SLAT OVERVIEW

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SLAT defined

SLAT is short for Spousal Lifetime Access Trust.

It is a type of trust set up by one spouse for the other spouse that will remove assets from both spouse's estates while giving the beneficiary spouse (and indirectly the donor spouse) lifetime access to trust assets.

Benefits of a SLAT

- Background
  - The Tax Cuts and Jobs Act of 2017 (TCJA) substantially increased the federal gift and estate tax exemption amount.
  - In 2017, prior to the enactment of the TCJA, the federal gift and estate tax exemption was $5.49 million.
  - In 2024, the federal gift and estate tax exemption is $13.61 million, meaning that a married couple can transfer approximately $24.12 million before having to pay gift or estate tax.
  - The exemption amount is scheduled to revert to pre-2018 levels (indexed for inflation) on January 1, 2026 and is anticipated to be approximately $6.8 million per individual.

- A gift to a SLAT now can lock in the higher exemption amount because there will be no “claw back” of exemption amounts applied to pre-sunset gifts.

How a SLAT works

•What is a SLAT?

•A SLAT is a gift from one spouse (the donor spouse) to an irrevocable trust for the benefit of the other spouse (the beneficiary spouse).

•The donor spouse may transfer assets having a value up to the donor spouse's remaining exemption amount.

•The beneficiary spouse can receive distributions from the SLAT during his or her lifetime.

•These distributions may provide indirect access to trust assets to the donor spouse.

How a SLAT works

•The SLAT is designed to be excluded from the beneficiary spouse's gross estate and not to be subject to estate tax when the beneficiary spouse dies.
•The SLAT is likewise not included in the donor spouse's gross estate and not subject to estate tax when the donor spouse dies.
•The donor spouse can allocate generation-skipping transfer tax exemption to the SLAT, making it exempt from future estate tax for many generations.

How a SLAT works

- A SLAT is irrevocable
- To achieve estate tax benefits, the SLAT must be an irrevocable trust.
- When creating a SLAT, the donor spouse must irrevocably transfer assets to the SLAT, forever parting with the income from and use of those assets.
- BUT, the beneficiary spouse, as a potential beneficiary of the SLAT, may receive distributions of income or principal from the SLAT, allowing the beneficiary spouse (and the donor spouse, indirectly) to access the transferred assets if needed.

How a SLAT works

- Other attributes of a SLAT
  - For federal income tax purposes, a SLAT is treated as a "grantor trust," meaning that the donor spouse is treated as owning the assets of the SLAT for income tax purposes.
  - The income from the trust's assets is included in the donor spouse's gross income, requiring the donor spouse to pay income tax.
  - This has the benefit of allowing trust assets to grow without being diminished by income taxes.
  - Payment of income tax is not an additional gift to the trust.

How a SLAT works

- Other attributes of a SLAT
  - Transferring assets to a SLAT may also provide creditor protection for both the donor spouse and the beneficiary spouse.
  - Assuming the transfer to the SLAT is not a fraudulent conveyance, because the donor spouse has parted with dominion and control over the transferred assets and has not retained any interest in or become a trustee of the SLAT, the transferred assets should be free from the claims of the donor spouse's creditors.
  - Assuming that the terms of the SLAT include a proper spendthrift clause, if the beneficiary spouse has only a discretionary interest in the SLAT the assets of the SLAT should also be exempt from the beneficiary spouse's creditors.

How a SLAT works

- Points to consider when setting up a SLAT
- The donor spouse should not be a trustee of the SLAT.
- If the beneficiary spouse is trustee of a SLAT, distributions should be mandatory or subject to an ascertainable standard.
- An ascertainable standard restricts distributions from the SLAT to providing for a beneficiary’s health, education, maintenance, and support.
- Consider appointing an independent trustee to make discretionary distributions among a number of beneficiaries (including the beneficiary spouse).

How a SLAT works

- Points to consider when setting up a SLAT
- Care should be taken to avoid causing the donor spouse to be taxed on the trust's income without having the resources to pay the tax, e.g. large capital gain on the sale of a trust asset.
- Consider making distributions subject to the consent of other current trust beneficiaries to avoid grantor trust status.
- Assets held in the SLAT do not get a "stepped-up" tax basis on the death of either spouse.
- The donor spouse should contribute separately owned assets to avoid deemed gift by the beneficiary spouse and estate tax inclusion.
- Allow time to pass before setting up trusts if spouses are making gifts to each other to create separately owned assets.

How a SLAT works

- Points to consider when setting up a SLAT
- When each spouse creates a SLAT for the other, it is important to avoid application of the reciprocal trust doctrine.
- This could cause the value of the trust that each spouse created for the other spouse to be subjected to estate tax in the donor spouse's estate.
- The trusts should contain dispositive provisions that are substantively dissimilar so that the spouses are not in the same economic position after the creation of the SLATs

How a SLAT works

- Optional trust provisions to reduce the reciprocal trust doctrine risk:
  - One trust could require that all of its income be paid to the beneficiary spouse each year, while the other trust allows the trustee to distribute income among the beneficiary spouse and the spouses’ descendants.
  - One trust could prohibit distributions of principal, while the other could grant the trustee discretion to distribute principal to the beneficiary spouse.
  - One trust could grant the beneficiary spouse an annual 5 or 5 principal withdrawal power.
  - One trust could give the beneficiary spouse a testamentary or lifetime limited power of appointment, while the other trust would pass only to the beneficiaries named in the trust.
  - Each trust could have a different trustee.
  - Allow time to pass between the creation of each trust, for example by straddling tax years.

SAMPLE SLATs

Sample SLAT One

Donor Spouse

Donor Spouse transfers asset(s).

SLAT

Beneficiary Spouse is Family Trustee

Independent Trustee for discretionary distributions

Donor spouse pays income tax on SLAT income

- All income paid to beneficiary spouse
- Discretionary principal distributions to beneficiary spouse and children
- Beneficiary spouse has a limited power of appointment
- Separate trusts for issue on death of beneficiary spouse

Sample SLAT Two

Donor Spouse

Donor Spouse transfers asset(s).

SLAT

Beneficiary Spouse is Family Trustee

Independent Trustee for discretionary distributions

Donor spouse pays income tax on SLAT income

- Discretionary income paid to beneficiary spouse or children by Independent Trustee
- Beneficiary spouse has a 5 or 5 power to withdraw principal annually
- Separate trusts for issue on death of beneficiary spouse