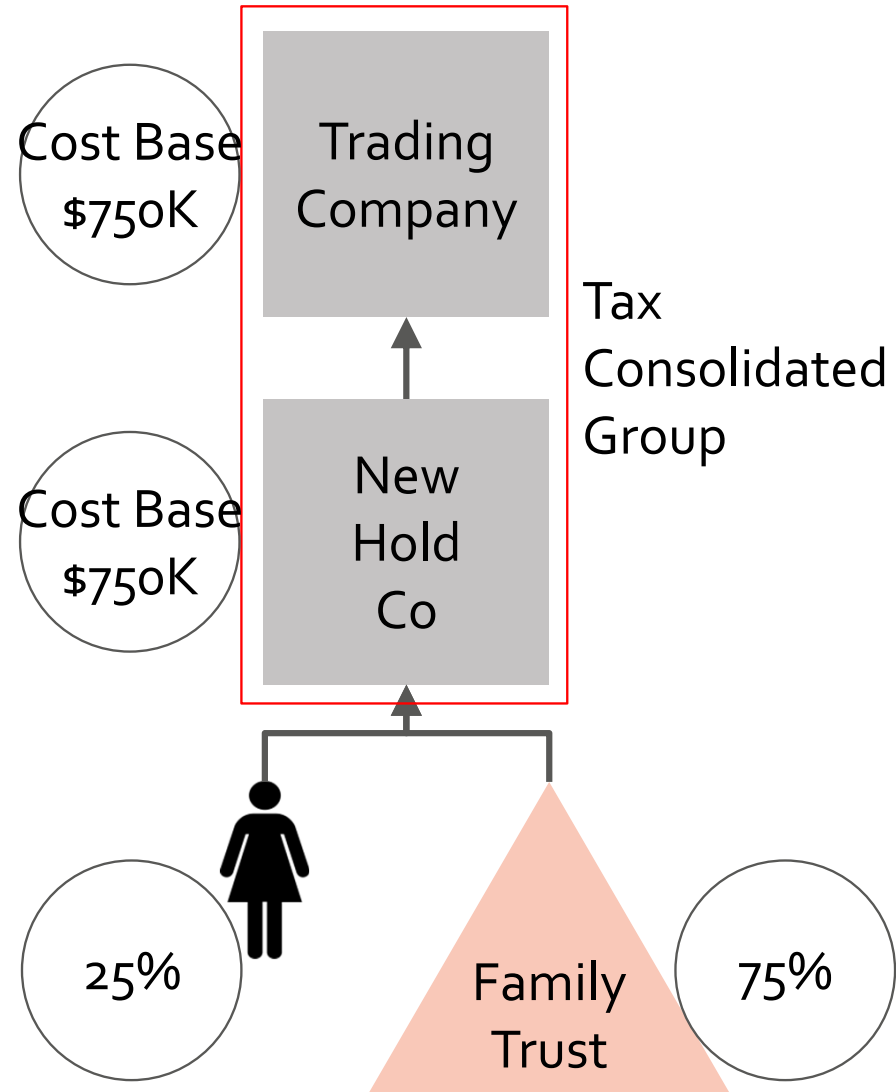
(C) Interposition & Consolidation



Div 615 Interposition



Consolidation



Issues

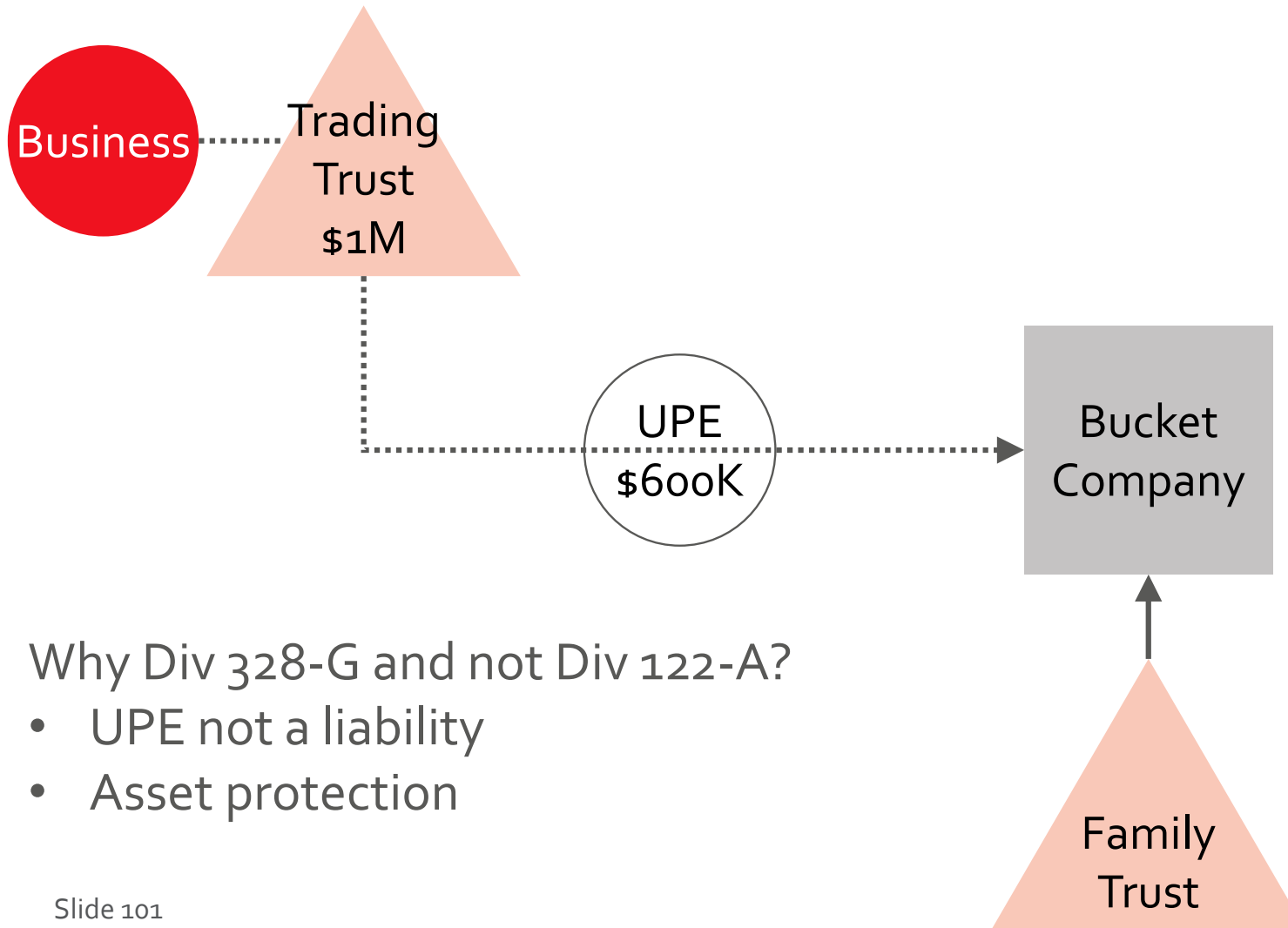
- Part IVA
- Getting the money out:
 - Cost base of Trading Company shares
 - Share sale v asset sale

Scenario 2

Facts

1. Trading Trust
 2. Cost base - \$100K
 3. Market Value - \$1M
 4. UPEs - \$600K
- Restructure to Company wholly owned by Trading Trust

