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A touchstone for financial success

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Gibraltar is an offshore centre in a continual state of financial reinvention. Constantly adapting and reacting to the needs of the global economy, Gibraltar has been busy this past year, updating and rearranging its extensive canon of tax planning structures and incentives. The touchstone to Gibraltar's success is, and always has been, its ability to identify its unique strengths and build upon them by introducing legislative advantages designed to complement the colony's socioeconomic and political progress.

Dependent but strong

Our unique strengths are manifold; they spring forth from a singular relationship with the UK, one that in 1973 allowed Gibraltar accession to the EU as a dependent territory of the UK via Article 227(4) of the Treaty of Rome. Since then, the tiny peninsula has experienced an unprecedented rise in inward investment, especially in the last 15 years. No doubt this has been aided by Gibraltar's attractive location at the gateway to the Mediterranean, as well as at the crossroads between Europe and Africa. This unique location bodes well for Gibraltar's plans to form the financial hub for the multinational leisure industry along the southern European and North African coasts.

Although it is a dependent territory, Gibraltar enjoys considerable autonomy from the UK, virtually self-governing itself in all matters except defence and foreign policy. Gibraltar enacts its own legislation, applying English common law and transposing EU directives to engender a well regulated and international finance centre.

It is in the latter that Gibraltar's legislation drafters have been most recently occupied,

especially in their efforts to transcribe directives that will allow Gibraltar's services to be passported throughout the European Economic Area. These have included advances in the insurance sector and the passporting of Undertakings for Collective Investment in Transferable Securities (Ucits) following the implementation of the amending EU Ucits Directive, meaning pan-European funds can now be set up in Gibraltar and run by the same managers across Europe.

The local implementation of the EU Interest and Royalties Directive, on a common system of taxation applicable to interest and royalty payments between associated companies of different member states, is another example of a recently enacted legislative enhancement that only Gibraltar, as the only offshore member of the EU, can offer its eager investors. Of similar European clout is the implementation of the amended Parent-Subsidiary Directive, exempting such structured companies from tax on certain transactions carried out between them.

Taxation and funds

Gibraltar is also envisaging an entirely new tax regime, abolishing the current 35% corporate tax rate and replacing it with a system of payroll taxes and business property occupation taxes, both capped at 15% of profit. This in effect would introduce a nil-rate corporate tax regime for companies with no physical presence in Gibraltar.

Unfortunately, and despite the UK's backing, Brussels has resisted these proposals. The UK and Gibraltar have litigated on the EU's decision, taking the case to the European Court of Justice (ECJ). Gibraltar's arguments are based on those expounded in the recent *Portugal vs Commission* judgment (the Azores Case). Confidence is high amongst both concerned parties and it is expected that the new tax regime will become law following a favourable judgment this summer. This year's annual budget has already revealed a corporate tax cut of 2%; it is envisaged that corpo-

ration tax is to go down every year until 2010 when it should reach 10%.

On a purely domestic level, Gibraltar has recently introduced the experienced investor fund. This highly innovative class of fund is aimed at experienced investors and is capable of becoming fully operational in a very short space of time. Stamp duty has also recently been abolished, with the exception of low-cost real property transactions. The abolition of stamp duty is just the last instalment in a series of attractive tax incentives offered by Gibraltar, which include full exemptions on capital gains tax, wealth tax, sales tax, withholding tax and VAT.

Opportunities for high net-worth individuals continue to attract inward business with the ever-popular category 2 status tax planning strategy, as well as the asset protection trust. The former allows high net-worth individuals (worth over £2 million) the opportunity to pay a nominal amount of annual tax on their worldwide income (this may be as low as £18,000 and no higher than £25,000 per annum). The latter is based on the age-old common law concept of the trust and allows, through the transfer of assets to a third person, avoidance of execution, forfeiture, confiscation and naturalisation of assets, as well as providing for the distribution of assets on death. The asset protection trust is specifically designed to keep assets contained within the structure from being reached by creditors.

