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The Watkins, Meegan, Drury & Company, L.L.C. Forensic Focus welcomes feedback and suggestions for articles to assist attorneys and business leaders in meeting their organization's objectives. If you wish to submit an idea or comment, request use of any information in this issue, or be added to our mailing list, please contact Mary Beth Rinaldi at (301) 664-6888 or MaryBeth.Rinaldi@WatkinsMeegan.com.

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Certified Public Accountants
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Four Key Technology Questions to Ask Your Forensic Accountant



Extensive research by professors at New York University, the Massachusetts Institute of Technology and Boston University continues to show that information workers, such as forensic accountants, with stronger IT skills are more productive than those without IT skills. By assessing whether your forensic accountant is leveraging technology in the following four areas, you'll be able to identify whether that expert has the tech know-how to improve client satisfaction, lower costs and increase overall value.

Project Planning

What planning tools does your forensic accountant use?

Technology can play a major role in this initial and critically important litigation support function. By leveraging project planning tools, such as Engagement Manager or Microsoft Project, forensic accountants develop a detailed project with tasks, milestones, deliverables and deadlines. Such a project plan assists in managing expectations, reducing tangents and communicating progress. Project plans do not limit the investigation team's "creativity," but rather allow them to focus on accomplishment of specific objectives.

Communication and Administration

Does your expert accountant use document management and collaboration tools to organize and communicate work products?

At the very least, forensic accountants should properly document their work with particular attention on the methodology of doing so. According to International Data Group research, knowledge workers spend 20 percent of

their day searching for information documents, yet they were unable to find the item they were looking for about 50 percent of the time. Current technology, such as SharePoint, affords users with an ability to organize, share and search for information. These document repositories are similar to e-discovery tools like Concordance, but they provide broader functions, including workflow, contact information, calendars and task lists.

Data Mining and Analysis

What are the critical aspects of using technology in data mining and analysis?

We estimate that between 50 percent and 75 percent of a forensic engagement is spent in the data extraction and preparation phase. Several key factors increase or decrease the amount of required time. While it is not always possible to have influence over the quality of information received, requesting information in sufficient detail and specificity at the onset will become paramount to saving time and money later.

It is critical to properly request data and have the requisite skills to clean and prepare the data for analysis. Considerations are numerous and include obtaining data in its native format with metadata, as opposed to receiving a facsimile in portable document format (PDF) or obtaining transactional data extracts with a data dictionary, relevant master data and control totals or corroborating system reports.

Consider that the counterparty has ready access to data and understands the structure. In fact, they may make analysis difficult by mistakenly excluding certain key pieces of information. For ex-

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ample, where transactions are grouped or matched by journal entry, obtaining an extract of the general ledger transactions without the journal entry number can substantially increase analysis time. Obtaining the transaction date of record and post date may indicate potential accounting errors and internal control weaknesses.

An experienced forensic accountant has a myriad of tools and techniques to prepare data for analysis. However, mismanagement of data collection and poor cleaning techniques can double or triple the forensic accounting time or, worse, result in erroneous conclusions readily identified by the opposition.

Quality Control and Data Security

What are your expert accountant's policies related to quality control and security?

Strict quality standards help ensure a quality work product as well as reduce preparation cost. Remember the adage, "Doing it right the first time saves headaches in the long run." Complemented by proper work product support and document management, efficient forensic groups rely on independent review by experienced senior professionals. Technology facilitates and ensures these reviews through use of document routing and workflow.

Ability to ensure that data is properly safeguarded from unauthorized access within and outside the forensic accountant team is crucial. Access to data and information should be limited to using various tools such as network perimeter security, two factor password authentications, and encrypted communication and data storage.

In addition to the typical questions you may ask your expert (knowledge, experience, past testimony), further diligence regarding use of critical technology tools will provide insight that is useful in the selection process.

For more information on the use of technology in Forensic Accounting, contact Rick Westerman at Rick.Westerman@WatkinsMeegan.com.

