



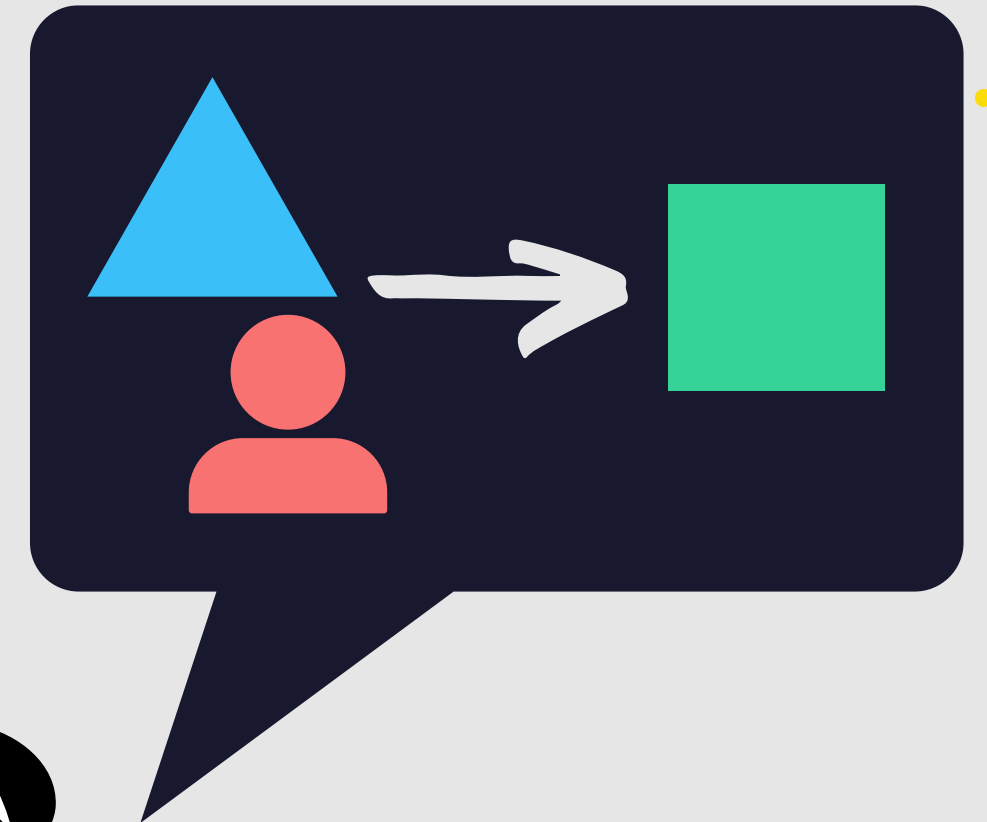
Restructures & Rollovers: Subdiv 122-A

Individual/trust to wholly-owned company

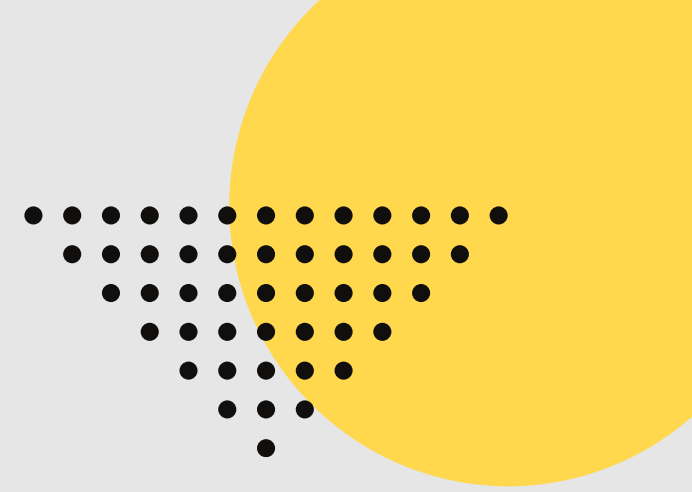
11 October 2022

Daniel Taborsky

Director, Birchstone Tax Law



Housekeeping



This is an interactive workshop!

01

Ask questions via Q&A

02

There'll be lots of quizzes and polls etc

03

Participate!

This session is being recorded. Replays available for VIP subscribers.





