Attorneys Fidelity Fund
South Africa

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Interest earned on trust current banking accounts: to be paid over monthly

This article is intended to be a comprehensive reference document. Please retain it as part of the accounting process documents relating to your practice

Kindly be advised that **with effect from 1 March 2016 it becomes mandatory for practitioners to pay over interest earned on trust current banking accounts to the Attorneys Fidelity Fund (AFF), via the appropriate collecting law society, on a monthly basis.** This amounts to a refinement on the present position whereby practitioners are obliged to pay over such interest annually. The authority for the change is contained in regulation 8(1) to the Attorneys Act.

The requirement to pay over interest monthly is applicable to all trust current banking accounts operated under section 78(1) of that Act. Interest generated on trust savings or other interest-bearing accounts under section 78(2)(a) of the Act may be paid over annually.

Practitioners are well advised to review their banking arrangements well in advance of the 1 March 2016 deadline, to take action as necessary and educate bookkeeping staff accordingly.

In planning for the introduction of a monthly process the AFF worked with the banking industry to harness banking systems and technology to best effect. The four largest banks in South Africa offer products for attorneys which automate the monthly collection process in seamless fashion, with little or no practitioner involvement, and recoverable bank charges are automatically set off against the interest earned before payment of the remaining interest is made to the relevant collection authority. All transactions are transparent and reflect in bank statements provided to practitioners. The detailed process is explained below.

The regional law societies are designated as collecting agents for the AFF. Transfers of interest from a bank to a collecting law society are accompanied by electronic reporting which enable the societies to upload information into their membership management systems.

Practitioners who operate trust current accounts with the smaller banks are required to account for the monthly trust interest on a manual basis.

The automated monthly process explained

a) All transaction fees and credit interest accumulate during the course of a month in the trust current banking account. Often such information will reflect in a memorandum column on the bank statement, and on a certain day (usually the last day of the month) the items are posted to the account.

b) On the day that accrued fees and interest are posted to the account, the VAT-exclusive portion of fees is compared against the credit interest paid during the month.

c) If the credit interest exceeds the VAT-exclusive value of fees, the bank pays over such excess of interest to the account of the Law Society nominated by the practitioner.

d) If the VAT-exclusive fees exceed the credit interest, the Bank will debit the business account of the practitioner with the excess value of fees.

e) In all cases, the value of VAT raised during the month will be charged separately across to the client's business account. Such VAT should be claimed as a VAT input credit when the practitioner submits the regular VAT return to SARS. Practitioners who are not VAT-registered may recover such VAT from the AFF by completing an annual claim form.

f) The bank will generate a monthly report to the collecting Law Society in respect of each practitioner firm, indicating the credit interest, bank fees and the net amount paid over.

Many practitioner firms prefer to split their section 78(1) trust balances across a number of banks for business reasons. This practice is especially popular in conveyancing. The AFF has no objection to such an approach being taken, despite the fact that interest paid by the banks on smaller account balances is paid at a lower interest rate. A larger account balance will always yield a better return to the AFF. The flip side to this coin from a practitioner point of view is that firms who prefer to split their trust account balances must accept a minor inconvenience, explained in the next paragraph.

In order for an automated monthly process to operate, a matching business banking account must be located at the same bank as the trust banking account. It follows that if a firm has four section 78(1) trust accounts, such firm must operate four matching business bank accounts if it wishes to utilize the automated monthly process. The alternative is to pay over manually, which is administratively burdensome for obvious reasons.

Action required by practitioners - in summary

1. Ensure that a matching business bank account exists for each and every section 78(1) trust account.

2. Ensure that each section 78(1) trust current account is operated within the correct bank product reference code, see below. Bankers should be requested to confirm to practitioners that the accounts are configured correctly.

3. Ensure that authorisation documents required by the banks are completed and submitted.

4. Thereafter ensure that the automated process is operating correctly, with reference to movements of interest and bank charges reflected in the trust account bank statements.

Staff employed in the trust accounting departments at each collecting Law Society will be pleased to assist with queries. The AFF Trust Interest Co-ordinator, Mr Mandlenkosi Mbatha, will assist on issues not specific to a particular Law Society. Mr Mbatha can be contacted via email at mandlenkosi@fidfund.co.za.

Bank product reference codes for automated monthly transfers

To achieve a seamless transition practitioners must ensure that their bankers operate section 78(1) trust accounts using the reference codes provided on the AFF website, www.fidfund.co.za. From the homepage select "banking options" where the information relating to ABSA, FNB, Nedbank and Standard Bank is made available.

As indicated earlier, practitioners who operate trust current accounts at a bank which does not offer an automated option will be required to pay over the interest manually each month.

Impact of the Legal Practice Act

The new Legal Practice Act, promulgated in September 2014, will in due course replace the Attorneys Act. The new Act empowers the AFF to make arrangements with the banking industry with respect to trust account banking, and also makes it clear that practitioners must adhere to such arrangements.

Please provide a copy of this article to the staff in your accounts / bookkeeping department.

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