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The 2018 cryptocurrency crash has not halted growth

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GFIA celebrates 20th Anniversary

The Gibraltar Funds & Investments Association (GFIA) celebrated its 20th Anniversary with a Gala Dinner at the Five Star Sunborn Hotel in April.

The event which was hosted by GFIA chairman, James Lasry (pictured left) and GFIA members, was attended by the Chief Minister, Fabian Picardo, Minister for Finance, Albert Isola, the Gibraltar Governor, Edward Davis, and senior members of the Gibraltar Financial Services Commission.

James Lasry addressed the 180 strong audience, citing several of GFIA's achievements over the years, including contributions to legislation and codes of conduct. With regard to Brexit he commented: "We did not cause this, but if this is the situation we have been given, this will be how we succeed. The brain power in our industry and government, and the strong triumvirate relationship of government, regulator and industry will give Gibraltar the opportunity to make the best of whatever situation it is presented."

First Digital Assets Group granted DLT licence by GFSC

In March, the Gibraltar Financial Services Commission (GFSC) awarded a full Distributed Ledger Technology (DLT) licence to First Digital Assets Group, also known as First.

After completing the rigorous application process and demonstrating strict adherence to the nine core principles underpinning Gibraltar's DLT regulatory framework, First can now store and transmit value belonging to others using blockchain technology.

Ran Goldi, Founder and CEO of First commented: "First is happy and proud to receive the DLT licence, which will allow us to better serve our clients, providing them with the regulatory framework in the evolving digital asset economy space."

Tourist board launch trade initiative

The Gibraltar Tourist Board has launched Gibraltar 2020, its biggest trade initiative in over a decade.

Working closely with UK tour operators, airlines, local hoteliers, and tourist attractions, the campaign will be running monthly familiarisation trips with the aim to bring 200 agents from the UK to Gibraltar over the next two years.

Chief Executive, Nicky Guerrero commented: "The British public have long held an affection with Gibraltar, often through its historic legacy to the armed forces. Today the destination is appealing to a younger, more youthful generation driven by our great range of events. Vibrant new products are capturing the imagination of the Instagram generation".

Gibraltar and UK Brexit talks

In April there were a number of meetings held between the United Kingdom and Gibraltar governments to discuss the Brexit issues.

Early in the month, a team of senior officials from the UK visited Gibraltar in order to continue the close cooperation between the two countries. The two day meetings centred on details of the Brexit contingency planning and the future relationship between the UK, Gibraltar and EU.

Chief Minister, Fabian Picardo, received a phone call the following day from the British Prime Minister, Theresa May. The lengthy conversation that ensued was friendly and positive in both tone and substance.

Later in the month both governments met in London and agreed to continue with the structure of Joint Ministerial Council (JMC) meetings for intergovernmental business going forward into the future.

UK and Spain Tax Treaty and how it affects Gibraltar

By Melo Triay and the Private Client Team, Triay and Triay

Following the recent signing of a Tax Treaty between the United Kingdom and Spain, individuals, companies, trusts, foundations and other legal structures/entities resident in or established and managed in Gibraltar with connections to Spain should consider their potential liability to taxation.

Aside from dealing with issues of tax residency and where tax is payable, the Treaty provides for enhanced administrative cooperation and exchange of information. Beneficially, it provides that persons should not end up paying taxes both in Spain and Gibraltar.

Under the Treaty, tax residency in Spain is determined for the taxable period starting, or if there are no taxable periods, to cover any charge to tax arising, on or after the Treaty takes legal effect. The Treaty will come into force once internal procedures in Spain have been completed.

Individuals

The Treaty does not change an individual's existing tax liability under Spanish Law for previous tax years.

A non-Spanish national who spends one year in Spain or a Gibraltarian who spends four years in Spain, who moves to Gibraltar, will not lose their tax residency in Spain and will continue to pay tax in Spain that tax year and for the following four tax years.

A Spanish national who moves to Gibraltar on or after the 4th March 2019 will pay tax in Spain continuously.

If you are paying tax in Gibraltar from employment or self-employment and are tax resident in Spain, then currently Spain gives unilateral tax relief to the amount of tax paid in Gibraltar, but you are fully taxable in Spain under Spanish law on all income and assets worldwide.

Under the Treaty, whilst residency is determined according to the laws of Spain or Gibraltar, certain provisions determine residency in the event of "... tax residency conflicts".

A 'residency' conflict is not defined, so one may be ignited, for example, by Spain deciding, on reasonable grounds, that someone is Spanish tax resident. Once this happens that person is presumed to be resident in Spain unless he/she proves the contrary.

The two Treaty provisions which determine an individuals tax residency status, where he/she is said to be resident in both Spain and Gibraltar are: first, residency for 183 days in Spain by the individual or spouse, secondly, any time spent away from Spain or Gibraltar is added to where one has spent most time.

If there is a conflict, tax residency in Spain may also be triggered by only having a permanent home at one's disposal in Spain or where two thirds of one's direct or indirect net assets are located in Spain.

