

# Estate Duties

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## ESTATE DUTIES (PROPERTY VALUE AND RATES) REGULATIONS, 1992

**1934-04**  
**Repealed**  
Subsidiary  
1992/056

Subsidiary Legislation made under s. 39.

## ESTATE DUTIES (PROPERTY VALUE AND RATES) REGULATIONS, 1992

**Repealed by Act 1997-21 as from 6.8.1997**

(LN. 1992/056)

*Commencement*      **1.7.1991**      (*LN. 1992/126*)

Amending enactments	Relevant current provisions	Commencement date
LN. 1992/128	rr.8(2) and 13(1)	24.9.1992
1992/129	rr.2(d), (e) and (g) and 13(1)	24.9.1992
1993/019	r. 3	18.2.1993

**EU Legislation/International Agreements involved:**

**ARRANGEMENT OF REGULATIONS.**

1. Title and commencement.
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4. Property exempted.
5. Transactions for money consideration.
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7. Widows and orphans pensions.
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9. Property of national, etc. interest given for public purposes.
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15. Interests in expectancy.
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17. Valuation of interest in coparcenary property ceasing on death.
18. Allowance for debts and funeral expenses.
19. Exception as to property in the United Kingdom etc.
20. Rates of duty.

**SCHEDULE**  
**RATES OF DUTY**

**Title and commencement.**

1. These regulations may be cited as the Estate Duties (Property, value and Rates) Regulations 1992, and shall come into effect on such day as the Governor may, by notice in the Gazette, appoint and different days may be so appointed for different purposes.

**Property passing on death.**

2. Property passing on the death of the deceased shall be deemed to include—

- (a) property of which the deceased was at the time of his death competent to dispose;
- (b) property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest and shall include property the estate or interest in which has been surrendered, assured, divested or otherwise disposed of whether for value or not, to or for the benefit of any person entitled to an estate or interest in the remainder or reversion in such property, unless the surrender, assurance, divesting or disposition was bona fide made or affected three years before the death of the deceased and bona fide possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting or disposition and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise and shall include in the case of any person dying after the 12th day of December 1963, a coparcenary or sub-coparcenary interest in the joint family property of Hindu family governed by the Mitakshara, Marumakkattayam or Aliyasantana law, but shall be exclusive a property the interest in which of the deceased or other person was only an interest as holder of an office, or as recipient of the benefits of a charity, or as a corporation sole;
- (c) property which was the subject of an annuity or other periodical payment limited to cease on the death of the deceased to the extent of the benefit which would accrue from the cessor of that annuity or other payment notwithstanding that the annuity or other payment has been surrendered, assured, divested or otherwise disposed of during the lifetime of the deceased, whether for value or not, to or for the benefit

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of the person entitled to the property, unless the surrender, assurance, divesting or disposition was bona fide made or effected three years before the death of the deceased and the person entitled to the annuity or other payment was not at any time within the period in receipt of any substituted annuity or other periodical payment limited to cease on his death, being an annuity or payment which was secured, whether by contract or otherwise to him in return to the surrender, assurance, divesting or disposition;

- (d) property taken as donatio mortis causa made by the deceased or taken under a disposition made by him purporting to operate as an immediate gift to inter vivos, whether by way of transfer, delivery, declaration of trust or otherwise which shall not have been bona fide made three years before his death, or taken under any gift, were never made, of which bona fide possession and enjoyment shall not have been assumed by the done immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise:

Provided always that the property shall not be deemed to pass on the death of the deceased, if subsequently by means of the surrender of the benefit reserved or otherwise, it is enjoyed but to the entire exclusion of the deceased, and of any benefit to him by contract or otherwise for three years before his death:

Provided further that any gift proved to the satisfaction of the Commissioner to have been part of the normal expenditure of the deceased and to have been reasonable having regard to his income or to the circumstances, shall not be deemed to pass on the death of the deceased;

- (e) property which the deceased, having been absolutely entitled thereto, has caused to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise, including also any purchase or investment effected by the deceased alone or in concert or by arrangement with any other person, so that the beneficial interest therein or in some part thereof, passes or accrues by survivorship on his death to such person;
- (f) property passing under any past or future disposition (including any trust whether expressed in writing' or otherwise) made by any person dying after the 1st day of May 1934, verbally or by deed or any instrument not taking effect as a will whereby an

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interest in such property or the proceeds of sale thereof, for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property or the proceeds of sale thereof;

