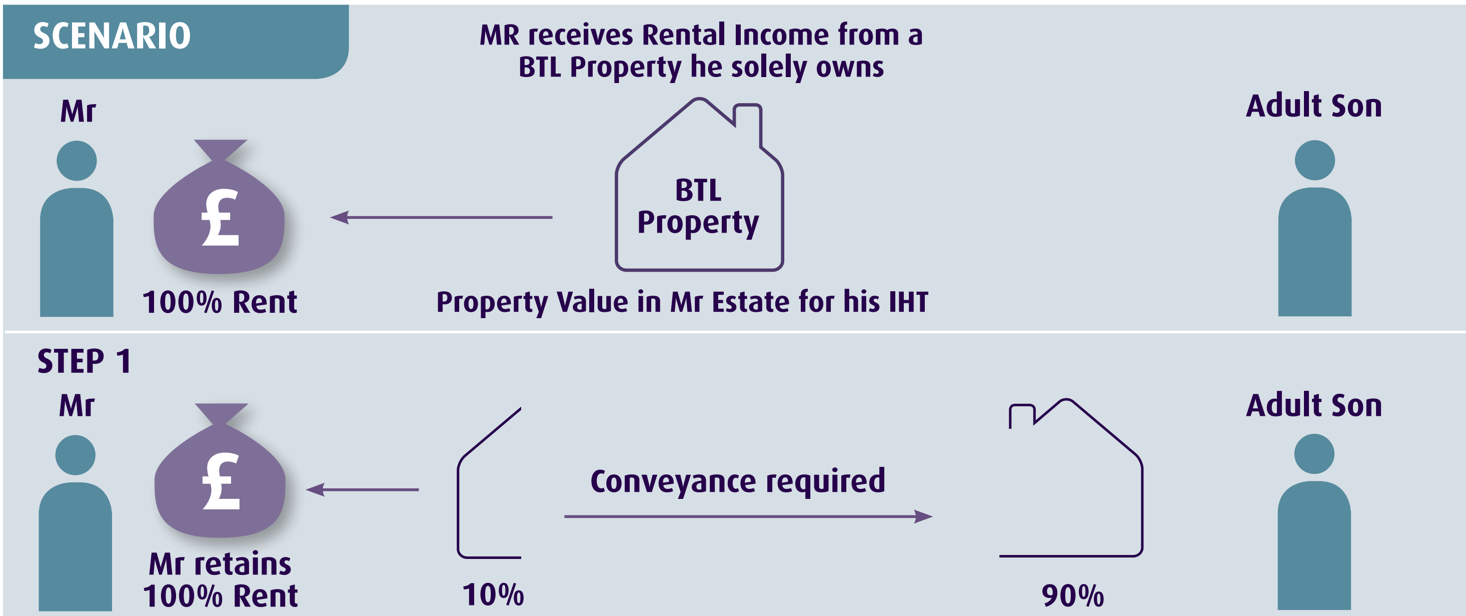
STRATEGIC ASSET PROTECTION
WEALTH & ESTATE PLANNING

KEY FEATURES AND BENEFITS 23E

Concessions to Gift with Reservation Rules and Rental Properties

When considering 'gifting' solutions for clients to aid in reducing their potential Inheritance Tax (IHT), it is generally perceived that the donor of a gift cannot retain any benefit of the gift for it to be IHT efficient. Otherwise, it would be deemed to be a 'Gift with Reservation of Benefit' (GWROB) and HMRC will deem the gift still accountable to the donor's Inheritance Tax calculation on death. There are however, some exceptions to that rule. This Key Features and Benefits considers a Buy to Let property with the owner retaining the rent that the property produces.

This is the implication of Section 102(b) (iii) of The Finance Act 1986. This enables the donor to 'retain' the benefit (i.e. keep the rent) of the property but still reduce their estate value for Inheritance Tax (IHT).



Mr transfers an 'undivided' share of property to son. Conveyance required.
In this case 90% 'share' to son, Mr maintains 10% 'share'...and Mr keeps 100% of the income.

Question: So is the whole property value still in Mr's estate for his Inheritance Tax as he has retained the 100% benefit of the rental income?

Answer: No – but why not?

- It satisfies Section 102(b)(iii) of The Finance Act 1986 in that it is not a 'Gift with Reservation of Benefit' (GWROB).
- Critically the gift has to be that of an 'undivided share' of the property. So the property has to be intially either 'solely' owned oras 'Tenants in Common'. Not 'Jointly owned'.
- The donor (Mr in this case) does not, and cannot occupy the land (e.g. it's a Buy To Let).
- But Mr can retain the benefit of 100% of the income. See below.

FURTHER ISSUES TO NOTE:

- ! The gift is a Potentially Exempt Transfer (PET) if making an outright gift, or a Chargeable Lifetime Transfer (CLT) if making a gift to trust.
- ! CGT would apply to the 'disposal' of the 90%.
- ! However the 90% share is now in the estate of the son and is at risk from his divorce/separation, bankruptcy/creditor claims, future care fees and his Inheritance Tax.
- On Mr surviving 7 years the value of his 'gift' (90% of the property) is out of his estate for the calculation of his IHT.
- Theoretically anything up to 99% can be transferred.
- We would provide a Report to client for peace of mind.