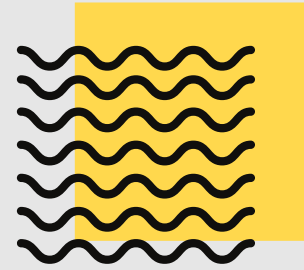
WELCOME

Daniel Taborsky

Director, Birchstone Tax Law



Agenda



Overview of Subdivision 122-A

15 min

Eligibility Requirements

10 min

**Consequences of using the rollover
Stamp duty implications**

10 min

Pros & Cons

5 min

Practical uses

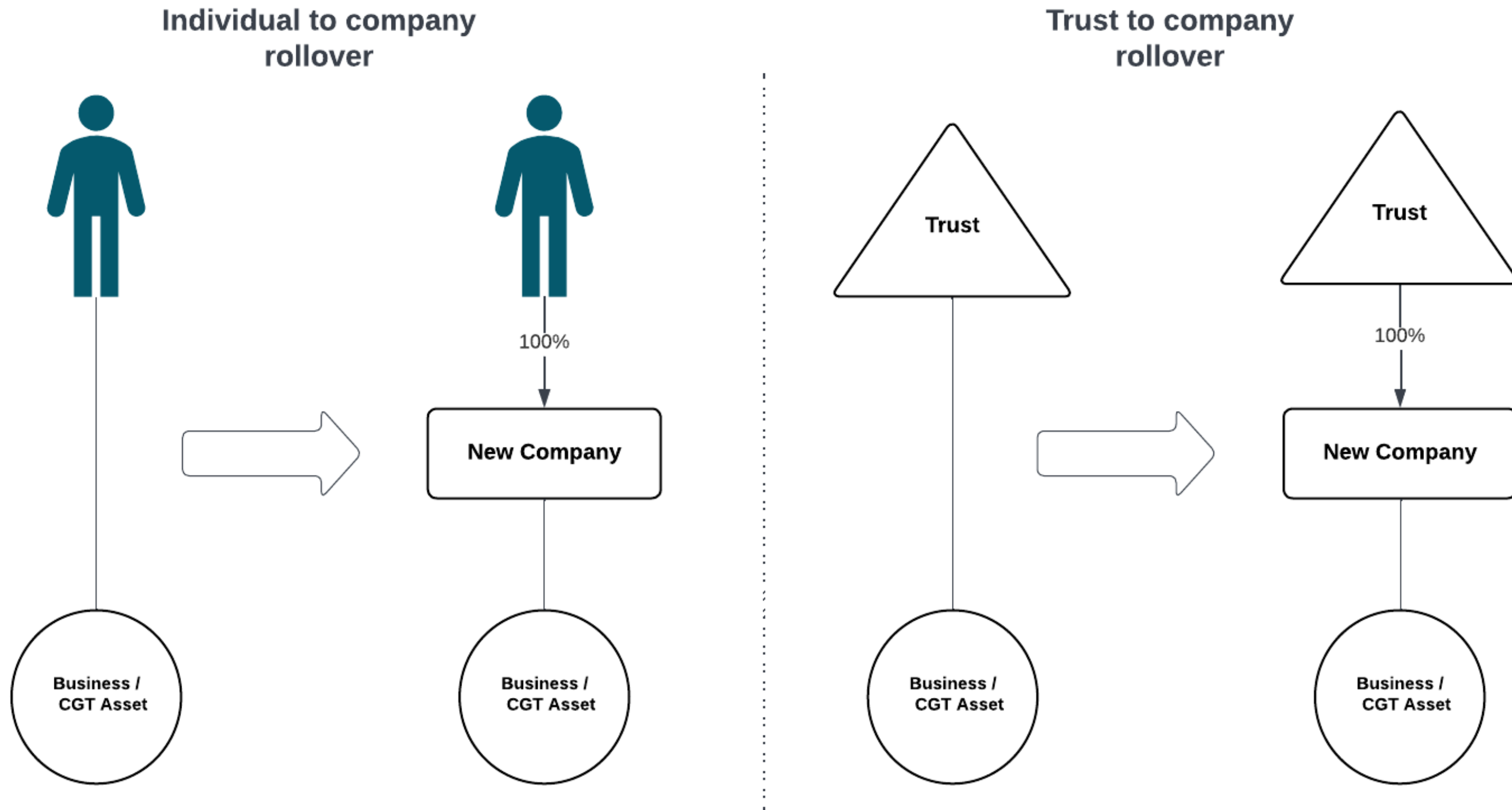
15 min

Questions & Answers
will be taken
throughout the
session!