Companies or trusts

Companies or trusts established and managed in Gibraltar or governed by Gibraltar law will be resident in Spain when:

(a) the majority of its direct or indirect assets are in or are rights that can be exercised in Spain;

(b) the majority of its annual income derives

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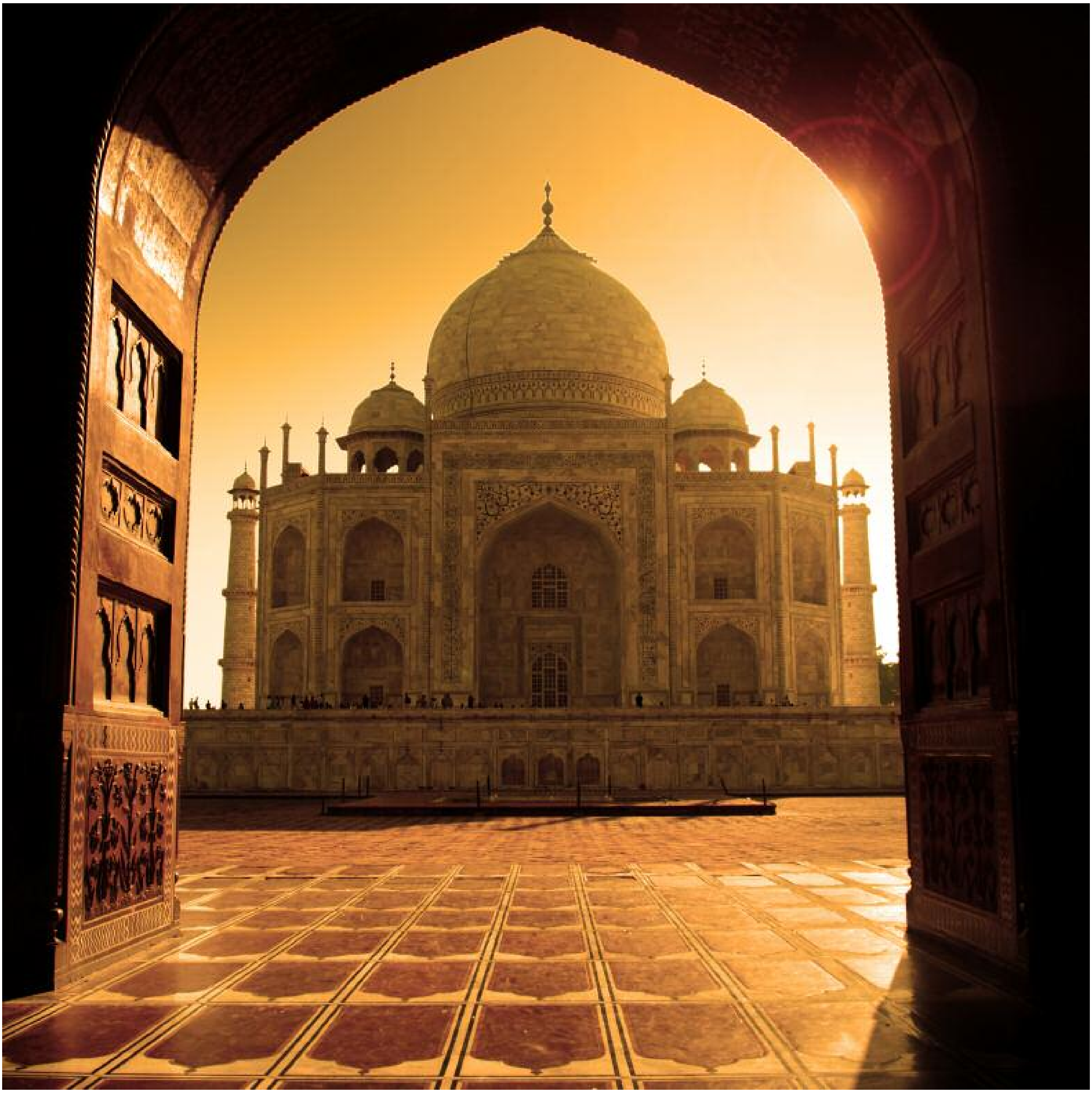

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from Spanish sources;
(c) the majority of individuals effectively managing the business are Spanish tax residents; or
(d) the majority interest in capital, equity or profit-sharing rights are directly or indirectly controlled by Spanish tax resident individuals or linked to companies or trusts linked to Spanish tax residents.

Those included in (c) and (d) above are not affected if the Company existed before 16 November 2018 and the following conditions were satisfied as at 31 December 2018:
(e) the Company has a fixed place in Gibraltar from which the whole or part of the business is carried on and an adequate number of qualified employees and operating expenditure; and
(f) the Company pays Corporation Tax in Gibraltar; and
(g) more than 75% of its income for its prior financial year accrues in and derives from Gibraltar; and
(h) in its prior financial year, its income or that of any Gibraltar related party sourced in Spain is less than:

(i) 5% if its annual turnover exceeds €6 million;

(ii) 10% if its annual turnover is between €3 million and €6 million; or

(iii) 15% if its annual turnover does not exceed €3 million.

Any Spanish company or trust whose residency is moved to Gibraltar after the Treaty takes effect will indefinitely be considered tax resident in Spain irrespective of that change of residency.

Companies or trusts that are tax resident in Spain are taxable in Spain under Spanish law on worldwide income and assets. If these are paying tax in Gibraltar, then there are circumstances in which Spain will give unilateral tax relief to the amount of any tax paid in Gibraltar, but these are fully taxable throughout that period in Spain on all income and assets worldwide.

