

Gibraltar

Contacts

Gibraltar

EY Limited
Regal House
Queensway
PO Box 191
Gibraltar

Neil Rumford
neil.rumford@gi.ey.com
+350 2001 3200

1. Types of tax

1.1 Inheritance tax

There is no inheritance tax in Gibraltar.

1.2 Gift tax

There is no gift tax in Gibraltar.

1.3 Real estate transfer tax

Stamp duty is payable on the change in ownership of property located in Gibraltar (see Section 1.5). There is no other real estate transfer tax.


1.4 Deed tax

There is no deed tax in Gibraltar.

1.5 Stamp duty

Stamp duty is payable on the change in ownership of real estate property located in Gibraltar and on instruments relating to certain capital transactions, pursuant to the Stamp Duties Act 2005. The following are the principal rates:

- ▶ On initial authorized share capital and increases thereof – flat rate of £10 per transaction
- ▶ On loan capital (on each issue, e.g., debenture stock) – flat rate of £10 per transaction



On conveyance or transfer of real estate property as follows:

First- and second-time buyers:

- First £250,000 of purchase price – zero
- Balance above £250,000 to £350,000 – 5.5%
- Balance above £350,000 – 3.5%

Other buyers:

- Where purchase price does not exceed £200,000 – zero
- Purchase price of between £200,001 and £350,000 – 2% on first £250,000 and 5.5% on balance
- Purchase price of over £350,000 – 3% on first £350,000 and 3.5% on balance

There is no stamp duty where the property is being transferred between spouses or, following the dissolution of a marriage, between former spouses.

Stamp duty on mortgages as follows:

- Mortgages not exceeding £200,000 – 0.13%
- Mortgages over £200,000 – 0.2%

1.6 Land appreciation tax

There is no land appreciation tax in Gibraltar.

1.7 Endowment tax

There is no endowment tax in Gibraltar.

1.8 Transfer duty

There is no transfer duty in Gibraltar (but see Section 1.5).

1.9 Net wealth tax

There is no wealth tax in Gibraltar.



Gibraltar

2. Who is liable?

There is no inheritance tax, estate duty, wealth tax or similar taxes in Gibraltar.

Stamp duty is payable on the change in ownership of real estate property located in Gibraltar, irrespective of the residency or domicile of the owner of the property. Similarly, stamp duty is payable on relevant capital transactions irrespective of the residency or domicile of the beneficial owner of the shares or loan instrument.

3. Rates

There are no rates in Gibraltar.

4. Exemptions and reliefs

There are no exemptions and reliefs in Gibraltar.

5. Filing procedures

There are no filing procedures in Gibraltar.

6. Assessments and valuations

This does not apply.

7. Trusts, foundations and private purpose funds

Gibraltar trust law is based on Anglo-Saxon legal concepts, which recognizes and gives full legal effect to the concept of a trust. The Trustee Act, the main legislation governing trusts, is based on the English legislation incorporated in the Trustee Act 1893.

There have been certain amendments to the legislation, such as the introduction of the Variation of Trusts Act 1958 under the English Law (Application) Act.

Discretionary trust is known and widely applied in Gibraltar and the provisions of the Perpetuities and Accumulations Act 1964 in England apply with some amendments. The perpetuity period and the accumulation period now stand at 100 years.

The Registered Trust Act 1999 provides a facility for the registration of a trust deed (where registration is required by the trust deed) and for the keeping of an index of the names of such trusts. A registration fee is payable (£100) together with the submission of a form of Short Particulars and the Deed of Trust. The Deed of Trust is simply endorsed with the date of registration and returned; no copy is retained. The register will thereafter contain only the following details for public inspection:

- ▶ The name and date of creation of the Trust
- ▶ The amount of the initial settlement
- ▶ The name of the trustee(s), a Gibraltar address for service
- ▶ The date on which registration was made

The capital of a trust is not liable to tax in Gibraltar.



Asset protection trusts

This type of trust seeks to protect the assets of a settlor from such situations as political strife, forced repatriation, confiscatory taxes, exchange controls and, most recently, risks associated with litigation arising out of malpractice or negligence suits or from vexatious litigants.

