IHT

79. RECORD THE GIFTS AND LOANS

A recent case has highlighted the need to evidence all gifts and loans and make it clear whether the transaction is a gift or a loan.

In many farming families there can be confusion between who actually owns what farm land between family members. There can also be misinterpretation and uncertainty over gifts and loans between family members and trading operations. These difficulties of course apply to many family businesses in other sectors.

In *Mrs G Silber (personal representative of Mr M Lerner deceased) v HMRC* TC02369 there was debate over the evidence regarding a loan which was reported to be a gift.

Mr M Lerner died in 1999 at which time he owned the entire share capital in Towvale Ltd, an unquoted company. Before Mr Lerner died, he made a loan of £107,210 to the company. The appellant (the personal representative of the deceased's estate) reported that the £107,210 should not form part of the estate because it had been a gift, rather than a loan. It therefore did not form part of the estate and was not liable to inheritance tax.

HMRC argued that the gift was a loan. There was no evidence that the transaction had been a gift. For example, it was shown in the company accounts as an amount due to a creditor, ie the deceased, and therefore the loan was liable to inheritance tax. The taxpayer's appeal was dismissed.

There can be huge inheritance tax advantages of a gift as opposed to a loan provided the donor survives seven years. Direct evidence in such cases is essential; indirect evidence, for example, how the monies are shown in the farm accounts, is also helpful.

A practical point is to ask questions and obtain written information about the movement of monies within a family farm. The availability of signed documentation is key but it is important that this is correctly reflected in contemporaneous paperwork.

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