

A Strong Marriage Is A Necessity When It Comes To Using A SLAT

When creating your estate plan, there's a certain amount of prognosticating involved. What will your financial picture look like in years to come? How will estate tax laws change? No doubt one of the biggest challenges involved with estate planning is all the uncertainty. One option to hedge your bets is using a spousal lifetime access trust (SLAT). But consider using a SLAT only if your marriage is strong.

How Does A SLAT Allow For Plan Flexibility?

To take advantage of a SLAT, you transfer assets to an irrevocable trust that benefits your spouse during his or her lifetime, with any remaining assets passing to your children or other heirs. Because the trust is irrevocable, the assets you transfer to it are completed gifts for estate tax purposes. That means their value, together with any future appreciation or earnings, are removed from your taxable estate. Most important, your gifts are shielded from gift tax up to your current unused exemption, protecting you from possible future reductions in the exemption amount.

Here's how a SLAT allows you to hedge your bets: Although you must give up your assets to gain the tax benefits described above, you continue to have *indirect* access to your wealth through your spouse, who's a beneficiary of the trust. Usually, the best way to accomplish this is by appointing an independent trustee with full discretion to make distributions to your spouse or, alternatively, with the power to make distributions to your spouse under specified conditions.

Why Is Asset Control So Important?

To ensure that a SLAT achieves your objectives, it must be carefully drafted. For example, you must avoid retaining too much control over the trust assets. Otherwise, they may be pulled back into your taxable estate. That means you shouldn't act as trustee or otherwise wield power over the trust, and the trust should prohibit distributions that would satisfy your legal support obligations to your spouse.

Care must be taken to keep the trust assets out of your spouse's estate as well. So, it's best not to name your spouse as trustee or, if that's unavoidable, consider limiting distributions to those necessary for his or her health, education, maintenance or support.

Also, gifts to the trust must be made with your separate property. Gifts of jointly owned or community property may be included in your spouse's taxable estate. After the trust has been funded, be sure that its assets aren't commingled with marital assets.

Are Two SLATs Better Than One?

The advantage of a SLAT is that even though it's irrevocable, it provides you with indirect access to the trust assets through your spouse. Thus, to preserve this advantage, your marriage must remain strong.

If you get divorced, you risk losing the safety net provided by a SLAT. You also risk losing a SLAT's benefits if your spouse dies before you do. One strategy for mitigating this risk is for each spouse to set up a SLAT. For this to work, each spouse must fund his or her SLAT with separate property. Thus, you may need to retitle or transfer assets to ensure that each spouse has sufficient separate property to fund each SLAT.

If you use two SLATs, be sure the trusts aren't "mirror images" of each other. If they're too similar, the IRS may invoke the reciprocal trust doctrine. Under that doctrine, the IRS may conclude that the two trusts place you and your spouse in roughly the same economic position as if you each created a trust for your own benefit. In that situation, the IRS can undo the arrangement and bring the assets back into your respective taxable estates.

To avoid this result, be sure that the two SLATs are sufficiently different that they can't be viewed as a quid pro quo for each other. For example, you might establish the trusts at different times or include terms in one trust (a special power of appointment, for instance) that aren't included in the other.

Turn To Your Advisor With Questions

There are many upsides to using a SLAT, but careful planning (and a strong marriage) are required to realize its benefits. Your estate planning advisor can be a valuable resource when determining if a SLAT is right for your estate plan.

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