- (g) money received under a policy of assurance effected by the deceased on his life, where the policy is wholly kept up by him for the benefit of a donee, whether a nominee or assignee, or a part of such money in proportion to the premiums paid by him where the policy is partially kept up by the deceased for such benefit;
- (h) any annuity or other interest purchased or provided by the deceased either by himself alone or in concert or by arrangement with any other person to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

### 3. *Revoked*

#### **Property exempted.**

4.(1) Property passing on the death of the deceased, shall not be deemed to include—

- (a) property held by the deceased as trustee for another person under a disposition not made by the deceased or under a disposition made by the deceased more than three years before his death, where possession and enjoyment of the property was bona fide assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the entire exclusion of the deceased of any benefit to him by contract or otherwise;
- (b) a chose in action in Gibraltar against the trustees of a settlement if the deceased was not domiciled in Gibraltar and the property subject to the trust of a settlement is property outside Gibraltar or property otherwise exempt from the payment of estate duty.

(2) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the

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settlement continues to subsist, the property shall not be deemed to pass on his death.

- (3) Where, by a disposition of any property—
- (a) an interest is conferred on any person other than the disponent for the life of such person or determined on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponent, or of any benefit to him by contract or otherwise and the only benefit which the disponent retains in the property is subject to such life or determinable interest and no other interest is created by the disposition, then on the death of such person after the 1st of May 1934, the property shall not be deemed to pass by reason only of its reverting to the disponent in his lifetime;
  - (b) any such interest as is mentioned in paragraph (a) is conferred on two or more persons either severally or jointly, or in succession, paragraph (a) shall apply in like manner as it applies where the interest is conferred on one person:

Provided that paragraphs (a) and (b) shall not apply where such person or persons taking the life or determinable interest had at any time prior to the disposition in himself or themselves competently disposed of the said property.

**Transactions for money consideration.**

5. (1) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a bona fide purchase from the person under whose disposition the property passes, nor in respect of falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives where such purchase was made or such lease or annuity granted for full consideration in money or money's worth, paid to the vendor or grantor for his own use or benefit, or in the case of a lease, for the use or benefit of any person for whom the grantor was a trustee.

(2) Where any such purchase was made or lease or annuity granted for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease, for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

### **Small annuities.**

6. Estate duty shall not be payable in respect of a single annuity not exceeding £25 purchased or provided by the deceased, either by himself alone or in concert or arrangement with any other person for the life of himself and of some other person, and the survivor of them or to arise on his own death in favour of some other person, and if in any case there is more than one such annuity, the annuity first granted shall be alone entitled to the exemption granted under these regulations.

### **Widows and orphans pensions.**

7. Estate duty shall not be payable in respect of any pension or gratuity granted under the Pensions Ordinance or any other law relating to the pensions or gratuity payable to public officers for the time being in force in Gibraltar or in respect of any pension, annuity or gratuity payable by the Government of any British possession to the estate or widow, child or other dependant of any deceased officer of such Government notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension, annuity or gratuity is paid.

### **Deposits by non-residents.**

8.(1) Where the deceased is, at the date of his death, a non-resident person, estate duty shall not be payable in respect of any property passing on the death of the deceased that is held on deposit in Gibraltar in any bank or building society not being property in the form of securities or other documents of title relating to property otherwise situate in Gibraltar, other than shares and debentures held in a company which is registered under the Companies (Taxation and Concessions) Ordinance and securities or debentures issued by the Government of Gibraltar which are exempt from estate duty.

(2) In this regulation “non-resident person” does not include any person to whom immediately prior to his death, section 34(3) of the Income Tax Ordinance applied, but otherwise has the same meaning as it has in that Ordinance.

### **Property of national, etc. interest given for public purposes.**

9. The Commissioner may remit the estate duty in respect of such pictures, books, prints, manuscripts, works of arts or scientific collections as appear to him to be of national scientific or historic interest, and to be given all bequeaths for national purposes, or to any university or to any municipal corporation and no property the duty in respect of which is so remitted, shall

be aggregated with any other property for the purpose of determining the amount of estate duty.

**Relief in case of settled property.**

10. Where, on the death of one party to a marriage, estate duty has been paid or is payable in respect of any settled property since the date of settlement, no estate duty shall be payable in respect of the same property upon the death of the other party to the marriage, unless the last mentioned party was at the time of his death or had been at any time during the continuance of the settlement, competent to dispose of such property, and if on his death, subsequent limitations under the settlement take effect in respect of such property, was sui juris at the time of his death or had been sui juris at any time while so competent to dispose of the property.

