

INHERITANCE TAX: EXEMPTION FOR EMERGENCY SERVICE PERSONNEL

Response by the Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the consultation document *Inheritance Tax: exemption for emergency service personnel* ('the Consultation') published by HMRC on 23 July 2014.
- 1.2 The Consultation covers the Government's intention, as announced by the Chancellor in his Budget Speech on 19 March 2014, to extend the existing Inheritance Tax ('IHT') exemption, available under s154 of the Inheritance Taxes Act 1984 ('IHTA') for members of the armed forces, to members of the emergency services.
- 1.3 We are being asked to consult on three elements of the proposed extension of the exemption: who ought to be included within the definitions of 'emergency service personnel', what events should be included within the definition of 'emergency circumstances', and how the administration of the exemption should be operated.
- 1.4 In addition, HMRC are considering making some adjustments to the current legislation under s154 IHTA to ensure that it is up-to-date and fit for purpose. HMRC are also considering withdrawing the Extra Statutory Concession ('ESC') F5, which currently extends the exemption under s154 IHTA to members of the Police Service of Northern Ireland who die from injuries caused in Northern Ireland by terrorist activity on the basis that the extension of the exemption under s154 IHTA to emergency service personnel will make the concession obsolete.
- 1.5 In section 2 we provide responses to the Consultation questions. Where appropriate we reply to linked questions together.

2 Our responses to the questions

2.1 **Question 1: Will this definition of ‘emergency service personnel’ include everyone who should be included within this description? If not, which groups have been excluded and why should they be included?**

The proposed definition put forward by HMRC for ‘emergency service personnel’ (on page 9 of the Consultation) includes some terms which we feel require further explanation.

For example, we believe that there needs to be further clarification on what is meant by

‘a person.... engaged directly or indirectly by.....or a person providing such services pursuant to arrangements made by, or at the request of a relevant (fire and rescue authority / NHS body / police force)’

There is generally no doubt over the situation of a member of the fire service, ambulance, paramedic or police force who dies as a result of carrying out his or her duties of employment. Their situation would appear to be very clear. However, we feel that the definition does not provide clarity for other situations which may arise, such as where a member of the general public or an off-duty emergency service professional assists with an emergency situation (either alone or in conjunction with on-duty emergency service personnel) and loses their life as a result.

It is not the ATT’s intention to advise the Government on who should or should not be covered by the exemption. However, as the Financial Secretary to the Treasury states in the Foreword to the Consultation, the aim is to ensure that ‘the inheritance tax system recognises ***all those who risk their lives in responding to emergency circumstances***’. Bearing this in mind, the ATT would like to see the exemption stated in much clearer terms so that there is clarity on the situations where it applies and so that it can achieve the Government’s stated aim. This very well-intentioned amendment to the legislation could be the subject of significant public criticism if it produced anomalous outcomes.

2.2 **Question 2: Will this definition of ‘emergency circumstances’ cover all the circumstances which meet the Government’s objectives of providing a broad parity with the existing exemption for the armed services? If not, what definition would be suitable?**

Whilst the list of ‘emergency circumstances’ is probably comprehensive enough to provide broad parity with the existing exemption for the armed services, we question whether it actually covers all the scenarios currently covered by ESC F5, which HMRC propose to withdraw when the new legislation is introduced.

Exemption from IHT through ESC F5 is currently granted to the estates of members of the Police Service of Northern Ireland who die from injuries caused in Northern Ireland by terrorist activity. This broad definition suggests that the provisions of ESC F5 would apply where the member of the Police Service was killed not only whilst responding to an emergency situation but also perhaps if killed whilst on patrol or indeed if they had been targeted whilst at home because of their membership of the Police Service. The Consultation states that under the proposed new legislation the police would be covered by virtue of being ‘emergency service personnel’ so the

ESC is no longer needed. However, the definitions under the proposed new legislation appear to all relate to death (or injury leading to death) resulting from circumstances occurring while on active duty and in the course of responding to an emergency circumstance.

Unfortunately, as highlighted by the tragic case of Lee Rigby, members of the police and armed forces can be targeted by terrorists and killed even when not actively responding to an emergency situation or engaged in active warfare.

Under paragraph (2)(b) of s154 IHTA, the second condition provided for (in addition to death on active service against an enemy) is death 'on any other service or a warlike nature or which in the opinion of the Treasury involved the same risks as service of a warlike nature'. We do not know how the Treasury would consider the application of the existing provision in the case of someone who was the target of a terrorist attack whilst off-duty but there would appear to be a strong case for including a comparable provision in relation to emergency service personnel in order to preserve the apparent breadth of application of ESC F5.