Cooperation and transparency

Succinctly, there is full exchange of information and administrative cooperation in matters related to taxes and enforcement of taxes between Spain and Gibraltar. The Treaty requires "an enhanced administrative cooperation ... with a view to exchanging

information that is foreseeably relevant to the administration, enforcement and collection ..." of all taxes.

All current and future EU provisions engaging mutual administrative assistance on exchange of information and wider cooperation and assisting in the recovery of taxes and duties will have full force and effect beyond Brexit.

The OECD and Council of Europe's Multilateral Convention on Mutual Administrative Assistance in Tax Matters (which is law already in Gibraltar) apply, additionally, any future OECD and G20 standards will be applied.

A liaison body, to be established by Spain and the UK (in the context of the Treaty), is obliged to provide mutual assistance whether a person is resident or non-resident in either Spain or Gibraltar, without qualification under the Treaty.

Co-operation will include automatic or on request exchange, participation in tax examinations, collection and preservation and service or transfer of documents.

There will be automatic exchange of:

- annual information, within four months of the end of each calendar year, on workers in each jurisdiction registered as resident in the other, with the first exchange backdated to 1 January 2014 and due within four months of the Treaty entering into force. A worker includes any individual employed and/or carrying on a trade, business, profession or vocation in Gibraltar, who is resident within 80 kms from Gibraltar, and, vice versa, employed or operating within 80 kms of Gibraltar;
- Six-monthly information, including ownership, licence plate, value and acquisition date, on 31 March and 30 September, on vessels, aircraft and motor vehicles registered in each jurisdiction relating to residents of the other, with the first exchange backdated to 1 January 2014.

The following will apply as between Gibraltar in favour of Spain:

- free access to the Companies Registry and Gibraltar Land Registry as required by EU Law;
- direct access to public information or information held by the Commissioner of Income Tax, for taxable periods commencing with or charges of tax on or after 1 January 2011, on
  - beneficial ownership of companies and foundations;
  - settlors, trustees, beneficiaries, assets of all trusts or other legal structures established or managed in or governed by the law of Gibraltar, if these persons are Spanish tax resident or the assets are in Spain.

Conclusion

Those who have connections with Spain should act quickly to ease the possible longer-term effects of the Treaty. The provisions dealing with when the Treaty takes effect may provide a window to organise one's affairs. Although there is no mention on the face of the Treaty, political declarations have been made to the effect that once the Treaty has been operating for a while, then Gibraltar will be removed by Spain from its list of tax havens.

The 2018 cryptocurrency crash has not halted growth

A spectacular crash in cryptocurrency prices at the end of last year, had a subsequent roller coaster effect and a decline in digital business crowd funding (ICOs), but the digital financial services sector is still going strong, Ray Spencer reports

Gibraltar launched the world's first blockchain / Distributed Ledger Technology (DLT) regulation in January 2018, and is now gradually increasing its licensing activity. The jurisdiction is poised again to trail blaze with the launch of token sector regulation, albeit a year later than anticipated.

In 2018 Q1, 30 DLT license applications reportedly were received. By mid-April this year only seven firms had been approved and almost all were cryptocurrency exchange-related, including some of the world's largest such enterprises!

Nicky Gomez, Gibraltar Financial Services Commission (GFSC) head of risk & innovation, said some were aimed at start-up businesses and others at established operations that had "decided to run its [sic] virtual asset business in a regulated environment".

He explained that businesses using DLT to store or transmit value belonging to others and operating from Gibraltar before January last year, were given three months to submit an application if they wished to continue trading under transitional arrangements. A robust assessment to ensure applicants comply with the nine regulatory principles is required before a DLT Provider licence can be issued.

"In a principles based regulatory regime, an open dialogue and collaboration between the regulator, applicants and their advisors is necessary in order to ensure applicants have adequate controls to meet the nine regulatory principles and outcomes that will deliver protection to customers, Gibraltar's reputation and reduce the potential for financial crime", Gomez asserted.

Regulation new to techies

GFSC technical specialist, Nathan Catania, pointed out: "In particular, some applicants are from tech-based businesses and are not used to dealing with regulatory requirements in their operations, which makes the need for transparency, dialogue and clear communication of our expectations even greater."

There were a further nine applications with in principle decisions pending a full DLT license "and there are [still] more in train", Gomez noted. However, he revealed: "To date, a few firms, have for different reasons, decided to withdraw their application at different stages of the authorisation process".

LMAX Digital, an electronic exchange formed in May 2018 dealing in foreign exchange (FX) and crypto currencies for institutional clients, revealed in March that it was awaiting DLT license approval. Parent company, LMAX Exchange Group, has traded over US$12trillion at multiple FX trading venues worldwide. Others, such as **TokenMarket** and **CEX.io**, have also received in-principle decisions from GFSC.

The earliest applications took over six months to gain approval, double the time originally expected. According to Paul Astengo, the government-supported **Gibraltar Finance** senior executive with responsibility for innovation and technology initiatives: "A lot depends on the quality of the applications the complexity of the proposed activity and how well-presented the cases are; they're being processed more quickly and generally it now takes closer to three months. It has been a learning curve for us all, including applicants, practitioners and the GFSC."

