

# Is Now the Time to Consider a Spousal Lifetime Access Trust?

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## Highlights

- Current enhanced estate, gift, and generation-skipping transfer tax exemptions are scheduled to revert to their previous lower levels on January 1, 2026, but it could possibly happen sooner, and the exemptions could be lowered even further.
- Making large gifts to take advantage of these enhanced exemptions this year is possible, but many — particularly those who may be concerned about running short of funds in later years if they give away too much now — find the spousal lifetime access trust (SLAT) to be a more attractive alternative.
- Bessemer's estate planning professionals are available to help determine if a SLAT would make sense for you and your family.

The current estate, gift, and generation-skipping transfer (GST) tax exemptions (\$11.58 million per person) are scheduled to revert back to \$5 million per person, indexed for inflation, on January 1, 2026. Some are speculating about the potential for a new tax law accelerating the reversion and perhaps lowering the exemption amounts even further (such as \$3.5 million per person). Thus, there is a possibility of a “use it or lose it” environment.

That being the background, many wealth planning conversations revolve around whether to make large gifts in 2020 to fully utilize the exemptions. We know from long experience that clients should not be put into a position of giving away so much that they fear running short of funds in their later years. This concern is heightened by the historic size of the current exemption. Generally, tax law will not allow someone to give away assets, yet retain access “just in case.”

Several techniques attempt to strike a balance. One is to make a gift to an irrevocable trust that includes the donor's spouse as a potential beneficiary. This technique has come to be known as a spousal lifetime access trust, or SLAT. Below is a summary of how SLATs work along with some of their benefits and drawbacks.

## How a SLAT Works

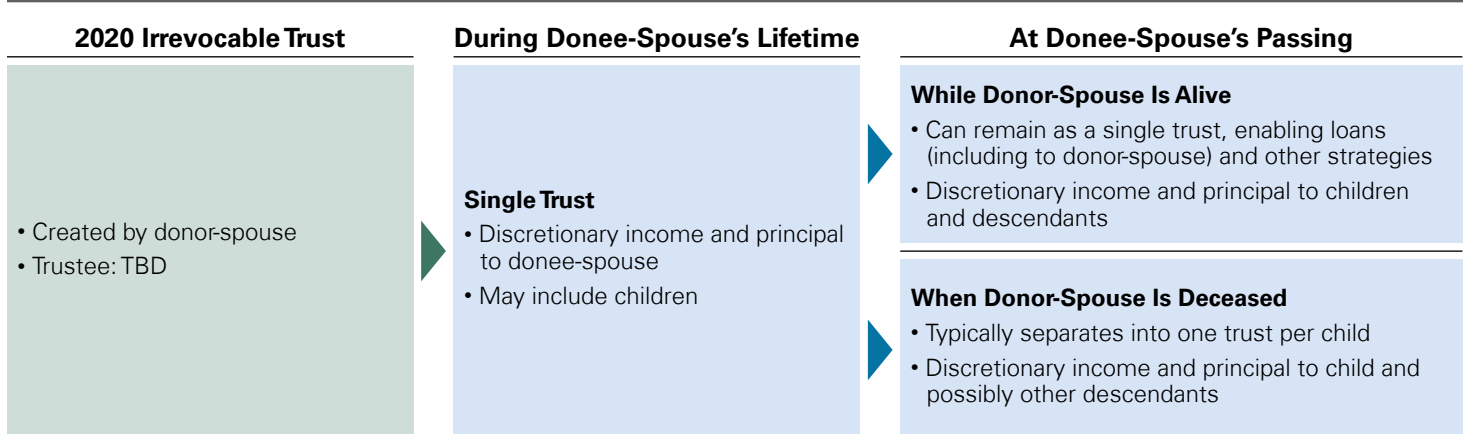
A SLAT is an irrevocable trust created by one spouse (the donor-spouse) for the benefit of the other spouse (the donee-spouse). For example, a spouse makes a gift by transferring assets into a SLAT using his gift tax exclusion. His spouse is a beneficiary of the SLAT. How? The trust agreement authorizes the trustee to distribute funds to or for the donee-spouse's benefit pursuant to a discretionary standard.

If desired, there may be additional current beneficiaries of the SLAT, such as children, but this is optional. Upon the donee-spouse's death, the assets can remain in trust for the benefit of the next beneficiaries, often children and their descendants. This structure typically mirrors your estate plan.

SLATs are grantor trusts as to the donor-spouse, meaning that all income generated by the SLAT assets will be taxable to the donor-spouse.

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### SLAT Example — Spouse for Spouse



### Benefits

- SLATs allow the donor-spouse to use his or her lifetime gift tax exemption, locking in the current high exclusion amount.
- Assets in the SLAT, including any appreciation, are not subject to estate tax in the estate of the donor-spouse or the donee-spouse and can be designed to avoid estate tax for children, grandchildren, and generations beyond.
- All SLAT assets and earnings are available to the trustee to benefit the donee-spouse. This also creates indirect access to the donor-spouse, as long as the donee-spouse is living and remains married to the donor-spouse.
- SLAT assets are generally protected from the creditors of spouses, children, and more remote descendants.
- If not needed by the donee-spouse, SLAT assets pass down to trusts for the benefit of children and more remote descendants transfer-tax free.
- Income is taxable to the donor-spouse, meaning SLAT assets continue to grow, free from income taxes, while the donor-spouse's estate is reduced by the income tax payments.
- If structured carefully, spouses can create a SLAT for each other, though material differences must exist in the trust terms.

### Drawbacks

- The SLAT and the gift to the SLAT are irrevocable. The donor-spouse will not be able to change the terms of the SLAT or take the assets back; the donor-spouse could acquire trust assets by substituting assets of equivalent value. Also, the donor-spouse can embed flexibility through the use of powers of appointment, trust protectors, and decanting provisions.
- If the spouses divorce, the donor-spouse will have no right to the assets.
- If the donee-spouse predeceases the donor-spouse, the remaining assets thereafter benefit children, not the donor-spouse. (Note that there may be ways to reduce the risk that the donor-spouse will lose access to the assets should the donee-spouse predecease.)
- In the event both spouses would like to create a SLAT for the benefit of the other spouse, great care must be taken to avoid the reciprocal trust doctrine. The reciprocal trust doctrine is a principle under which the IRS may deem each spouse to have created a trust for his or her own benefit, losing the asset protection and transfer-tax advantages of the SLAT.
- It is very difficult to turn off the grantor trust status of SLATs. This means that the donor-spouse may remain responsible for the income taxes attributable to the SLAT income, even after a divorce.
- There is no capital gains basis "step-up" of the SLAT assets at the death of either the donor- or donee-spouse.

### Is a SLAT Right for You?

If you are interested in taking advantage of the temporarily enhanced estate, gift, and generation-skipping transfer tax exemptions, doing so sooner, rather than later, may be a prudent course of action. If you are concerned that giving away the assets may undermine support for you or your spouse's lifestyle, it could make sense to consider a SLAT.

*Please reach out to your Bessemer client advisory team to arrange a discussion with an estate planner as to whether this, or another technique, may be wise for you and your family.*

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