Publication: Tax Talk
Date: Wednesday, January 01, 2025
Page: 26

15minutes CPD

THE BURDEN OF TRUST: Can South Africa get its affairs in order?

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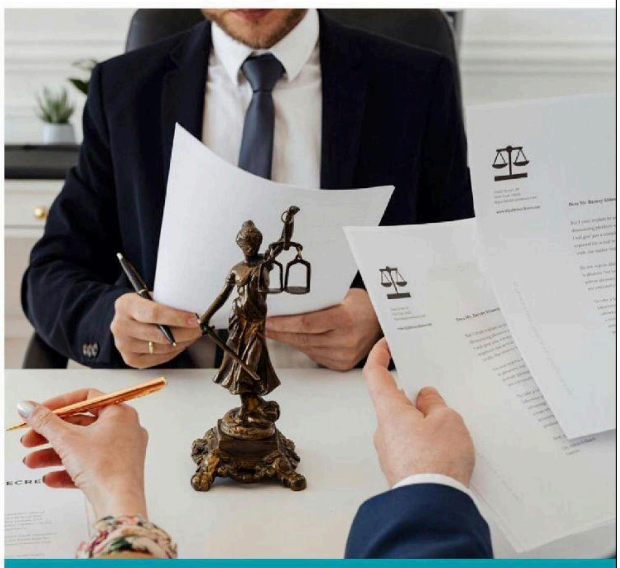
In typical South African style, until recently, few trustees have responded to the Financial Action Task Force's (FATF's) anti-money laundering and anti-terrorist financing measures introduced into our laws at the end of 2022.



Most were waiting for government to start issuing fines and penalties before they took action. Others were unaware of the total trust 're-set' since the beginning of 2023. As a member of the FATF, South Africa had to align its regulatory framework with international standards in anti-money laundering and in combating the financing of terrorism. The Trust Property Control Act was amended effective 1 April 2023 to address the shortcomings in beneficial ownership transparency for trusts in South Africa's regulatory framework as guided by the FATF. Other onerous requirements were also introduced, of which few trustees are aware.

What exactly is required of trustees to avoid a criminal offence?

Trustees are to keep a multitude of up-to-date information on beneficial owners in terms of the Trust Property Control Act, the Regulations and the SARS' requirements. Only an extract of this information should be reported to the Master of the High Court in real-time. Trustees also have to meet two additional requirements that attract penalties for non-compliance, being the recording and confirmation of their interactions with 'accountable institutions'. Firstly, trustees are to keep a real-time register in the prescribed format as per the Regulations of accountable institutions, which they use as agents to perform trustee functions and provide any services to trustees. The Regulations require trustees to understand and record details of 'accountable institutions', such as whether the trustees are using the 'accountable institution' as an agent and whether their relationship can be classified as a 'single transaction' or as a 'business relationship'. Secondly, the trustees should inform the accountable institution concerned, in writing, that they are acting in their capacities as trustees and not in their personal capacities.

Therefore, trustees must become knowledgeable in anti-money laundering legislation, as they need to know which persons and entities that they deal with qualify as 'accountable institutions'. It no longer only includes the banks but also quite an extensive list of goods and service providers such as legal practitioners (inclusive of trust advocates), trust and/or company service providers, credit providers, money or value transfer service providers, high-value goods dealers (a business that sold/has stock items of R100 000 or more—this includes motor vehicle dealers, jewellers, etc.), crypto asset service providers, and clearing system participants, to name but a few. I ayperson trustees do not have the required knowledge and recuire the help of a professional who can assist them. Ultimately, the board of trustees remains liable for non-compliance, so they must obtain proper professional assistance to meet these new requirements.