DLT beyond finance

Recent DLT-license applications are challenging areas of blockchain activity other than being crypto-related. Astengo confirmed: "There are applications in course that are concerned with other areas of industry, not just financial services, run by advisory firms to aid, for example, detailed business planning that previously might have involved hiring a human management consult to consider."

A year ago, **Gnosis** was attracted to set up headquarters in Gibraltar after its US$12.5m token sale, and established the Olympia prediction platform to "aggregate information about the expected outcome of a future event" from climate change, gauging the price of a piece of art before auction, or forecasting epidemics".

Minister for commerce, Albert Isola, enthused: "There is a real vibrancy emanating from Gibraltar's growing blockchain ecosystem." He added: "We have set a high bar for prospective DLT providers. We are committed to upholding the highest standards in our expanding blockchain ecosystem, and remain deeply

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committed to our principles-based approach to DLT regulation."

Fly in ointment

The fly in the ointment has been the sudden crash in digital currency prices last year. In November, for example, crypto currency valuations fell by a third in one week and have been volatile since.

In response to late-March questions, Nick Cowan, chief executive of **Gibraltar Stock Exchange** (GSX) Group, observed: "Having been a trader in the 1987 as well as the 2008 crash, I have seen the financial industry go through many significant bear and bull markets, such that 18 months ago Bitcoin, [the largest crypto currency by far] was at the same price it is today.

"What happened in between was a combination of greed (versus fear) and simple hype", he opined adding that most major exchanges saw a drop in crypto business volume and prices down by 90% since the peak.

Cryptocurrencies form a major part of GSX Group activity, but since receiving its DLT license in November, business had grown, "particularly with our insurance cover for theft from our wallets". He cautioned: "When markets suffer the type of falls seen, many people who entered the market seeking gains (without understanding the underlying technology, perhaps) naturally withdraw or move on."

Coinfloor trades Bitcoin for institutional and 'sophisticated investors', and in 2013 became the UK's first crypto exchange, and in October 2018 it gained a Gibraltar DLT licence.

In January, the firm reportedly was "scaling back activities for now", a move described by industry pundits as "sensible" and "responsible to protect the long-term future of the business". Coinfloor expects to return to its previous level of activity by the year-end.

Set up in the US in 2007 "to reduce dependency on traditional financial institutions" **eToro** is now a market-leading internet trading platform and gained its Gibraltar DLT licence in December, along with **Huobi Technology** (Gibraltar), which is part of a leading Singaporian blockchain group boasting over US$1trillion turnover from users in 130+ countries. Huobi said: "It's no secret that we think that well-designed regulatory applications, from liquidity to safe storage with military grade security layers".

"Among other benefits, our [Gibraltar] DLT license will allow us to open doors to more institutional investors who were previously unable or unwilling to get involved in an unregulated sphere," Li stated.

First Digital Assets Group, operating as **Eppur Group**, gained its DLT license in March to "create building blocks for blockchain applications, from liquidity to safe storage with military grade security layers".

Coinsilium Group, a blockchain investment and advisory firm, in March moved its core operations from London to reduce operating costs and put more resources into investment activity and advisory services. Executive chairman Malcolm Palle, relocated to Gibraltar to recruit staff before summer, and declared: "It's not just regulation that is attractive – it is also because banking is better and the jurisdiction is ahead of the curve".

"Crypto trading seen greed v fear and simple hype", Nick Cowan, GSX Group Chief Executive

Palle said Gibraltar's private **Turicum Bank** "has a good understanding of how DLT and crypto companies work and is more open-minded to the sector, whereas many other banks have a blind spot with regard to blockchain". Firms involved with cryptocurrencies have experienced widespread difficulty in obtaining bank accounts in main financial jurisdictions, sometimes instead choosing eastern European jurisdictions and Euro bank accounts.

"It's about the banks being comfortable on where the money has come from to satisfy their know-your-customer (KYC) and anti-money laundering (AML) obligations. With money into businesses arising from cryptocurrency activity, the banks need comfort on the source of funds," Palle observed.

While State-owned **Gibraltar International Bank** (GIB) is accepting of crypto businesses, its reciprocal British bank, [the Royal Bank of Scotland], is not and reportedly refused last year to process orders from locally based crypto firms.

GIB chief executive, Lawrence Podesta, told *Gibraltar International:* "It is still very difficult to engage with institutions [that] are willing to entertain payment channels, in and out, for any monies related to FinTech business." He disclosed: "A number of meetings with some institutions were arranged in April. I am optimistic and hopeful that we can revive this area of activity within the next few months."

The **Gibraltar Blockchain Exchange** (GBX), which runs an initial coins-offering marketplace as a subsidiary of Gibraltar Stock Exchange (GSX), gained its DLT license last November reportedly after 180 days of preparation. GSX Group now employs 100 people – 70 at its Gibraltar headquarters, and the rest in London, Hong Kong and Singapore.

Blockchain transformational

Bitcoin is not legal tender in Gibraltar. It will not regulate the currencies, but will license firms that have business in or from Gibraltar, for the use of DLT for storing or transmitting value belonging to others. The jurisdiction's consistent view is that the underlying blockchain technology is what is transformational.