Structure

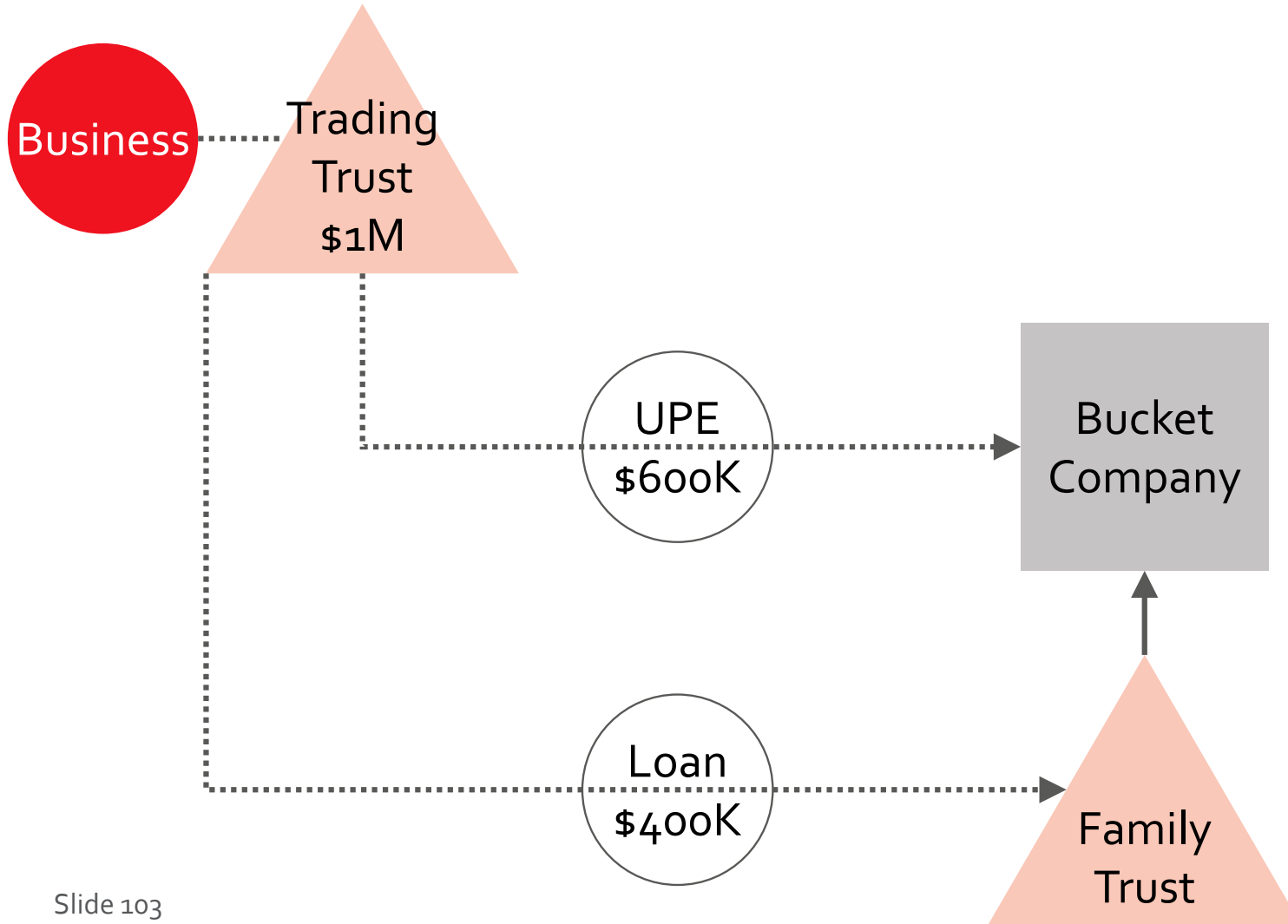


Why Div 328-G and not Div 122-A?

- UPE not a liability
- Asset protection

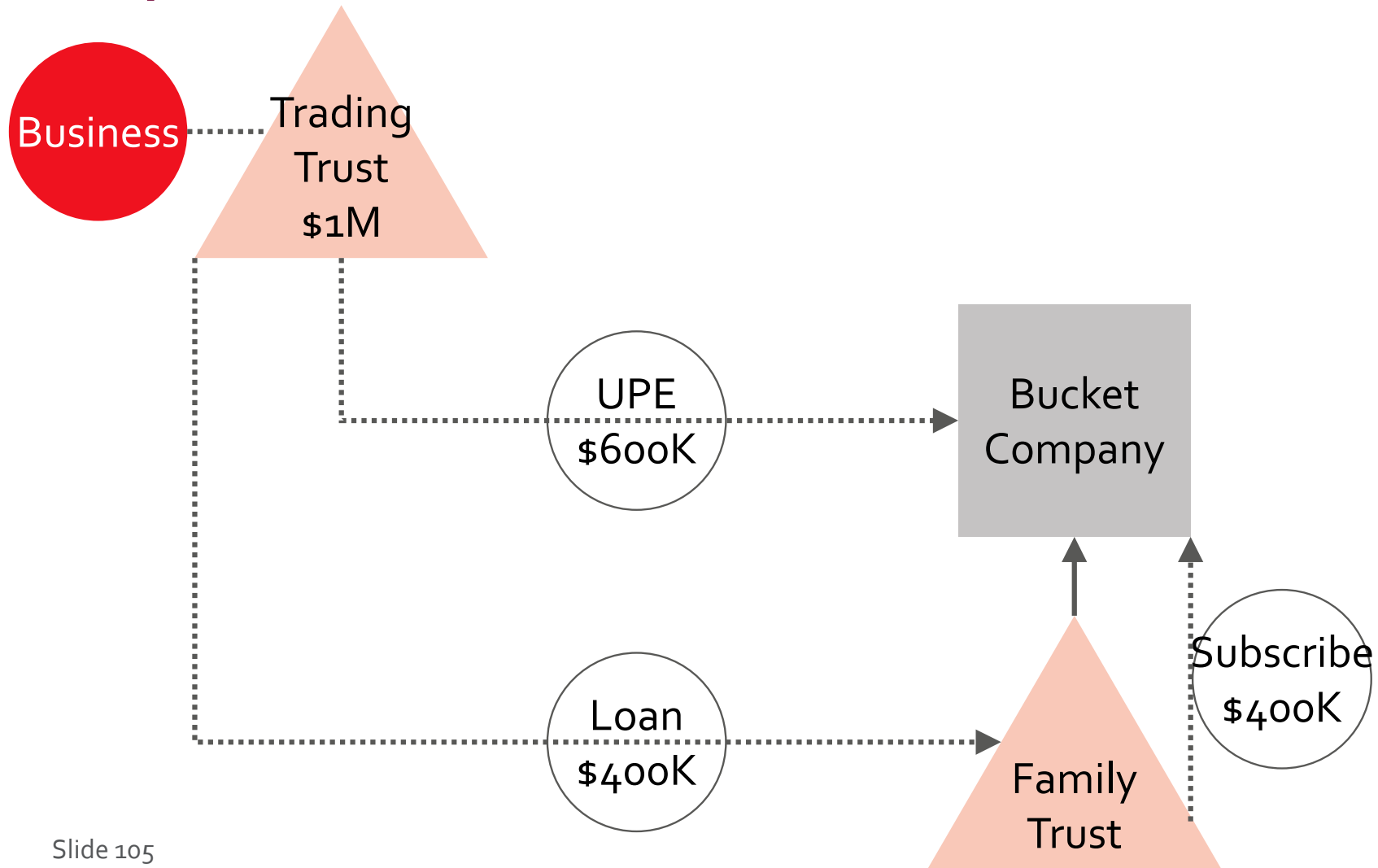
Trading Trust	Bucket Company	Family Trust
A: \$1M	A: \$600K	A: \$600K
L: \$100K	L: \$0	L: \$0
OE: \$300K	OE: \$600K	OE: \$600K
UPE: \$600K		

