



Gibraltar the Alternative Jurisdiction



"Gibraltar without Borders"

"The re-introduction of the Gibraltar - Algeciras maritime link marks a move in the right direction for both countries. The challenge was particularly significant given that the link had been closed for approximately 40 years. The aim was to re-establish the ferry service to provide Gibraltar and Spanish residents the option to travel from Algeciras to Gibraltar and vice versa, via ferry in little over 20 minutes, thus avoiding traffic jams and frontier queues"

Tony Provasoli
Partner & Head of Financial Services



With the proposed changes to the United Kingdom's tax rates as announced by the Chancellor in the 2009 pre-budget report speech, it won't come as a surprise that we will see an influx of businesses, and individuals alike, seeking to re-domicile in different and perhaps more favourable jurisdictions. Top investment bankers, traders, businessmen and businesses will relocate abroad and continue to work/operate from a place where their income or profits may not be taxed in the UK at all. However, there is no standard reply as to which is the best jurisdiction for a business or individual as questions such as incorporation costs, tax rates, legal system, compliance and other factors will shift the decision one way or another. Notwithstanding this, Gibraltar is certainly, in many ways, an attractive alternative.

A British colony located in the southernmost tip of Spain, situated between two continents at the entrance to the Mediterranean Sea, Gibraltar benefits from a constantly growing financial sector. Gibraltar was captured by the British in 1704 and, has to date, remained British thus

enjoying British Dependant Territory Status. The head of state is Queen Elizabeth II who is represented by the Governor of Gibraltar.

A self-governed territory and part of the EU under Article 227 (4) of the Treaty of Rome via Britain's membership, Gibraltar offers an outstanding portfolio of financial services and has been awarded "white list" status by the Organisation for Economic Cooperation and Development. With a successful legal system based on English common and statute law, the legal practice in Gibraltar is very similar to that of the UK.

So the question really is; 'In what way is Gibraltar an attractive alternative?' There are many ways in which Gibraltar can be viewed as an attractive jurisdiction, one of which is the taxation benefits provided by Gibraltar to individuals. Under our Income Tax Act, combined with Qualifying (Category 2) Individuals Rules 2004 and the High Executive Possessing Specialist Skills Individual Rules 2008, we are able to offer certain individuals a financially advantageous tax package.



Individuals, depending on their circumstances, can opt for one of the following;

Qualifying Individual (Category 2) ("Cat 2")

In summary a successful Cat 2 individual shall be liable to income tax on the first £70,000 of assessable income only within the Gibraltar financial year which runs from the 1st of July to the following 30th of June. Additionally, it should be noted that the amount of tax due and payable in any year of assessment shall be not less than £20,000 and not more than £25,880 (although this amount varies from year to year subject to changes on the tax band).

In order for an individual to successfully obtain Cat 2 status, he will have to meet various requirements laid down by taxation law in Gibraltar. Firstly, an individual must apply in writing to the Finance Centre Director for the issue of a Cat 2 certificate if he has available to him and his family an approved residential accommodation in Gibraltar. The individual, however, must not currently reside in Gibraltar nor should he have been present in Gibraltar in the five years preceding the year of assessment in which the application is made. Furthermore, the individual must note have engaged in trade, business or employment in Gibraltar during this period other than those specifically exempted by the law. In view of this, and subject to the Finance Centre Director considering the applicant to be of good character, substantial and sound financial standing and such that the issue of a certificate to him would not be deleterious to the reputation of Gibraltar as a finance centre, his application will be considered.

Although this taxation status is provided on an indefinite basis the certificate awarded by the Finance Centre must be endorsed by the Finance Centre every three years.

High Executive Specialist Skills Possessing Individual ("HEPSS")

The rules and conditions of a HEPSS Individual are different to those of the Cat 2 requirements stated above.

In stark contrast, a HEPSS individual will actually be engaged in trade or business in Gibraltar. The applicant must demonstrate to the Minister with responsibility for finance that he possesses skills that are necessary to promote and sustain economic activity of a particular value to Gibraltar. These skills must not be available in Gibraltar and they must be important for the economic development and growth of Gibraltar. Additionally, the applicant must occupy a high executive or senior management position and earn more than £100,000 per annum in Gibraltar.

Similar to Cat 2, a HEPSS individual will require an approved residential accommodation in Gibraltar for him and his family's exclusive use. He must have not been gainfully occupied or resident in Gibraltar in any part of the 36 month period immediately preceding the year in which his application has been made. This requirement, however, may be waived by the Minister of Finance at his discretion.

A successful applicant shall be charged to tax limited to the first £100,000 of his assessable income, under the Gross Income Based System in Gibraltar thus limiting their income tax liability annually to £26,750.