Ten Things Attorneys Should Know About Business Valuation

- * **Define the project.** Provide the appraiser with the specific ownership interest and level of value for the interest being appraised. A business interest can be affected by voting rights, preferences in distributions or liquidation, and participation in management. The size of the ownership interest can also have impact on value, especially when comparing controlling interests to minority interests.
- * **Understand the standard of value.** There are several different types of value and they can vary significantly. Know which standard of value applies for your engagement, given the circumstances under which it's being used. "Fair Market Value" is used for estate and gift tax purposes. "Fair Value" is often appropriate in litigation matters. There are other standards of value such as "Investment Value" and "Intrinsic Value" that may also be appropriate to use.
- * **Specify the purpose of the appraisal.** For example, appraisals used for M&A purposes may result in a different value than appraisals used for divorce or gift and estate purposes.
- * **Involve the appraiser early on.** It's usually helpful to seek the advice of the appraiser to see if key valuation elements of a buy-sell, family limited partnership or corporate reorganization could be modified to provide a more meaningful agreement to your client. To a business appraiser (and many courts), valuation terms such as "Fair Value" and "Fair Market Value" have very different meanings. A valuation specialist can alert you to differences in the valuation terms incorporated in your document before it's presented to the client.
- * **Establish a reasonable time frame.** Business valuations are custom-made for each business and require a lot of information that takes time to accumulate and analyze. Typically, a valuation engagement takes several weeks to complete after all the required information has been received.
- * **Know the primary valuation approaches.** Business valuation is an art, as well as a science, and appraisers will utilize different approaches that suit

the particular needs of an assignment. The three general approaches are the Market Approach, the Earnings Approach and the Cost Approach. There are different methods within each approach that the appraiser will consider when valuing an ownership interest.

- * **Be aware of possible litigation support issues.** The business appraiser cannot serve as an advocate for your client. However, appraisers can have differing opinions resulting in values that may be higher or lower than others. Obtain an understanding of how the appraiser would approach a valuation of your client's business to make sure it's consistent with your goals and objectives.
 - * **Insist on an appraisal firm with experience and credentials.** Each business appraisal is unique and experience counts. Most business valuation firms are generalists rather than industry specialists, but a broad experience of analyzing operating characteristics and industry constraints provides ammunition to understand your client's special situation. Credentials don't guarantee performance, but they do indicate a level of professionalism for having achieved and maintained them.
 - * **Consider the appraisal as a first line of defense.** A well-reasoned and documented appraisal report serves as an indication of the seriousness and professionalism with which you address your client's needs. Appraisals are more persuasive to outside parties when they have been prepared contemporaneously with an event, rather than years later.
 - * **Expect the best.** In most cases, the fee for appraisal services is nominal compared to the dollars at risk, and the marginal cost of getting the best is negligible. The best appraisers not only have the experience and credentials, they also recognize the balance between art and science that enables them to interpret the qualitative nuances of a company and translate them into a quantifiable result.
- For more information on business valuation, contact Jeff Walsh at Jeffrey.Walsh@WatkinsMeegan.com or at (301) 664-8157.

The IRS Is Focusing Enforcement Resources On Foreign Bank Account Reporting Compliance

In the past year, the U.S. government has cracked down on the use of offshore accounts to evade U.S. tax liabilities, forcing U.S. taxpayers with previously undisclosed foreign bank accounts to reconsider their decisions not to disclose or report income from those accounts.

In a very public campaign, the Internal Revenue Service (IRS) and the U.S. Department of Justice (DOJ) have been aggressively pursuing taxpayers they believe are hiding income in offshore bank accounts in an effort to avoid paying income tax.

The most widely publicized example of the government's efforts on this front is the ongoing case against Swiss banking giant UBS. In February 2009, UBS entered into a deferred prosecution agreement with the United States in which the bank admitted to helping U.S. taxpayers hide accounts from the IRS. As part of that agreement, UBS agreed to provide the U.S. government with the identities of, and account information for, select U.S. customers of UBS's cross-border business.

Immediately after entering into the deferred prosecution agreement, DOJ filed a lawsuit seeking a court order to force UBS to turn over the names of all its U.S. customers. UBS is contesting enforcement of the summons, however, on the grounds that it requires the bank to violate Swiss laws regarding bank secrecy. Nevertheless, DOJ is moving forward with its summons enforcement action with a hearing on the matter set for August 3 in the U.S. District Court for the Southern District of Florida. DOJ estimates that as many as 52,000 U.S. customers could be using UBS accounts as tax shelters.

While UBS has been garnering the media's attention, holders of bank accounts at other offshore banks are not necessarily safe as reports have surfaced that the IRS and DOJ are looking into offshore banking and financial services provided to U.S. customers of numerous other foreign banks and institutions.

What This Means for U.S. Taxpayers with Foreign Accounts

Taxpayers who file U.S. tax returns and who have any offshore or foreign bank accounts must report income from these offshore accounts on their income tax returns. They must also declare any offshore

or foreign bank accounts over which they have signatory authority, regardless of whether they receive any income from the account.