Step 1 - Loan



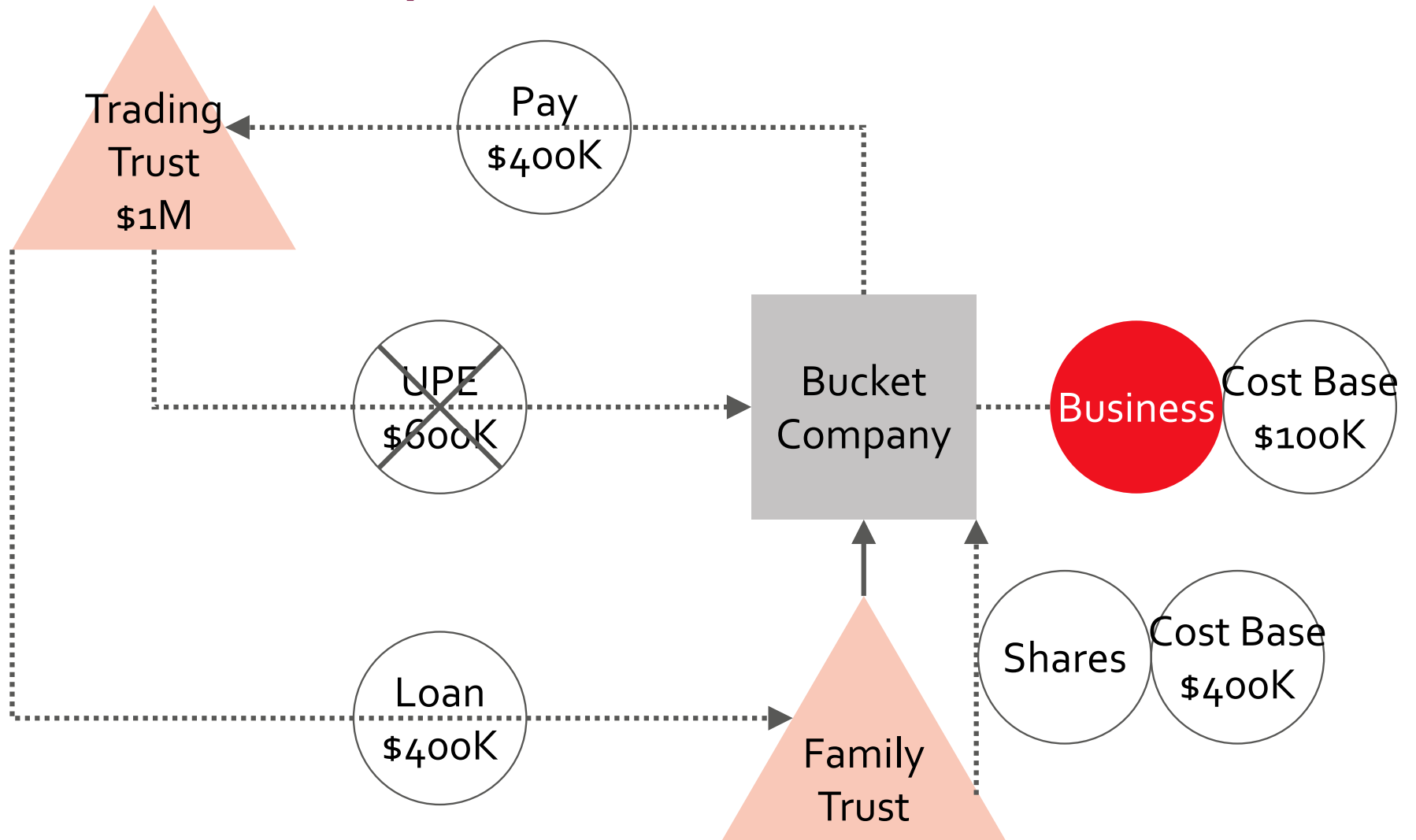
Trading Trust	Bucket Company	Family Trust
A: \$1.4M (\$1.0M + \$0.4M)	A: \$600K	A: \$1M (\$0.6M + \$0.4M)
L: \$500K (\$0.1M + \$0.4M)	L: \$0	L: \$400K (\$0M + \$0.4M)
OE: \$300K	OE: \$600K	OE: \$600K
UPE: \$600K		

