

What is the current threshold for inheritance tax?

The current inheritance tax rate is 40% and is generally payable on the value of an estate which is over the £300,000 threshold, and as of Tuesday 9 October 2007 the current threshold jointly for married couples is £600,000.

Who can qualify?

There is a complete exemption from inheritance tax (IHT) for the estates of those who die 'on active service'.

An IHT certificate is granted by the Ministry of Defence (MOD) when a person dies from a wound inflicted, an accident occurring or a disease contracted whilst either on active service against an enemy, or on other service of a warlike nature.

Scope of active service?

For causes of death arising after 1953, 'active service' is regarded as service which constitutes the same risks as service of a warlike nature.

The Inland Revenue offers guidance based on the IT Act 1984, Section 154:

There is an automatic exemption to IT in the following circumstances:

- Where a Serviceman/woman dies on active service where war has been declared
- Where a Serviceman/woman dies on active service when war has not been declared, but there is an officially recognised conflict, such as Sierra Leone, operations in Iraq and Afghanistan.

Date of death

The date of the active service, which is shown to cause death, does not effect eligibility for the exemption.

Case study

"It appears that a 'death on active service' exemption has been used in the estate of an 83-year-old veteran of the Second World War. The veteran sustained injuries in France in 1944 but did not die until 2005. Although the veteran did not die until 61 years after the injuries, the cause of death was shown to

be linked to those injuries and therefore a full exemption was granted."

It appears that there is no time limit from the date in which the cause of death occurs and the death itself.

Causation

In the case where there is no immediate or direct link between a wound, injury or disease (contracted during active service) and death, there is authority that granting the exemption for liability to inheritance tax will be assessed on a case by case basis.

Cases to date indicate that if death is due to, or hastened by, the aggravation of the injury or illness which occurred during a period when the injury or disease first came about (as a result of active service), the exemption may be granted.

Example

If a member of the Armed Forces on active service sustains a wound to the lung, which requires the removal of that lung, this in the fullness of time, because that man only has one lung, in the course of his life its absence places excessive strain on his heart, so that he dies earlier than he would have done had he had two lungs... the exemption should apply. (Example taken from Judgement in High Court case of Duke of Westminster)

The link between cause of death and death does not have to be immediate or direct, but cases indicate that there must be a causal link between death and the injury inflicted, accident occurring or disease contracted whilst on active service.

The most difficult obstacle is showing the link to death.

What evidence is needed to qualify?

What to show:

After death the person(s) acting for the deceased estate claiming the exemption will need to show that the wound was inflicted, injury occurred or the disease contracted whilst on active service and this contributed to, or hastened death.

Evidence

For practical reasons a post mortem report should be requested. Legal and medical opinions should be sought

from appropriate specialists with the right experience.

Applying for the exemption – the Inland Revenues view

The Revenue is not supportive of a claim for this exemption. The Revenue will refer claims to its litigation group and clearly envisages circumstances in which it would challenge an MOD certificate. However in cases of doubt, where exemption is recommended by the MOD, the recommendation has never been overturned.

What happens if a claim for exemption is refused?

A refusal of a certificate by the MOD has no appeals process other than a judicial review in the High Court which is very expensive. With the current concern over 'the war against terrorism', there is an argument for the exemption to be reconsidered by Parliament.

Contact us

If you would like to speak directly to a solicitor for specialist advice please contact us.

This note is for general guidance only. Please contact us for detailed advice.



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