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COMPLIANCE INSIGHT BRIEF

Portability vs. Credit Shelter Trusts: Which Estate Planning Strategy Is Right for Your Family?

Evaluating the Estate, Income Tax, and Asset Protection Trade-Offs Between Portability Elections and Credit Shelter Trusts

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Executive Summary

Portability and Credit Shelter Trusts (CSTs) both preserve a deceased spouse's estate tax exemption, but they offer different benefits. Portability is simpler and can provide a second basis step-up at the surviving spouse's death, while CSTs can shield future asset appreciation from estate tax, preserve GST exemption, and provide valuable asset protection.

Key Takeaway: While portability offers simplicity, Credit Shelter Trusts often provide greater long-term tax savings and asset protection for families with significant or growing wealth.

Portability vs. Credit Shelter Trusts: Key Differences

While both **portability** and **Credit Shelter Trusts (CSTs)** (also known as Bypass Trusts) aim to preserve a deceased spouse's unused federal estate tax exemption, they operate through fundamentally different legal mechanisms and offer distinct tax and non-tax trade-offs.

1. Mechanism and Implementation

- **Portability:** An administrative tax election made on Form 706. It transfers the Deceased Spousal Unused Exclusion (DSUE) directly to the surviving spouse, allowing assets to pass outright or in a marital trust.
- **Credit Shelter Trust:** An irrevocable trust established upon the first spouse's death. Assets up to the deceased spouse's available exemption fund the trust for the benefit of the surviving spouse and/or descendants.

2. Treatment of Asset Growth

- **Portability (**DSUE **is Frozen):** The ported DSUE dollar amount is fixed as of the date of death. If inherited assets appreciate significantly before the surviving spouse passes away, all post-death growth remains in the survivor's taxable estate.

- **Credit Shelter Trust (Growth Bypasses Estate):** Assets placed in the CST—and **all subsequent appreciation and accumulated income**—are removed from the surviving spouse's gross estate entirely, making CSTs superior for rapidly growing assets.



3. Income Tax Basis Step-Up

- **Portability:** Because assets pass to the surviving spouse, they are included in the survivor's gross estate and receive a **second step-up in cost basis** (IRC § 1014) at the survivor's death, eliminating accumulated capital gains for heirs.
- **Credit Shelter Trust:** CST assets generally do not receive a second basis step-up upon the surviving spouse's death, potentially exposing future sales to capital gains tax unless special statutory powers are incorporated into the trust.

4. Non-Tax Protections & GST Exemption

- **Generation-Skipping Transfer (**GST**) Tax:** GST exemption is **strictly non-portable**. A CST allows the first spouse to allocate their GST exemption to shelter multi-generational trust transfers.
- **Asset & Remarriage Protection:** A CST shields assets from the surviving spouse's creditors, lawsuits, or redirection to a new family upon remarriage. Outright transfers under portability offer no such fiduciary protections.

Feature	Portability (DSUE)	Credit Shelter Trust (CST)
Primary structure	Tax Election of Form 706	Irrevocable Trust
Future Appreciation	Taxable at survivor's death	Sheltered from estate tax
Second Basis Step-Up	Yes (at survivor's death	Generally no
GST Tax Exemption	Lost (Non-portable)	Preserved
Creditor/Remarriage Shield	None (outright transfer)	Robust Fiduciary Shield

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