2.3 **Question 3: Will extending the qualifying circumstances for armed forces personnel to include responding to emergency circumstances cover all the circumstances which should qualify? If not, what definition would be suitable?**

We agree that the armed forces responding to emergency circumstances should also be covered by the exemption, but as we mention in section 2.2 above that the conditions of s154 IHTA should also cover death occurring from being specifically targeted by terrorists – if this is not already covered under the definition of 'a warlike nature' under paragraph (2)(b), especially as the Government intends to withdraw ESC F5. We think that consideration is needed to the application of the exemption to the estates of both armed forces personnel and emergency service personnel who die as a result of an act of terrorism directed against them because of that employment.

2.4 **Question 4: Should the exemption include the liability that may arise on potentially exempt lifetime transfers which would otherwise become chargeable at death?**

Yes. We agree that this is a sensible decision, especially as the responsibility for paying the tax on potentially exempt transfers that have 'failed' falls on the recipient of the gifts – usually family members who will be grieving the loss of their loved one in most likely tragic and distressing circumstances.

As the Consultation explains in the Foreword 'when the circumstances arise it is right that the Government supports the families of these brave individuals by ensuring they are not faced with an inheritance tax bill on any estate left behind'. This should therefore extend to include any tax falling due as a result of the untimely death within seven years of a lifetime gift.

2.5 **Question 5: Should the exemption include the additional liability arising on death for immediately chargeable lifetime transfers?**

Again, we agree that this is a sensible decision for the same reasons as outlined at section 2.4.

2.6 **Question 6: For each emergency service, which would be the best organisation or agency to be the decision maker?**

Question 7: Is there an alternative approach to the administrative arrangements and why do you recommend it?

We do not believe it is appropriate for the ATT to put forward any suggestions here for the best organisation or agency to be the decision maker.

We would be concerned if the decision making was too widespread across different bodies as that could lead to a dilution of consistency and standards. We would prefer the option of one decision making authority for each emergency service throughout the UK, as opposed to separate ones in Wales, Scotland, England and Northern Ireland, as our concern is that this could lead to differing approaches depending on where in the UK the death occurred.

We think that there should be a right of appeal against a refusal to apply the exemption and that this should be to a single appellate body to ensure consistency of approach regardless of which body had the initial responsibility for the decision.

2.7 **Question 8: Do you have any comments on the assessment of equality and other impacts?**

At this point, we would like to make mention of the fact that the legislation is intended to be brought in as part of Finance Bill 2015, but it will have effect for deaths on or after 19 March 2014.

Therefore, this could have impact on estates which are currently in administration where the executors will be uncertain whether the exemption under the new legislation will apply to the estate. Similarly, as the example at page 7 of the Consultation shows, there may be cases where the whole estate has been left to the surviving spouse to ensure no IHT liability. If s154 IHTA could now apply to that estate under the extended exemption, it could provide personal representatives with scope to vary the terms of the Will so as to pass assets to people other than the surviving spouse.

At present, these estates, albeit possibly few in number, will currently be left in a state of limbo and unable to effectively administer the estate until the outcome of this Consultation process is known and the provision of Finance Bill 2015 pass into legislation. The ATT would like to see transitional provisions introduced to protect such estates from interest charges or penalties where the administration was put on hold whilst the personal representatives waited to see if s154 IHTA could apply. Similarly, if an estate pays IHT that turns out not to be due under the new legislation then we would like to see this swiftly repaid to the estate.

3 Summary

3.1 The ATT welcome the Government's proposal to extend the exemption in s154 IHTA to people who sacrifice their own life in responding to emergency circumstances. We do, however, believe that the current definition of 'emergency service personnel' needs to be stated in much clearer terms in order for there to be clarity over who is covered by the exemption.

We have also highlighted the need for consideration of terrorism-related events that result in the death of a member of either armed forces or the emergency services personnel where the deceased person was not responding to an ongoing emergency situation as such but was killed by virtue of being on the 'front line' as part of the armed forces or the emergency services. Our comments are made on the basis that ESC F5 is to be withdrawn and we wish to ensure that the exemption provides the same relief for the estates of all relevant personnel as is currently provided for members of the police service of Northern Ireland by the extra statutory concession.

Finally, we do not feel we are in a position to suggest a monitoring body to perform the same service that the MoD provide when armed forces personnel die on active service. However, we believe that keeping the decision making concentrated to as few organisations as possible must be appropriate and that any appellate function should be contained within a single body.

The ATT will be happy to consult further on this issue once draft legislation is available.

3.2 Contact details:

Should you wish to discuss any aspect of these comments, please contact our relevant Technical Officer, Alison Ward, on 07762 947 910 or at award@att.org.uk.

Yours sincerely

Paul Hill
Chairman, ATT Technical Steering Group

4 Note

4.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 7,500 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.