

IHTM amendments: death on active service

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IHTM11280 – Death of armed forces or emergency service personnel: summary

There are three exemptions from Inheritance Tax that apply to the armed forces and civilians subject to service discipline and to emergency service personnel. The legislation is found in

- IHTA84/S153A for emergency service personnel (IHTM11282),
- IHTA84/S154 for armed forces and civilians subject to service discipline (IHTM11290), and
- IHTA84/S155A for constables and service personnel targeted as a result of their jobs (IHTM11300).

The effect of the exemptions (IHTM11281) is the same in all three cases and applies to all qualifying persons who die on or after 19 March 2014. Before that date, a more limited exemption applied only to armed forces personnel and civilians subject to service discipline.

Any case where one of the exemptions above claimed should be referred to Technical for record purposes, as should an enquiry about the operation of any of the exemptions.

IHTM11281 – Death of armed forces or emergency service personnel: effect of the exemptions

For deaths on or after 19 March 2014 the exemption, under IHTA84/S153A(2), S154(1A) or S155A(3), applies to

- any potentially exempt transfers (IHTM04057) made within 7 years of death. By virtue of relevant sub-section (a), PETs do not become chargeable transfers under IHTA84/S3A(4) as a result of the death,
- the estate (IHTM04029) on death. The relevant sub-section (b) disapplies IHTA84/S4 and so no charge to tax can arise on the estate passing on death,
- any additional tax that arises on an immediately chargeable transfer (IHTM04067) made within 7 years of death. By virtue of relevant sub-section (c) no additional tax under IHTA84/S7(4) is due.

So the only chargeable occasion to which an exemption does not apply is where a person makes a lifetime transfer which gives rise to an immediately chargeable transfer. Tax at 20% is still payable where the nil-rate band is exceeded and any such tax paid in the lifetime is not repayable should an exemption apply on death.

Where the death is prior to 19 March 2014, exemption under IHTA84/S154 applies only to armed forces and civilians subject to service discipline and only to the estate passing on death; so PETs remain chargeable and any additional tax due on an immediately chargeable transfer remains payable.

The exemptions do not apply to any relevant property trust charges (IHTM42070) that may arise as a result of the death, nor do they apply to any Estate Duty payable where, as a result of a qualifying death, a reversionary interest falls into possession in the estate of another person (where the option to defer the payment of Estate Duty was taken).

There are, however, two situations (IHTM11296) in which settled property can be exempt from IHT by reference to the Estate Duty exemption for death on active service.

IHTM11282 – Death of armed forces or emergency service personnel: emergency service personnel responding to emergency circumstances: introduction

IHTA84/S153A provides an exemption from Inheritance Tax (as set out in IHTM11281) for an emergency responder (IHTM11283) whose death occurs as a result of responding to emergency circumstances (IHTM11284). The exemption applies where the death results from

- an injury sustained, accident occurring or disease contracted when that person was responding to emergency circumstances, IHTA84/S153A(1)(a), or
- a disease contracted at some previous time, the death being due to, or hastened by, the aggravation of that disease when the person was responding to emergency circumstances, IHTA84/S153A(1)(b).

There is no time limit on when the injury, accident or disease was incurred.

It is important to note that for the exemption to apply, the person must qualify as an emergency responder and they must have been responding (IHTM11285) to emergency circumstances.

IHTM11283 – Death of armed forces or emergency service personnel: emergency service personnel responding to emergency circumstances: meaning of emergency responder

IHTA84/S153A(6) sets out the services a person needs to be engaged in before they can qualify for exemption. They are

- a. a person employed, or engaged, in providing fire services or fire and rescue services,
- b. a person employed, or engaged, in search or rescue services (or both),
- c. a person employed, or engaged, in providing medical, ambulance or paramedic services,
- d. a constable or person employed for police purposes or engaged to provide services for police purposes,
- e. a person employed, or engaged, in providing services for the transportation of organs, blood, medical equipment or medical personnel, or
- f. a person employed, or engaged, by a government, international organisation or charity in connection with the provision of humanitarian assistance.

The employment or engagement does not have to be paid, IHTA84/S153A(7)(a) so the exemption applies to both employees and volunteers. An international organisation is defined by IHTA84/S153A(7)(b) as one of which two or more sovereign powers, or their governments, are members. Charity is an organisation that meets the definition of charity for IHT purposes (IHTM11112).

