Introducing the GOAT Trust

The menu of tax planning options for founders includes many strategies designed to minimize income taxes upon liquidity events and to provide for wealth preservation across multiple generations. To achieve those benefits, these strategies most often require the founder to make a gift of equity to trusts that benefit others, including a spouse, children, parents or siblings.

We are often asked whether there is a strategy where the founder can enjoy the benefits of a trust without sacrificing the founder's own access to the wealth created when stock is sold. In certain situations, we are able to structure a trust that can meet this objective. Given its extraordinary benefits, and the fact that tax planners love acronyms, we have nicknamed it the GOAT Trust. While it may indeed be the Tom Brady of trusts, in this case the acronym stands for Gift Optimized to Alleviate Taxes.

Under most circumstances, the GOAT Trust can be structured to have the following advantages for the founder:

- *Ability to receive distributions*. The founder will have unlimited lifetime access to the assets in the trust in the discretion of a trustee who the founder selects.
- *Power to choose trustee*. The founder will have the power to remove and replace the trustee at any time and for any reason. In certain situations, the founder can act as a trustee and control certain trust decisions, such as how to direct investments or vote stock, directly.
- *Control over disposition at death*. The founder will have the ability to direct what happens to the assets in the trust upon the founder's death, including terminating the trust, changing the beneficiaries of the trust and/or modifying any of its provisions.
- *Creditor protection*. The assets in the trust will not be subject to claims by the founder's creditors.
- *Independent QSBS eligibility*. The trust will have its own eligibility for a Qualified Small Business Stock (QSBS) exemption independent of the founder's eligibility for a QSBS exemption.
- *State/local income tax savings*. For any capital gains not sheltered by a QSBS exemption, the trust can usually be structured so as not to be subject to state or local income tax on those capital gains, including capital gains on reinvested sale proceeds.
- *Not subject to estate tax*. The trust assets will not be included in the founder's estate at death and will pass without estate tax to the founder's designated beneficiaries. The avoidance of estate tax can continue for multiple generations.

The timing for implementation of a GOAT Trust is critical and must be done very early in a company's lifecycle and ideally concurrently with the company's formation. (For later stage companies, we may be able to employ a different type of trust to achieve similar benefits.) If you are launching a new company, we encourage you to contact the Founder Focus team to determine if the GOAT Trust may be appropriate to consider.

Patterson Belknap has a multi-disciplinary team of lawyers who are focused on the legal needs of founders and entrepreneurs. A description of the full range of our services and attorney contacts can be found here. Please visit the Founder Focus Resource Center for more content on broad range of topics of interest to founders and their professional advisors.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact the following attorney or call your regular Patterson contact.

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