

ESTATE DUTIES ORDINANCE**Repealed by Act 1997-21 as from 6.8.1997****Principal Ord**

Ord. No. 1934-04	<i>Commencement</i>	1.5.1934
	<i>Assent</i>	31.3.1934

Amending enactment	Relevant current provisions	
Ords. 1934-45	s. 12(1)	
1935-08	ss.12(1), 19(3) and 35(4)	
1939-15		
1947-13		
1954-13	s. 7	
1963-12	s. 17	
1965-21		
1977-36	ss.7A and 13(1)	
1980-22	ss.10A,25,31(4),33,35(2) and (3)	
1981-07	Sch.	
1983-25	s.12A	
1986-08	ss.8(1) and 10A(1)	30.4.1986
1987-16	Sch.	1.5.1987
1987-29	ss. 6, 15(a) and (b), 22(4), 23(1) and (3), 32(2) and (3), 13 and Sch.	
		1.5.1987
1992-10	ss.6, 7, 8 to 19, 27, 29, 39 and Sch.	
		1.7.1991
1993-06	s.7A(2)	18.2.1993

Exemption

The Government Debentures (Exemption from Estate Duty) Regulations, under which debentures issued under the Loans Empowering (1981.1986) Ordinance and accrued interest thereon do not form part of the estate of a deceased person for the purposes of assessing estate duty, appear under the title Loans Empowering (1981.1986).

English sources

Customs and Inland Revenue Act 1881 (44 & 45 Vict, c.12)
Settled Land Act 1882 (45 & 46 Vict. c.38)
Customs and Inland Revenue Act 1889 (52 & 53 Vict. c.7)
Finance Act 1894 (57 & 58 Vict. c.30)
Finance Act 1896 (59 Vict, c.28)
Finance Act 1898 (61 & 62 Vict. c.10)
Finance Act 1900 (63 & 64 Vict. c.7)
Finance (1909.10) Act 1910 (10 Edw. 7 c.8)
Finance Act 1914 (4 & 5 Geo.5 c. 10)
Finance Act 1930 (20 & 21 Geo.5 c.28)

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SCHEDULE:

Repealed.

AN ORDINANCE RELATING TO THE IMPOSITION AND COLLECTION OF ESTATE DUTIES.

Short title.

1. This Ordinance may be cited as the Estate Duties Ordinance.

PART I.
PRELIMINARY.

Interpretation.

2. In this Ordinance, unless the context otherwise requires,—

“Commissioner” means the Commissioner of Estate Duties appointed under this Ordinance, and includes a Deputy Commissioner of Estate Duties;

“the court” means the Supreme Court;

“deceased person” or “the deceased” means a person dying after the commencement of this Ordinance;

“estate duty” means estate duty under this Ordinance;

“estate duty affidavit” means the affidavit, together with the accounts annexed thereto, mentioned in section 26;

“executor” means the executor or administrator of a deceased person and includes, as regards any obligation under this Ordinance, any person who takes possession of or intermeddles with the property of a deceased person, and in the case of a deceased person whose estate and effects are taken possession of by the Administrator-General, means the Administrator-General;

“incumbrances” include mortgages and terminable charges;

“interest in expectancy” includes an estate in remainder or reversion and every other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases;

“property” includes real property and personal property of any kind situate or being in Gibraltar and the proceeds of sale thereof respectively, and any money or investment for the time being representing the proceeds of sale; and, in the case of a deceased

person who was at the time of his death domiciled in Gibraltar, includes personal property wherever it may be;

“property passing on the death” includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression “on the death” includes “at a period ascertainable only by reference to the death”;

“settled” when applied to property means property comprised in a settlement;

“settlement” means any deed, will, agreement for a settlement, or other instrument or any number of instruments, under or by virtue of which any property or any interest therein stands for the time being limited to or in trust for any person or persons by way of succession, and includes any interest in remainder or reversion not disposed of by the settlement and reverting to the settlor and also includes a settlement effected by a parol trust;

“will” includes any testamentary instrument.

Presumptions.

3. For the purposes of this Ordinance—

- (a) a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression “general power” includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument inter vivos or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or exercisable as tenant for life under the Settled Land Act, 1882, and the Settled Land Ordinance, or as mortgagee;
- (b) a disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required;
- (c) money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

Appointment of Commissioner.

