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factsheet

Counsel and Care factsheet: 7

Transfer of capital: capital gains 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



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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 paying 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 (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 find 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.

Capital gains tax – information sources

In addition to the disadvantages and implications of deprivation of capital, another disadvantage may be that liability is incurred for capital gains tax. We are not financial advisers so please find below links to information sources. You may want to look at the **Her Majesty's Revenue and Customs (HMRC)**'s website for further information relating to capital gains tax: www.hmrc.gov.uk/leaflets/cgtrfs1.htm.

Capital gains tax – what is it?

It is the tax calculated on the 'gain' or **increase in value** of an asset.

When is liability incurred for capital gains tax?

Liability is normally incurred when you no longer own the asset, when it has been **disposed** of and someone else owns it. However, you may be exempt from this tax if the asset is your home and it was your sole place of residence.

What if you give an asset away?

In this case, the asset will be valued at what it is worth, not what you get for it. So if your daughter received a house from you for nothing, if you had initially bought it for £75,000 and its market value is now £100,000, the 'gain' would still be £25,000 and may be liable for tax on this increase in value.

What if you dispose of an asset you have received as a gift?

To work out the 'gain' or increase in value, the market value at the time you received it will normally be used and set against the value when you dispose of it (sell it or give it away). So in the above example, if the property was worth £100,000 when it was given to your daughter and she sells it for £150,000 the 'gain' liable for capital gains tax is £50,000.

What if I inherited an asset?

The estate of the person who died is not liable for this tax at that time. If you later dispose of (sell or give away) the asset the 'gain' is worked out by taking the value at the time of death against the value when it is disposed of.

For further information on the types of assets that do and do not lead to a capital gains tax charge, how to work out the amount that has to be paid and where to find out more about capital gains tax, please contact Her Majesty's Revenue and Customs (see above).

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 HMRC. 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 capital gains 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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