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Can clients bring forward two years under the Social Security gifting rules?

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Social security gifting (or deprivation) rules apply when a person:

- destroys, disposes of or diminishes the value of their assets or income, and
- do not receive adequate financial consideration in exchange for the asset or income.

The value of gifted assets that exceed the allowable gifting limits is assessed under the assets test and is subject to deeming provisions under the income test. Gifts in excess of the allowable limits are called deprived assets and it's assessment applies for a period of five years from the date of transfer or gift. After five years, deprived assets are no longer assessed.

The deprivation provisions do not apply to gifts that took place more than five years before the person became qualified for a pension, benefit or allowance. Social security rules also allow for gifts within five years of qualifying to be also disregarded where the person could not reasonably have expected that they would become qualified. For example, a person becomes qualified after the death of their partner or unexpectedly loses their job.

The limits

Individuals, or couples combined, can provide gifts up to certain limits without it being assessed. The gifting limits are $10,000 per financial year up to $30,000 over a rolling five financial year period. Centrelink applies two tests to determine if a person exceeds the gifting limits:

- firstly, whether the value of gifts exceeds the $10,000 limit for the financial year, and
- secondly whether the value of gifts exceeds $30,000 for the current and previous four financial years and is not caught under the first test.

This means individuals or couples can provide gifts of $10,000 per financial year for three years or $30,000 over five financial years without exceeding $10,000 in any year. Individuals or couples are not able to gift $30,000 in a single year as this will exceed the first test.

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Example: Joe provides a cash gift of $4,000 to each of his two grandkids on the 1st of May 2024. He later provides another cash gift of $6,000 to each of his two grandkids on the 1st of August 2024. Joe's gifts totaling $8,000 on the 1st of May is within limits and nothing is held as a deprived asset. However, his gifts totaling $12,000 on the 1st of August exceeds the annual gifting limit by $2,000. The excess $2,000 is treated as a deprived asset and assessed for five years from the 1st of August 2024. Joe is able to provide additional gifts in 2025-26 of up to $10,000 and up to $2,000 in 2026-27 and remain within limits.

Other considerations

The gifting/deprivation rules include many other nuances, but some key points to consider when advising clients include:

- spouses can gift between each other without triggering the deprivation provisions;
- the limits do not apply individually for each member of a couple, but the couple as a whole;
- deprivation rules also apply for the aged care means test;
- gifted assets can be returned, from which point Centrelink generally cease to assess them;
- deprivation rules may apply to beneficiaries who waive their interest in a deceased estate or super death benefit; and
- special disability trusts have a $500,000 gifting concession limit per beneficiary.

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