4.(1) The Governor may, by notice in the Gazette, appoint an officer to carry out the provisions of this Ordinance, to be called the Commissioner of Estate Duties, and such number of Deputy Commissioners of Estate Duties as he thinks fit.

(2) A Deputy Commissioner of Estate Duties shall have and may exercise such of the powers conferred by this Ordinance on the Commissioner as the Commissioner may delegate to him.

Taking of oath.

5. Any oath or affirmation required for the purposes of any duty under this Ordinance may be taken before the Commissioner, who is hereby authorized to administer such oath or affirmation, and no fee shall be payable therefor.

PART II.
SUBJECTS OF ESTATE DUTY.

Estate duty imposed.

6. In the case of any person dying after the commencement of this Ordinance, other than a person excluded from any or all provisions of the Ordinance by virtue of regulations made in accordance with section 39 there shall, save as hereinafter or in such regulations expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided or in those regulations (which regulations may provide for the aggregation of property for the purpose of determining value) prescribed, of all property specified in those regulations, whether settled or not settled, which passes on the death of such person, a duty called "estate duty", calculated in accordance with the provisions of those regulations.

What property is deemed to pass.

7. Property passing on the death of the deceased shall be deemed to include property, settled or not, specified in regulations made under section 39, which regulations may prescribe exceptions and exemptions thereto and relief in respect thereof.

Gifts by way of release of right.

7A. (1) The extinguishment at the expense of the deceased of a debt or other right shall be deemed for the purposes of this Ordinance to have been a disposition made by the deceased in favour of the person for whose benefit the debt or right was extinguished, and in relation to such a disposition the expression "property" in this Ordinance shall include the benefit conferred by the extinguishment of the debtor right.

(2) The proviso to regulation 13(1) of the Estate Duties (Property, Value and Rates) Regulations, 1992 or such other regulation as may be replace that regulation (which excepts from aggregation property in which the deceased never had an interest) shall not have effect in relation to property passing on the death of the deceased which consists of a benefit that is treated as property by virtue of this section.

ss. 8 to 19 repealed

PART III.
LIABILITY FOR ESTATE DUTY.

Duty to be a first charge.

20. (1) Unless and until the same is paid as hereinafter provided, the estate duty payable in respect of any property passing on the death of a deceased person shall be a first charge on all the property of the deceased coming to an executor or being under his control, so far, of as the duty payable by such executor is concerned, and on the property passing to any other person, so far as the duty payable by such other person is concerned :

Provided that the property shall not be so chargeable as against a bona fide purchaser thereof for valuable consideration without notice.

(2) Nothing in this Ordinance shall be held to create a charge for estate duty on any property situate outside Gibraltar, or to authorize the Commissioner to take any proceedings outside Gibraltar for the recovery of any estate duty.

(3) As between the several persons beneficially interested in the property passing on the death of a deceased person, all estate duty paid under this Ordinance in respect of such property shall (unless there is a direction to the contrary in the will of the deceased or other instrument under which the property passes) be apportioned among such persons in proportion to the values of their interests in the property.

Liability of executor.

21. (1) The executor of the deceased shall pay the estate duty in respect of all property of which the deceased was competent to dispose at his death, on delivering the estate duty affidavit to the Commissioner, and may pay in like manner the estate duty in respect of any other property passing on such death not under his control, if the persons accountable for the duty in respect thereof request him to make such payment; but an executor shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

(2) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the estate duty affidavit that such property exists, but that he does not know the amount or value thereof, and that he undertakes as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(3) Where property passes or is deemed to pass on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes or is deemed to pass for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the estate duty on the property, and shall within the time required by this Ordinance, or such later time as the Commissioner allows, deliver to the Commissioner and verify an account to the best of his knowledge and belief of the property:

Provided that nothing in this section shall render a person accountable for duty who acts merely as agent or bailiff for another person, in the management of property.

Raising estate duty by sale, mortgage or terminable charge.

22. (1) A person authorized or required to pay the estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of or a terminable charge on that property or any part thereof.

(2) A person having a limited interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge, as if the estate duty in respect of that property had been raised by means of a mortgage to him.

(3) Any money arising from the sale of property comprised in a settlement or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, or the Land Law and Conveyancing Ordinance may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts.

(4) If estate duty in respect of any property is paid by the executor, it shall where occasion requires be repaid to him by the trustees or owners of the property.

Apportionment of estate duty.

