

# Record the Gifts and Loans

By Julie Butler on June 20, 2013 in Tax

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A recent case *Silber* has highlighted the need to evidence all gifts and loans and make it clear whether the transaction is a gift or a loan. This case has highlighted the position on loans at the same time that the Finance Act 2013 tries to prevent ‘aggressive’ tax planning through loan allocation.

In many farming families there can be confusion between who actually owns what farmland between family members. There can also be misinterpretation and uncertainty over gifts and loans between family members and trading operations.

## Silber

In *Mrs G Silber (personal representative of the estate of Mr M Lerner deceased) (TC2369)* there was debate over the evidence regarding a loan which was reported to be a gift. The deceased 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 (IHT). The taxpayer lost their appeal showing the need to record, document and evidence gifts and loans.

There can be huge IHT advantages of a transaction being treated as a gift as opposed to a loan provided the donor survives seven years (or a “sliding scale” thereof). There have been attempts at “manipulation” by taxpayers to achieve an IHT advantage which could come in to consideration in order to maximise tax efficiency.

The 2013 Budget proposed changes to IHT re allocation rules for liabilities in an individual’s estate that are likely to become law in July. The four new sections broadly take effect to limit the relief for debts in the estate of individuals where these liabilities have been incurred in specific circumstances. IHT is chargeable on the net value of an individual’s estate, after taking account of any debts or liabilities. Section 162B ‘Liabilities attributable to financing certain relievable property’ - basic IHT planning of securing borrowings against non-business assets appear to be caught under this section.

Direct evidence in such cases is essential; indirect evidence though, for example, how the monies are shown in the farm accounts, is helpful.

## Practical Point

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

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