Overview and context

What is the subdivision 122-A rollover?



The subdivision 122-A rollover in context



Subdivision 328-G
(small business restructure rollover)

Division 152
(small business CGT concessions)

Division 615
(interpose holding company rollover)

Subdivision 122A
(Individual/trust to company rollover)



Subdivision 122-B
(partnership to company rollover)

Subdivision 124-N
(unit/fixed trust to company rollover)

Subdivision 124-M
(scrip for scrip rollover)

Why restructure?



From a tax perspective:

- Access to the corporate tax rate
- Eliminate/avoid Division 7A issues



From a commercial perspective:

- Ability to better reward, and therefore retain, staff
- Asset protection



Things to consider before restructuring



Will the restructure trigger a review of existing supplier contracts or loan facilities?

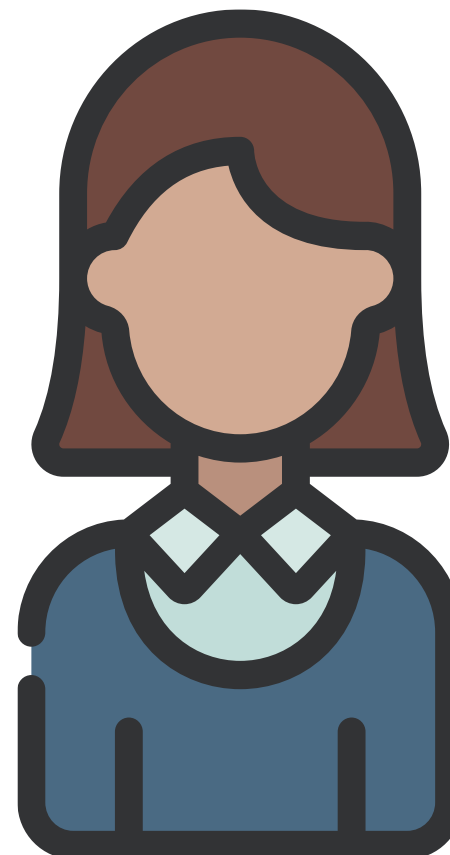
How will the restructure impact on the business' employment arrangements?

What third party consents (e.g. landlords or financiers) need to be obtained?

Are any amendments to the trust deed required?

Does the trust have accumulated losses?

How will existing beneficiary loans/UPEs be dealt with?



Eligibility requirements

Eligibility requirements



- ✓ 1. A CGT event must occur (A1, D1, D2, D3 or F1)
 - Equivalent rollover available for depreciating assets (section 40-340)
 - Excludes trading stock
- ✓ 2. Consideration must only consist of:
 - (a) Shares in the company
 - The market value of shares issued *must be substantially the same as* the market value of the assets transferred (less any liabilities assumed)
 - (b) The company assuming liabilities related to the assets transferred
 - There is a cap on the amount of liabilities that can be assumed
- ✓ 3. The individual or trust must own all the shares in the company just after the restructure
- ✓ 4. The company cannot be a tax-exempt entity
- ✓ 5. Residency requirement
- ✓ 6. The individual or trust must choose to obtain the roll-over

Consequences

Consequences



Consequences for the individual/trust	Consequences for the company
<p>Capital gain/loss</p> <ul style="list-style-type: none">• Capital gain/loss disregarded <p><i>Other assets (in an ‘all the assets of a business’ case)</i></p> <ul style="list-style-type: none">• Depreciating assets – balancing adjustment disregarded• Trading stock - no relief <p>Shares issued as consideration</p> <ul style="list-style-type: none">• If asset transferred was <u>post CGT</u>:<ul style="list-style-type: none">• The cost base of the shares received is the cost base of the asset (less liabilities assumed)• If asset transferred was <u>a precluded asset</u>:<ul style="list-style-type: none">• The cost base of the shares received is the market value of the asset (less liabilities assumed)• If asset transferred was <u>pre-CGT</u>:<ul style="list-style-type: none">• Shares received are deemed to be pre-CGT	<p>Post CGT assets</p> <ul style="list-style-type: none">• Inherits the individual’s/trust’s cost base in the asset• Date of acquisition retained for purposes of the CGT discount <p>Pre CGT assets</p> <ul style="list-style-type: none">• Deemed to have acquired the asset before 20 September 1985 (i.e. pre-CGT status retained) <p><i>Other assets (in an ‘all the assets of a business’ case)</i></p> <ul style="list-style-type: none">• Depreciating assets – continue to deduct the decline in value on the same basis as the individual/trust was• Trading stock – new cost based on market value