In considering Gibraltar as an alternative jurisdiction, both potential Cat 2 and HEPSS individuals are provided with an obvious advantage. A capped income tax depending on each person's individual employment and business needs and the value and skills brought to Gibraltar as a result of these tax options, both enrich Gibraltar and potential business carried out here and provide for a candidate who benefits from a specific taxation system.

Coupled with these income tax benefits Gibraltar offers a complete and powerful package. This includes no capitals gains tax, no wealth tax, no inheritance tax, no estate duty or VAT and a low corporate tax which ultimately means that as mentioned previously, Gibraltar certainly is an attractive alternative.

*Article written by
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Gibraltar without Borders

Introduction

Transcoma Lines as a part of TRANSCOMA GROUP, a very reputable firm in Spain and globally within the shipping industry, instructed Hassans in October 2009 to advise and assist in obtaining all licences necessary in Gibraltar to re-establish the Gibraltar - Algeciras maritime link. Transcoma wished to commence operating a ferry service between Algeciras and Gibraltar before the New Year.

"Gibraltar without borders" was their slogan. The idea was to give Gibraltar and Spanish residents the option to travel from Algeciras to Gibraltar and vice versa, via ferry, in little over 20 minutes avoiding traffic jams and frontier queues. This was a challenge given that this maritime link had been closed for approximately



40 years. Although Transcoma had done substantial ground work prior to instructing Hassans, there was still a great deal of work to be undertaken in order to meet Transcoma's deadline for the commencement of operations. In order to be able to operate the ferry service legally, from a Gibraltar point of view, Transcoma required several Gibraltar licences, namely a) Port Operators Licence (Ferry Operation) b) Harbour Craft Licence and subsequently c) Ship Agency Licence, all of which were successfully applied for.

Port Operators Licence (Ferry Operation)

The Port Operators Licence for the operation of the ferry was required in order to be able to carry passengers to and from the Port of Gibraltar. In order to obtain this licence, there were certain requirements that had to be satisfied. These included (a) submitting a full business plan, containing 5 year financial projections, that was acceptable to the Gibraltar authorities; (b) complying with due diligence requirements with regards to both the ferry owners and the ferry operators; (c) complying with due diligence

requirements with regards to the type of vessel that would be used; and (d) complying with due diligence requirements with regards to crew and personnel.

Harbour Craft Licence

The Harbour Craft Licence was required in order to satisfy the authorities that the vessel was safe to carry passengers. This required an extensive survey by the Gibraltar Maritime Administration and the presentation of the necessary international safety certificates, approvals and exemptions. The Government of Gibraltar also granted a licence to Transcoma for the use of office space within the Ferry Terminal which space was needed by Transcoma to carry out general administration work in connection with the ferry service. The office space also included a small ticket office. Hassans advised on and discussed the form of licence.

Ship Agency Licence

Hassans were then instructed to apply for a Ship Agency Licence on behalf of Transcoma. A Ship Agency Licence was

required in order to enable Transcoma to provide ships berthing or docking in Gibraltar with the usual ship agency services. Transcoma's intention is to utilise its extensive network to attract vessels to Gibraltar and generally to use Gibraltar's services. Transcoma would market, amongst other things, Gibraltar's dockyard and bunkering services.

Hassans advised Transcoma on the requirements for the obtainment of a Ship Agency Licence. Transcoma, amongst other things, had to show that (a) they had a relationship with a bank in Gibraltar; (b) they had suitable premises in Gibraltar; (c) they had the necessary expertise in their sector; (d) they could contribute in a positive way to the maritime industry in Gibraltar; and (e) they had adequate insurance.

As far as the banking aspect was concerned, Hassans assisted in the obtainment by Transcoma of a bank guarantee, for the benefit of the Government of Gibraltar, which is a key requisite for the obtainment of a Ship Agency Licence. Hassans reviewed the bank's facility letter and the guarantee and advised Transcoma accordingly.



Hassans also assisted Transcoma in identifying suitable commercial premises in Gibraltar. Hassans also advised on the conveyancing documentation for these premises.

Hassans were also instructed to review the contract that Transcoma's customers would enter into with Transcoma when purchasing a ticket for the crossings. Hassans further advised Transcoma on all relevant aspects of employment law in Gibraltar and facilitated Transcoma's recruitment of local employees drafting the necessary employment contracts.

Summary

Hassans has provided legal advice and general assistance in all aspects of the Transcoma operation in Gibraltar. Transcoma managed to open this maritime link to the public on 17 December 2010 and is now fully operational (5 rotations daily, Monday to Friday, and 3 more Saturday's) despite the adverse weather conditions that have been encountered in December 2009 and January 2010.