The range of emergency services covered by the provisions is wide and will include not only the traditional emergency services – police, fire and ambulance – but also, for example, RNLI, HM Coastguard, Mountain Rescue, Cave Rescue, Air Ambulance, Community First Responders and lifeguards (both at a swimming pool and at the beach). It will include equivalent in-house services provided by other organisations, such as fire services at airports, oil rigs and refineries.

The reference to the term 'constable' does not limit the exemption to police personnel holding that rank, but applies to anyone executing the office of constable and will therefore cover police personnel of all ranks as well as British Transport Police, Civil Nuclear Constabulary, Royal Parks Constabulary etc.

The reference to humanitarian assistance will include those engaged in providing food distribution, shelter, medical care, transport services, administrative roles, telecommunication services, civil engineering services etc in an area affected by a natural disaster, such as the 2004 tsunami, the 2014 Ebola outbreak in Africa, or conflict such as the Syrian Civil War that started in 2011.

It is important to note that a person must be responding to emergency circumstances (IHTM11285) in their capacity as a person 'employed or engaged' in connection with providing appropriate services – in other words when, as an employee, they are on duty; or in the case of a volunteer, when they have been called out to assist in dealing with emergency circumstances.

A person will not be responding in that capacity if they are killed or injured whilst offering assistance at an incident whilst off duty, for example a doctor travelling at the weekend who attends a road traffic accident. Equally, a member of the public who happens to be a qualified 1st Aider and dies administering 1st Aid will not qualify as an emergency responder as they are not 'employed or engaged' to provide those services within the meaning of IHTA84/S153A(6)(c).

In the case of the police however, police officers are required, by virtue of Police Act 1996/S29 to exercise the office of constable at all times, whether on or off duty. A police officer who attends an emergency will always be responding in their capacity as a constable and therefore within the meaning of IHTA84/S153A/(6)(d).

IHTM11284 – Death of armed forces or emergency service personnel: emergency service personnel responding to emergency circumstances: meaning of emergency circumstances

IHTA84/153A(3) sets out the situations that are 'emergency circumstances' for the purposes of the exemption. These are circumstances which are present or imminent and are causing, or are likely to cause

- a) the death of a person,
- b) serious injury to, or the serious illness of, a person,
- c) the death of an animal,
- d) serious injury to, or the serious illness of, an animal,
- e) serious harm to the environment (including the life and health of plants and animals),
- f) serious harm to any building or other property, or
- g) a worsening of such injury, illness or harm.

Emergency circumstances can arise anywhere in world and anyone responding to those circumstances in the capacity of an emergency responder (IHTM11283) may qualify for the exemption.

Although it would normally be expected that a member of the UK emergency services would be responding to emergency circumstances in the UK and a humanitarian aid worker would be responding to emergency circumstances elsewhere in the world, the reverse could apply and a person who dies providing search and rescue services following an earthquake in, say, Turkey would qualify as would, say, a police officer or soldier who is swept away and drowns whilst attempting to deliver food supplies to flood victims in the UK.

IHTM11285 – Death of armed forces or emergency service personnel: emergency service personnel responding to emergency circumstances: meaning of responding to emergency circumstances

IHTA84/153A(4)(b) sets out that a person is responding to emergency circumstances if they are

- dealing with emergency circumstances,
- preparing to do so imminently, or
- dealing with the immediate aftermath of the situation.

Travelling to the emergency circumstances is specifically included by virtue of IHTA84/S153A(4)(a).

It is important to have regard to the nature of travel at different points in the working day of emergency service personnel. For example,

- a police officer driving to and from home to their normal place of work would not normally be responding to emergency circumstances, whereas a retained fireman or RNLI crew leaving home/work to attend a callout would be,
- ‘dealing with emergency circumstances’ would include travel connected with the emergency circumstances such as a police officer who may not have attended the scene of an armed robbery, but who is travelling elsewhere to place roadblocks,
- the ‘immediate aftermath’ of emergency circumstances includes a lifeboat or fire engine returning to its station or air ambulance returning to base, but will not extend to personnel driving home from the station or base afterwards.

