



Transfer of capital: pre-owned assets tax

Deprivation of capital

The guidance around 'deprivation of capital' states that '**intention**' is a key factor in the transfer of property or capital. Where a local council Social Services believes that capital or ownership of a property was transferred with the intention of avoiding paying care home fees, the local council Social Services may decide that this amounts to 'deprivation of capital'.

If the local council Social Services makes this decision, it sees you as still having that capital or property and will include the full value in your financial assessment. If the value is over £23,000 (England), £22,500 (Scotland) and £22,000 (Wales) you would be

expected to fund your own care until your capital drops to that level. There is no time limit on the transfer of assets. However, the local council Social Services would need to look at different factors including the reasons for transfer and whether or not it could be foreseen, at the time of the transfer, that it was likely that you would need care.

Financial assessment

The decision on whether or not someone has deprived themselves of capital to avoid care fees will be made at the time of the **financial assessment** carried out by the local council Social Services in accordance with the **Charging for Residential Accommodation Guide (CRAG** – available at www.dh.gov.uk). (Please see guides **16: Care Home Fees: paying them in England, 52 (Scotland) or 72 (Wales)** for more information.) This can also be a retrospective decision if the council finds out at a later date that, for example, someone bought a lot of expensive jewellery or gave a lot of money away to relatives just before the financial assessment.

Pre-owned assets tax – information sources

In addition to the disadvantages and implications of deprivation of capital specified in factsheet **3: Assets – disadvantages of giving your capital away**, another potential disadvantage may be that liability is incurred for pre-owned assets tax. We are not financial advisers so please find below links to a solicitor's website:

www.lgold.co.uk/index.php/mnu/s, which offers information on this

form of income tax, and the website for Her Majesty's Revenue and Customs: www.hmrc.gov.uk/poa/poa_guidance3.htm.

Pre-owned assets tax – implications and liability

Pre-owned assets tax was brought in under the **Finance Act 2004** and applies, including retrospectively, from April 2006. It was formally known as 'gift with reservation of benefit' and was introduced to close a loophole in the 'reservation of benefit' legislation. Essentially, it is an **income tax charge** on the 'benefits' a person gets by having free or low cost enjoyment of a tangible or intangible asset they formally owned, but is still considered part of their estate, because they still have 'enjoyment' of it. For example, if you gift a house to someone else but continue to live there. An **annual cash value** may be quantified for the benefits you enjoyed by doing that. In the case of property, this may be in the form of the **market value rent** or a **specified percentage of capital value**. For example, if the property was worth £1,000,000 with a market value rent of 5% per annum, the benefit to you would be £50,000 per annum. If this was taxed at 40% (higher tax band) then the **income tax on pre-owned assets** would be £20,000 per annum.

Exclusions and exemptions

The list of exclusions and exemptions does not mention someone's age or physical health and, therefore, you may not be exempt from this form of income tax if you transfer a property but continue to live there. This could be because this form of income tax is closely related to **inheritance tax**. Indeed, one of the

exemptions relates to something called '**election**'. This is the term used when someone elects to have the property treated as if it is still in their ownership and normally part of their estate even though they have gifted it to someone else. However, by electing to treat the property in this way, the property will be liable for inheritance tax at a later date.

The pre-owned assets tax issue may be in addition to, not instead of, the other disadvantages and implications of deprivation of capital specified in factsheet **3: Assets – disadvantages of giving your capital away**.

Financial and legal advice

We are not legal or financial advisors and the information set out above is the result of research from websites including Her Majesty's Revenue and Customs. Therefore, you may want to seek more expert and in-depth legal and/or financial advice. The **Financial Services Authority (FSA)** can be contacted on **0845 606 1234** or through their website: www.fsa.gov.uk. They may be able to direct you to a financial adviser that specialises in pre-owned assets tax. You may also want to talk to the **Community Legal Services (CLS)** on **0845 345 4 345** and ask them to direct you to a solicitor who specialises in the transfer of property and related tax issues.

Further information

Counsel and Care is a national charity; however the creation of the Scottish Parliament, and the Welsh and Northern Ireland Assemblies means there are differences in the ways each region cares for and supports older people. The information in this factsheet applies essentially to England although there may be similarities with Scotland, Wales and Northern Ireland.

If you need further information or advice about deprivation of capital or capital as it relates to financial assessments please see the other factsheets in this series or our guides at www.counselandcare.org.uk/helping-you/guides. All our factsheets and guides can also be ordered by telephoning our guide order line on **0207 241 8522**.

Alternatively, if you have a query in relation to deprivation of capital or funding, you may want to contact our advice line on **0845 300 7585** or send your enquiry by email to advice@counselandcare.org.uk.

Counsel and Care is the national charity working with older people, their families and carers to get the best care and support. If you have found our service helpful, please consider making a donation or leaving a legacy in your Will. You can arrange either by telephoning 020 7241 8555 or using the secure service on our website www.counselandcare.org.uk.

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