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## RESIDENTIAL CARE SUBSIDIES AND ABOLITION OF GIFT DUTY

The Taxation (Tax Administration and Remedial Matters) Bill has been passed by Parliament and was given the Royal Assent on 29 August 2011. The Act contains the provisions for the abolition of gift duty.

Some commentators have suggested that now gift duty is abolished consideration should be given to forgiving all remaining debt in one go. However, if this is done it may affect a person's entitlement to residential care subsidies in the future.

If a person requires residential care, they are subject to a means assessment to determine their entitlement to a subsidy for the cost of the care. The means assessment looks at the assets and income the person has available to them to meet the cost of their care. If the person who requires care, or their spouse or partner, has 'deprived' themselves of any income or property, the means assessment can be completed as though the deprivation had not occurred. The result of this is that the amount which it is considered the person has deprived themselves of will be added back in the means assessment, and may affect a person's entitlement to the subsidy.

The term "deprivation of property and income" is defined in the Social Security (Long-term Residential Care) Regulations 2005 and includes:

- any gifts made in any 12-month period, which is more than 5 years before the date of means assessment, to the extent the total value of gifts in each period exceeds \$27,000
- any gifts made in any 12-month period, that is within 5 years of the means assessment, to the extent the total value of gifts in each period exceeds \$6,000
- the disposal of any property within 5 years of the means assessment, for no consideration or a consideration less than market value
- a failure at any time to exercise any right or entitlement to demand a payment
- a waiver of a right at any time to receive any entitlement or payment
- an investment at any time in non-income earning assets

Therefore, a couple, where only one of them ends up in care, can gift up to \$27,000 (\$13,500 each) in total in any 12-month period, which is more than 5 years before the means assessment, without it affecting their entitlement to the residential care subsidy. Furthermore, a couple, where only one of them ends up in care, can gift up to \$6,000 (\$3,000 each) in total in any

12-month period which is within 5 years of the means assessment, without it affecting their entitlement to the residential care subsidy. Any gifting over these amounts can affect a person's entitlement to the residential care subsidy.

When assessing the value of property and income that has been deprived, it is the deprivation by both the person who requires the care, and their spouse or partner, that is counted. For example, if the person requiring the care, and their spouse or partner, have each gifted \$27,000 in each 12 month period within 5 years of the means assessment, the person requiring the care will have deprived themselves of \$240,000 (\$54,000 - \$6,000 x 5 years). This \$240,000 will be treated as if it was still available to the person. This could cause serious difficulty among family members. If, for example, parents had gifted this \$240,000 to their children but were now still considered to have access to this sum to pay for their residential care, where is the money going to come from?

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The important point is that if a person gifts the remaining debt they are owed in one go, as suggested by some commentators, this can affect their entitlement to a residential care subsidy in the future. Those persons who do not want their gifting to affect their entitlement to residential care subsidies should continue with their existing annual gifting programmes making sure that they keep within the above limits. This will require a couple to gift only \$13,500 each per annum. It has been common to gift \$27,000 each per annum. This was because gift duty did not apply to gifts totalling \$27,000 or less per annum. However, for rest home subsidy purposes, couples are assessed jointly so this \$27,000 limit applies to the couple, not each individual.

The Social Security Act gives Work and Income New Zealand (WINZ) broad powers in assessing a persons entitlement to a residential care subsidy. Exactly how these powers will be exercised going forward remains to be seen, however with the abolition of gift duty, WINZ has become much more active in the enforcement of the powers they have.

If you are concerned at all about your situation please contact us.