Establishing the period of time during which an incident might be regarded as emergency circumstances will vary depending on the nature of the event. Travelling to a motorway traffic accident and dealing with the incident to the point of the motorway being open again for normal traffic flow would all be part of responding to emergency circumstances. But a police officer who, sometime afterwards, dies whilst assisting in the removal of vehicles that had been moved to the hard shoulder would not be responding to emergency circumstances.

On the other hand, the period of time during which a person could be said to be responding to emergency circumstances where there had been an earthquake abroad is likely to run to a number of days or weeks. The definition of emergency circumstances (IHTM11284) is in the present tense ‘circumstances which are present or imminent and are causing, or are likely to cause....’. So in the case of an earthquake, aftershocks will continue to pose a risk to people, animals and buildings, as will the rescue efforts. There will be a need for humanitarian aid for some time after the event, but once the ‘emergency’ is over – perhaps once there is little chance of finding survivors alive and suitable food and shelter aid has reached those who did survive – the situation would no longer qualify as emergency circumstances.

A person is to be treated as responding to emergency circumstances if they believe and have reasonable grounds for believing that they are responding to emergency circumstances, IHTA84/S153A(5). This provision ensures that a death which arose from responding to a hoax call is covered by the exemption.

In the case of armed conflict, emergency circumstances will exist from the start of the conflict until the conflict is recognised officially as having ended through a surrender or a lasting ceasefire is in effect.

Any case where the point at which emergency circumstances came to an end is relevant should be referred to Technical.

IHTM11286 – Death of armed forces or emergency service personnel: emergency service personnel responding to emergency circumstances: evidence to show exemption is due

There is no process equivalent to the MoD certification of entitlement (IHTM11293) for emergency services personnel. Instead, personal representatives should provide such evidence as is available to show that the deceased's death was as a result of, or was hastened by, their being an emergency responder who was responding to emergency circumstance. Such evidence is likely to include

- evidence that the deceased attended the incident in their capacity as an emergency responder. This could be in the form of evidence from the emergency service concerned, a police report or perhaps press reports,
- a copy of the death certificate, and
- a medical report which should (if necessary) explain the link between the cause of death and the emergency circumstances concerned.

The extent of the evidence needed will vary depending on length of time between the incident and the death. Where the death occurs at the incident or very shortly thereafter, it is likely that quite basic information will be sufficient to prove entitlement to the exemption. Where the death occurs sometime after the incident, including many years after the incident, the evidence will need to be more substantial to show that the deceased was an emergency responder who was responding to emergency circumstances and that the death was a result of those actions.

IHTM11290 – Death of armed forces or emergency service personnel: armed forces on active service: introduction

IHTA84/S154 provides an exemption from Inheritance Tax (as set out in IHTM11281) for a member of the armed forces (IHTM11291) who dies

- from a wound inflicted, accident occurring or disease contracted on active service, IHTA84/S154(1)(a), or
- from a disease contracted at some previous time, the death being due to, or hastened by, the aggravation of the disease whilst the person was on active service, IHTA84/S154(1)(b).

For deaths on or after 19 March 2014, the exemption also applies to members of the armed forces and civilians subject to service discipline who are responding to emergency circumstances in the course of their duties, IHTA84/S154(2)(c) and the instructions at IHTM11284 & 11285 apply.

The person must be responding to emergency circumstances 'in the course of their duties' and so, in line with IHTM11283, must be on duty. A soldier who dies assisting at an incident whilst on leave, or who was on duty, but whose unit was not assigned to respond to emergency circumstances, would not qualify.

There is no time limit on when the wound, injury, accident or disease was incurred.

IHTM11291 – Death of armed forces or emergency service personnel: armed forces on active service: meaning of armed forces

Armed forces means any of the armed forces of the Crown, IHTA84/S154(2). This was extended to civilians subject to service discipline within the meaning of the Armed Services Act 2006 with effect from 31 October 2009.