Step 2 – Share Issue



Trading Trust	Bucket Company	Family Trust
A: \$1.4M	A: \$1M (\$0.6M + \$0.4M)	A: \$1M
L: \$500K	L: \$0	L: \$400K
OE: \$300K	OE: \$1M	OE: \$600K
UPE: \$600K		

Step 3 – Business Acquisition

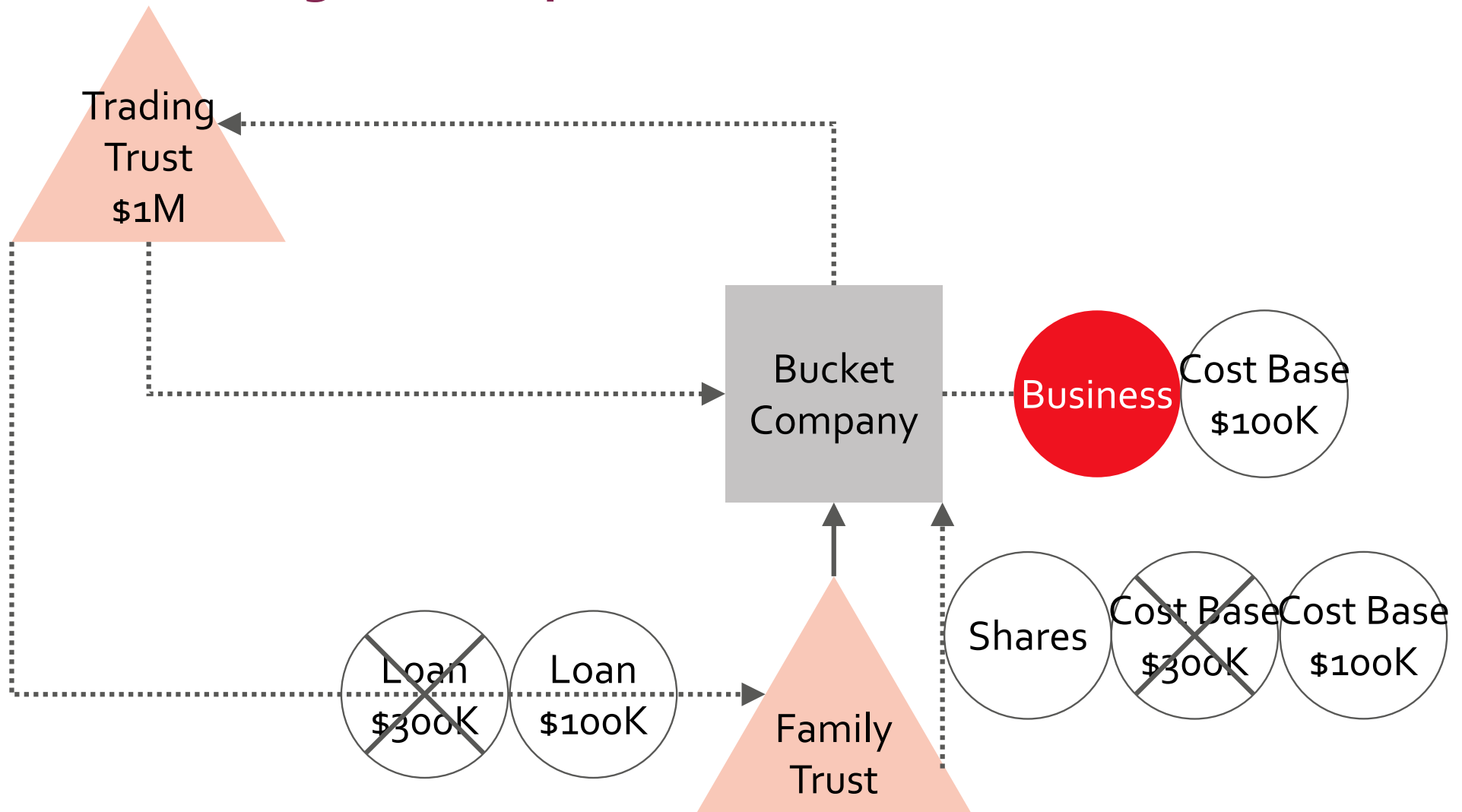


Trading Trust	Bucket Company	Family Trust
A: \$400K (\$1.4M - \$1M + \$0.4M - \$0.4M)	A: \$1M	A: \$1M
L: \$100K (\$0.5M - \$0.4M)	L: \$0	L: \$400K
OE: \$300K	OE: \$1M	OE: \$600K
UPE: \$600K		

