MILLS & REEVE
Achieve more. Together.

Matters to consider when your client is moving to or leaving the UK

Gilly Kennedy-Smith, TEP, ATT
Principal Associate, London office
12 January 2021

What we will cover:

1. “Arrivers”	2. “Leavers”	3. Anticipated Tax Changes
1.1 Before they move to the UK	2.1 Before they leave	3.1 OTS
1.2 Immigration	--	3.2 APPG
1.3 SRT	2.3 SRT	3.3 Key similarities between reports
1.4 Domicile	2.4 Domicile	3.4 A Case Study to compare
1.5 Property Purchasing	2.5 Property Sales	
1.6 Interests and Influence	2.6 Interests and Influence	
1.7 Dates for their Diaries	2.7 Dates for their Diaries	

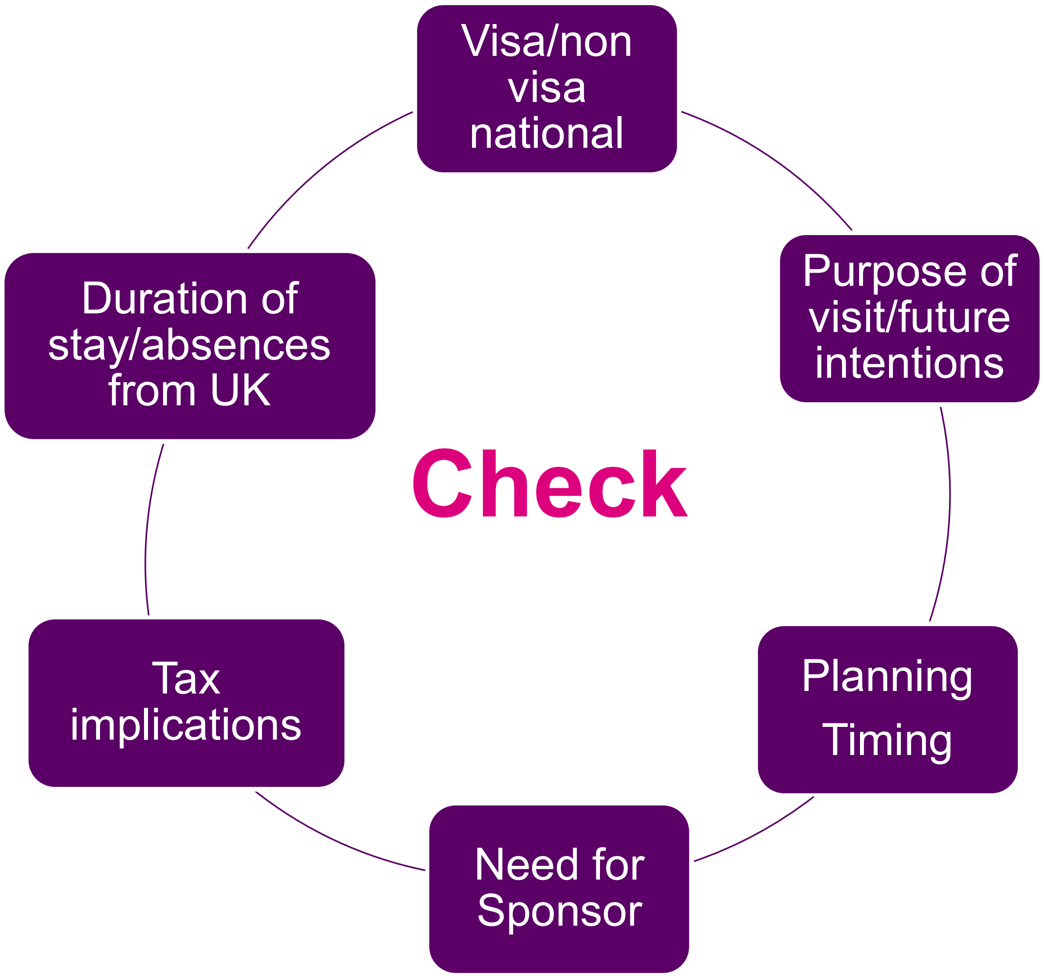
1.1 Before they move to the UK

- Where a client is moving jurisdiction you need to investigate their situation in more detail than you would a client who already lives in the UK – what they assume isn't an issue in their country of origin might be an issue in the UK.
- Is there a timeline to adhere to?
- How permanent does the planning need to be?
- What advice is needed?
- What are they affected by?