Nick Cowan, GSX Group chief executive, declared: "Gibraltar has found the right blend of sensible and supportive regulation, which has helped position the jurisdiction as a lodestar for the global crypto currency space" and suggested: "Crucially, here in Gibraltar there has been a realization that the pursuit of innovation should never come at the expense of sustainability and long-term development."

There is continuing interest from operators in becoming a licensed DLT provider, insisted Peter Howitt, director of Gibraltar's **Ramparts Law**, "though the bear market for crypto has made it tougher for many operators to afford the licensing and set up costs given the drop in revenue and also asset value for those holding their own assets in crypto!"

There is no harmonised approach at EU level to the regulation of virtual currencies or the use of blockchain technologies in areas that overlap with more traditional financial services.

Gibraltar's planned Tokens regulation, including initial coin offerings (ICOs) – used across the world to crowdfund multi-millions of pounds for new and established businesses – was expected in mid-2018, but the slump in crypto market activity of all types contributed to make the launch less urgent.

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A Tokens Bill was eventually published in February and after industry consultation it is now expected to take effect in May 2019. Tokens offerings will need to be made through licensed 'authorised sponsors', who will be required to ensure compliance to the regulator's principles and adherence to authorised codes of practice for each issue.

Research from **Atlantic NeoTechnologies** (ANT), a specialist service company for digital currencies, tokens and ICO projects, suggests ICO funds raised through Gibraltar rose from around US$40m in Q3 2017 to US$340m by end-2018.

While crypto exchanges such as GBX [which itself attracted over US$27m in a seven day February 2018 token offering] accounted for a quarter of Gibraltar's ICO activity, other areas showed "even more signs of acceleration and diversification" across 15 sectors, including commerce, healthcare, infrastructure and energy, according to Alain Chevee, chief executive of ANT, with offices in Geneva, Luxembourg and Gibraltar.

Chevee's report on information website, fintech.gi, noted: "We see that Gibraltar is clearly a major player in terms of pro-ICO regulation, expertise and the number of ICOs in proportion to its size as a jurisdiction. The development of an ICO industry is undoubtedly an investment for the future of Gibraltar's economy as the funds raised by ICOs will continue feeding and seeding projects, no matter how the crypto-currency industry evolves meanwhile."

ICOs investment in future

But pointedly, Chevee stated: "The key relevant question now [is] whether Gibraltar will stay ahead of the curve in the future when bigger countries clarify their stance on ICO regulation and major banks and other actors enter into play!"

The test for Gibraltar's DLT regime, and forthcoming tokens regulation - where it will be the first in the world - is the extent to which other jurisdictions accept those standards for Gibraltar licensed businesses operating in their countries. The UK does not regulate firms working with blockchain, or tokens offerings.

Ramparts in January told Lexology, an online news feed: " Whether by regulation or cross-party industry agreement on a self-regulatory basis, it is expected that Gibraltar will take a lead in managing the risks and setting the standards that should be applied in this fast-growing [tokens] sector. Most jurisdictions (including the United States) expect a detailed case-by-case assessment of whether any such crowdfunding may constitute the offer of securities (including whether they constitute a form of investment fund)."

GSX believes that the future for capital markets rests with the tokenisation of securities, known as 'smart securities'. "The efficiencies, cost reductions and instantaneous transferability can have seismic transformational effects as to how securities are traded, cleared and settled," Cowan asserted.

EIF stumbling block removed: James Lasry, GFIA Chairman

To develop its own digital exchange, GSX Group established a joint venture subsidiary, Hashstacs Inc, last year in Singapore, with a team of 40+ developers to prepare its STACS Network to begin trading digital securities later this year.

Huobi revealed that now licensed, it is looking at "exciting possibilities for simplified and efficient fiat-to-crypto and crypto-to-fiat functionality" and also expects to roll out in the first half of this year "a concerted move into the regulated financial product space".

Howitt noted that while "ICO's have really died out... there is lots of focus on equity offerings with tokens (so called Security Token Offerings)." He advised: "Gibraltar can become a leader in the tokenised securities sector if we properly balance speed to market and reduced costs with necessary regulatory controls and supervision."

Crypto funds are one area where tokenised assets are expected to make an impact and help revive Gibraltar's traditional funds sector, which in recent years has not grown as expected.

In 2014, [the last year in which GFSC published statistics] there were some 180 funds strategies in operation, 88 being Experienced Investor Funds (EIFs), with roughly £2.5 billion of assets being managed, according to **Gibraltar Funds & Investments Association** (GFIA). Today there were around 75 EIF fund strategies (including cells in PCCs), plus a number of private funds, association chairman, James Lasry, estimated

Crypto funds activity

"The sector has been contracting, but finally we have seen a steadying of that and we are launching some new funds, which is very good", he remarked in early April.

Lasry, a partner in Hassans law firm, pointed out: "We are the only jurisdiction in continental Europe that allows the pre-authorisation launch of funds for experienced investors, even when they are sub-AIFM threshold. This is because our funds include two experienced investor fund directors, who are preapproved by the GFSC to ensure proper corporate governance."

Amended legislation late last year allows non-residents to be authorised as EIF Directors, "because firms who have large funds businesses may already have their own cadre of very well-qualified directors and they don't necessarily want to use new directors who are unknown to them in order to set up in Gibraltar", Lasry explained. "We encountered some objections to this when we were in Hong Kong on a number of seminars there, so this stumbling block has been removed." The first applicant to benefit is understood to be a prominent compliance consultant with senior US and UK experience.