IHTA84/S154(3) provides that for any time before 28 July 1981 (the date of the passing for the Armed Forces Act 1981) the armed forces of the Crown includes any person of the description listed in FA75/Sch7/Para1(3) being a

- member of Queen Alexandra's Royal Naval Nursing Service or any reserve thereof,
- member of Queen Alexandra's Imperial Military Nursing Service or any reserve thereof,
- member of the Territorial Army Nursing Service,
- member of the Women's Royal Naval Service or any reserve thereof,
- woman medical or dental practitioner serving in the Royal Navy or any naval reserve,
- member of the Auxiliary Territorial Service,
- woman employed with the Royal Army Medical Corps or the Royal Army Dental Corps with relative rank as an Officer,
- member of the Women's Auxiliary Air Force,
- women employed with the Medical Branch or the Dental Branch of the Royal Air Force with relative rank as an Officer, or
- member of the Voluntary Aid Detachments employed under the Admiralty, Army Council, Air Council or Defence Council.

The Women's Services listed above have been assimilated by the Armed Forces Act 1981, so that from 28 July 1981 members of those bodies fall within the general description of armed forces of the Crown. Exemption is available where the injury or disease occurred during membership or employment in the service concerned before it was assimilated. Service with the armed forces of the Dominions and Colonies (but not with the forces of the Republics associated with the British Commonwealth) may also qualify for exemption.

IHTM11292 – Death of armed forces or emergency service personnel: armed forces on active service: meaning of active service

A member of the armed forces is on active service when they are on

- active service against an enemy, IHTA84/S154(2)(a) or
- such other service of a warlike nature in which in the opinion of the Treasury involved the same risks as service of a warlike nature, IHTA84/S154(2)(b).

IHTM11293 – Death of armed forces or emergency service personnel: armed forces on active service: evidence to show exemption is due

Exemption for the armed forces can only be given upon receipt of an appropriate certificate from the Defence Business Service (DBS) Joint Casualty & Compassionate Centre (JCCC), Ministry of Defence (MoD). The wording of IHTA84/S154(1) is such that the responsibility for deciding whether the exemption is available rests solely with DBS (JCCC). If a certificate is given for serving personnel, the exemption is due; equally the exemption cannot be given without a certificate.

For deaths on or after 19 March 2014, DBS (JCCC) are also responsible for issuing a certificate where the death was as a result of service personnel responding to emergency circumstances (IHTM11285) or as a result of service personnel being targeted because of their job (IHTM11300).

All applications for a certificate should be made to

Defence Business Services
Joint Casualty & Compassionate Centre
Deceased's Estates
Room G35
Innsworth House
Imjin Barracks
GLOUCESTER
GL3 1HW

Telephone 01452 712612 (ext 8174/7495)

Where DBS (JCCC) decide that the exemption is due on the death of serving personnel engaged in a current conflict or responding to emergency circumstances, they will write to the applicant and provide the appropriate certificate. The certificate should be supplied to HRMC with form IHT400.

Where the exemption has been sought as a result of the death of non-serving personnel whose death has been hastened by an injury, accident or disease contracted in a conflict or whilst responding to emergency circumstances that occurred a number of years ago, DBS (JCCC) will not issue a certificate, but instead will write to HMRC setting out the circumstances and confirming that the conditions for the relevant exemption are met. Where such a letter is received, it should be treated in the same way as a certificate issued for serving personnel.

The same process applies whether the request for exemption concerns a member of the British armed forces or someone in the service of other armed forces, for example, the armed forces of a Commonwealth country. In the latter case, DBS (JCCC) will consider whether the person was a member of the armed forces of the Crown, before granting a certificate under section IHTA84/S154(1).

IHTM11294 – Death of armed forces or emergency service personnel: armed forces on active service: extension to the Police Service of Northern Ireland

Extra Statutory Concession F5 extended the exemption for death of armed forces on active service to the estate of a member of the Police Service of Northern Ireland (or the previous police authority, the Royal Ulster Constabulary) who died from injuries caused in Northern Ireland by terrorist activity.

This concession is withdrawn with effect from 6 April 2015 and is replaced by the exemptions available for emergency responders (IHTM11282) or constables whose death arises from being targeted as a result of their job (IHTM11300).

IHTM11295 – Death of armed forces or emergency service personnel: armed forces on active service: Estate Duty exemption and transferrable nil-rate band

A belated application for exemption from Estate Duty due to death on active service may be made so that the transferrable nil-rate band (IHTM43000) becomes available on the death of a surviving spouse. The application must be made to DBS (JCCC) (IHTM11293) in the normal way and the certificate issued by DBS (JCCC) should make it clear that the exemption is being granted under the rules that applied for Estate Duty so a claim for TNRB can be made. The Estate Duty is not repayable, but if granted, the exemption will enable the personal representatives of the survivor to claim 100% TNRB.