1.2 Immigration – what you need to know

- EU Nationals and family members of EU Nationals in the UK on 31 December 2020 have until 30 June 2021 to apply under EU Settlement Scheme for settled/pre-settled status.
- Updated immigration system effective from 1 January 2021
    - **Tier 1** Visa options: Investor, Global Talent, Innovator, Start-up.
    - **Tier 2** Visa options (work related): Skilled Worker, Intra-Company Transfer, Sportsperson, Graduate (no scholarship).
    - **Visitor Visa:** Tourist, Business, Study for up to 6 months.
    - Other options: Student, Youth Mobility, GAE, Ancestry

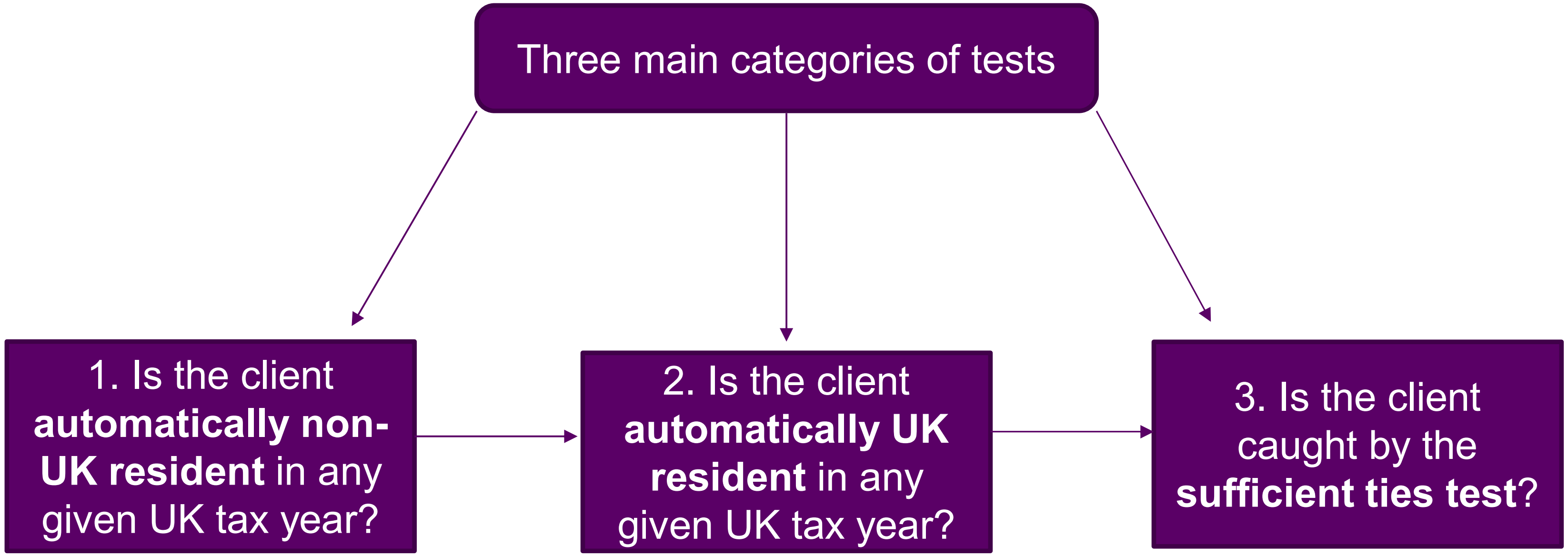
1.2 Immigration - considerations



MILLS & REEVE
Achieve more. Together.

1.3 Statutory Residence Test

- Q: When is the best time for them to enter the UK?



1.3 Statutory Residence Test

- **Test 2:**

Is the client automatically UK resident in any given UK tax year?		
Present in UK for >182 days in the tax year.	Has a "home" in the UK.	Carries out "full time" work in the UK.

MILLS & REEVE
Achieve more. Together.