"Our regime is so flexible – there are no limitations on asset class unlike most other jurisdictions – so we have been able to set up crypto funds and we are looking at funds that invest in medicinal cannabis companies, provided of course, that those companies are lawful in the places where they are active", GFIA's chairman revealed.

Lasry's firm had received a number of such enquiries, including three from one London law practice, and other GFIA members similarly had been approached. "We are also looking at exchange traded funds, which we feel can fit in with our legislation," he added.

A GFIA Code of Conduct for crypto funds was established last year as the first of its kind worldwide and has received international acclaim, because although the principles of corporate governance are universal, there are scenarios that are specific to crypto funds that require specialist knowledge to set up.

New UK and Spain Tax Treaty provides certainty for Gibraltarian HNWIs

By Gavin Gafan, Senior Manager, Tax, Deloitte Limited

Like so many other Gibraltarians of my generation I was blessed with the chance of going to University, where I had the pleasure of meeting not only a good number of people, but where I was challenged by a varied number of opinions. I would stand behind the notion that these non-academic experiences were instrumental in moulding me into the person I am today, as was the education I received at that ripe age of 'somewhere between my late teens and early twenties'.

By way of example, I remember fondly the sporting aptitude of one of my flatmates who was a brilliant fencer. Upon winning Gold at a tournament a colleague said to him in passing "you are a very lucky man," to which he answered in mock-jest "indeed…the more I practice, the luckier I get." This expression stuck to my mind like glue and to some extent may have helped me achieve certain goals in life. Applying these thoughts to tax (well I am a tax consultant after all!) and the recently signed Tax Treaty, it is important to develop a good understanding of the tax legislation that one is potentially exposed to, particularly where different jurisdictions are involved.

Spanish lifestyle

Given the proximity of Spain to Gibraltar and the attraction of the Spanish lifestyle there are many situations where Gibraltar High Net Worth Individuals (HNWIs) may be exposed to Spanish tax and there has never been a mechanism to deal with conflicts between the two tax systems. In this sense the recently signed tax agreement between the United Kingdom and Spain concerning Gibraltar is a welcome development.

It would be fair to say that there has been quite some debate regarding this agreement and not just among the tax boffins, but also amongst the general populace. As a general consensus it is evident that the agreement does not follow common double tax treaty models and that aspects of the agreement will benefit Spain more than it does Gibraltar. However, notwithstanding this and without delving too deep into the rules laid-out by the agreement itself, it is worth considering the fact that many of the provisions set out in the agreement itself should already apply under Spanish domestic law, and which will in all probability continue to apply whether or not the agreement is ratified.

What has become evident is that the agreement may have awoken dormant fears amongst some taxpayers of the likelihood of non-intended dual tax residence, which thus merits the question as to whether they have historically handled their compliance obligations correctly. Whether you are for or against the content of the agreement does not detract from the fact stipulated in the body of the agreement itself, that "natural persons shall be tax resident in Spain or in Gibraltar in accordance with their domestic law…"

Tax residence

So how do most tax jurisdictions determine tax residence? Invariably tax residence provisions can be rather complex (take the UK Statutory Residence Tests as an example, which is an article in its own right), but in a nutshell most tests employed to ascertain tax residence chiefly focus on the number of days spent in a jurisdiction, as well as 'ties' to that jurisdiction.

In most cases (Gibraltar included) any individual who spends either 183 days (or more) a year, in a given tax jurisdiction tends to be held as being tax resident there.

In cases where an individual spends less than 183 days in any given jurisdiction but who has their centre of vital and economic interest in a particular jurisdiction (i.e. principal dwelling, children attending school there, investments and businesses there etc) it can trigger tax residence in said jurisdiction, despite not meeting the 183 day ceiling. Therefore taxpayers who are spending more time in Gibraltar than in Spain and who have real substance in Gibraltar shouldn't be affected by legislation for dual residents.

Overall, the treaty is a welcome clarification of tax legislation and individuals considering relocating to Gibraltar now have at their disposal agreed provisions they can rely on.

