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ENERGY

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A MATTER OF TRUST

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Irrevocable Grantor Trusts

- Trust assets are deemed to be owned by the grantor for income tax purposes.
- Transactions between Grantor and trust have not income tax consequences.
- Payment of taxes is not a gift.
- Some irrevocable trusts are grantor trusts by nature (GRATs, SLATs, QTIP Trusts).
- Others can be grantor trusts or independent taxpayers (ILITs, CLTs, DAPTs, Family or Gift Trusts).

Alphabet Soup

- IDGT (Intentionally Defective Grantor Trust)
- ILIT (Irrevocable Life Insurance Trust)
- SLAT (Spousal Lifetime Access Trust)
- QTIP (Qualified Terminable Interest Property Trust)
- GRAT (Grantor Retained Annuity Trust)
- CLAT (Charitable Lead Annuity Trust)
- QPRT (Qualified Personal Residence Trust)
- DAPT (Domestic Asset Protection Trust)

INTENTIONALLY DEFECTIVE GRANTOR TRUST

- Irrevocable trust, the income of which is taxed to the Grantor
- Family Trust, Gift Trust, Remainder Trust
- Grantor trust status may be turned off
- Beneficiaries might be spouse or descendants
- Beneficiary can be trustee so long as ascertainable standard for distribution (HEMS)
- May include a power of appointment exercisable during beneficiary's lifetime or at death
- May be generation skipping and often are dynastic

IRREVOCABLE LIFE INSURANCE TRUST (ILIT)

- Irrevocable trust that is the owner and beneficiary of life insurance policy
- Wealth replacement to spouse
- Provide liquidity and compensate for lost income
- Pay taxes
- Remove death benefit from taxable estate

Spousal Lifetime Access Trust (SLAT)

- Variation of an irrevocable “grantor” trust
- One spouse creates an irrevocable trust for the benefit of the other
- Beneficiary spouse could be the trustee of the irrevocable trust

SLAT cont.

- The value of the assets transferred into the Spousal GST Trust by gift or sale (and their growth) should escape the federal and state estate tax system permanently
- The spouse may enjoy the assets as if they were never transferred
- Future flexibility for distributing the assets upon the beneficiary spouse's death remains in place

Qualified Terminable Interest Property Trust (QTIP)

- Irrevocable grantor trust created by one spouse for benefit of the other.
- All income must be distributed to beneficiary- spouse at least annually.
- No distributed allowed during beneficiary-spouse's lifetime to anyone other than beneficiary-spouse.
- Contributions to trust qualify for marital deduction.
- Assets included in beneficiary spouse's estate if QTIP election made.

Grantor Retained Annuity Trust (GRAT)

- Irrevocable grantor trust in which the grantor retains the right to a fixed annuity from the trust for a term of years
- If the grantor survives the term, the trust principal passes to the beneficiaries or a trust for their benefit
- Gift is made when trust is funded, equal to the actuarial value of the remainder interest
- Trust principal, including the appreciation on the principal, is excluded from the grantor's estate for federal estate tax purposes

Charitable Lead Annuity Trust (CLAT)

- Irrevocable trust in which a charity received a fixed annuity from the trust for a term of years
- Grantor may (if designed as a grantor trust) receive a charitable deduction for present value of annuity payments to charity
- At the end of the term, the trust principal passes to the grantor's individual beneficiaries or a trust for their benefit
- Trust principal, including the appreciation on the principal, is excluded from the grantor's estate for federal estate tax purposes

Qualified Personal Residence Trust (QPRT)

- Irrevocable trust to which the grantor transfers a personal residence and retains the right to use residence for fixed term of years.
- If the grantor survives the term, the residence passes to the beneficiaries or a trust for their benefit.
- If residence is sold during trust term and proceeds are not reinvested in a new residence, then convert to a GRAT.
- Gift is made when trust is funded, equal to the actuarial value of the remainder interest.
- Trust principal (including appreciation) is excluded from the grantor's estate for federal estate tax purposes.

Domestic Asset Protection Trust (DAPT)

- Self-settled irrevocable trust created under certain states' laws authorizing such trusts
- 19 states now allow for self-settled DAPTs (Alaska, Connecticut, Delaware, Hawaii, Indiana, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming)
- Grantor is a beneficiary
- Independent trustee who typically must reside in applicable jurisdiction
- Assets protected from creditors
- May or may not remain in Grantor's estate for federal estate tax purposes