

result frequently being the dissolution or failure of the business to succeed to the next generation as intended. All for the lack of a comprehensive plan to deal with issues around death, succession, and financial risk management during the lifetime of the patriarch. As the adage goes – “Fail to plan and you plan to fail”.

When the pieces of the puzzle fit together to provide for a smooth transition, all of the objectives established by the founding generation of the business are met and the long-term financial health of the family will be preserved. That is where we can help. At Moodys we recognise the importance of a well-crafted and skilfully executed succession plan to help you and your family chart a path for your business to be successful today, tomorrow, and beyond.

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**Moodys Private Client Accounting** has one focus – tax. They provide tax advice and planning for individuals with personal and business interests on both sides of the Canada-US border, no matter where they live in the world.

✉ **Brad Severin** was once described as an “eminent tax accountant” by former federal Finance Minister and Prime Minister Paul Martin. That’s high praise indeed. With more than 25

years of experience as a tax professional, he specialises in consulting in the areas of Canadian and international taxation matters, including corporate reorganisations, mergers and acquisitions, and succession planning for family-owned businesses.



# Gift tax trap for intra-family transactions in Germany

By ✉ **Martin Thieslauk**  
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Beware of intra-family transactions! As the following example shows, foreseeable increases in value in the future may trigger gift tax even before profits are realised.

## Initial situation:

G holds a 100% share in a German corporation. G also holds 51% and his son 49% of a German holding company. The corporation owns a property valued at EUR 2 million according to an expert opinion, which it initially acquired for EUR 500,000. G sells

his shares in the corporation to the holding company for EUR 2 million. However, shortly after, the corporation can sell the property to a third party for EUR 15 million. The corporation achieves a taxable profit of EUR 14.5 million. After the deduction of required taxes, a distributable amount of approximately EUR 12 million remains.

## Tax risks in the sale of the corporation shares:

Contracts between relatives and related parties are only recognised

for tax purposes if they are “at arm’s length”. The property is the value-determining factor in the assets of the corporation and therefore decisive for the value of the shares. A third party would have had to pay EUR 15 million for shares in the corporation. However, the contract on the sale of the shares for EUR 2 million becomes effective under civil law.

The view of the tax office is that the EUR 2 million would probably not be recognised for tax purposes. With reference to the arm’s length principle, the EUR 15 million is assumed. This is confirmed by the sale of the property in temporal connection with the sale of the shareholding.



From a tax point of view, the holding company received shares in the corporation worth EUR 15 million for only EUR 2 million. The value of

the shares in the holding company thus increases by EUR 13 million. As the son holds 49% of the holding company, he has a gratuitous increase

in value of 49% of EUR 13 million. The son is thus “enriched”, and this leads to gift tax of over EUR 1 million.

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