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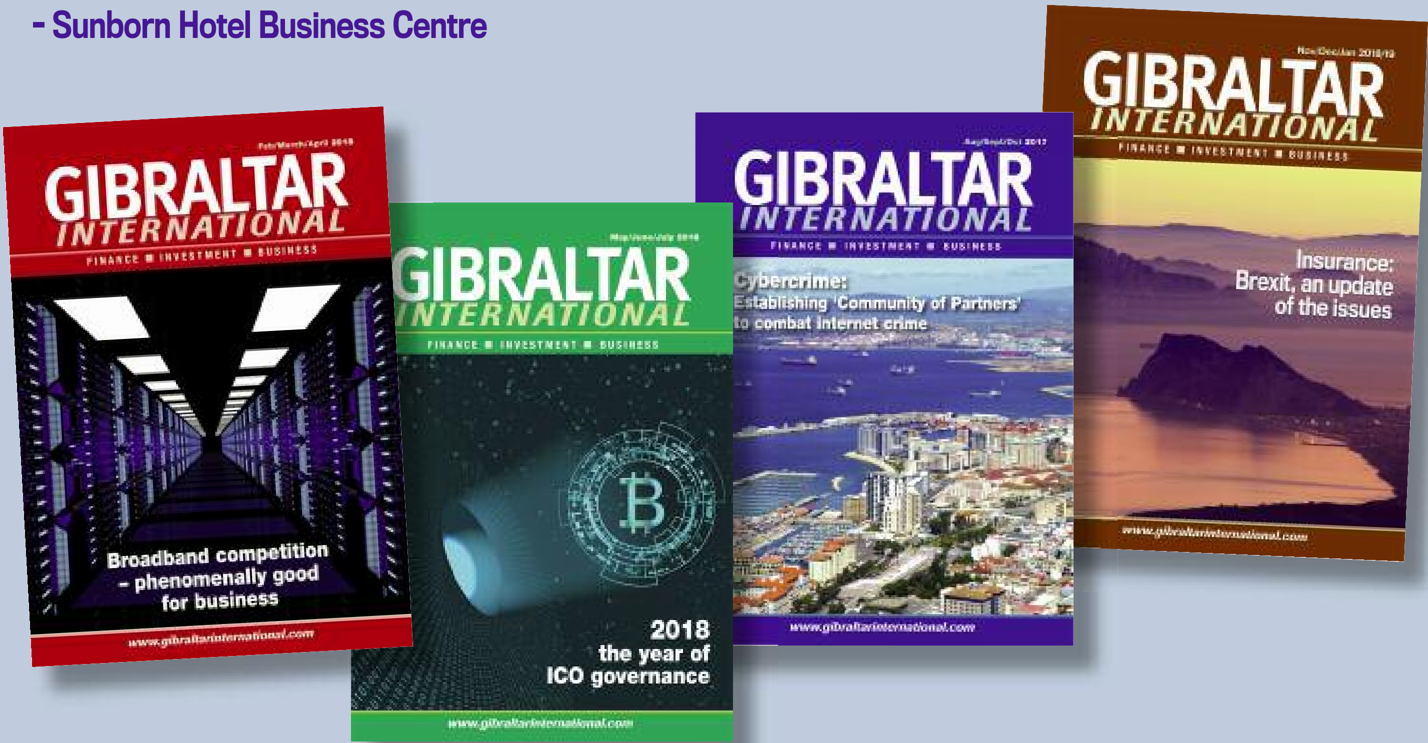

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Regime change for non-UK resident owners of UK land or property

By Lynette Chaudhary, International Tax & Research Director, STM Fiscalis Ltd

The changes to extend the UK's grip on the taxation of UK land and immovable UK property (UK land or property) came into law in April. These changes are onerous and therefore any Gibraltar resident (or in fact any non-UK resident) owner of UK land or property should take note.

All types of UK property

From 6 April, gains made on the disposal of all types of UK land or property, directly or indirectly held, are chargeable to UK tax, regardless of the residency of the owner.

The inclusion of indirect disposals means that, for example, gains made on the disposal of shares in a company holding UK land or property will fall within the UK tax charge. This applies if the company is "property rich" and the shareholder has at least a 25% interest. Whilst there is a tax exemption for indirect disposals if the property is used in the course of a qualifying trade, the simple activity of letting out property is in itself not a trade.

For Gibraltar resident owners, this means that gains made on the direct or indirect disposal of all types of UK land or property are within the scope of UK tax. For Gibraltar resident individuals or trusts non-resident UK capital gains tax (NRCGT) needs to be considered, and for Gibraltar resident companies UK corporation tax is payable on any gains realised on the disposal of the UK land or property.

The applicable rate of UK tax depends on the circumstances, for example:

- whether the property is residential or not
- if it's a direct or indirect disposal
- if it's a disposal by a company or by another entity or person, and
- for individuals the amount of their taxable income and other gains in the tax year in which the disposal occurred.

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Such disposals have to be reported to HMRC within the tight timeframe of 30 days, with, in some cases NRCGT paid within this timeframe. Even if a disposal does not result in a gain or it is sold at a loss, it must still be reported.

It is worth noting however that there is currently, and looks set to continue, a specific exemption from UK tax for gains made by certain overseas pension schemes.

UK commercial property

This is a significant tax change for Gibraltar owners of UK commercial property, who have been outside the scope of UK tax on any gains until now (Gibraltar owners of UK residential property have been within the scope of NRCGT since 2015).

Most property not already within the scope of UK tax (i.e. UK commercial land or property) has been rebased from April so that only gains arising after that date are chargeable. It is therefore advisable to obtain valuations of such land or property in order to know the base cost for any future disposal, although there may be rare occasions where it may be advantageous not to rebase the value of the land or property.

> **This rapid pace of tax change poses considerable challenges for non-UK resident owners of UK land or property**

Further change for non-UK resident corporate owners

On a related note, from 6 April 2020, non-UK resident companies will be brought within the charge to UK corporation tax on their UK rental profits (such companies are currently liable to UK income tax on their profits).

Challenges and review for the future

This rapid pace of tax change poses considerable challenges for non-UK resident owners of UK land or property. They are often unaware of such developments and fitting into the UK's Self-Assessment system can involve delays and difficulties. The 30 day filing requirement also means owners have to act quickly on completion in order to avoid costly penalties and professional guidance should be taken to ensure that any tax filings are made in good time.