328-G Small Business Restructure Rollover

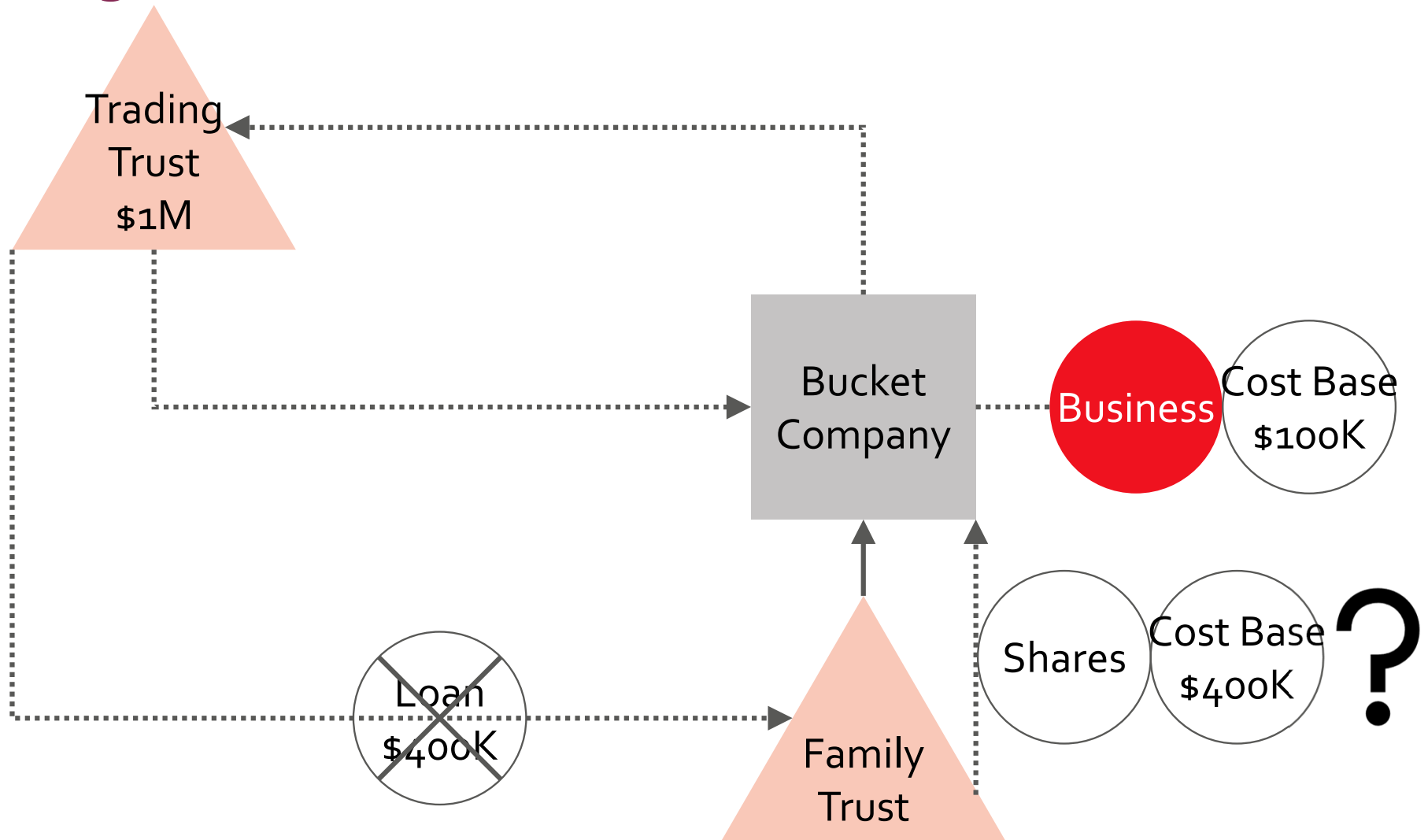
- Transfer – ✓
- Active asset – ✓
- Genuine restructure – LCR 2016/3 (Example 8 – reduce UPE compliance requirements) – ✓
- No change in economic ownership – natural persons remain test individual and family group (PR 1051445701405) – ✓

Step 4 – Debt Forgiveness (partial)

