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SLAT (Spousal Lifetime Access Trust) Specifics

Estate planning strategies evolve over time and can become more or less attractive depending on the current environment. One strategy that has drawn more attention recently due to potential changes in tax policy is the Spousal Lifetime Access Trust or SLAT.

These trusts provide grantors an avenue to maximize the current lifetime estate and gift tax exclusion while it is at a 2020 amount of $11.58 million/per spouse. In addition, unlike some other estate planning vehicles, the SLAT continues to offer the grantor limited access to the trust assets via their spouse. With a scheduled sunset of the current lifetime exclusion set to occur on December 31, 2025 or a tax policy change occurring sooner as a result of the upcoming elections, this planning tool is being considered more frequently for taxpayers with large estates. The following summary is provided as a way to better understand if this strategy may be right for you.

Overview:

1) Set-up while both spouses are alive (inter-vivos).
2) Irrevocable Trust – hence must maintain enough assets to support lifestyle and pay trust taxes.
3) Spouse is one of the beneficiaries and other beneficiaries are typically children.
4) Spouse has LIMITED access to trust assets during their lifetime.
5) Should only be funded with grantor property. Funding with joint assets could jeopardize the estate tax exclusion of the beneficiary spouse.
6) Typically taxpayers will set up a similar trust for the other spouse. Must not be an identical Trust to avoid the "Reciprocal Trust Doctrine". If this occurs, the assets will be pulled back into each spouse's estate at their death.
7) Typically a Grantor-Trust, so income still taxed by grantor. Can do non-grantor trusts as well - those are referred to as SLANTs.
8) Probably wouldn't use this tool for estates less than $10 - $12M in today's environment, given the portability election is available for spouses.
9) Should draft with language to allow grantor and/or beneficiary spouse to remove or replace trustees to maintain greater control.
10) Must be careful funding the trust with grantor-only assets. Other spousal assets used to fund a trust where they are also the beneficiary could result in assets being included in the beneficiary spouse's estate upon death.
11) Via appropriate drafting language, allows use of maximum estate/gift exemption while providing indirect access to funds.

12) Rather than both spouses maximizing, one approach is to set-up one trust and the other spouse preserves their lifetime exemption. This approach leaves some lifetime exemption remaining at the death of the 2nd spouse.

Pros:

1) Beneficiary spouse has access to assets transferred to the Trust during and after grantor's death.
2) Provides ability to utilize full lifetime exclusion of $11.58M now while exclusion is still high.
3) Any growth once assets are contributed to the trust is excluded from the grantor's estate.
4) Given this is a Grantor-Trust, the payment of trust taxes further reduces the grantor's estate.
5) Provides creditor protection for those assets.
6) If grantor needs access to the funds, could draft agreement to allow trustee to make loans of trust assets to the grantor spouse. The loan is then re-paid at the grantor's death.

Cons:

1) Grantor spouse must give up complete control of these assets.
2) Any assets contributed into the trust do not receive a step-up in basis upon the grantor's death.
3) If beneficiary spouse passes away before grantor spouse, future access to the trust assets is lost. The same would be true in the event of divorce. (Language can be included to eliminate a spousal beneficiary in the event of divorce.)
4) Grantor spouse can't be Trustee of this trust. Typically it would be beneficiary spouse.
5) If beneficiary spouse is the Trustee, distributions are restricted to "Ascertainable Standard", meaning Health, Education, and Maintenance & Support. The "Ascertainable Standard" can be overcome by selecting an independent Trustee.
6) Must have sufficient assets to maximize the use of the lifetime exclusion when funded, yet retain enough assets to support lifestyle and pay trust taxes.
7) Administration expenses, such as a cost to set-up, requirement that a tax return be filed each year, and possibly Trustee fees.