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Publication: Tax Talk
Date: Wednesday, January 01, 2025
Page: 21

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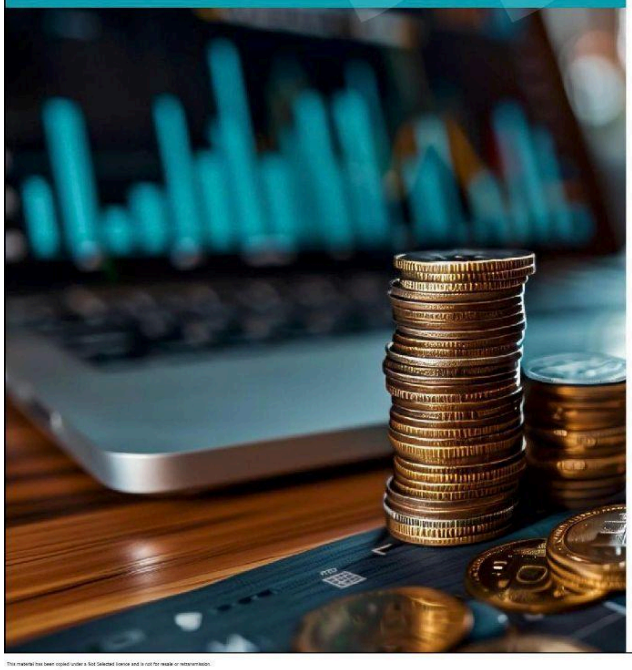

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A trustee who is convicted of any of the offences referred to above may be liable for a fine of up to R10 million or imprisonment for a period of up to five years or to both. It should be noted that, as the law stands, such an offence will be a criminal offence, which may have severe implications for a person's life, such as the possible limitation of the ability to earn a living. There is speculation that administrative penalties for non-compliance may be introduced.

FATF's recent response

After our greylisting, government has adopted a jointly agreed-upon Action Plan containing 22 Action Items linked to the eight strategic deficiencies identified in the country's Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) regime. After a recent review by the FATF at the end of October 2024, it was confirmed that six items remained unaddressed for South Africa to be removed from the grey list in early 2025. One of these items relates to timely access to beneficial ownership information concerning companies and trusts, with noted unsatisfactory compliance rates. Only one reporting cycle remains in terms of the Action Plan in January 2025. If the FATF Plenary determines in February 2025 that we have addressed or largely addressed all 22 Action Items, an onsite visit of the Joint Group in April or May 2025 will be scheduled to confirm that assessment and make a recommendation to the June 2025 FATF Plenary to remove South Africa from the FATF grey list. However, if any items remain unaddressed by January 2025, we will be required to continue reporting to the FATF every four months until all the deficiencies have been addressed.

Government's reaction

Even though government has issued various communications since 2023, they did not seem to have reached the correct audience. The Department of Justice and Constitutional Development issued a media statement on 4 May 2023 reminding (informing) the public that these new measures have come into effect from 1 April 2023 with the heading *"Increased measures for Trusts to combat money-laundering and terrorism financing crimes"*. The Chief Master also issued Directive 8 of 2023, effective 16 October 2023, titled *"Beneficial Ownership Register"*, which reminds trustees that the requirements apply to all trusts, *"irrelevant of when and for what purpose it has been registered"*. No extension was provided to submit beneficial ownership information to the Master and it stressed that *"all South Africans are required to provide records and reports on all information about beneficial owners as from 1 April 2023"*. The Minister of Finance, Enoch Godongwana, delivered his Medium-Term Budget Policy Statement (MTBPS) on 1 November 2023. He stressed that *"there is also a significant amount of work that must still be done"* to prove to the FATF that enough is being done to remove South Africa from the grey list. The Department of Justice and Constitutional Development issued a Media Statement on 17 September 2024 titled, *"Trustees not complying with the provisions of the amended Trust Property Control Act to face harsher punishment"*. In a drive to improve the chance to exit the grey list in early 2025, the media statement set a deadline for filing the beneficial ownership registers with the Master by 15 November 2024.

