



Accountancy is a people business. One of its greatest attractions is working with clients - numbers are involved for sure; but its people who use those numbers and seek advice on them.

An accountants relationship with "the client" can be a long, close and fruitful one. As a consequence, a close working relationship and bond can develop.

But, who is the client?

Any one "client" can have a number of entities involved. There can be:

1. the key person aka "the client";
2. the spouse;
3. the children;
4. the company;
5. the trustees of the trust;

6. business partners;
7. co-shareholders;
8. fellow directors etc.

When we receive a call, the first piece of information we hear is - "I have a client and s/he is doing.....".

We usually ask -is s/he doing this or is it a trust, company, partnership, LTC etc?

We frequently hear, "our client has a house". We usually ask - is it owned by the client or a trust,? If the answer is yes - the client doesn't have a house!

It is easy to perceive "the client" as "the key person" when in reality s/he is only one client!

What about when something goes wrong?

Reality is that at some time a client will have a problem. It could be a falling out with a business partner, spouse, child, investor, executor, trustee or beneficiary. It could be a death.

December 2015

What then do you do?

This challenge has been handled poorly by three accountants recently and they illustrate the difficulty accountants (and lawyers for that matter) can face.

The difficulty

The difficulty is called "conflict of interest".

In essence, when a conflict of interest arises it is necessary to decide who is the client because an adviser cannot act objectively for:

- the company and the owners
- both spouses
- all the directors
- the trust and each trustee etc
- the trustees and beneficiaries.

You must decide who is the client!

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We wish you a safe and enjoyable Christmas.

We appreciate your continued support.

We will be closed from

22 December 2015 to 19 January 2016.



Let the conflict end cont

Each of the three accountants faced disciplinary proceedings following complaints from an unhappy and disaffected party.

Case 1

This accountants client was a company and the shareholders and directors who were going through a separation.

The accountant did not advise that he was conflicted and did not send the shareholders away for independent advice and then he:

- paid an installment on a vehicle from company funds for the husband; and
- formed a new company for the husband.

Case 2

This accountant was a trustee and the accountant for an estate. He also acted for the widow and a son of the deceased.

There was a Deed of Family Arrangement negotiated and there were accounting mistakes.

Case 3

The third accountant acted for a company and both shareholders. One shareholder was buying out the other.

The accountant continued to act for the buyer of the shares.

In each case the accountants were held to be in conflict and did not deal with those conflicts.

They were each censured or reprimanded and ordered to pay costs.

Each accountant should have:

1. disclosed their conflicts of interest;
2. put in place strategies and disclosed how they would be handled;
3. suggest they take independent advice;
4. obtain informed consent if they were to continue to act for the parties; and
5. keep an eye on things to ensure actions are appropriate.

We would go further, all parties should be simply told "*I can't act for you*" and sent away to independent accountants with an invitation to return when the issues are resolved.

We are confident the clients would return!

These cases are a timely reminder of the importance of retaining an objective and independent relationship with clients.

The courts

The courts will also not countenance a conflict of interest.

In a recent decision, a trustee who was also a beneficiary was ordered to get a second lawyer so one could act for him as trustee and one to for him as beneficiary.

When he didn't he was removed as trustee.

FATCA bites

FATCA is an information reporting law in the US. The US expects the World to comply and provide information to the IRS on investments and income held by its citizens no matter how long they have been absent from their homeland.

When it comes to trusts - the reporting requirements are extensive.

NZ banks are now requiring trust customers to verify that there are no US citizens controlling or able to benefit from NZ trusts. The time involved is not insignificant.

PRIVACY NOTICE

Under the Privacy Act 1993 you are entitled to access information held by us about you. You also have the right to request us to correct any information we hold about you and you have the right to tell us to remove your name from our

ON THE SPOT ADVICE

Our telephone/fax/email consultation service is available to enable practitioners to deal with any questions as they arise.

TAX OPINIONS

Providing fully researched opinions on the taxation effect of transactions.

TAX AUDITS

Reviewing tax compliance requirements (FBT, GST, PAYE etc) to identify any deficiencies prior to any visit from tax inspectors.

TAX DISPUTES

Preparation of responses to disputes with Inland Revenue.