1.3 Statutory Residence Test

- **Test 3:**

Is the client caught by the sufficient ties test?				
Family tie	"Accommodation" tie (not "home")	Work tie	UK presence tie	*Country tie ("leavers" only)*

- Compare number of ties to days in UK to see if resident in that tax year.

"Arrivers"	Days spent in UK	Number of ties needed to establish residence
	<16 days	Always non-resident
	16-45 days	At least 4 ties needed to be UK resident
	46-90 days	At least 3 ties needed
	91-120 days	At least 2 ties needed
	121-182 days	At least 1 tie needed
	183 days or more	Always UK resident

MILLS & REEVE
Achieve more. Together.

1.3 Statutory Residence Test

- Once you determine if they are resident you need to consider if they should pay tax on the arising basis or if they should elect to pay on the remittance basis.

- **Remittance Basis Charge (RBC):**
  - Irrevocable annual election.
  - Compare charges with income and gains made

1.4 Domicile

- Three main types under general law:
  - **Origin** – follows your father at the time of your birth
  - **Dependency** – if a child is under 16 it follows the father
  - **Choice** – sever all ties with old country and permanently settle in one other legal jurisdiction (consider states, cantons, provinces).

- Also, due to long-term UK residence, there is **deemed domicile** under the 15 out of 20 year rule.

1.4 Domicile

- Pre 6.4.2017 the deemed domicile rules focused on IHT. Now includes income tax and CGT as well.
- Remember:
  - Those with a UK domicile of origin are now UK domiciled for any periods of UK residence (fact based test with small COVID exemptions).
    - One year grace period for IHT
    - Not clear how this affects a domicile of choice argument with HMRC if they leave
  - At least 15 out of the last preceding 20 tax years rule (effectively reduces the time count by one year compared to previous rules).