**Qualifying companies.**

11. All shares in, loans made to, debentures held in and policies of life assurance issued by a qualifying company (as defined in section 2 of the Income Tax Ordinance) shall be exempt from estate duty in the same manner, under and to the same extent as if they were made to, held in or issued by an exempt company (as defined in section 2(1) of the Companies (Taxation and Concessions) Ordinance).

**Relief in respect of quick succession.**

12. When the Commissioner is satisfied that estate duty has become payable on any property consisting of land or a business (not being a business carried on by a company), or any interest in land or such business, passing upon the death of any person, and that subsequently within five years estate duty has again become payable on the same property, or any part thereof, passing on the death of the person to whom the property passed on the first death, the amount of estate duty payable on the second death in respect of the property so passing, shall be reduced as follows—

- (a) where the second death occurs within one year of the first death, by 50%;
- (b) where the second death occurs within two years of the first death, by 40%;
- (c) where the second death occurs within three years of the first death, by 30%;
- (d) where the second death occurs within four years of the first death, by 20%;



- (e) where the second death occurs within five years of the first death, by 10%:

Provided that where the value, on which the duty is payable, of the property on the second death exceeds the value, on which the duty was payable, of the property on the first death, the latter value shall be substituted for the former, for the purpose of calculating the amount of duty on which the reduction under this regulation is to be calculated:

Provided further that this regulation shall not apply with the land or business in respect of which the estate duty has again become payable within such period of five years, passes to any person other than a husband, wife, lawful issue, ancestor, brother, sister, nephew or niece of the deceased.

**Aggregation of property.**

13. (1) For determining the amount of estate duty to be paid on any property passing on the death of the deceased, all property so passing, shall be aggregated so as to form one estate, and the duty shall be levied at the proper rate on the principal value thereof:

Provided that any property so passing in which the deceased never had an interest, shall not be aggregated with any other property, but shall be an estate by itself, and the estate duty shall be levied at the proper rate on the principal value thereof .

(2) In the case of a person dying on or after the 1st of May 1987, who at the time of his death was residing in a property—

- (a) which, on the death of the deceased, passes to the surviving spouse or to a child or children of the deceased; and
- (b) in which the spouse or at least one such child to whom the property so passes, had been residing with the deceased for not less than twelve months at the time of his death,

the market value of such property or £100,000, whichever shall be the lesser, shall not be included in the estate, and estate duty shall not be levied thereon.

(3) Property passing on any death, shall not be aggregated more than once, nor shall estate duty, in respect thereof, be more than once levied in respect of the same death.

(4) In determining the amount of estate duty chargeable, the value of all the real and personal property of the deceased situate outside Gibraltar, shall be included as well as the value of the property of the deceased within Gibraltar.

**Principal value.**

14. (1) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioner, such property would fetch, if sold in the open market at the time of the death of the deceased.

(2) In estimating such principal value, the Commissioner shall fix the price of the property according to the market price at the time of the death of the deceased, and shall not make any reduction in the estimate on account of the estimate being made, on the assumption that the whole property is to be placed on the market at one and the same time.

(3) Where it is proved to the Commissioner that the value of the property has been depreciated by reason of the death of the deceased, the Commissioner, in fixing the price, shall take such depreciation into account.

**Interests in expectancy.**

15. Where an estate includes an interest in expectancy, the estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate, or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then—

- (a) for the purpose of determining the amount of estate duty in respect of the estate, the value of the interest shall be its value of the date of the death of the deceased; and
- (b) the amount of estate duty in respect of the interest, when it falls into possession, shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

**Value of interests ceasing on death.**

16. The value of the benefit accruing or arising from the cesser of an interest on the death of the deceased, shall—

- (a) if the interest extended to the whole income of the property, be the principal value of that property; and

- (b) if the interest extended to less than the whole income of the property, be the principal value of an addition to the property equal to the income to which the interest extended.

### **Valuation of interest in coparcenary property ceasing on death.**

17. (1) The value of the benefit accruing or arising from the cesser of a coparcenary or sub-coparcenary interest in any joint family property governed by the Mitakshara school of Hindu law which ceases on the death of the members thereof, shall be the principal value of the share of the joint family property which would have been allowed to the deceased had there been a partition immediately before his death.

