

MANAGE YOUR PRACTICE

so-called professionals provide the (standalone) service to submit a once-off 'beneficial owner' register and create the impression that this ticks the compliance box, it is the biggest disservice they can do to the client. Not only is there a requirement to submit real-time 'beneficial owner' information to the Master (10 of the 14 required items), but the Regulations require the trustees to maintain a real-time record of all 14 required items per 'beneficial owner'.

- o *Preparation and ongoing updating of the accountable institution (as defined in the Financial Intelligence Centre Act) register that trustees have to keep up to date in a real-time fashion.* All of a sudden it is expected of trustees to become FIC 'experts' as they need to understand FIC concepts such as 'agent', 'services', 'single transaction' and 'business relationship' and apply that to keep an accurate up-to-date register.
- o *Preparation and maintenance of confirmations to accountable institutions of the trustees dealing with them in their capacities as trustees* – The discipline to meet this requirement is key. Many are still of the view that only banks are accountable institutions. The list of accountable institutions has been expanded substantially and includes the estate agent that the 'controlling' trustee often approaches alone without the knowledge of the other trustees, attorneys, anybody dealing in high-value goods (a business that sold / has stock items of R100 000 or more – this includes motor vehicle dealers, jewellers, etc). Two of the three new measures that attract fines of up to R10 million or five years' imprisonment deal with trustees' interactions with accountable institutions; 'beneficial owner' registers are but one of the three.
- o *Preparation and maintenance of trust transaction documents (including invoices, contracts, etc).*
- o *Dealing with ongoing Master requirements.*
- o *Creating and updating an asset register for the trust as required by the Trust Property Control Act.*

The accountant basically assists the board of trustees in demonstrating the active participation of all trustees in the trust, in conformity with the trust deed and the law.

- Thirdly, some accountants act as independent trustees on their clients' trusts. Since March 2017, every new 'family business trust' requires the appointment of an independent trustee. The accountant should be mindful that they may be exposed to increased risk after increased measures are introduced.
- Fourthly, trustees require the services of a properly experienced tax practitioner to guide the trustees regarding taxes payable on income and capital gains generated in the trust. This is a complicated field

as a trust is a taxpayer of last resort, with donors/funders and beneficiaries who may be liable for tax rather than the trust. The tax practitioner who does not provide trust administration services as described above would probably have to charge their clients more to merely submit a trust tax return, as they would have to do the run-around to obtain the required information to submit to SARS. Accountants acting as 'Representative taxpayers' should be mindful that they submit accurate, complete information and that they can truthfully sign the following declaration on the trust tax return:

The information furnished in this return is to the best of my knowledge both true and correct.

I have disclosed the gross amounts of all income received and/or accrued to this trust during the period covered by this return.

I have the necessary financial records and supporting schedules to support all declarations on this return which I will retain for audit purposes.

AN OPPORTUNITY FOR THE ACCOUNTANT

Whichever of these services the accountant decides to provide, it is critical to communicate to the client which services would be provided. If the accountant does not provide one or more of the services explained above, the client would most probably have to go elsewhere to get the services. This may be an opportunity missed by the accountant.

The accountant already has the relationship and can easily unlock additional income streams through the provision of trust services, as long as it is done in a risk-controlled fashion. With all the new trust measures introduced, South Africans have gotten used to paying for trust services, otherwise, they may get what they pay for – penalties and fines!

AUTHOR

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