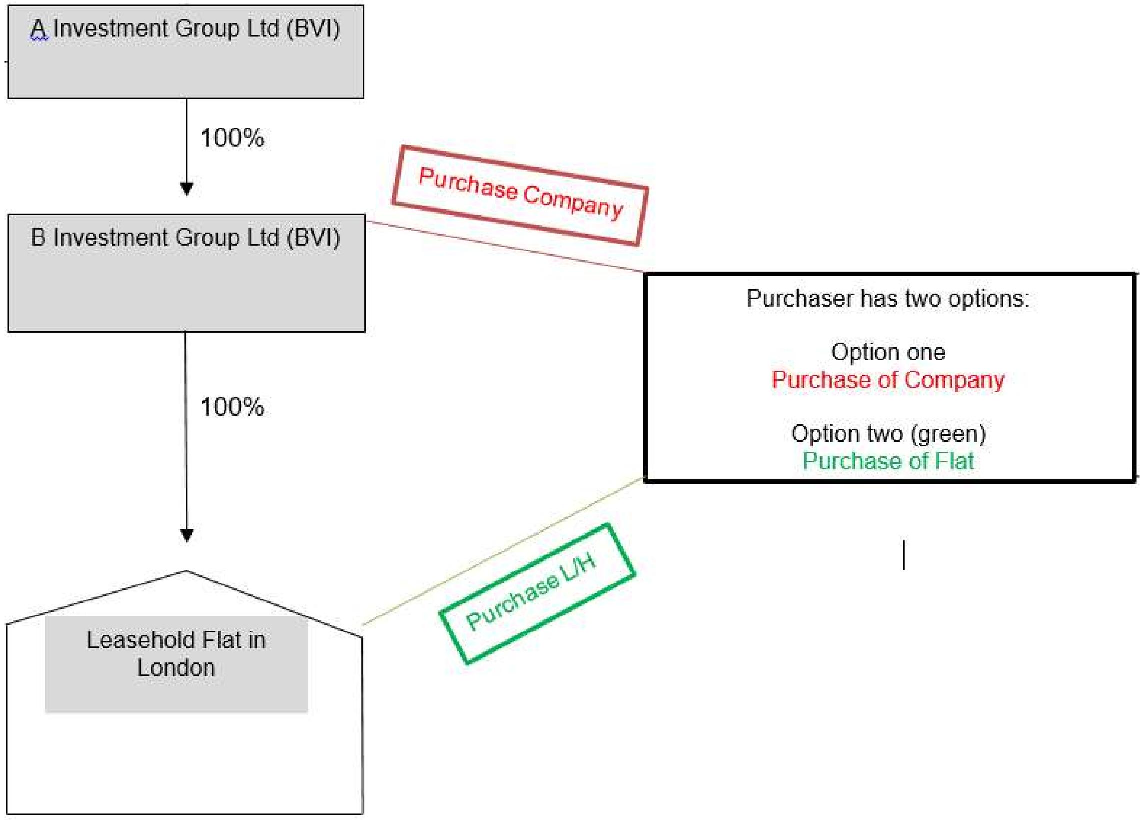
1.5 Property purchasing

- UK situs = it is exposed to IHT
- ATED introduced in April 2013
- NRCGT came in in April 2015
- In April 2019 the UK taxes non-UK resident persons seeking to sell UK property in 2 ways:
  - Direct disposals (yourself or through a company); and
  - Indirect disposals (disposals of assets that derive >75% of their value from UK land where the person has a 25% or more interest ("property rich entity")

1.5 Property purchasing

- Consider the order of any actions and the practical implications of how companies record their actions
- <u>For purchasers:</u>
  - **Until end of March 2021** - currently enjoying an SDLT holiday in the UK with 0% charged up to £500,000.
  - **From April 2021** - new SDLT surcharge for non-resident purchasers expected, which would mean that non-resident purchasers of UK property would pay SDLT rates akin to corporation tax rates. Therefore consider if they are better placed purchasing once they become UK resident to avoid the surcharge.   It may affect the foreign "buy to let" market.

1.6 Case Study: Interest in Companies



MILLS & REEVE
Achieve more. Together.

1.7 Dates for their diaries

- Tax Year:
  - An April to April tax year differs from most jurisdictions globally. Clients have to relearn the tax year and deadlines on entering.
  - There are good times to “enter”/“leave” depending on where you are moving from/to.
  - Relearning tax submission deadlines
- Changing status:
  - Are they remittance basis users?
  - When will they become deemed domiciled?
  - Keeping an eye on changing laws and timelines
  - Always review the position annually – not just at the time of “big events”
  - SRT: test annually as the UK day count and ties can change.

2.1 Leavers – Before they leave

- Recap on the pre-arrival planning meeting to establish what, if anything, has changed and how the plans needs to adapt.
- What advice has been given in the interim
- What statements have been made in annual tax returns?
- Check timelines for exit of UK and entry into new country
- Establish action plan for what needs to be done:
  - Sale of investments
  - transfer of assets
  - Unwinding of structures
  - Ensuring UK tax position is up to date for a clean exit

2.3 Statutory Residence Test

- With “leavers” you hope to start and finish the conversation with **Test 1:**

Is the client automatically non-UK resident in the given tax year?		
They were UK resident in one/more of the last 3 tax years but spent <16 days in the UK this year.	They were not UK resident in all of the last 3 tax years and spent <46 days in the UK this year.	They work full time overseas.

2.4 Domicile

- Position differs for someone who:
  - isn’t originally from the UK and isn’t yet deemed domiciled
  - Isn’t from the UK and is now deemed domiciled
  - Is from the UK (i.e. has a domicile of origin in the UK)
  - Made a death election if spouses had mis-matched domiciles at death
  - Is originally from the UK, has acquired a valid domicile of choice elsewhere and is resident in the UK for a short period of time.

2.5 Property Sales

- Home owned in own name:
  - PPR (while resident) or
  - NRCGT (when non-resident)
- Investment property:
  - capital gains tax due on gain made
  - 18% or 28%

2.6 Interests and Influence

- Directorships
- Trusteeships
- Beneficiary
- Protector

- Property and other asset ownership
- Situs of assets

2.7 Dates for their Diaries

- Keeping:
  - the SRT under review after they leave – day counts usually ease after 3 years or when ties to the UK lessen
  - records of:
    - all travel into the UK
    - decreasing connection to the UK
    - increasing connections overseas
    - tax filings

2.8 Succession Update

- Never forget to review the Wills, LPAs and lifetime planning in advance of their exit.
- What is the gift tax regime where they are moving to?
- Should assets be held by Husband and Wife as they currently are?
- Is now a good time to move assets down the family line?