(2) The value of the benefit accruing or arising from the cesser of an interest in the property of a Tarwad or Tavazhi, governed by the Maiumakkattayam rule of inheritance, or of a Kutumba or Kavaru, governed by the Aliyasantana rule of inheritance which ceases on the death of a member thereof, shall be the principal value of the share in the property of the Tarwad or Tavazhi or, as the case may be, the Kutumba or Kavaru which would have been allotted to the deceased had a partition taken place immediately before his death.

(3) For the purpose of estimating the principal value of the joint family property of a Hindu family, governed by the Mitakshara, Marumakkattayam or Aliyasantana law, in order to arrive at the share which would have been allotted to the deceased had a partition taken place immediately before his death, the provisions of the Ordinance and these regulations, so far as may be, shall apply as they would have applied if the whole of the joint family property had belonged to the deceased.

### **Allowance for debts and funeral expenses.**

18. (1) In determining the value of an estate for the purpose of estate duty, allowance shall be made for reasonable funeral expenses and for debts and incumbrances, but an allowance shall not be made—

- (a) for debts incurred by the deceased or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created bona fide for full consideration in money or money's worth, wholly for the deceased's own use and benefit and take effect out of his interest; nor
- (b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless that reimbursement cannot be obtained; nor

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- (c) more than once for the same debt or incumbrance charged upon different portions of the estate,

and any debt or incumbrance over which an allowance is made, shall be deducted from the value of the property liable thereto.

(2) An allowance shall not be made in the first instance for funeral expenses incurred outside Gibraltar or for debts due from the deceased to persons resident out of Gibraltar (unless contracted to be paid in Gibraltar or charged on property situate within Gibraltar), except out of the value of any property of the deceased, situate out of Gibraltar, in respect of which estate duty is paid.

(3) And there shall be no repayment of estate duty in respect of funeral expenses incurred outside Gibraltar or for debts due from the deceased to persons resident out of Gibraltar, except to the extent to which it is shown, to the satisfaction of the Commissioner, that the property of the deceased, situate in a country in which the person to whom such funeral expenses and debts are due resides, is insufficient for their payment.

#### **Exemption as to property in the United Kingdom.**

19. (1) Where the Commissioner is satisfied that in the United Kingdom or in any British possession to which this regulation applies, estate duty is payable by reason of the death in respect of any property situate in the United Kingdom or in such possession and passing on such death, he shall allow a sum equal to the amount of that duty to be deducted from the estate duty payable in respect of that property on the same death.

(2) No such deduction as is provided for in this regulation, shall be made until and unless the duty so payable in the United Kingdom or British possession, has actually been paid, and in the meantime, the full amount of the estate duty shall be assessed and payable, and on payment of the duty in the United Kingdom or British possession, a refund of the amount thereof shall be made accordingly in the same manner as in the case of duty paid in excess.

(3) The Governor may, by notice in the Gazette, apply this regulation to any British possession where he is satisfied that by the law of such possession, either no duty is leviable in respect of property situate in Gibraltar when passing on death, or that the law of such possession, as in respect any duty so leviable, is to the like effect as the provisions contained in sub-regulation (1).

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**Repealed**  
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(4) The Governor may revoke any such notice where it appears that the law of the British possession concerned had been so altered that it would not authorise the issue of a notice under this regulation.

(5) Where any property, passing on the death of the deceased, is situate in a foreign country and the Commissioner is satisfied that by reason of such death, any duty is payable in that foreign country In respect of that property, he shall make an allowance of the amount of that duty from the value of the property.

(6) For the purpose of this regulation and of section 20 of the Finance Act 1894, local situation of any property shall be determined in accordance with the law in force for the time being in Great Britain or Northern Ireland, as the case may require.

#### **Rates of estate duty.**

20. The rate of estate duty payable in accordance with the provisions of the Ordinance and in these regulations, is that set out in the Schedule to these regulations.

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#### SCHEDULE.

Regulation 20.

#### RATES OF ESTATE DUTY.

<b>Portion of principal value of the estate</b>		<b>Rate of Duty</b>
<b>Lower Limit</b>	<b>Upper Limit</b>	
<b>£</b>	<b>£</b>	
0	20,000	NIL
20,000	40,000	5%
40,000	60,000	10%
60,000	80,000	15%
80,000	100,000	20%
100,000	—	25%

The rate shown in the third column of the above table is that applicable to such portion of the value concerned as exceeds the lower limit shown in the first column but does not exceed the upper limit (if any) shown in the second column.