23. (1) In the case of property which does not pass to the executor as such, an amount equal to the proper part of the estate duty may be recovered by the person, who being authorized or required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise) under a disposition not containing any express provision to the contrary.

(2) Any dispute as to the proportion of estate duty to be borne by any property or person, may be determined upon application by way of originating summons in the court.

(3) Any person from whom a ratable part of estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioner.

PART V.
COLLECTION OF ESTATE DUTY.

Date when duty due.

24. The duty which is to be collected upon an estate duty affidavit or upon an account directed to be delivered under section 26(4) shall be due on the delivery thereof or on the expiration of six months from the death, whichever first happens.

Interest payable on outstanding estate duty.

25. (1) Interest, calculated in accordance with this section, shall be levied and paid on all estate duty that for the time being remains owing and unpaid after the expiration of the period of 6 months following the date of death of the deceased.

(2) The interest that is payable under this section shall be—

- (a) on so much of the estate duty as remains for the time being owing and unpaid after the expiration of the period of 6 months following the date of death but before the expiration of the period of 12 months following the date of death, simple interest at the rate of 8 per cent per annum calculated from the

expiration of the period of 6 months following the date of death; and

- (b) on so much of the estate duty as remains owing and unpaid after the period of 12 months following the date of death, compound interest at the rate of 12 per cent per annum calculated from the expiration of that period of 12 months.
- (3) Interest that is payable in respect of unpaid estate duty shall be recoverable in the same manner as if it were part of the estate duty to which it relates.

Filing of accounts of property.

26. (1) Every person applying to the court for a grant of probate or letters of administration and every person applying for registration or sealing of a part of probate or letters of administration made by a court of probate in the United Kingdom or in a British possession, which grant may be registered or sealed in Gibraltar shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the estate duty affidavit to be delivered to the Commissioner within six months from the date of the death of the deceased or such later time as the Commissioner may allow all the property in respect of which estate duty is payable upon the death of the deceased.

(2) The estate duty affidavit shall extend to the verification of the accounts annexed thereto and shall be in a form to be approved by the Commissioner.

(3) The accounts annexed to the estate duty affidavit shall include all income accrued or accruing upon the property included therein down to and outstanding at the date of the death of the deceased.

(4) Where the executor is not accountable for estate duty in respect of any property passing on the death of the deceased, the person accountable shall, within six months from the date of the death of the deceased or such later time as the Commissioner may allow, deliver to the Commissioner an account, in a form to be approved by the Commissioner, of such property verified to the best of his knowledge and belief.

Penalties for delay.

27. An accountable person who wilfully fails to comply with the provisions of section 26(4) is liable to pay an amount equivalent to the amount at level 3 on the standard scale, or a sum equal to double the amount of the estate duty (if any) remaining unpaid for which he is accountable, according as the Commissioner elects.

Recovery of estate duty.

28. (1) Any sum of money whatsoever owing to Her Majesty under the provisions of this Ordinance shall be a debt due to the Crown and may be recovered as such.

(2) A certificate purporting to be signed by the Commissioner, and stating the amount owing under this Ordinance, shall, in proceedings under this section, be prima facie evidence of the statements therein contained.

(3) Where any proceeding is instituted for the recovery of any sum owing under this Ordinance in respect of any property, the court may appoint a receiver of the property and the rents and profits thereof and may order a sale of the property.

Powers of Commissioner.

29. (1) Every person accountable for estate duty, and every person whom the Commissioner believes to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioner, deliver to him and verify a statement of such particulars together with such evidence as he requires relating to any property which he has reason to believe to form part of an estate in respect of which estate duty is leviable on the death of the deceased.

(2) A person who wilfully fails to comply with the provisions of subsection (1) is liable to pay an amount equivalent to the amount at level 3 on the standard scale, or a sum equal to double the amount of estate duty (if any) remaining unpaid for which he is accountable, according as the Commissioner elects.

(3) Subject to the provisions of this Ordinance, the value of any property for the purposes of estate duty shall be ascertained by the Commissioner in such manner and by such means as he thinks fit, and if he authorizes a person to inspect any property and report to him the value thereof for the purposes of this Ordinance, the person having the custody or possession of that property shall permit the person so authorized to inspect it at such reasonable times as the Commissioner considers necessary.

(4) (a) The Commissioner shall, if he is satisfied with the particulars set out in the estate duty affidavit or account, assess the duty on the footing of such particulars, but it shall be lawful for the Commissioner, if he is dissatisfied with such particulars, to cause a valuation to be made by a person named by him and to assess the duty on the footing of such valuation.