3. Anticipated UK Tax Changes

- OTS
- APPG
- Comparison
- Example

MILLS & REEVE
Achieve more. Together.

3.1 Reform of inheritance tax: OTS

- Office of Tax Simplification ("**OTS**") – independent advisor to the government on simplifying the UK tax system.
  - First report focused on administration of tax was published in November 2018.
  - Second report on: "Simplifying the design of inheritance tax" published July 2019.
- Report 107 pages long (with 11 key recommendations), focuses on three areas –
  - lifetime gifts,
  - interaction with capital gains tax and
  - businesses and farms.

3.1 OTS

“*The taxation of lifetime gifts is widely misunderstood and administratively burdensome*”

1. Introduce a **personal gift allowance** to replace annual allowance and gifts on marriage/civil partnership, consider level of small gifts allowance and reform or remove the normal expenditure out of income exemption.
2. Reduction of **7 year rule** to 5 years and abolition of taper relief.
3. Remove the need to consider gifts outside of the 7 year period (the dreaded **14 year rule**).
4. Simplify rules on payment of **tax on gifts** and allocation of nil rate band.

3.1 OTS

Issue

- Currently a **CGT uplift on death**.
- Combination of business relief ("**BR**")/spouse exemption and CGT uplift means the asset can be sold shortly after death without charge to inheritance tax ("**IHT**") or CGT.
- Can dissuade lifetime gifting and distort decision-making.

Proposal

5. No CGT uplift for assets which are exempt from IHT i.e. where spouse exemption/BR applies. Recipient to acquire at historic base cost.

3.1 OTS

Policy rationale is to prevent break up of businesses or farms to fund IHT.

6. Sixth proposal has 3 elements:
   - “Wholly or mainly” test (>50%) change to a “substantive” test(>80%) to align with comparable CGT reliefs;
   - Consider treatment of minority holdings in trading companies, and
   - Align furnished holiday lets with income tax/CGT treatment.
7. Review treatment of limited liability partnerships to ensure fair treatment.
8. Consider eligibility of farmhouses for AR where a farmer needs to leave the farmhouse for medical treatment or to go into care.
9. Better guidance on when and what form a valuation of a farm or business is needed.

3.1 OTS

10. Life assurance: abolish the need for a policy to be written into trust.
11. Consider if the pre-owned assets tax rules are still needed.

3.2 Reform of inheritance tax: APPG

- The All-Party Parliamentary Group for Inheritance & Intergenerational Fairness (APPG IIF) was established in February 2019 to promote understanding of the issues generated by inheritance and intergenerational fairness and to facilitate discussion on methods of reform.
- In January 2020, the APPG published a report on the Reform of Inheritance Tax. It states at the beginning:

  "Inheritance tax (IHT) is a tax on transfers of wealth, mainly levied on a person's death. It is often criticised as ***complex, ineffective, riddled with anomalies, distortionary and unfair****. It is unpopular and ripe for reform."*
- Two key recommendations made.

3.2 APPG: First recommendation

- ***Recommendation 1: Replace the current IHT regime with a tax on lifetime and death transfers of wealth, with very few reliefs and a low flat rate, likely between 10% and 20%.***
  - Annual **gifts allowance £30,000** (no carry forward) replaces all other gift allowances.
  - **Replace nil rate band** allowance with a death allowance (£325,000).
  - No PETs, BR, AR, RNRB, GROB and POAT.
  - Charity exemption stays but **no 36% rate** for gift of 10% of estate.
  - The **CGT tax-free death uplift** would be **abolished**.
  - Trusts treated like individuals.

3.2 APPG: Second recommendation

- ***Recommendation 2:***
  - *The APPG recommends that HMRC and HMT are given greater powers to collect more meaningful data through **compulsory electronic reporting of lifetime gifts** over the current annual exemption of £3,000, even if they are not immediately taxed.*

3.3 Key similarities between both reports

- Restrictions to lifetime gifting and introduction of an Annual Gift Allowance.
- Removal of the normal expenditure out of income relief.
- CGT uplift on death restricted or scrapped.
- Reform of rules for business relief and agricultural relief.