This summer the launch of the Gibraltar Stock Exchange heralds a new era for the Gibraltar Finance Centre; one that will build on the amazing growth currently reported in the territory's insurance, banking and fund management sectors.

Financial and corporate

Recommended firms
Tier 1
Hassans
Tier 2
Isolas
Marrache & Co
Triay & Triay
Tier 3
Triay Stagnetto Neish
Tier 4
Attias & Levy
Massias & Partners

Though a lot less severe, the downturn has found its way to Gibraltar – effecting a shift in the types of work to be had.

“The market this year has noticeably declined in terms of credit-related transactions,” says one partner at a leading Gibraltar firm. “Banks are not lending so there’s a significant decline, but this has been more than compensated by the amount of litigation work we are getting as a result of credit and loan defaults.”

Restructuring work has also reached a peak for Gibraltar lawyers, as the swing from a borrowers’ to a lenders’ market has made banks keen to renegotiate.

But it is acquisition finance and real-estate finance work that has taken the biggest hit, dropping significantly in volume. However Gibraltar has seen an influx of online gaming mandates – a development that has benefited Isola & Isola (Isolas), whose partner Peter Isola is a leading light in gaming law.

More good news for Gibraltar’s lawyers this year was the ruling by the European Court of First Instance to annul a previous decision of the European Commission that the government of Gibraltar’s proposed reforms of its corporate tax plan were unlawful under EU and state aid rules. The judgment paves the way for the government’s proposed 10% flat tax rate, which will see Gibraltar competing with Ireland for clients.

Hassans

Hassans is the largest law firm in Gibraltar and, though peers note that unfavourable market conditions have put a stop to its expansion, it continues to be the exclusive occupant of the top tier.

“Hassans has expanded very quickly in the last ten years but that expansion has slowed down substantially and now it is going through a period of consolidation,” says a peer. “But they are a full-service firm, depart-

mentalised and they provide an effective full service.”

The firm houses several leading lawyers and James Levy is described as “one of the most experienced lawyers on the rock” by one competitor.

Nigel Feetham, an insurance specialist, acted on one of the firm’s most prominent mandates, securing a licence from the Gibraltar Financial Services Commission for NewPel to distribute insurance. The deal closed in March 2009, making NewPel the first company of its kind to utilise a protected cell structure.

Leading lawyers

Nigel Feetham
James Levy
Anthony Provasoli

Isolas

Isolas has a strong reputation for private-client work – a sector in which it is described by a rival as “a dominant force”. The firm has also picked up some excellent clients according to competitors, particularly in the electronic gaming industry. Partner Peter Isola, an expert in gaming and regulatory law, is largely to thank for this and, according to one rival, “is definitely a leading lawyer”.

But it was Christian Hernandez, a corporate finance and banking specialist, who acted in the firm’s most noteworthy transaction. He led the team advising Vnesheconombank bank as lender in relation to the €1.5 billion refinancing of a Russian telecoms company.

Leading lawyers

Peter Isola

Marrache & Co

Marrache & Co is most prominent in tax and private client work, according to peers. The firm is led by Benjamin and Isaac Marrache and has an international reach, with offices across Europe. It acted as lead counsel for KPMG in a restructuring that utilised a Gibraltarian SPV and receives instructions from some of the world’s top law firms, including Fried Frank Harris Shriver & Jacobson and Eversheds.

Leading lawyers

Benjamin Marrache
Isaac Marrache

Triay & Triay

Triay & Triay has strong practices in a broad range of areas. The firm is widely acknowledged to be number one for shipping in

Gibraltar and has a strong team of litigators who also act in corporate mandates – an ideal mix for a post-financial meltdown market. It also includes insurance work among its varied diet of instructions, with the only criticism of the firm being its domestic focus.

“Our closest competitor is Triay & Triay,” says one partner at a leading Gibraltarian firm.

Leading lawyers

Abraham Serfaty
Joseph Triay
Raymond Triay