- (b) If the duty so assessed in accordance with a valuation made by the person named by him exceeds the duty assessable according to the particulars set out in the estate duty affidavit or account, it shall be in the discretion of the Commissioner having regard to the merits of each case to defray the costs incident to such valuation or to recover from the estate the whole or any part of such costs.
- (5) (a) Where any document in the custody of the Commissioner relating to duty charged or chargeable in respect of any property has been lost or destroyed, or has been so defaced or damaged as to be illegible or otherwise useless, the Commissioner may require any person appearing to him to be accountable or to have accounted for that duty to furnish to him to the best of his ability such information, particulars and evidence, including evidence by affidavit, as he may require for replacing that document, and any person so appearing to be accountable shall be liable to discharge all claims in respect of that duty, unless he proves to the satisfaction of the Commissioner that those claims have already been discharged or that he is not accountable for the duty.
- (b) The Commissioner shall have all such powers for the purpose of enforcing any requirement made by him under this subsection as he had for enforcing the delivery of the document which is to be replaced, and all statutory provisions in that behalf, including provisions as to penalties, shall apply accordingly with the necessary modifications.
- (c) The Commissioner shall pay to any person complying with any requirement under this section his reasonable costs of so doing, and if any question arises as to the amount so to be paid as costs, the question shall be referred to and determined by the Registrar of the Supreme Court.

Commissioner's certificates.

30. (1) When the Commissioner has ascertained the amount of the duty and interest payable on an estate duty affidavit or account, he shall certify the same in writing on the affidavit or account, as the case may be.

(2) When an amount payable on an estate duty affidavit or account has been paid, the Commissioner shall certify such payment in writing on the affidavit or account, as the case may be.

(3) The Commissioner shall then prepare a certificate under his hand setting forth that the estate duty affidavit or account has been duly delivered

and that the estate duty, if such duty is payable, has been paid, and stating the value of the property as shown in such estate duty affidavit or account.

Probate not to be issued until estate duty paid.

31. (1) No probate or letters of administration shall be granted by the court until the Commissioner has given a certificate under section 30(3) that the estate duty payable in respect of the estate has been paid or has given a certificate that he has allowed payment thereof to be postponed under subsection (2) or (4) of this section, and the certificate so given has been filed in court.

(2) When the estate duty affidavit contains the statement and undertaking specified in section 21(2) the Commissioner may allow payment of the whole or any part of the estate duty to be postponed until after the issue of probate or letters of administration, upon condition that a further and complete affidavit shall be delivered and the proper duty paid thereon as soon as the full value of the estate has been ascertained.

(3) The Commissioner may require the executor to enter into a bond with or without sureties in such an amount as he may think fit to secure the delivery of such affidavit as aforesaid and the payment of the proper duty thereon within such time as shall be named in such bond, or he may require the executor to deposit in his hands such sum of money as he may think fit to be held as security for the payment of the proper duty within such time as he may appoint.

(4) Where the Commissioner is satisfied that the estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, or cannot be paid before the grant of probate or letters of administration, he may allow payment to be postponed for such period, to such extent, and on payment of such interest in accordance with section 25 or at any higher rate of interest actually yielded by the property, and on such terms, as he may think fit.

Release of estate on which duty is paid.

32. (1) The Commissioner on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the estate duty, give a certificate to that effect, which shall discharge from any further claim for estate duty the property shown by the certificate to form the estate or part thereof, as the case may be.

(2) Where a person accountable for the estate duty in respect of any property passing on a death applies at any time after such death to the Commissioner, and delivers to him and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the

several persons entitled thereto, the Commissioner may if he thinks fit determine the amount of the estate duty in respect of the property for which the applicant is accountable, and on payment of that amount, that property and the applicant so far as regards that property, shall be discharged from any further claim for estate duty, and the Commissioner shall give a certificate of such discharge.

(3) A certificate of the Commissioner under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts, and the value of any property afterwards shown to have passed on death shall be added to that in respect of which duty has already been accounted for and the duty shall be assessed paid accordingly;

Provided, nevertheless, that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate from the estate duty a bona fide purchaser for valuable consideration without notice, notwithstanding any such fraud or failure.

(4) Nothing in this section contained shall be deemed to derogate from or affect the power conferred upon the Commissioner by section 34(1).

Return of duty overpaid.