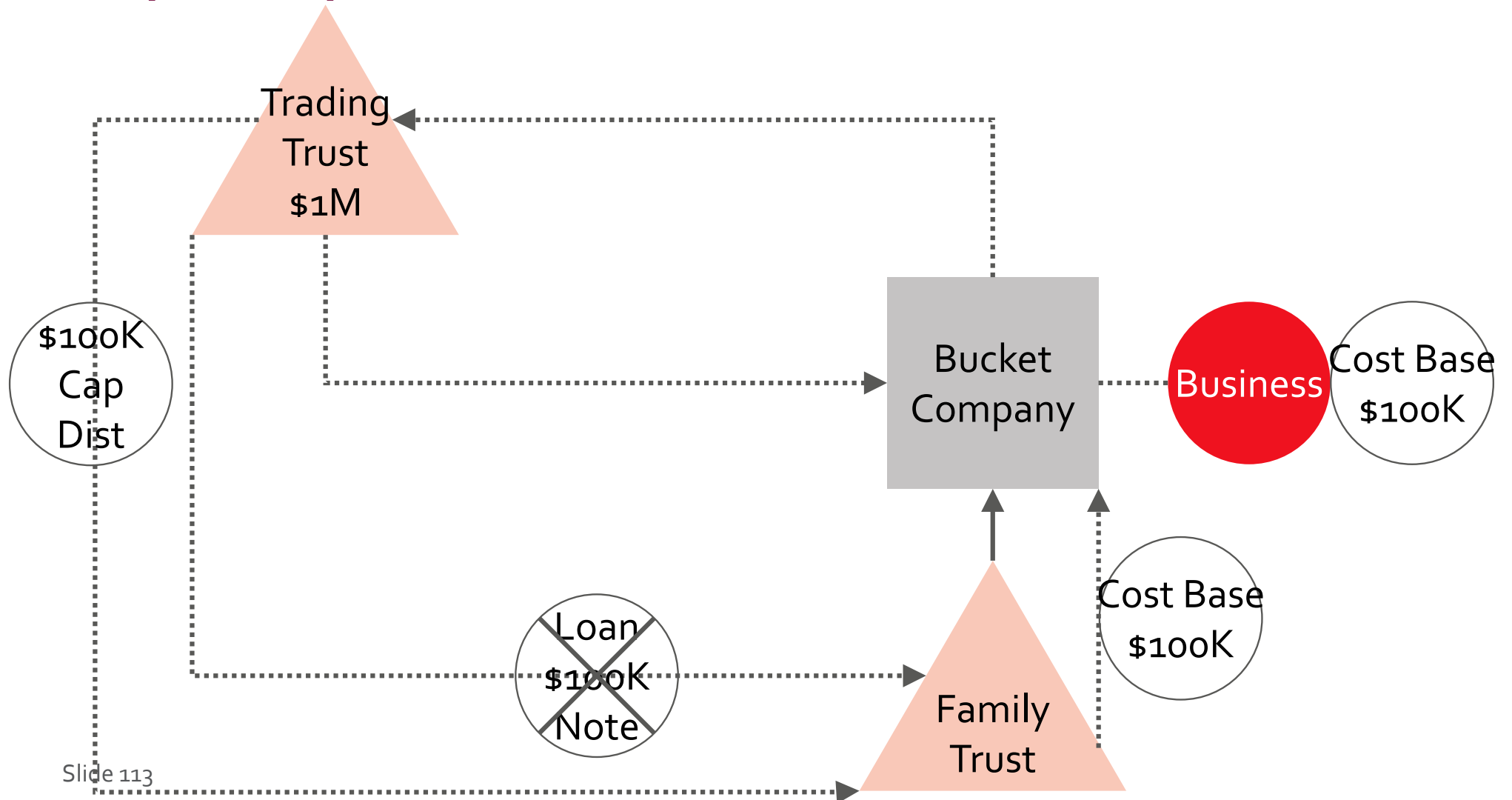


Trading Trust	Bucket Company	Family Trust
A: \$100K (\$0.4M - \$0.3M)	A: \$1M	A: \$1M
L: \$100K	L: \$0	L: \$100K (\$0.4M - \$0.3M)
OE: \$0	OE: \$1M	OE: \$900K (\$0.6M + \$0.3M)

Debt Forgiveness (full)

