GIBRALTAR: EMBRACING THE FUTURE

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The ECJ's ruling on the legitimacy of Gibraltar's fiscal autonomy may help to dispel outdated perceptions of it as a 'tax haven' and move it further into the financial mainstream.

Last December's ruling by the European Court of Justice ratifying the autonomy of the Gibraltar government to set its own fiscal policy has opened the way for a new low tax corporate regime and helped to ensure the 'Rock's' continued prosperity, say lawyers.

Had the decision gone against it, many believe that it would have dealt a mortal blow to its expanding financial services and online gaming sectors, at a time when US and European Union (EU) governments are placing increasing pressure on offshore 'tax havens' and banking secrecy laws.

'The ECJ has effectively reaffirmed the legitimacy of Gibraltar's tax policy, which will no doubt be helpful to the government's strategy to reposition Gibraltar as a mainstream financial centre within the EU,' says Michael Castiel, corporate and finance partner at Gibraltar's largest firm, Hassans.

The ruling has helped open the door for draft legislation outlining a proposed across the board 10% corporate tax regime that is now expected in early July, the start of the Gibraltar government's fiscal year, with implementation likely in July 2010. Gibraltar's domestic corporate tax rate currently stands at 27% while its exempt company scheme was closed to new entrants in June 2006.

Subsequently, the inclusion of Gibraltar in the list of tax havens published by the OECD this April – albeit on the 'grey' list – has however disappointed some. Nonetheless the OECD's definition of a tax haven, where different tax regimes exist for onshore and offshore companies, will no longer apply to Gibraltar once a prerequisite number of bilateral tax exchange agreements have been agreed (expected by November 2009) and the tax-exempt regime is finally phased out in December 2010.

Changing emphasis

The ECJ's decision is welcomed however not only because of the fiscal certainty it now offers companies operating through Gibraltar but also because it enables 'Gibraltar PLC' to better sell itself in a period of economic uncertainty, say many.

'For all of our success in recent years and the clarity the ECJ has brought, Gibraltar is not immune to the wider economic situation. Our economy remains buoyant, there is still work out there, but the emphasis has clearly changed,' says Robert Vasquez, partner at leading firm Triay & Triay.

Lawyers across Gibraltar repeat the analysis. Cross-border corporate and transactional activity has fallen sharply, as has structured finance, while real estate deals have come to a virtual halt.

The proposed Gibraltar Stock Exchange has also been put on hold, in part reflecting the collapse of international capital markets activity, but also of one of its main sponsors, Vienna-based Bank Medici – which has been taken over by the Austrian authorities after it revealed a €2.1bn exposure to the fraudulent Madoff Fund.

Refocusing

Despite such developments Gibraltar's lawyers are not overly pessimistic. The economy remains diversified. Two-thirds of GDP is generated by financial services and tourism – with 8 million visitors a year – while the online gaming industry and shipping-related services help to make up the remainder. James Tipping, who leads Gibraltar's Finance Centre, highlights the pragmatism that pervades throughout the government, finance and legal sectors.

'Zero tax is no longer an option. The current economic situation, international governments focus on transparency, and a general disapproval of opaque corporate and banking regimes means that there is no future in that type of business. Our trajectory has been for some time and continues to be toward a low tax, internationally co-operative onshore finance centre.'

The IMF in May 2007, under the leadership of prominent Spanish political figure Rodrigo Rato, endorsed Gibraltar's robust banking and insurance regulatory environment and antimoney laundering regime.

Thawing

Despite Gibraltar's emphasis on transparency and compliance, lawyers note that the Territory's relations with Spain continue to cloud its message.

Many sense a continuing easing of relations since the September 2006 Tripartite Agreement, signed by Spain, Gibraltar and the UK, at which a number of longstanding disagreements were resolved. A second round of talks is scheduled for the summer, for which Gibraltar has placed concerns over its tax regime and financial centre on the agenda.

'The belief is that the Government is keen to explore the potential for an exchange of information agreement with Spain and there is debate around the merits of a double taxation agreement, which would be Gibraltar's first. The overriding belief here is that we have nothing to hide, in fact we want to be more open,' says Tipping.

Many leading Spanish companies are already active locally, note lawyers. Oil and petroleum refiner CEPSA has a significant local bunkering – ship refuelling – operation, while over €200m of public works contracts have been awarded to Spanish operators in recent years. Dragados is now building Gibraltar's new airport terminal, while Bruesa is near to completing private and social housing contracts worth €84m.

Playing to win

Lawyers are keen however for Gibraltar–Spanish relations not to detract from the fact that business continues to be generated from across Europe and elsewhere. It is in any event now established as an international centre for online gaming and home to many of the leading operators, an industry last year that earned global revenues in excess of €15.5bn.

Among Gibraltar's 19 licensed companies are Bwin, 888, Victor Chandler, Ladbrokes, Gala Coral – which has recently opened a £6m casino – and industry leader PartyGaming, which in December 2008 signed a three-year alliance agreement with Spain's leading gaming group Cirsa. Fears that the new 'low tax' regime might prompt some gaming companies to leave – many having been established under the tax exempt Gibraltar company scheme – have proved unfounded, say lawyers. UK-based William Hill recently announced an intention to even expand its operations locally.

Gibraltar in any event is to introduce new gaming codes of practice later in the year enhancing oversight of anti-money laundering measures, technical standards and internal controls.

Flexibility

The prevailing belief then among the local legal and finance community is that Gibraltar retains the flexibility to ride out the prevailing economic storm.

'The Rock has an ability to adapt and even prosper in the face of changing circumstances and to some extent that is what is happening now,' believes Kenneth Bonavia, former managing partner of DLA Piper in Madrid who now leads Hassans Spanish practice.

Governments increasing emphasis on international financial transparency, and multinationals current emphasis on debt and tax-driven restructuring, may even help drive business to Gibraltar, say others.

The effects of consolidation in the banking sector are already being felt locally. SG Hambros recently absorbed the private banking operations of ABN Amro – creating Gibraltar's third largest private bank with £1.3bn (€1.4bn) assets – and Close Brothers, is currently awaiting a licence to open a Gibraltar branch in a joint venture with the Marrache Group.

For the time being the only conspicuous absence among the mainstream finance institutions currently operating through Gibraltar are the household Spanish banks, note lawyers. Although rumours suggest that the beleaguered Royal Bank of Scotland may be considering the potential sale of its managed property portfolio to a major Spanish player.

The ECJ's clarification of Gibraltar's tax position and its government's apparent willingness to enter into exchange of information agreements and seek double taxation agreements will help promote the message even further, say lawyers. The challenge now is for Gibraltar to refine its products and to move further into the mainstream.