Stamp duty implications

Stamp duty implications



- Western Australia, Queensland and the Northern Territory still impose duty on the transfer of non-land business assets
 - A subdivision 122-A rollover involving business assets (including goodwill) in these jurisdictions is likely to be subject to duty
 - Queensland has an exemption for small business restructures which may apply
- If interposing a new holding company between the individual/trust and an existing 'landholding' company/unit trust, all the jurisdictions have corporate reconstruction relief which may apply



Pros and cons

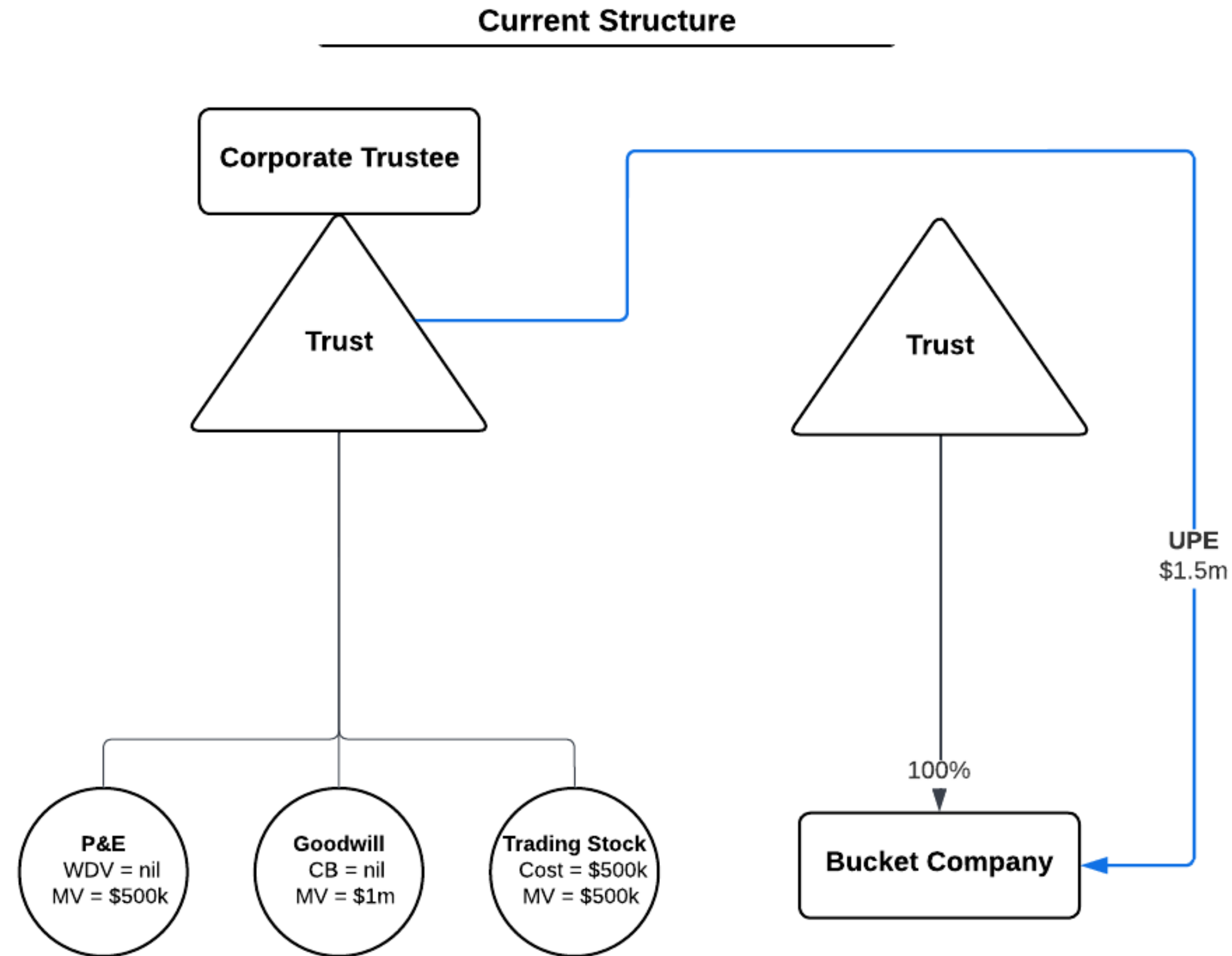
Pros and cons



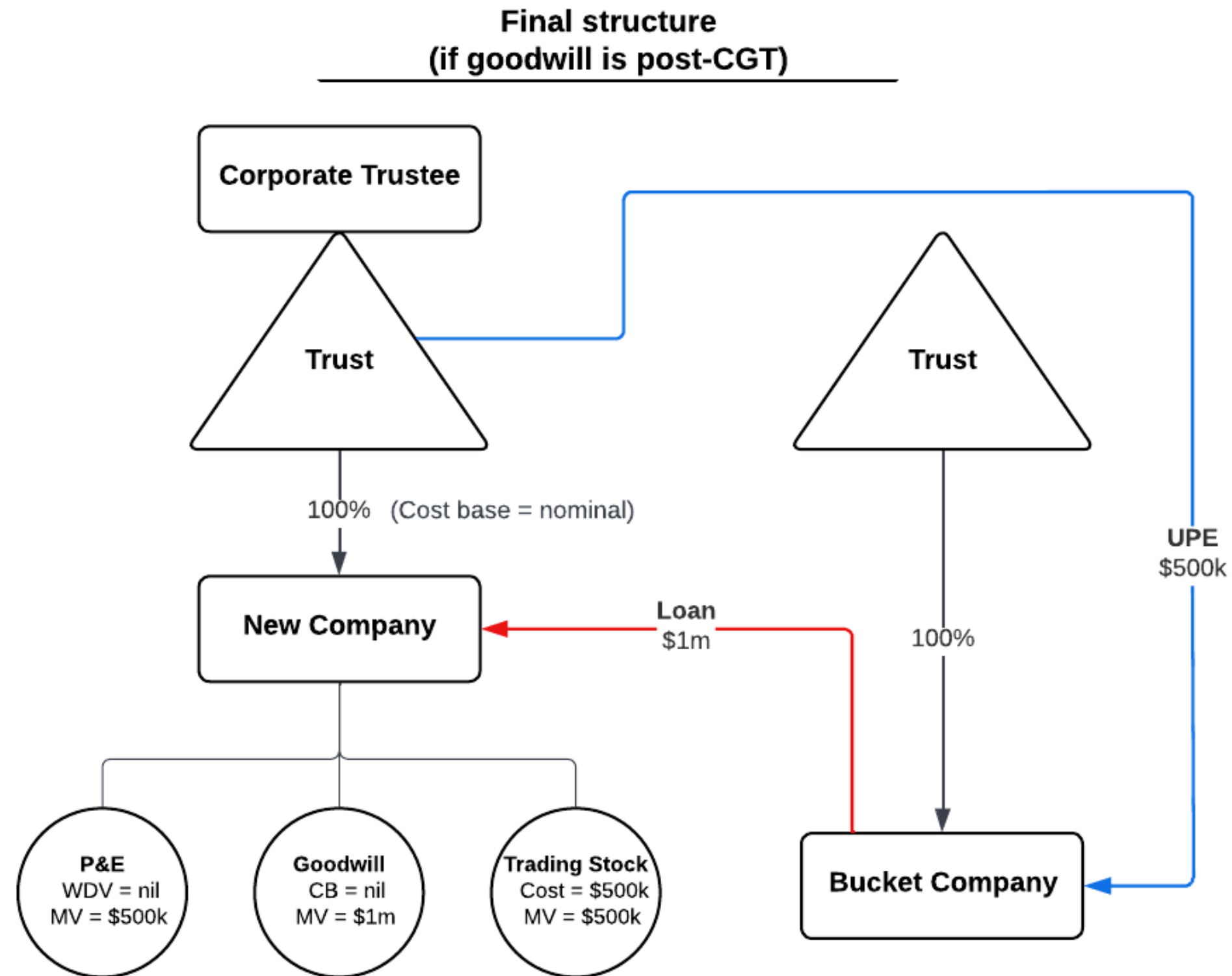
Pros	Cons
<ul style="list-style-type: none">• Eligibility requirements can be easier to satisfy than other rollovers/concessions:<ul style="list-style-type: none">• No turnover or maximum net asset value test requirement• No genuine restructure requirement• No active asset test requirement• Pre-CGT assets transferred maintain that status in the company's hands (and any shares received by the individual/trust will also be pre-CGT)• Cost base uplift in shares issued where 'precluded assets' (particularly depreciating assets) are transferred	<ul style="list-style-type: none">• No cost base uplift to market value for assets transferred• Individual/trust must be the shareholder of the company after the transfer• Does not cover trading stock