The rules for exemption from Estate Duty for death on active service were not always the same as the blanket exemption for Inheritance Tax that now applies. The issues to consider as regards TNRB are set out

at IHTM43060. You should refer any file where the Estate Duty exemption for death on active service is in point to the Estate Duty specialist.

IHTM11296 – Death of armed forces or emergency service personnel on active service: armed forces personnel: Estate Duty exemption and settled property

Exemption for death on active service may be available following the death of a civilian for settled property (IHTM16000) which can be exempted from Inheritance Tax (IHT) as a result of the Estate Duty surviving spouse exemption. This is where the IHT charge arises on the termination of an interest in possession (IHTM16091) in settled property where the person whose interest terminates, is the surviving spouse of a person on whose death the Estate Duty exemption applied. Estate Duty that was not paid because of the exemption for death on active service is treated as 'paid' for the purposes of the settled property exemption under IHTA84/Sch6/Para2. Further details are given at IHTM16150.

Under Extra Statutory Concession F13 an interest in possession in settled property which terminates on death is exempt where

- a person died before 12 March 1952,
- whose estate was wholly exempted from Estate Duty as the property of a common seaman, marine or soldier who died in service of the Crown, and
- under whose Will a person who dies on or after 13 March 1975 has a limited interest in possession.

Where all these conditions are satisfied, IHT is not charged on any property exempted on the original death which passes under the terms of that person's Will, on the termination of the limited interest on the later death. Although this concession remains on foot, it is unlikely that any persons who might qualify still survive.

IHTM11300 – Death of armed forces or emergency service personnel: constables and service personnel targeted because of their job: summary

IHTA84/S155A provides an exemption from Inheritance Tax (as set out in IHTM11281) for constables and service personnel, including civilians subject to service discipline, who die as a result of being deliberately targeted because of their job. The exemption also applies to retired constables and service personnel etc who die in such circumstances through the reference to former constables etc.

The exemption applies where a constable or former constable dies

- from an injury sustained or disease contracted in circumstances where they were deliberately targeted as a result of their job, IHTA84/S155A(1)(a), or
- from a disease contracted at some previous time, the death being due to, or hastened by, the aggravation of the disease by an injury sustained or a disease contracted through being deliberately targeted as above, IHTA84/S155A(1)(b).

The equivalent provisions for service personnel (IHTM11301) is at IHTA84/S155A(2).

There is no time limit on when the injury or disease was incurred, and it does not matter whether the deceased was acting in the course of their duties as a constable or service person when the injury was sustained or the disease contracted, IHTA84/S155A(4).

This exemption does not apply where either IHTA84/S153A or IHTA84/S154 applies to the deceased's death, IHTA84/S155A(6); so it will primarily apply where a constable or service person is injured or dies when they are off duty or attending non-emergency circumstances and an attack on them was driven by the nature of their job. It would apply in circumstances similar to those resulting in the death of Fusilier Lee Rigby in 2013 and of PCs Nicola Hughes and Fiona Bone in 2012.

IHTM11301 – Death of constables and service personnel: meaning of constable and service personnel

The reference to the term 'constable' does not limit the exemption to police personnel holding that rank, but applies to anyone executing the office of constable and will therefore cover all police personnel as described at IHTM11283.

Service personnel means a member of the armed forces of the Crown, IHTA84/S155A(5) and includes a civilian subject to service discipline within the meaning of the Armed Services Act 2006.

IHTM11302 – Death of constables and service personnel: evidence to show exemption is due

Evidence to show that a person qualifies for this exemption will, in the case of service personnel or civilians subject to service discipline, take the form of a certificate or other letter issued by DBS (JCCC) as outlined at IHTM11293. In view of the opening words of IHTA84/S155(2), exactly the same procedure applies.

In the case of a constable, the position outlined at IHTM11286 will apply.

In the case of both service personnel and constables, a current death is very likely to be covered in the press, so there should be little difficulty in establishing that the exemption is due. Entitlement to the exemption may require more substantial evidence where the death occurs sometime after the event.