

By Ian Felice and Richard Buttigieg

INTRODUCTION

UK commercial property purchasers lucky enough to find a willing vendor and financier may deem it worthwhile from a stamp duty land tax (“SDLT”) point of view to structure the transaction using a Gibraltar limited partnership (“LP”).

The LP is a creature of statute, with the Limited Partnerships Act (“the Act”) providing for the constitution and registration of Gibraltar LPs. A LP should not consist of more than 20 persons and must have one or more general partners, who shall be liable for all debts of the firm, and one or more limited partners. A LP shall have a registered office in Gibraltar.

Section 7 of the Act sets out the registration requirements for a LP, entailing the delivery to the Registrar of a statement, signed by the partners, containing *inter alia* the firm name, the nature and principal place of business, the name of each partner, the sum contributed by each limited partner and how this is contributed. If a LP is not registered in accordance with the provisions of the Act, it shall be deemed to be a general partnership and every limited partner deemed to be a general partner.

A limited partner shall not take part in the management of the LP and shall not have power to bind the firm. Unless the Act provides differently, the Partnership Act and the rules of equity and of common law applicable to partnerships apply to LPs.

The Registrar shall issue a Certificate of Registration of the LP from which date the partners shall be a LP, having separate legal personality under the firm name, and capable of exercising all the functions of a LP. Given this separate legal personality, and its recognition by HMRC as being tax transparent, the Gibraltar LP has become useful in the planning of SDLT savings in commercial property transactions.

Essentially, the vendor, the purchaser and the purchaser’s parent establish a LP with a LP Agreement drawn-up to reflect the interests and rights of the parties. The vendor is entitled to almost the entire income rights from the date of establishment until a minimum period of 3 months, with 0% capital rights and with the provision of a nominal amount of capital. The purchaser and its parent have minimal income rights for the first 3 months, after which 50% flow to each. The purchaser’s parent enjoys 100% of the capital rights and capital and bank financing is injected by way of capital contribution to enable the purchase of the property.

The vendor exchanges contracts with the LP for the sale of the property. As the vendor has the majority of the income rights, the “chargeable consideration” for SDLT should be minimal. After the passage of time, the vendor’s interest attracts neither capital nor income rights and are sold to either of its existing partners.

Gibraltar corporate vehicles have traditionally been used for UK commercial property transactions but it is in the present market that the hitherto little used Gibraltar LP has seen an influx of life. The onset of Limited Liability Partnerships however, may provide

yet another vehicle through which structures can be put in place in a manner similar to that described above.

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