Practical uses

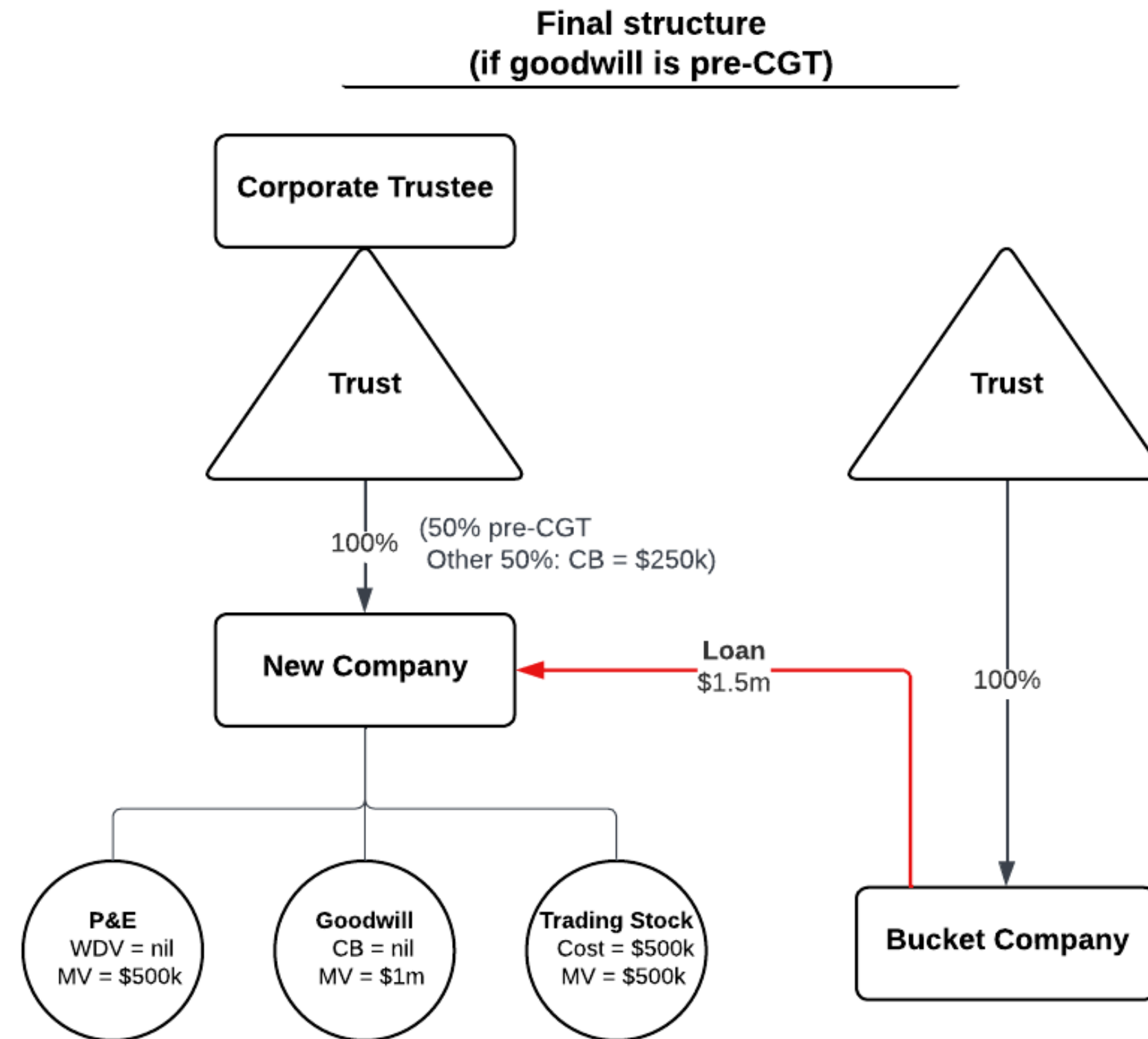
Trust to company restructure



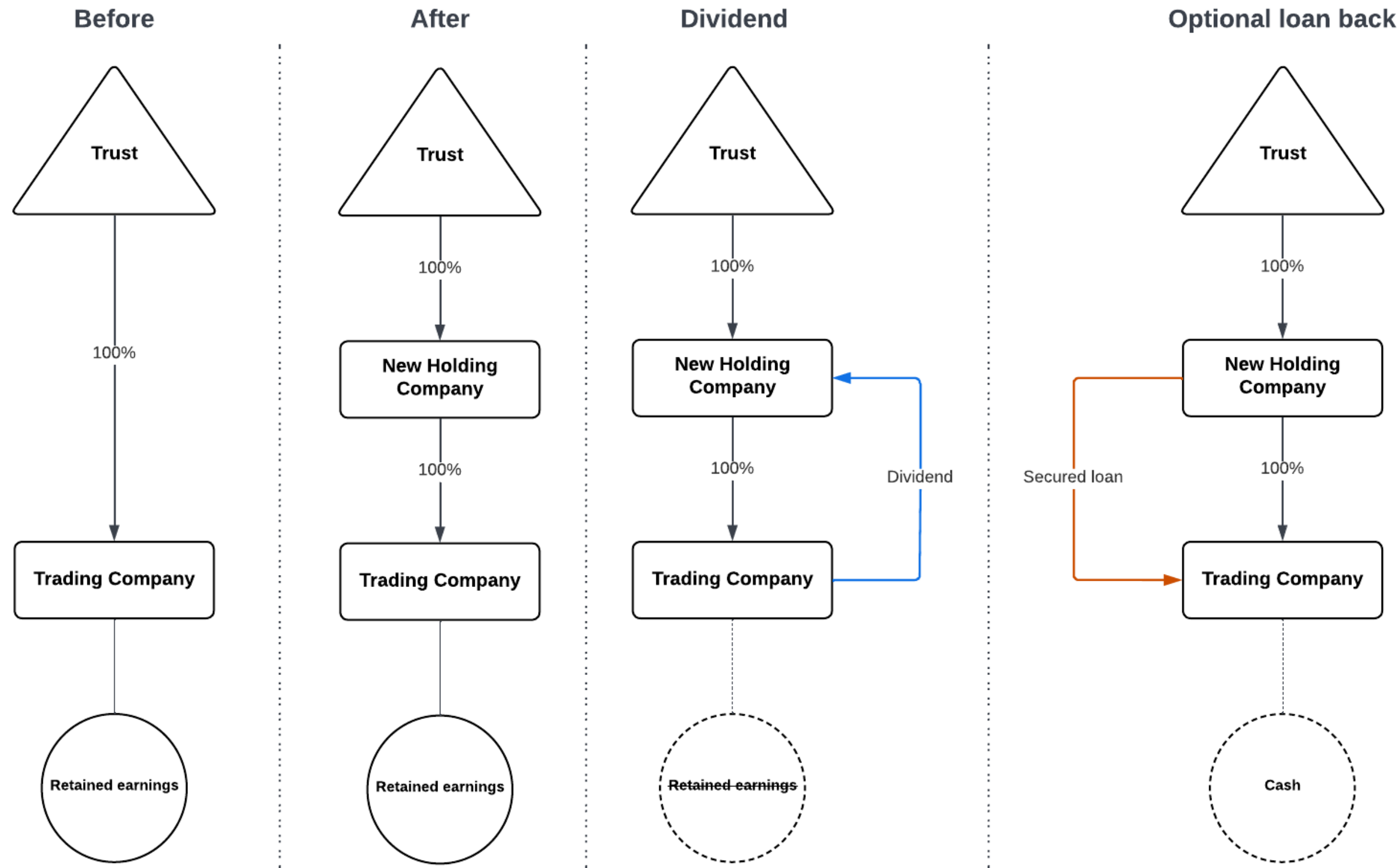
Trust to company restructure (continued)

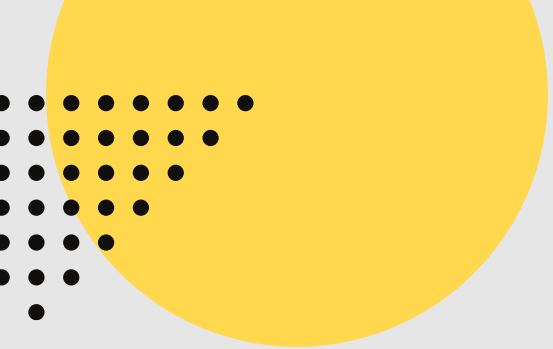


Trust to company restructure (continued)