3.4 Case Study:
How could this clients?

Facts:

Phil is a widower and has an estate worth £7.35m

He has two children, Mike and Sally.

He gave Mike and Sally £125,000 each in cash six years ago.

He dies age 74.

3.4 Case Study

- Phil leaves his assets as follows:

Estate	Mike	Sally
Working Farm	£2,000,000	
AIM Shares Portfolio		£3,000,000
Family Business	£500,000	£500,000
Cash	£200,000	£200,000
Pension (nominated)	£500,000	£500,000

- NB The family business is trading but also carries on some investment activity – 78% trading, 22% investment.

3.4 The Current Rules – lifetime

Total Tax on lifetime gifts: £0

Lifetime gift, within seven years of death so potentially taxable, but covered by Phil and his late wife's combined nil rate band allowances (total £650,000)

Sally receives:
£125,000 tax free

Phil's estate still has £400,000 of nil rate band allowance available

3.4 The Current Rules - death

Total Tax on death: £0

Phil
£7,350,000

£400k free of IHT due to nil rate band
£6m qualifies for AR or BR @ 100%
£1m Pension – not in estate for IHT
No IHT to pay

Mike

Sally

Mike receives:
£200,000 cash – within NRB
£2m Farm – AR @ 100%
£500,000 Family Business – BR @ 100%
£500,000 Pension – outside estate

Sally receives:
£200,000 cash – within NRB
£3m Shares Portfolio – BR @ 100%
£500,000 Family Business – BR @ 100%
£500,000 Pension – outside estate

MILLS & REEVE
Achieve more. Together.

3.4 The Proposed Rules? (OTS)

Total Tax on lifetime gifts: £0

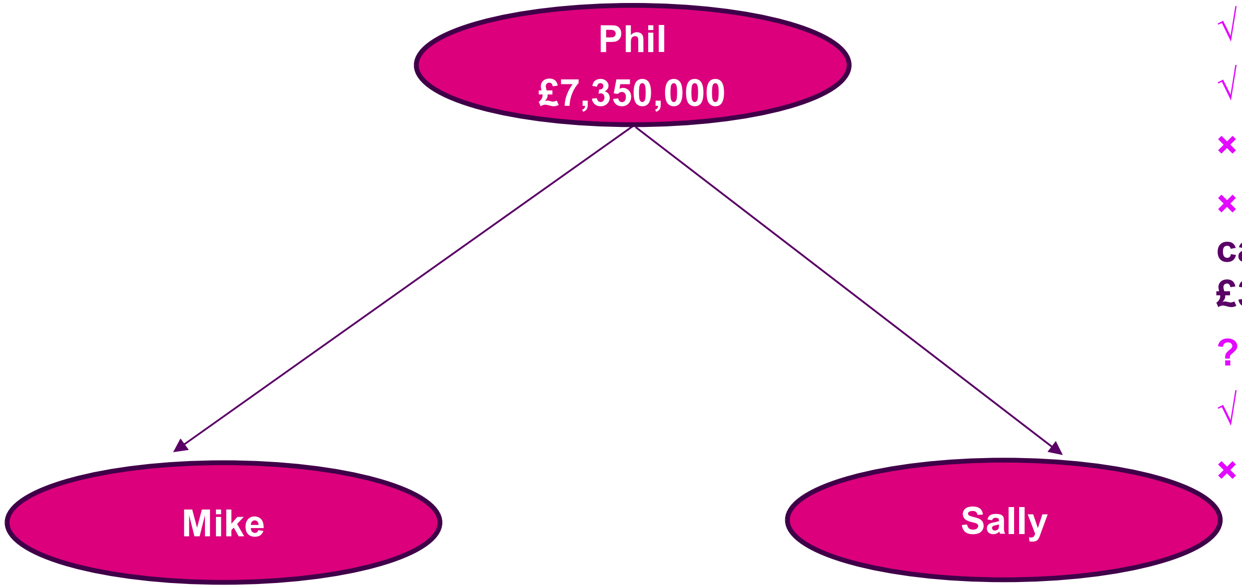
Survived lifetime gift by five years so:
1) not relevant to tax on death
2) no tax on gifts themselves

Sally receives:
£125,000 tax free

MILLS & REEVE
Achieve more. Together.