Hassans is the largest law firm in Gibraltar and benefits from specialist teams with extensive experience in all areas of law. The Financial Services team advise major investment and commercial banks, insurance groups and other corporate clients on how to establish tax-efficient EU operations, regulatory issues and various legal structures. We also play a key role in drafting financial services, banking and insurance legislation.

Article by Anthony Provasoli

The Payment Services Directive

Introduction

With the imminent implementation of the EU Payment Services Directive 2007/64/EC (the "PSD") into Gibraltar law, firms that provide payment services to consumers will certainly have to make some changes in order to comply with the provisions of the PSD. Article 1 of the PSD classifies payment services providers into six categories and these will include banks, building societies, e-money issuers and money transmitters, amongst others. Such institutions will fall under the remit of the PSD.

In essence, the PSD introduces specific rules and requirements which seek to achieve a level playing field for the regulatory regime of payment services throughout the European Economic Area (the "EEA"). Its key aim is to ensure that payments made throughout the EEA become as easy, efficient and secure as domestic payments. The PSD establishes the following concepts in this area of business:

- an authorisation regime for payment institutions;
- lays down a set of rules to increase transparency of conditions;
- provides information requirements for payment services; and
- sets out a framework of rights and obligations of payment services users and payment services providers.

Payment Services

A payment services provider must be engaged in one or more of the following types of business activities as listed in the Annex of the PSD:

- (1) Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
- (2) Services enabling cash withdrawals

from a payment account as well as all the operations required for operating a payment account.

(3) Execution of payment transactions, including transfers of funds on a payment account with the user's payment services provider or with another payment services provider:

- execution of direct debits, including one-off direct debits;
- execution of payment transactions through a payment card or similar device;
- execution of credit transfers, including standing orders.

(4) Execution of payment transactions where the funds are covered by a credit line for a payment service user:

- execution of direct debits, including one-off direct debits;
- execution of payment transactions through a payment card or similar device;
- execution of credit transfers, including standing orders.

(5) Issuing and/or acquiring of payment instruments.

(6) Money remittance.

(7) Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system of network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.

A payment instrument is defined in Article 4 of the PSD as "any personalised device(s) and/or set of procedures agreed between the payment service user and the payment

services provider and used by the payment service user in order to initiate a payment order”.

Key Provisions and Information Requirements

Institutions other than those which are already authorised to carry out payment services under the Financial Services (Banking) Act (the “Banking Act”) will need to apply for authorisation or registration under the PSD. Applications for authorisation will have to be submitted to the competent authority together with a number of documentation such as a programme of operations and a business plan with financial projections for the first three years of business. A full list of these requirements is set out in Article 5 of the PSD. Firms such as banks, building societies and e-money issuers which have already obtained authorisation under the Banking Act will still nevertheless have to adhere to the conduct of business requirements laid down by the PSD.

Article 26 of the PSD provides a waiver of certain prudential requirements for registered payment institutions (small payment institutions) provided their turnover does not exceed Euro 3 million of payment transactions per month (averaged over the preceding 12 months) and none of the individuals responsible for the management or operation of the business has been convicted of offences relating to money laundering, terrorist financing or other financial crimes. Member States can opt whether or not to take advantage of this waiver, so we will have to wait and see whether Gibraltar will benefit from this provision when the PSD is finally transposed into Gibraltar law.

The transparency of conditions and the information requirements for payment services are set out in Articles 30 to 50 of the PSD. The information that needs to be disclosed to the payment service users consists of, inter alia, the amount of charges payable by the user, the maximum execution time for the payment service to be provided,

applicable interest and exchange rates, information on the payment services provider and on use of the payment service. The information requirements will vary depending on whether the user is simply effecting a single payment transaction or is establishing a framework contract with the payment services provider.

It is important to note that only transactions where, (1) the payment services provider of both the payer and the payee are located in the EEA and (2) the payments are made in Euros or in the currency of a Member State which has not adopted the Euro, fall under the scope of the PSD. So for example, if the payment services provider of the payer is in Gibraltar and one of the payee’s is in the USA, the rules and requirements under the PSD shall not apply.

Passport

Payment services providers which are authorised in Gibraltar will benefit from the freedom to provide payment services business and operate in other Member States on the strength of their Gibraltar authorisation. However, small payment institutions which are only registered under Article 13 of the PSD, will be unable to passport their services to other Member States.

Hassans have a wealth of knowledge and experience in the financial services sector and we would be happy to advise you on any aspect of the PSD and deal with applications for authorisation as soon as the Gibraltar implementing legislation is passed by Parliament.

Article written by Ernest Lima



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