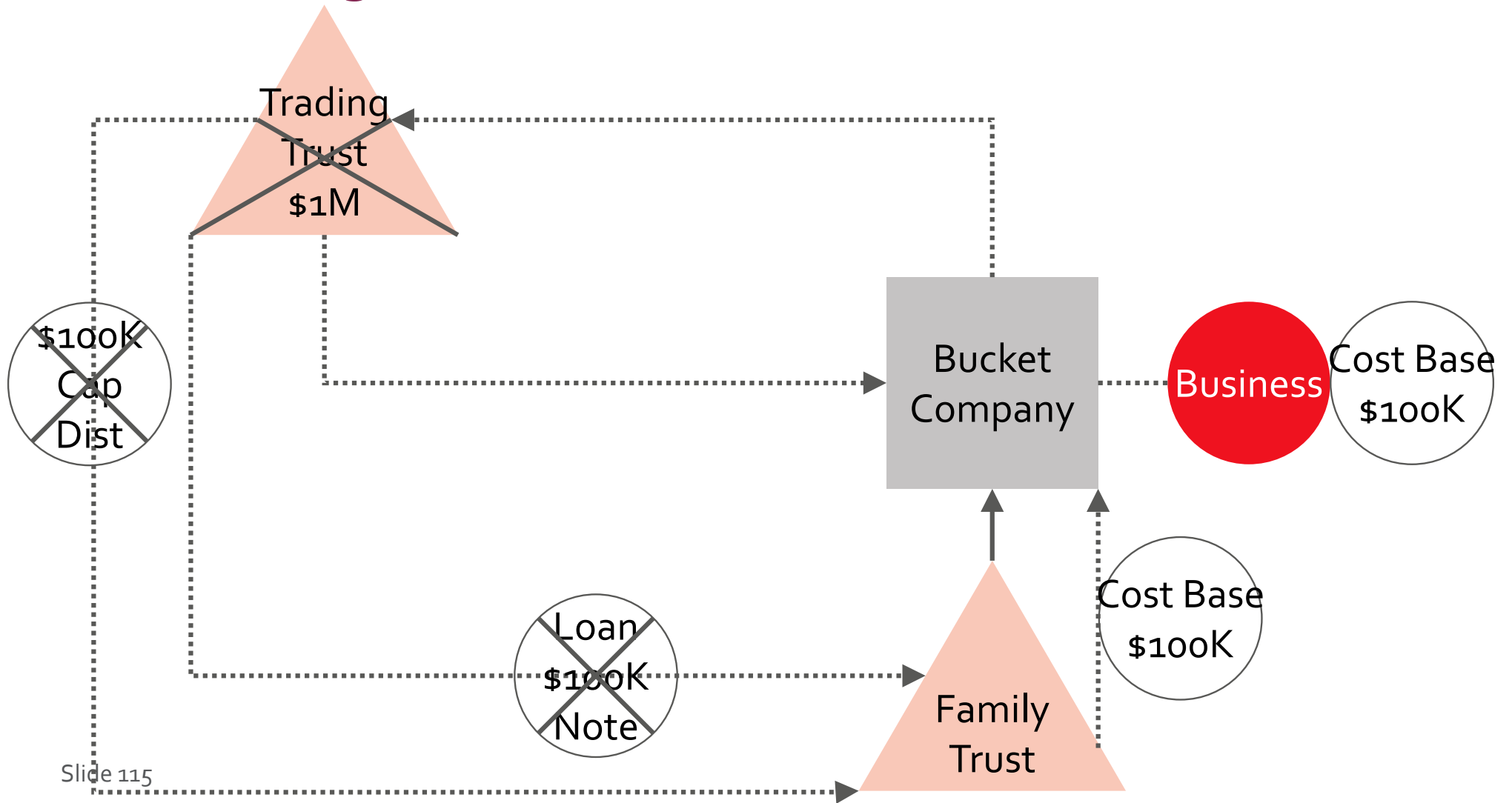


Step 5 – Capital Distribution

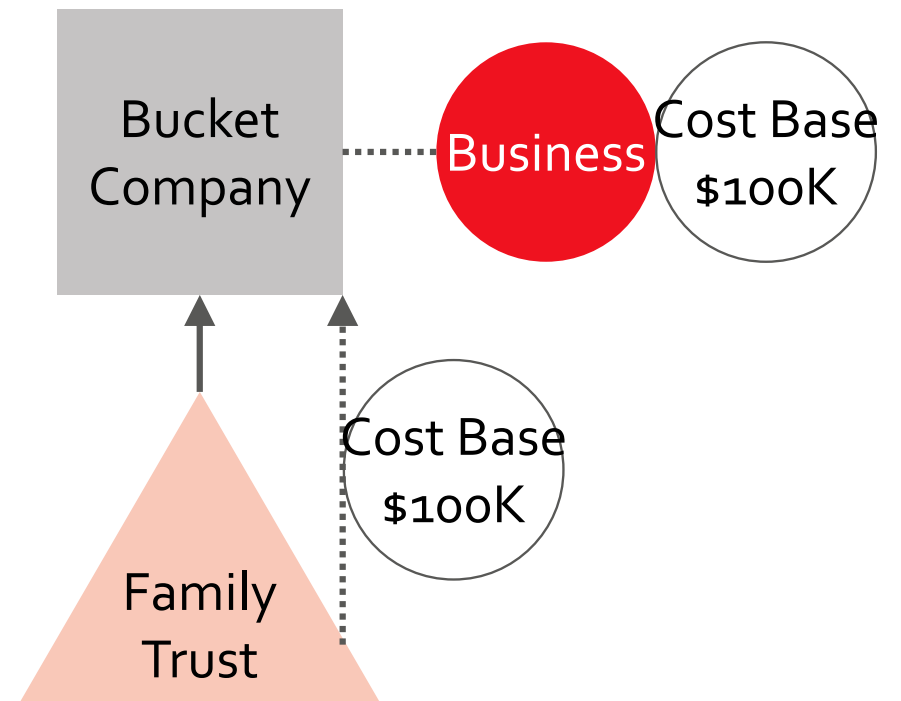


Trading Trust	Bucket Company	Family Trust
A: \$0 (\$0.1M - \$0.1M)	A: \$1M	A: \$1M
L: \$0 (\$0.1M - \$0.1M)	L: \$0	L: \$0 (\$0.1M - \$0.1M)
OE: \$0	OE: \$1M	OE: \$1M (\$0.9M + \$0.1M)

Trust Vesting



Final structure



Thank you!

Questions? Contact Us
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or IanT@redchip.com.au

