Spousal Lifetime Access Trust (SLAT)

A Spousal Lifetime Access Trust (SLAT) is a type of irrevocable trust that allows one spouse (the beneficiary spouse) access to transferred assets by the other spouse (the donor spouse). Created primarily for the purpose of estate planning, SLATs are designed to move assets (and future appreciation) out of the donor spouse's taxable estate, while still providing financial security for the beneficiary spouse as well as providing the ability to postpone the decision on how much to pass to the next generation.

DESCRIPTION OF STRATEGY

The donor spouse gifts assets to the SLAT utilizing his or her estate and GST exemptions. These assets can include cash, investments, real estate, business interests, and life insurance policies, among others investment properties. The trustee (who often is the beneficiary spouse) has the discretion to make distributions to the beneficiary spouse as needed. Upon the beneficiary spouse's death, the remaining assets in the SLAT pass to the designated successors beneficiaries, such as children or grandchildren, outside of the donor's taxable estate. Often the beneficiary spouse is given a 'power of appointment' to alter where the assets are to pass at his or her death. The strategy transfers the assets and all future appreciation out of the estate tax system as the assets are not included in the beneficiary spouse's estate or the successor beneficiaries' estates. A SLAT is typically taxed as a grantor trust, although they can be structured as non-grantor trusts. As a grantor trust, there is an opportunity to swap assets and sell assets without gain recognition to the donor spouse.

KEY BENEFITS

Estate Tax Reduction	SLATs reduce the value of the donor's taxable estate by shifting assets and future appreciation of such assets into the trust.
Asset Protection	Assets within the SLAT are typically protected from creditors of both spouses.
Lifetime Access	The beneficiary spouse a beneficiary of the trust and is eligible to receive distributions from the trust. This naturally may indirectly benefit the donor spouse.

KEY BENEFITS (CONTINUED)

Grantor Trust

The donor spouse pays all of the income tax on the SLAT which allows for tax-free growth in the SLAT as well as opportunity to swap assets and sell additional assets to the SLAT without recognizing a gain.

GST

Typically, the donor spouse allocates GST exemption to the assets gifted to the SLAT so that the assets are out of the estate tax system for future generations.

RISKS/DRAWBACKS

Death or Divorce of Beneficiary Spouse

Generally, upon death of the beneficiary spouse, the remaining assets pass to the designated successor beneficiaries and the donor spouse loses indirect benefit to the assets. The SLAT assets aren't marital assets subject to division by the courts but some courts have ruled the assets to be separate property of the beneficiary spouse due to the gift by the donor spouse. To avoid this outcome, the trust agreement should address what should with respect beneficiary spouse's interest in the SLAT upon divorce. For example, the trust may state that 1) the beneficiary spouse is removed as a beneficiary, 2) the beneficiary spouse will continue to be the primary beneficiary, or 3) the beneficiary spouse is the spouse of the donor spouse at any particular time. Some attorneys have tried to address divorce with a post-nuptial agreement as well.

Reciprocal Trust Doctrine

If each spouse creates a trust for the other and the terms of the trusts are too similar, are created too close together or contain similar assets the SLAT assets may still be included in each spouse's estate under the reciprocal trust doctrine. This doctrine asserts that effectively there was an agreement to create a trust for one another so each donor is treated as creating a trust for themselves. Additionally, if each spouse would like to implement a SLAT for their spouse, it's best to separate in time any transfer of property to the donor spouse from the creation of the SLAT. Similarly, the SLAT should be treated as an entity separate from both the donor spouse and beneficiary spouse, or once again estate inclusion becomes a significant risk.

Basis Issues

The assets of the SLAT will not receive a step-up in basis upon the donor spouse's death. As a grantor trust, there is an opportunity to swap low basis assets for higher basis assets in grantor's estate prior to death.

OPPORTUNITIES TO UTILIZE

High (But Maybe Not Too High) Net Worth Families	Couples with substantial wealth that can afford to immediately give away their exemption amounts to the next generation but would like to maintain some access to the wealth by way of a spouse (just in case) may utilize SLATs as a tool to transfer wealth.
Concerns About Future Estate Tax Laws	Those who are worried about future changes to estate and gift tax laws may use SLATs to lock in current exemptions.
Balancing Estate Reduction and Financial Security	SLATs are excellent for those wanting to reduce their taxable estate while maintaining financial security for the non-donor spouse.
Asset Protection	Individuals or families with a high risk of creditor claims or lawsuits may use a SLAT as a part of their asset protection strategy.

Illustration of how a SLAT integrates with other wealth transfer strategies.