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factsheet

Counsel and Care factsheet: 6

Transfer of capital: inheritance 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



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(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. (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.

Inheritance tax – information sources

In addition to the disadvantages and implications of deprivation of capital specified in factsheets **3: Assets – disadvantages of giving your capital away** and **4: Transfer of capital – with or without a Will**, another implication may be that liability is incurred for inheritance tax. We are not financial advisers, so please find below a link to information found on the Her Majesty's Revenue and Customs (HMRC)'s website:

www.hmrc.gov.uk/cto/customerguide/page4.htm#1, which contains information on inheritance tax and calculating liability. You may want to seek expert advice from a tax or financial adviser (please see the end of this factsheet for contact details).

Inheritance tax – implications and liability

As stated in factsheet 1: **Deprivation of capital – what can I spend before moving into a care home?**, if you give away up to £3,000 per year to a relative (inheritance tax exemption allowance) the council may view this as deprivation of capital for the purpose of assessing care home fee contributions. This form of tax, as stated in factsheet 5, may be closely related to **pre-owned assets tax**.

One of the exemptions under pre-owned assets tax relates to something called ‘**election**’. This is the term used when you elect to have the property treated as if it is still in your ownership and normally part of your estate even though you 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.

Threshold and inheritance tax calculation

Inheritance tax may be liable if the value of your **estate** (assets solely or jointly owned which are not exempt or ‘potentially’ exempt, gifted assets that are still part of the estate, any ‘nominated’ assets and certain trusts and assets that certain ‘reliefs’ cannot be claimed on) is above the **threshold** which is currently £325,000. The value of the estate above that threshold may be taxed at up to **40%**. For example, if your estate was worth

£400,000 then the liability would be calculated at 40% of £100,000 = £40,000.

When is an inheritance tax payment due and who pays it?

A 'personal representative' (if one is appointed, if not, it may be an executor or administrator; in Scotland it may be an executor-dative or executor-nominative) values the estate and makes payment of any inheritance tax due, usually within six months. Transfers not resulting from a death, made between 6 April and 1 October inclusive, are usually due for payment of any tax liability in April the following year. Interest may be charged if a tax payment is overdue for any reason and a penalty may be incurred for a miscalculation on the value of the estate. A '**grant of representation**' will be required by the representative (please visit the previous HMRC link for further information).

Financial and legal advice

We are not legal or financial advisers 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 inheritance 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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