Protective

ESTATE TAX CONCEPTS

Spousal Limited Access Trust (SLAT)

The Concept

- A Spousal Limited Access Trust (SLAT) is an irrevocable trust that lets a grantor of a trust:
    - make lifetime gifts to beneficiaries
    - avoid transfer taxes, and
    - provide lifetime access to trust assets for the non-grantor spouse
- A SLAT is attractive to grantors who want to protect and pass on assets but are concerned about permanently giving up access to a large part of their estate.
- Although a SLAT removes assets from the grantor's estate, the trust terms allow the non-grantor spouse (and sometimes children and grandchildren) limited access to trust assets during the grantor's lifetime.
- The trust allows a grantor to remove assets from the taxable estate without having to make lifestyle changes.

Funding

- The grantor establishes a SLAT during life and funds it with gifts of cash in order to pay premiums on a life insurance policy insuring their life, which is owned by the trust. The gift tax annual exclusion ($15,000 in 2021) and the gift tax exemption ($11.7 million in 2021) can be used to shelter these gifts from gift tax. The grantor typically funds the trust with gifts of cash; however, other property (stocks, bonds, etc.) can also be used.

The Process

- The trustee of a SLAT can make distributions to the non-grantor spouse during the grantor's lifetime. While SLATs are designed to give away property while avoiding transfer taxes, the ability to take distributions means the trust assets can continue to benefit the couple during life.
- The trust terms will often give the non-insured spouse beneficiary the right to withdraw the greater of $5,000 or 5% of the principal annually. The trustee is limited to making distributions for the non-insured spouse's health, education, support and maintenance needs.

- The non-insured spouse may serve as trustee provided the trust terms appropriately limit the spouse's rights.
- Despite the limited right to distributions, when the non-insured spouse dies, the SLAT assets are not included in their gross estate. Of course, other assets owned by the spouse will be included in the spouse's estate at death.
- When the spouse dies, the SLAT typically terminates, distributing trust assets to heirs as dictated in the trust terms. It's also possible for the trust to grant the spouse a testamentary power of appointment over how the assets are distributed to descendants.

The Tax Picture

- A grantor may also choose to apply the generation-skipping tax (GST) exemption to trust assets, allowing the trust to benefit multiple generations without incurring additional GST taxes. This is helpful since there is no portability of the GST exemption between spouses.

The Bottom Line

A grantor establishes and funds a SLAT during life to accomplish important planning objectives that benefit both the grantor and the spouse. The trustee makes distributions to the non-grantor spouse during life, which helps ensure maintenance of the spouse's current lifestyle. The trust protects assets from creditors and ultimately passes those assets to descendants with significant tax savings. The trust may contain legacy provisions that enable tax-free distributions to multiple generations.

SUMMARY

What Is a Spousal Limited Access Trust?

A spousal limited access trust (SLAT) is an irrevocable trust designed to give property to heirs without transfer tax consequences while retaining a limited right to the assets for the grantor's spouse.

How Does It Work?

A grantor establishes a SLAT during life and funds the trust with separate property. Many grantors use gifts of cash to fund the trust.

The trust terms can give the trustee the right to annually distribute the greater of $5,000 or 5% of the principal to the grantor's spouse. The trustee can also make distributions to support the spouse within certain limits (for health, education, support and maintenance needs). If the spouse serves as trustee, to maintain applicable tax benefits, the spouse must strictly adhere to all trust document limitations.

Trust principal typically remains in the trust until the spouse dies. Trust assets are not included in the spouse's gross estate at death, but instead pass as dictated under the terms of the trust, often directly to the named beneficiaries.

What Happens at Death?

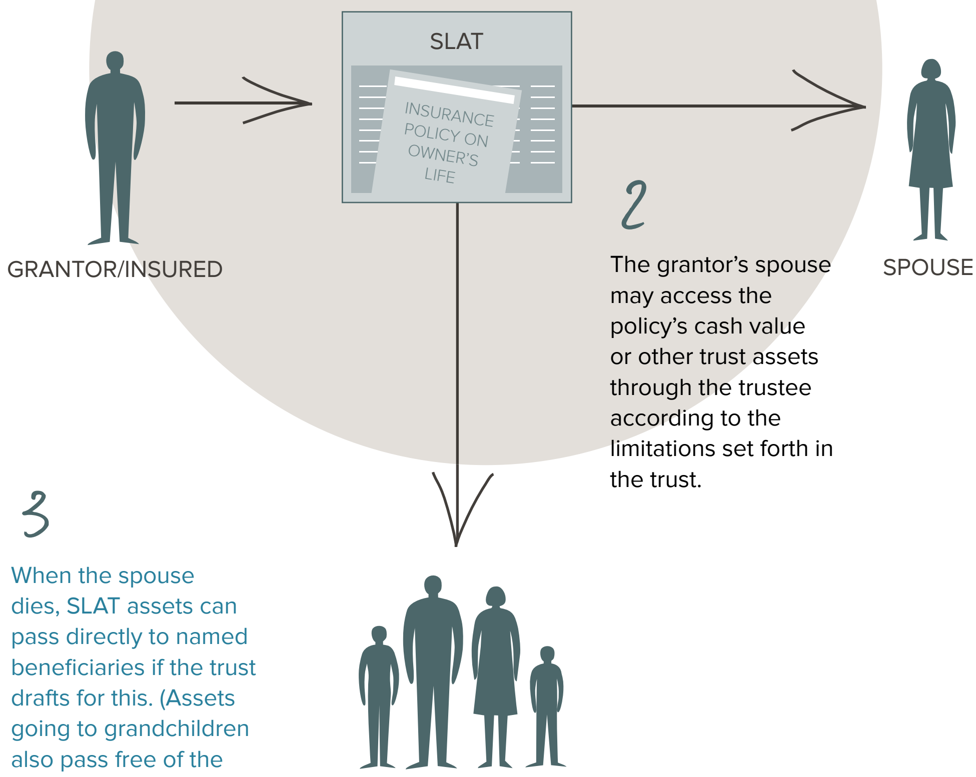
When the grantor dies, the SLAT continues to provide distributions to the surviving spouse. When the spouse dies, all assets in the SLAT go directly to the heirs. (Of course, trust assets are not included in the spouse's estate, and therefore avoid probate.) Alternately, the trust terms may stipulate that the trust will continue to hold the assets for the benefit of heirs.

What Are the Benefits?

Typically, if a grantor makes an irrevocable transfer to a trust, those assets cannot be retrieved. However, in a SLAT, the grantor benefits through the spouse's limited access to the trust assets. A grantor can use a SLAT to create a customized arrangement that meets a variety of planning goals—avoiding transfer taxes, making full use of the applicable exclusion amount, and benefitting not just the heirs (as the ultimate beneficiaries) but also the spouse during his or her lifetime.

1

During life, the grantor irrevocably transfers separate assets to the SLAT up to the value of the lifetime federal estate tax exemption. The trustee of the trust will use the cash to purchase a life insurance contract on the life of the grantor.



2

The grantor's spouse may access the policy's cash value or other trust assets through the trustee according to the limitations set forth in the trust.

3

When the spouse dies, SLAT assets can pass directly to named beneficiaries if the trust drafts for this. (Assets going to grandchildren also pass free of the generation-skipping transfer tax.)

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