Interpose holding company for asset protection

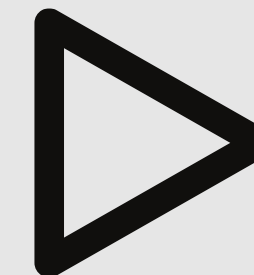
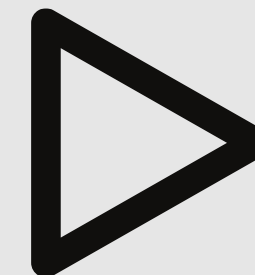




Q & A

Daniel Taborsky

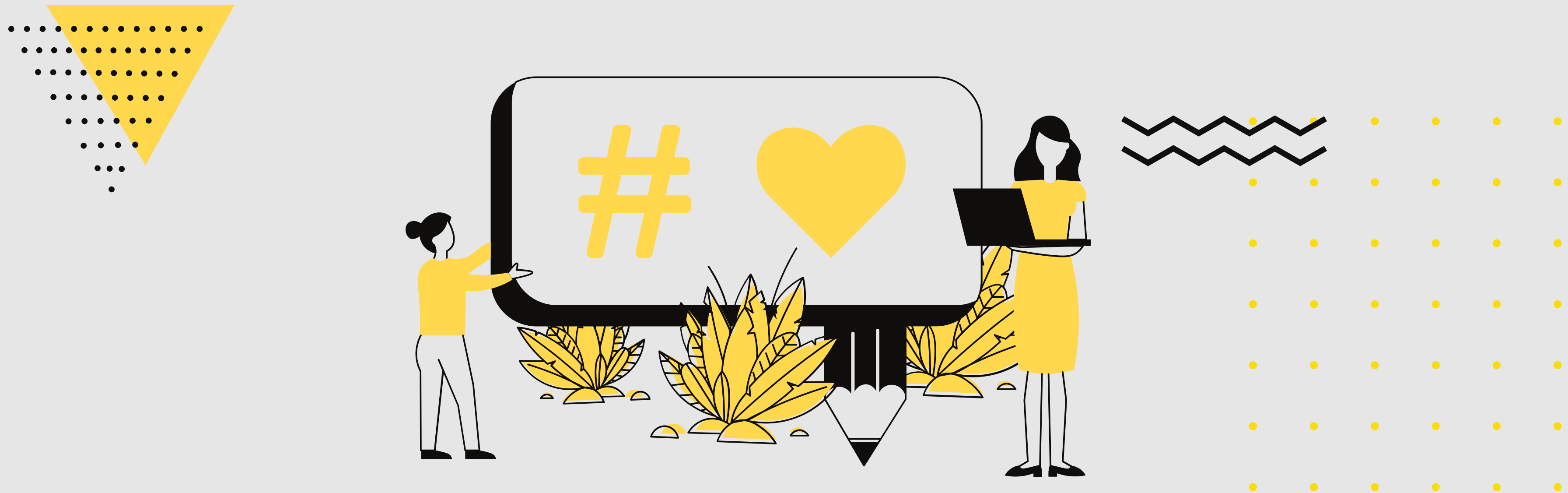
Director, Birchstone Tax Law



**What was
your key
takeaway?**



How would you rate today's session?
Do you have any feedback?

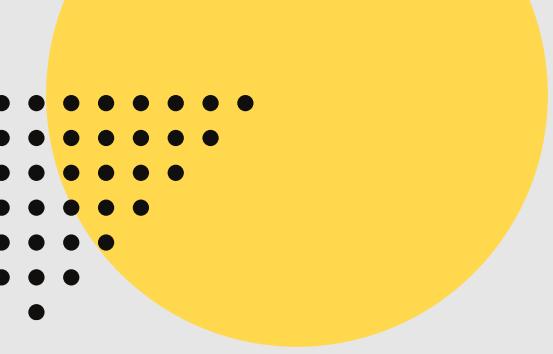




THANKS!

taxnuggetsacademy.com.au

Follow us on LinkedIn, Facebook, Instagram and YouTube



Disclaimer

All publications & materials are prepared for training, educational & general information purposes only & should not be relied on as (or in substitution for) legal, accounting, financial or other professional advice.