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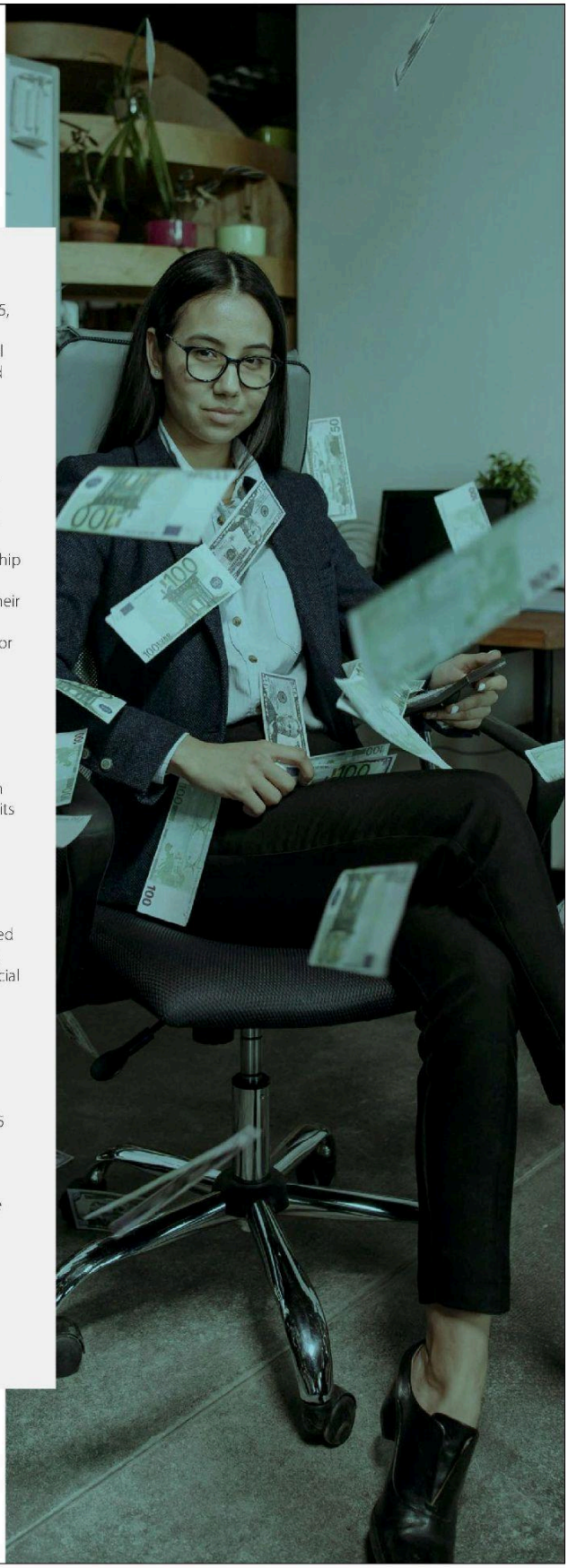
Publication: Tax Talk
Date: Wednesday, January 01, 2025
Page: 22

National Treasury provided a progress update on 25 October 2025, following the FATF Plenary, which took place on the same day. National Treasury also called upon all companies and professional trustee service providers to ensure registration by companies and trusts they engage with or are involved in before 30 November 2024 to increase the coverage in beneficial ownership registries significantly. The Master conducted a webinar, *"Unlocking Transparency: Paving the way for trust and accountability with our Trust Beneficial Ownership Register"* on 29 October 2024 to discuss challenges and solutions. The recording was made available on the website of the Department of Justice. Since the webinar and posting by various industry players on social media to remind trustees of their legal responsibilities to submit beneficial ownership registers, a significant improvement has been noticed in the submissions on the Master's portal. The Master also cleaned up their database of trusts with those that were historically deregistered with the Master, as well as those trusts that were never activated or used.

The Trust Property Control Act is also in the process of being rewritten. Although it was evident that government had hastily introduced these measures into our legislation late 2022 in an attempt to avoid greylisting, with some practical challenges and areas for improvement, these measures will remain entrenched in our legislation. It can be expected that government will improve its policing of these measures.

New measures here to stay

These requirements are here to stay. The FATF has already indicated that it will increase the frequency of reviews. South Africa should, therefore, remain focused on mitigating and responding to financial crimes such as money laundering and corruption. Although the goal for South Africa is to be removed from the grey list in early 2025, as mentioned above, South Africa will be required to continue reporting back to the FATF Africa Joint Group every four months until all the action items have been addressed, if the FATF Africa Joint Group assesses that South Africa has not adequately addressed all remaining action items in February 2025 to be removed from the grey list. Trustees are, therefore, advised to incorporate these compliance requirements into their normal routines as trustees in the ongoing, real-time administration of trusts. The days are certainly gone when trustees played a passive role in the administration of trusts.



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