

Gibraltar



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Gibraltar

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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 GBP10 per transaction
- ▶ On loan capital (on each issue, e.g., debenture stock) – flat rate of GBP10 per transaction

On conveyance or transfer of real estate property as follows:

First- and second-time buyers (residential properties purchased by noncorporate persons only):

- ▶ First GBP260,000 of purchase price – zero
- ▶ Balance above GBP260,000 to GBP350,000 – 5.5%
- ▶ Balance above GBP350,000 – 3.5%

Other buyers:

- ▶ Where purchase price does not exceed GBP200,000 – zero
- ▶ Purchase price of between GBP200,001 and GBP350,000 – 2% on first GBP250,000 and 5.5% on balance
- ▶ Purchase price of over GBP350,000 – 3% on first GBP350,000 and 3.5% on balance

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

Stamp duty of 7.5% applies to the sale of any property that was sold as an “affordable home” for and on behalf of the government in the four years preceding the introduction of this measure. This will not apply in certain circumstances, for example, a forced sale.

Stamp duty on mortgages is as follows:

- ▶ Mortgages not exceeding GBP200,000 – 0.13%
- ▶ Mortgages over GBP200,000 – 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.

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 is no inheritance tax, gift tax, estate duty or equivalent taxes 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 recognize and give 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, the Perpetuities and Accumulation (Amendment) Act 2014 and the Purpose Trusts Act 2015.

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 now stands at 250 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 (GBP100), 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 inquiry 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 GBP113). This higher degree of certainty makes Gibraltar a favorable location for setting up asset protection trusts.

Purpose trusts

The Purpose Trusts Act 2015 provides for the creation and enforcement of trusts whereby the trustees hold property on trust to carry out a specific purpose that is not of a charitable nature. Under this legislation, a purpose trust must be established with purposes for which there is sufficient certainty that those purposes are capable of being carried out. At least one trustee must be a licensed trustee. The legislation sets up powers that a trustee will need, such as the discretion to formulate the means by which to give effect to, and achieve the purpose or purposes of the trust. The bill also provides for the disapplication of the rule against perpetuities.

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 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 that accrues in or is derived from Gibraltar. By contrast, a trust that is ordinarily resident in Gibraltar is taxable on its worldwide income (subject to the income being taxable in nature, and to any exemptions that may apply to such income). As for individuals, non-trading interest income, dividends from listed companies or that represent a distribution of income that was not taxable in Gibraltar when such income was generated by the underlying company, 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 12.5% (prior to 1 August 2021 - 10%) 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.

Private foundations

The Private Foundations Act 2017, which was enacted in April 2017, provides a legal framework for foundations in Gibraltar. The act also provides a mechanism for overseas foundations to be registered in Gibraltar. Provisions of the act include the following:

- ▶ A foundation is an entity with a separate legal personality. As such, it can hold and deal with property in its own name as the absolute and beneficial owner.
- ▶ The Foundation Charter and Foundation Rules establish the foundation, set out its purposes and rules for its administration, and provide details of the beneficiaries and guardian.
- ▶ Details of the foundation are filed at Companies House Gibraltar, which maintains a Register of Foundations.
- ▶ The Founder provides the initial assets as an irrevocable endowment. He or she may reserve certain powers for himself or herself, such as the ability to appoint or remove the Guardian or Councillors or to amend the Constitution of the foundation.
- ▶ The Foundation Council manages the foundation and makes distributions to the beneficiaries.
- ▶ The Council comprises a number of Councillors, which must include a Gibraltar resident company that is licensed as a Professional Trustee in Gibraltar.
- ▶ Beneficiaries may either be enfranchised or disenfranchised. The former is entitled to copies of the accounts and other documents relating to the foundation.
- ▶ A guardian may be appointed to provide protection for the beneficiaries. In certain cases – for example, if there are no designated beneficiaries or there are more than 50 beneficiaries – a guardian is required to be appointed.

Taxation of foundations and beneficiaries

The Income Tax Act 2010 sets out the basis for the taxation of foundations and their beneficiaries. The tax treatment in Gibraltar closely follows the principles applied to the taxation of trusts and their beneficiaries:

- ▶ A foundation registered under the Private Foundations Act 2017 is resident in Gibraltar, unless persons who are ordinarily resident in Gibraltar and the issue of such persons are irrevocably excluded from benefit in respect of the foundation.
- ▶ A foundation resident in Gibraltar is generally taxable on a worldwide basis (although, as for trusts, most savings-type income and rental income from overseas property is not taxable in Gibraltar).
- ▶ The applicable tax rate for foundations is 12.5% (prior to 1 August 2021 - 10%), which is in line with the rate for trusts and companies.
- ▶ A foundation that is not resident in Gibraltar is taxable only on chargeable income that is accrued in or derived from Gibraltar (most savings-type income is, in any case, not taxable).
- ▶ Non-residents of Gibraltar are not taxed in Gibraltar on their income as a beneficiary of a foundation.
- ▶ Beneficiaries who are ordinarily resident in Gibraltar are taxable on:
 - a. Distributions received from the foundation when the underlying income was taxable on the foundation (a tax credit will be given in respect of the tax suffered by the foundation on that income)
 - b. The benefit derived by the beneficiary from the use of assets that are owned or leased by the foundation or by a person controlled by the foundation
 - c. Any loan made by the foundation to a beneficiary or to any person connected with the beneficiary

8. Grants

There are no grants in Gibraltar.

9. Life insurance

The proceeds to an individual from a life insurance policy are not assessable to tax in Gibraltar.

Life insurance relief is available to taxpayers who are taxed under the allowance-based system,¹ as follows: premiums or contributions (or both) payable during the year of assessment are allowable as a deduction subject to certain restrictions.

The deduction is given with respect to premiums payable by the claimant for an insurance contract on the claimant's or spouse's life. However, relief is restricted to:

- One-seventh of the assessable income of the taxpayer
- 7% of the capital sum assured at death

10. Civil law on succession

Succession

Legislation on succession within Gibraltar is covered by the Wills Act 2009 (modeled upon the United Kingdom Wills Act 1963) and by the Gibraltar Administration of Estates Act.

Forced heirship

There are no compulsory inheritance rules, nor forced heirship rules in Gibraltar. However, in the event of an intestacy, statutory provisions of the Gibraltar Administration of Estates Act will apply.

Matrimonial regulations and civil partnerships

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

¹ Individual taxpayers may choose between either the gross-income-based system or the allowance-based system of taxation. Under the latter, higher tax rates generally apply, but there are more allowances available. Life insurance relief is not available to taxpayers who choose the gross-income-based system.

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 appointed by the Supreme Court) may 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 when an estate is insolvent or, for example, when cooperation 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 GBP20,000. 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 with an application for Grant of Probate to the Supreme Court for formal validation. 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

A double taxation agreement between Gibraltar and the United Kingdom entered into force in 2020. However, it does not cover inheritance or estate tax. Gibraltar has no tax treaties with any other jurisdiction.