

Gibraltar

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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	Isola & Isola Marrache & Co Triay & Triay
Tier 3	Triay Stagnetto Neish
Tier 4	Attias & Levy Massias & Partners

Market commentators believe 2009 will be a magnificent year for fund services. The jurisdiction has already experienced a substantial increase in the number of funds businesses since the introduction of the experienced investor fund (EIF) legislation in 2005.

The implementation of the EIF model has triggered a sudden demand for funds in Gibraltar, and provided investors with several advantages that are useful for the establishment of funds. One is that Gibraltar is part of the EU, and therefore enacts all EU directives.

A further selling point for Gibraltar is that it is not subject to VAT, which greatly benefits funds' structures. In addition, funds can be established in Gibraltar quickly and at a relatively low cost. Gibraltar also passports investment services into Europe, which is a marketing tool for funds looking for new investors.

Funds are one of the fastest-growing sectors in the jurisdiction, and it seems that it will continue that way. The only obstacle the jurisdiction now faces is its lack of marketing prowess - Gibraltar has a great product, feel lawyers in the market, but needs to sell it better to investors in the US, the UK and across Europe.

The government is starting to tackle this problem, and has begun organising seminars in Europe's finance hubs to promote Gibraltar as an alternative jurisdiction for funds.

Hassans

Hassans is one of the oldest and most prestigious firms in Gibraltar. The firm holds its sole position at the top of the rankings after yet another year of strong transactions.

Fabian Picardo is praised by the market for his work with corporate entities. "He is safe, commercial and presentable," says one client. Picardo is also a member of Gibraltar's parliament, where he acts as shadow minister for financial services, telecoms, media and the environment.

Nigel Feetham is described as one of the standout lawyers in Gibraltar, with one highlight advising Rockhampton Insurance on the establishment of the first protected cell company under the European Commission's Reinsurance Directive. Feetham also published the first book on protected cell companies in March 2008.

The team is also very active in the insurance market, advising almost 90% of the insurers based in the jurisdiction. One highlight was acting on the £170 million transfer of an insurance portfolio from Link Insurance to Zenith.

Leading lawyers

Nigel Feetham
James Levy
Anthony Provasoli

Isola & Isola

Established 115 years ago, Isola & Isola is one of the leading advisors to banks in the jurisdiction.

While some competitors believe the firm concentrates too much on domestic matters, the firm has addressed this and boasts a number of associate offices in the UK, Switzerland and Spain, and is member of Advoc - a global network of independent lawyers - which provides the firm with the necessary backing for multijurisdictional work.

Christian Hernandez and Jonathan Garcia appear in most of the firm's transactions for this year. The two-man team advised RBS in the refinancing of a portfolio of properties owned by real-estate fund European Energy Group.

The team is also advising Hypo Real Estate Bank International on the £1.4 billion financing arrangement for the acquisition of a property portfolio.

Leading lawyers

Peter Isola

Marrache & Co

Marrache & Co has the widest geographical spread of the Gibraltar law firms, boasting offices in London, Spain, Lisbon, Prague and Luxembourg.

The firm has a strong corporate team which provides advice on capital restructuring and M&A transactions.

Among the firm's most prominent work for this year, the firm advised a shareholder in the £28 million sale of West Cornwall Pasty Company shares, and the advising in the establishment of a \$1.5 billion EIF in Gibraltar.

Leading lawyers

Benjamin Marrache
Isaac Marrache

Triay & Triay

Triay & Triay's financial and corporate practice focused on acting for banks looking to set up subsidiaries in Gibraltar. The firm is also an active participant on the insurance sector, advising on the formation of Gibraltarian insurance companies.

Leading lawyers

Abraham Serfaty
Joseph Triay
Raymond Triay