Spousal lifetime access trusts

The following information and opinions are provided courtesy of Wells Fargo Bank, N.A.

A spousal lifetime access trust (SLAT)—also referred to as a lifetime credit shelter trust—is a form of an irrevocable trust that is funded during a grantor's lifetime using annual exclusion gifts, applicable exclusion gifts, or taxable gifts.

SLATs can be structured to hold cash, securities, or other types of assets such as real estate, business holdings, and life insurance. The grantor, or "donor spouse," makes a gift to the SLAT and the "beneficiary spouse" is named as a current beneficiary. While the donor spouse gives up his or her right to the property transferred into the trust, the beneficiary spouse can have access to that same property under the provisions of the trust agreement. An example of access would be distributions made from the SLAT to the beneficiary spouse.

When a SLAT is properly structured and funded, growth of the gifted assets is excluded from both the donor spouse's and the beneficiary spouse's gross estate and not subject to estate tax when either spouse dies.

How does a spousal lifetime access trust work?

- Grantor makes a gift to the trust at inception, which may be offset by lifetime applicable exclusion amount and annual exclusion gifts.
- Grantor may also sell assets to the trust without recognizing a gain on the sale.

- Grantor cannot have any beneficial interest in the trust but may indirectly benefit from distributions to the beneficiary spouse.
- Community property may need to be changed to separate property first before the gift is completed.
- Additional gifts by the grantor to a SLAT are permitted.
- Trust language can be drafted to have the grantor responsible for the trust income taxes, enhancing the growth potential of the trust assets.
- Trust beneficiaries can include a non-grantor spouse, children, and grandchildren.

Some SLATs allow the beneficiary spouse to access funds during his or her lifetime while children and grandchildren benefit only after the beneficiary spouse's death. SLATs can be drafted so that distributions to the beneficiary spouse and children can occur simultaneously, at the discretion of the trustee.

Does a SLAT fit my needs?

- Can afford to make a large gift but could potentially access funds if needed in the future, via a distribution to the spousal beneficiary.
- Own assets with relatively higher cost basis and potential to appreciate in value that could be gifted into the trust.
- Have sufficient assets outside SLAT to support lifestyle, tax obligations, and health and end-of-life care in the event beneficiary spouse dies prematurely.

Benefits of a SLAT

The 2026 estate and gift tax exemption of $15,000,000 per individual can be used during life, or at death. Though the exemption may be used to transfer a variety of different assets classes to a SLAT, assets that have appreciation potential may be optimal candidates for funding a SLAT.

For example, if a grantor transfers an asset valued at $1 million today to a SLAT, and in five years that asset appreciates to $3 million, that appreciation is deemed to have occurred outside of the grantor's taxable estate, even though the grantor only used $1 million of his or her exemption amount. If the assets in the SLAT are not distributed to the beneficiary spouse, they continue to grow free of estate and gift taxes while remaining available for the next generation. Alternatively, if a grantor gifted an asset that may depreciate over time, the gift and estate tax exemption may not be optimized. The grantor must carefully consider which asset would be appropriate for transfer after conferring with a wealth planning professional.

Other considerations

SLATs require careful construction to help ensure maximum benefits as well as understanding of the trust structure to help ensure it is appropriate given a couple's wealth planning goals. These considerations may be a starting point when structuring a SLAT.

- **Trust must be irrevocable.** The grantor cannot retain any beneficial interest in the trust. As an irrevocable trust, the SLAT will not be included in the grantor's estate.
- **The trustee.** Beneficiary spouses may serve as trustee of a SLAT, so long as the power to make distributions to themselves is restricted by an "ascertainable standard." Ascertainable standards include a beneficiary's need for health, education, maintenance, and support (HEMS). Either or both spouses (and current or future beneficiaries) can be given the ability to appoint, remove, or replace a trustee.

- **The beneficiaries.** The primary beneficiary is the spouse of the grantor. Children, grandchildren, and more remote descendants may also be named as either current or remainder beneficiaries. When the SLAT will continue beyond the lifetime of children, additional tax considerations should be analyzed.[1]
- **Asset types.** As previously discussed, a SLAT can be funded with a variety of assets. However, it is important for the grantor spouse to fund the SLAT with separate property only and not assets jointly owned with the beneficiary spouse. The risk of funding with a jointly owned asset is that the beneficiary spouse could be perceived as making a gift to the SLAT, which may result in the trust assets being includable in the beneficiary spouse's estate, in effect, not fully maximizing the exemption allocated by the grantor spouse. In community property states, the community nature of assets contributed to the trust must also be considered and likely partitioned. Additionally, keep in mind that any transfer of assets out of a grantor's taxable estate would not gain the benefit of the "step-up" in basis which occurs at grantors death. This means that there could be a capital gain recognized when a trust sells an asset that would have been avoided if the asset had not been transferred to a trust. The cost-benefit analysis of saving estate taxes versus income taxes must be thoroughly and diligently vetted for each individual with assistance of legal and tax advisors.
- **Divorce.** Divorce poses considerable risk to the functionality of a SLAT. The grantor spouse will no longer own or have direct access to the assets that are transferred to the SLAT. If not carefully drafted, the trust can also result in the continued support of an estranged spouse. A potential safeguard would be to draft the SLAT so it is available only for any current spouse (and not a former or estranged spouse). Your estate planning attorney can work with you on how to draft your SLAT to consider the potential for divorce.
- **Reciprocal trust doctrine.** Whan a married couple is creating two SLATs—one for the benefit of each spouse—the dispositive terms of each trust must be carefully drafted to avoid the trusts being considered "reciprocal." If the trusts are too similar so that the spouses are in the same economic position they were in before the SLATs were established, the estate tax benefit could be jeopardized. Please consult with your legal and tax advisors before proceeding.

Flexibility

SLATs offer the opportunity to take advantage of utilizing the grantor spouse's gift and estate tax exemption to shift assets out of his or her taxable estate, while still allowing the beneficiary spouse access to those funds. To incorporate additional flexibility, the beneficiary spouse can be given a limited power of appointment within a SLAT. This power provides the ability to allocate trust assets in any manner to a limited class of recipients, generally the children in equal or unequal shares and with similar or different parameters. This is especially helpful in cases where children are too young for the parents to determine what their future needs will entail. With a limited power of appointment, the way children will benefit can be outlined after the trust is created. If the generation-skipping transfer (GST) tax is a concern, a grantor may allocate GST exemption to the trust at inception.

Conclusion

A SLAT can afford an estate plan the flexibility to adapt throughout one's lifetime while potentially maximizing gifting opportunities. Consult your financial, legal, and tax advisors to determine if this technique may be an appropriate strategy for you to potentially reduce your estate tax liability in the future and ultimately pass more wealth to your heirs.

1. Generation-skipping transfer taxes are imposed on gifts to grandchildren and more remote descendants. There is also a generation-skipping transfer tax exemption that may be utilized to better leverage such gifts. This topic is beyond the scope of this paper.

Information sourced from irs.gov; https://www.irs.gov/newsroom/irs-releases-tax-inflation-adjustments-for-tax-year-2026-including-amendments-from-the-one-big-beautiful-bill

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