Such a trust may be invaded by the settlor's creditor if it can be shown that transfers into the trust lacked legal propriety. Gibraltar has sought to reduce the uncertainties that can arise when determining propriety by shifting the focus to the objective test of solvency contained in the Insolvency Act 2011, section 419A.

Under provisions contained in the Bankruptcy (Register of Dispositions) Regulations 1990, an application may be made to register the trust by an approved trustee who has demonstrated adequate financial and administrative resources and professional indemnity insurance. Thereafter, the trustee must be able to show that due and sufficient enquiry was made to establish the propriety of the disposition and the solvency of the settlor at the time it was made. The registration of the disposition is renewable annually on payment of an annual fee (currently £100). This higher degree of certainty makes Gibraltar a favorable location for setting up asset protection trusts.

Taxation of trusts in Gibraltar

As from 1 January 2011, a trust is tax resident in Gibraltar if one or more of the beneficiaries are ordinarily resident in Gibraltar or the class of beneficiaries may include an ordinarily resident person or the issue of an ordinarily resident person. The residency status of the trustees or settlor is, in itself, not relevant.

An individual who has "Category 2" tax status or the spouse or child of such an individual (provided the individual has elected to include their spouse or child under the Category 2 rules) is not deemed to be a tax resident in Gibraltar for the purposes of determining the taxation of a trust or of the beneficiaries.

A trust that is not tax resident in Gibraltar is taxable only on income which accrues in or is derived from Gibraltar. By contrast, a trust that is ordinarily resident in Gibraltar is taxable on its worldwide income. As for individuals, non-trading interest income, dividends from listed companies, non-Gibraltar property-based rental income and capital gains are not taxable in Gibraltar.

The capital of the trust is not liable to tax in Gibraltar.

Trusts of a public nature are completely exempt from income tax provided that the profits from any trade or business are only used for the purposes of the trust, and either this trade or business is exercised in the cause of carrying out a primary purpose of the trust, or the work is mainly carried out by the beneficiaries of the trust.

Trusts are taxed at the rate of 10% (2013/14: 30%) on any taxable income.

Payment of tax

The trustees of a trust are required to pay any tax due from the trust under self-assessment. Payments on account are due by 31 January and 30 June, respectively, in the year of assessment. Any remaining balance is payable by 30 November following the end of the tax year.

Filing requirements

The trustees of a trust with assessable income are required to file a trusts tax return by 30 November. Trusts with assessable income must draw up their accounts to 30 June each year..



Matrimonial regulations and civil partnerships

There is no concept of matrimonial or community property in Gibraltar.

Intestacy

A deceased person will be deemed to have died intestate if he/she has not made any will, or if an attempted will is deemed to be invalid/incapable of being proved. In such instances the statutory rules of intestate succession contained in the Administration of Estates Act will automatically apply. In such an event usually the next of kin, or if they decline, an appropriate person may apply to be appointed by the Supreme Court apply for a grant of Letters of Administration so as to collect in assets, settle liabilities and administer the estate. Note that an appropriate person is dictated by reference to the legislation, but could be a creditor where an estate is insolvent, or, for example, where co-operation is needed in realizing the assets of a complex estate with significant liabilities. There is a scale of fees payable upon application, although no fee is payable upon an Estate with a value of less than £20,000. Net assets must thereafter be distributed in accordance with the sequential criteria laid down within the Administration of Estates Act.

Generally upon intestacy, a surviving spouse and children will share the estate. In the absence of immediate next of kin, the Act proscribes the entitled persons and the proportions they will share if several.

Probate

If a deceased person has left a will this must be submitted to the Supreme Court in Grant for formal validation and the court will issue a Grant of Probate appointing one or more executors; either the persons named in the will or, if they decline, an appropriate person - usually a lawyer, trustee or family member. The same fee scale as an application to the Court for the administration of an intestacy will apply.

It should be noted that presently there are no death duties payable on estates in Gibraltar.

11. Estate tax treaties

Gibraltar has no tax treaties with any other jurisdiction.