Total Tax: £300,000/ £1.5million ?

3.4 The Proposed Rules? (OTS) - death



√ £650,000 in nil rate bands

√ AR still available

× BR becomes 80/20 test?

× Business becomes exposed to tax along with cash holdings so £(1.4m - 650,000) @ 40% = £300,000

? Relief on share portfolio – could add £1.2m IHT

√ Pension still outside IHT estate

× No CGT uplift?

Mike receives:
£200,000 – Within NRB
£2m Farm – 100% AR
£500,000 Family Business – No BR under 80/20
£500,000 Pension – outside estate for IHT

Sally receives:
£200,000 – Within NRB
£3m Shares Portfolio – assume BR?
£500,000 Family Business – No BR under 80/20
£500,000 Pension – outside estate for IHT

MILLS & REEVE
Achieve more. Together.

3.4 The Proposed Rules? (APPG)

Total Tax on lifetime gifts: £22,000

Lifetime gifts have £30,000 annual allowance.

As these gifts exceed this by £220,000, 10% tax would have been payable at the point of gift, and reporting required.

Mike receives: £125,000 but Phil has to pay tax at date of gift

Sally receives: £125,000 but Phil has to pay tax at date of gift

3.4 The Proposed Rules? (APPG)

Total Tax: £1,140,000

Phil
£7,350,000

Mike

Sally

√ **£650,000 free of IHT as "death allowance" (=transferable)**

- × **No AR or BR**
- × **Pension now liable to inheritance tax**
- × **Balance of £6.7m therefore taxable**
- × **Estate exceeds £2m so:**
  - **first £2m at 10% = £200,000**
  - **excess is taxed at 20% = £940,000**
- × **Total = £1,140,000 IHT**
  (√ instalment option for business/agri assets)
- × **No CGT uplift**

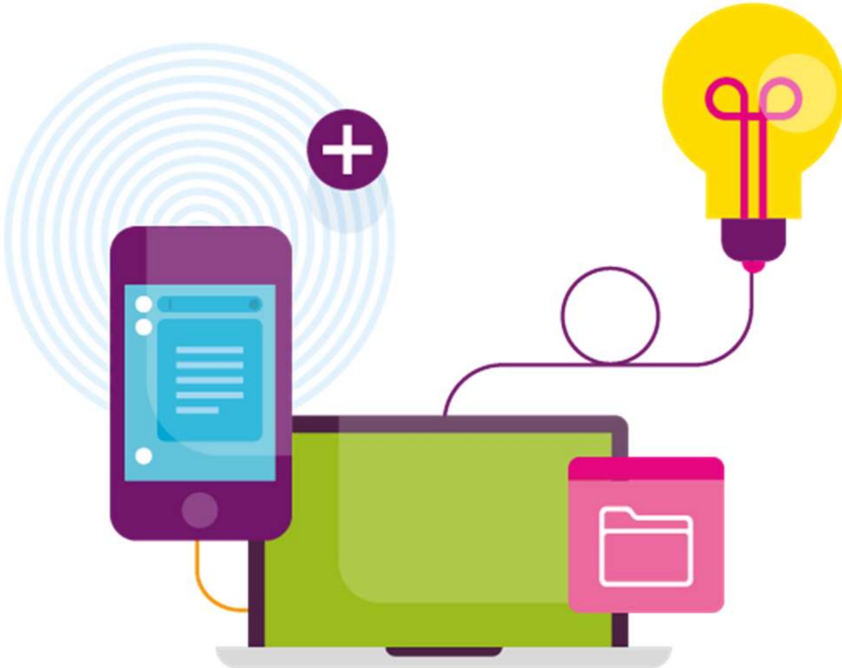
Mike receives:
£200,000
£2m Farm – No AR
£500,000 Family Business – No BR
£500,000 Pension - Taxable

Sally receives:
£200,000
£3m Shares Portfolio – No BR
£500,000 Family Business – No BR
£500,000 Pension – Taxable

MILLS & REEVE
Achieve more. Together.

Thank you

Gilly Kennedy-Smith
TEP, ATT
Private Client, Principal Associate
T: +44 (0)207 648 9240
gillian.kennedy-smith@mills-reeve.com



MILLS & REEVE
Achieve more. Together.