Furthermore, the UK penalties associated with recovering lost tax where an offshore position exists were dramatically increased from 1 October 2018. This is a direct consequence of the 'failure to correct' regime that was introduced and which increases the penalties on undisclosed or understated income and gains arising before 6 April 2017. Couple this with increasing international tax transparency and information exchange, and the pressure on non-UK resident owners of UK land or property to keep up to date intensifies.

Therefore, for any Gibraltar residents owning (directly or indirectly) UK land or property, they should review their UK tax position now in order to plan for the future and to avoid any nasty surprises. Planning ahead is essential and a review undertaken in good time can save considerable cost and anxiety in the long term.

Gibrael Chamber leads 5th business delegation to Israel

By Eran Shay, Gibrael President

In March, a business delegation from Gibraltar travelled to Israel as part of a trade mission led by the Gibraltar-Israel Chamber of Commerce (Gibrael). This 5th delegation saw delegates from a cross-section of sectors including property, education, retail and banking who came not only to explore business opportunities but also to witness some of the latest technological innovations developed in Israel and get inspiration and ideas which they can then implement back home.

As part of the four day trade-mission, the delegation travelled to four cities: Tel Aviv, Haifa, Kfar-Saba and Jerusalem, visited three technology accelerators, met with countless entrepreneurs and attended two large conferences. "We like each of our delegations to be completely different from one another and hence develop a unique itinerary for each delegation" said Ayelet Mamo Shay, Gibrael Chamber Chairwoman. "Gibraltar is a small jurisdiction and we believe it is not fair to introduce our delegates to the same network of contacts in Israel, and so we work hard on making each delegation unique", adds Ayelet.

An important aspect of the delegation was to network with many interesting and diverse professionals from a wide variety of sectors. Participating at the Tel Aviv FinTech Week Conference, delegates met many FinTech entrepreneurs and heard about some of the latest trends in the Blockchain industry, with Gibraltar featuring prominently amongst the jurisdictions mentioned.

OurCrowd Global Investors Summit

In Jerusalem the delegation attended the OurCrowd Global Investors Summit, which saw over 10,000 investors and entrepreneurs from 183 countries attending. According to Nadine Collado of the University of Gibraltar: "Being part of this weeks' Gibrael Delegation has been a very positive experience for the University of Gibraltar. With a particular emphasis on meeting senior representatives of Hitech start-ups as well as a variety of top-level institutions and meeting executive members of universities we are now looking at establishing collaborations with relevant

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Gibraltar will use smart Israeli technology to improve the everyday lives of every human being on our planet

parties. This is in particular in the area of blockchain tech, software development, cyber security, executive programmes amongst others."

Besides startup companies, the delegation also visited two of Israel's largest publicly traded companies: Elbit Systems which is one of the world's leaders in homeland security and cybersecurity technologies, where delegates witnessed some the latest developments in these markets and had the opportunity to wear $1 million fighter pilot smart helmets, currently implemented in F-16 Fighter jets. Another company visited was the Azrieli Group which is amongst Israel's largest property development companies with a large selection of lucrative projects, from some of Israel's most iconic skyscrapers to shopping malls, retirement homes, residential developments and much more.

The delegation heard how the ageing population is affecting trends in property development and the market opportunities this is creating. Solomon Cohen of Cohen & Massias Jewellers & Watchmakers- commented: "What tiny Israel, with a population of just 8 million, has achieved in 70 years, in every field of human endeavour, no other country has achieved and all this despite being surrounded by enemies and being thrown into seven wars.

Gibraltar will use smart Israeli technology to improve the everyday lives of every human being on our planet".

Commenting on her experience, Josiane Richardson of Richardsons Chartered Surveyors said: "Without a doubt, the passion, energy and dedication the Israelis deploy towards their start up Nation will mean they will be leading the global technological revolution mankind needs to sustain our planet. Gibrael have access to a high-level network of people in Israel and Ayelet and Eran Shay have a unique and generous attitude in the way they introduce the delegation to their network. The manner in which the chamber conducts these eye-opening experiences is extremely professional. I am sure this trip will create life long bonds for me".

Arab entrepreneurs

At Takwin Labs in Haifa, a technology accelerator dedicated to Arab entrepreneurs and sponsored by two of Israel's largest venture capital firms, delegates were told about the peaceful coexistence between people of different faiths and cultures in the city of Haifa and how a different approach is sometimes required in order to encourage innovation within ethnic minorities in Israel.

Besides the professional side of the visit, the delegation enjoyed some of the famous sites of the Old City of Jerusalem, the spectacular views from the top of Mount Carmel in Haifa, sampled Tel Aviv's night life, as well as tasted some of Israel signature dishes and danced the night away at the after-party of the OurCrowd Conference. "We work hard, we play hard!" said Eran Shay, President of Gibrael Chamber.

No doubt the delegation will be coming back with much inspiration and significant business opportunities, and as explained by Ayelet: "Besides the Israeli market, the delegation also opens the door to many delegates to do business between themselves here in Gibraltar. We become a family!"

Commenting on his experience, Mark Recagno from the Gibraltar International Bank said: "It was a pleasure to be part of the delegation. I loved the experience, but more importantly I take with me a friendship amongst people which I have thoroughly enjoyed the company of."

Gibrael Chamber is already working on planning the next delegations to Israel for later this year.

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