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Spousal Lifetime Access Trusts

Wealth and Estate Planning Strategists

Family Office Resources

Spousal Lifetime Access Trusts

- A spousal lifetime access trust, or "SLAT," is an irrevocable trust that names the donor's spouse as a discretionary beneficiary along with others (e.g., children).
- The donor transfers assets to the trust using a portion of his/her available gift tax exemption.
- The trustee is permitted to make distributions of income and/or principal to the donor's spouse and descendants. If assets are needed for the household, a distribution could be made to the beneficiary-spouse.
- To maximize the estate tax planning benefits of the transaction, the expectation is that assets will be used only for descendants; however, the assets are available for the beneficiary-spouse, if needed.
- At the beneficiary-spouse's death, the assets of the trust will pass estate and gift tax free (other than the use of exemption) to the remaining beneficiaries (e.g., children). The trust further could be shielded by the donor-spouse's generation-skipping transfer (GST) tax exemption if intended for grandchildren and more remote descendants.
- The assets transferred to the trust by the donor should be made from the donor's separate property and not from jointly titled or community property.
- If both spouses create identical trusts naming each other as a beneficiary, the IRS has used the "reciprocal trust doctrine" to unwind the transactions, asserting that each spouse is in the same economic position he/she would have been in had he/she instead created a trust for him/herself. In that case, the gifted assets will be brought back into each spouse's estate, rendering the planning ineffective and wasting a portion of his/her available gift tax exemption. Therefore, where the family wishes to fund trusts and retain indirect access to the assets via the spousal interest, the economic positon of each spouse must differ significantly.
- At a spouse's death, or in the event of a divorce, the donor/grantor-spouse loses his or her indirect access to the income and principal of the trust that he or she created.

1. The strategies set forth herein are shown for educational purposes only, are not tailored to any specific client, and do not constitute a recommendation to employ any strategy identified. To that end, they do not capture all possible outcomes but are based on limited set of assumptions. If the assumptions upon which they are based are not realized, the efficacy of the strategy may be materially different from that which is reflected in the illustration. Additionally, the current government is suggesting changes to the estate tax laws which if ultimately enacted could materially change the efficacy of the strategies described herein. Accordingly, clients must consult their tax advisor when considering the utility and appropriateness of any strategies identified herein. Please see the additional Important Disclosures at the end of this presentation.

Spousal Lifetime Access Trusts

Hypothetical Illustration

The following is an example of SLATs created by both spouses, which are structured such that each spouse is not in the same economic position (i.e., the trusts are not reciprocal).[1] It is critical to discuss the trust terms for each particular situation with the client's estate planning attorney and other tax advisors.

Spouse 1:

Gift to trust

SPOUSE 1 SLAT

Donor: Spouse 1

Beneficiaries: Spouse 2 and descendants

- Spouse 2 is entitled to distributions for any purpose
- Spouse 2 can have the right to withdraw up to 5% annually and amounts for health, support and maintenance
- Spouse 2 may have the power to appoint assets to children

At Spouse 2's death:

Remainder to children and/or more remote descendants

Spouse 2:

Gift to trust

SPOUSE 2 SLAT

Donor: Spouse 2

Beneficiaries: Spouse 1 and descendants

- Spouse 1 may receive distributions only in limited circumstances for health, maintenance and support (*can be limited further if desired*)

At Spouse 1's death:

Remainder to children and/or more remote descendants

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Spousal Lifetime Access Trusts

Hypothetical Illustration Continued

SPOUSE 2 SLAT

Donor: Spouse 2

Beneficiaries: Spouse 1 and descendants

- Spouse 1 may receive distributions only in limited circumstances for health, maintenance and support (can be limited further if desired)

Spouse 1 has his/her own funds and limited access to SLAT funds

SPOUSE 1 SLAT

Donor: Spouse 1

Beneficiaries: Spouse 2 and descendants

- Spouse 2 is entitled to distributions for any purpose
- Spouse 2 can have the right to withdraw up to 5% annually and amounts for health, support and maintenance
- Spouse 2 may have the power to appoint assets to children

Spouse 2 has his/her own funds and significant access to SLAT funds

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Spousal Lifetime Access Trusts

Hypothetical Illustration Continued: Managing Risk

What if a spouse dies prematurely?

~~Spouse 1:~~

Estate assets

Assume that Spouse 1 bequeaths estate in favor of Spouse 2

Spouse 2:

Spouse 1 and Spouse 2 personal assets

Spouse 2 has access to Spouse 1 SLAT, but not indirect access to Spouse 2 SLAT

SPOUSE 2 SLAT

- At Spouse 1's death, trust assets may only be used for descendants

SPOUSE 1 ILIT

- One option is for Spouse 1 to create a life insurance trust for Spouse 2's benefit
- If Spouse 1's death occurs prematurely, Spouse 2 will have insurance proceeds for additional principal access

SPOUSE 1 SLAT

Grantor/Donor: Spouse 1

Beneficiaries: Spouse 2 and descendants

- Independent Trustee may make distributions to Spouse 2 for any purpose
- Spouse 2 can have the right to withdraw up to 5% annually and amounts for health, support and maintenance
- Spouse 2 may have the power to appoint assets to children during lifetime and at death
- Spouse 2 can remove and replace the Independent Trustee

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Advantages	Disadvantages
• Allows each spouse to utilize his/her exemption but retain some level of access to the assets via his/her spouse. • If assets are not needed, all appreciation will pass free of gift and estate tax to the next generation. • The SLAT can be generation-skipping. • The irrevocable nature of the SLAT may provide creditor protection for the SLAT's assets.	• Donor-spouse only has indirect access to the assets via his/her spouse. • If the spouses divorce or if the other spouse dies prematurely, any indirect access to the SLAT initially created for the now ex-spouse or deceased spouse will be terminated. • In the case of each spouse creating a SLAT, care must be taken to avoid the reciprocal trust doctrine. Generally, the spouses must have different economic interests in the trust.

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Appendix & Disclosure

Important Disclosure

Trusts are not necessarily appropriate for all clients. There are risks and considerations which may outweigh any potential benefits. Establishing a trust will incur fees and expenses which may be substantial. Trusts often incur ongoing administrative fees and expenses such as the services of a corporate trustee or tax professional.

This presentation was designed to illustrate the financial impact of a particular planning decision. The slides herein do not constitute a recommendation.

Caution: many estate techniques share the common risk of the loss of control of the assets once the gift of the assets is complete.

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