33. Where it is proved to the satisfaction of the Commissioner that too much estate duty has been paid, the excess shall be repaid by him, and in cases where the overpayment was due to over valuation by the Commissioner, with simple interest at the rate of 8 per cent per annum.

Payment of additional duty.

34. (1) Notwithstanding any assessment or payment of any duty under this Ordinance or any certificate of the Commissioner that no such duty is payable it shall be lawful for the Commissioner at any time thereafter if it is discovered that any duty payable has not been fully assessed and paid to make a further assessment of the duty so unpaid and to recover the same in the same manner as if no previous assessment or payment had been made.

(2) Except in the case of fraud an executor, trustee, guardian, committee or other person accountable for estate duty shall not be personally liable for any estate duty under any such further assessment by reason of having administered or distributed the estate of the deceased without retaining sufficient assets to satisfy the duty.

Appeal from Commissioner.

35. (1) An executor or other accountable person aggrieved by the certificate of the Commissioner under section 30(1) or by any claim by the

Commissioner for payment of estate duty or interest thereon, or cost of valuations or by any further claims under section 34(1) or by the refusal of the Commissioner to return any estate duty or interest thereon alleged to have been overpaid, may, on payment of, or giving security as hereinafter mentioned for, the amount claimed by the Commissioner or such portion of it as is then payable by him, appeal to the court within the time and in the manner and on the conditions directed by rules of court to be made under this section, and the amount of the duty and interest shall be determined by the court, and if the duty and interest as determined is less than that paid to the Commissioner the excess shall be repaid.

(2) The costs of the appeal shall be in the discretion of the court, and where it appears just, the court may order the Commissioner to pay on any excess of duty or interest repaid by him simple interest at the rate of 8 per cent per annum for such period as appears to the court just.

(3) The court, if satisfied that it would impose hardship to require the appellant, as a condition of the appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioner or of such portion of it as is then payable by him, may allow the appeal to be brought on payment of no duty, or of such part only of the duty as to the court seems reasonable, and on security to the satisfaction of the court being given for the duty, or so much of the duty as is not so paid, but in such case the court may order interest in accordance with section 25 to be paid on the unpaid duty so far as it becomes payable under the decision of the court.

(4) The Chief Justice shall make such rules of court as may be deemed necessary for regulating and providing for appeals under this section.

PART VI.
MISCELLANEOUS PROVISIONS.

No payment on policy moneys unless duty first paid.

36. No person who shall become entitled on the death of a deceased person to any moneys payable on a policy of life assurance which is liable to any duty under this Ordinance shall have any right to sue for or recover the moneys assured or secured by such policy, or to give a valid discharge for the same, or any part thereof unless such duty payable in respect of such policy moneys has been duly paid, and no payment shall be made to any person claiming the policy moneys unless and until such duty payable thereon shall have been paid.

Inspection of records, etc.

37. Every public officer having in his custody any registers, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty under this Ordinance or to prove or lead to the discovery of

any fraud or omission in relation to any such duty, shall at all reasonable times permit any person authorized in writing by the Commissioner to inspect for such purpose such registers, books, records, papers, documents and proceedings, and to take such notes and extracts as he may deem necessary without fee or charge.

Reduction of penalties and commutation of duties.

38. (1) The Commissioner may reduce any penalty to which any person is liable under this Ordinance.

(2) The court in any proceedings for the recovery of any penalty to which any person is liable under this Ordinance may reduce such penalty.

(3) The Commissioner in his discretion upon application by an accountable person may commute any duty under this Ordinance which would or might but for the commutation become payable in respect of any property for a certain sum to be presently paid.

Regulations.

39. The Governor may make regulations to carry out generally the purposes of this Ordinance and without prejudice to the generality of the foregoing such regulations may provide for—

- (a) anything in this Ordinance to be prescribed or to be provided for by way of regulation;
- (b) the powers of the Commissioner generally including a power to remit duty or provide relief in respect of duty otherwise payable;
- (c) offences in connection with matters provided for by regulation and penalties therefor, such penalties to include provisions for fines not in excess of level 5 on the standard scale:

Provided that where the effect of any regulation would be to increase the rate at which the amount of duty payable is calculated, such regulation shall be laid before the House of Assembly in accordance with the provisions of section 28 of the Interpretation and General Clauses Ordinance, but shall not require the prior approval of the House of Assembly before coming into force.

1934-04
Repealed

Estate Duties

SCHEDULE

Repealed