Taxpayers are also required to report information about the accounts by filing a Form TDF 90-22.1, Report of Foreign Bank and Financial Accounts, more commonly known as an FBAR. Anyone with an offshore bank account who does not file an FBAR can be hit with both criminal and civil tax penalties. The criminal tax penalties are a maximum of \$250,000 per failure to file, or five years in prison, or both. Even if the government does not prosecute the taxpayer, that taxpayer will still almost certainly be subject to a civil examination and subject to civil penalties.

In an effort to help taxpayers with offshore accounts come into compliance, the IRS is offering a settlement initiative.

The civil tax penalties for failure to file an FBAR can be particularly severe. For willful violations that took place before October 23, 2004, a penalty of the entire balance in the account (not to exceed \$100,000) or \$25,000, whichever is greater, may be imposed for each year of noncompliance. For willful failures to file the FBAR after October 22, 2004, a maximum penalty equal to the greater of \$100,000 or 50 percent of the entire balance in the account may be imposed.

The IRS Settlement Initiative

In an effort to help taxpayers with offshore accounts come into compliance, the IRS is offering a settlement initiative. Ac-

cording to the terms of the settlement initiative, if a taxpayer with a previously unreported offshore account voluntarily comes forward and discloses the account and income from that account, the IRS, assuming certain conditions are met, might allow the taxpayer to come into compliance for significantly lower penalties and no criminal prosecution.

Also under the settlement, taxpayers are required to file up to six years of amended tax returns and FBARs and disclose all information regarding the account. In return, the IRS will reduce the usual penalty to a one-time payment of 20 percent of the account value, or 5 percent for an inherited account. Additionally, the taxpayer will have to pay income tax plus an accuracy penalty and interest on any unreported income from the account. However, this offer is only available until September 23, 2009.

In order to participate in the IRS settlement initiative, taxpayers must make a voluntary disclosure of the accounts and acknowledge their failure to previously disclose them to the IRS. A taxpayer can make a voluntary disclosure outside of the IRS settlement initiative, but the terms of the settlement may not be as good as the terms offered pursuant to the settlement initiative.

About Voluntary Disclosures

Voluntary disclosures are extremely sensitive and complex and they are subject to strict rules and guidelines. Once taxpayers are accepted into the voluntary disclosure program, they must provide the IRS with full cooperation while their case is being reviewed. It is highly recommended that taxpayers work with an attorney experienced in criminal tax defense issues, as well as an accountant who is experienced in conducting thorough, in-depth examinations and reviews of financial materials and bank records, who can trace the account's funds and who can prepare the necessary reports and amended returns required to substantiate the voluntary disclosure.



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EXTENSIONS FOR LATE FILING OF FBARS ALLOWED WITHOUT PENALTY UNTIL SEPTEMBER 23

Taxpayers have been given a rare extension in filing their FBARs without incurring a penalty, the Internal Revenue Service announced June 23. The Form TD F 90.22-1, Report of Foreign Bank and Financial Accounts, or “FBAR” as it is more commonly known, is required by all U.S. taxpayers who have a financial interest or a signatory interest in bank or financial accounts totaling \$10,000 or more that are located outside of the United States.

The FBAR was required to be filed by June 30, 2009; however, extensive media coverage surrounding the government’s attack on foreign bank accounts, particularly accounts with Swiss bank UBS, increased taxpayer awareness of FBAR requirements, resulting in numerous taxpayers filing FBARs for the first time. It was due to this increase in filing that the IRS granted the ex-

ension until September 23, 2009, for 2008 FBARs.

Certain conditions apply to the extension, and in order to file a delinquent FBAR without incurring a penalty, taxpayers must report all income from their foreign accounts in 2008 on their 2008 federal income tax return. In addition, the delayed filing of the FBAR must be due to the taxpayer’s inability to obtain the necessary account information from the foreign bank in time to prepare and file by the June 30 deadline. If taxpayers meet these qualifications, then they may file their FBAR, along with an accompanying statement of why the FBAR is late, by September 23.

For assistance reporting your interest in and/or income from foreign accounts, contact Watkins Meegan’s Forensic Accounting and Dispute Services professionals.

Please join us in welcoming **Stephanie Kelly**, who started at Watkins Walsh Associates as a Director on July 6, 2009. Ms. Kelly is a Certified Public Accountant with more than 13 years of experience providing valuation and litigation support to companies in both the public and private sectors. She has direct experience with financial derivatives, foreign exchange and fair value accounting, and she has taught courses on these topics through CPE, Inc. Ms. Kelly will primarily be working on valuation, commercial litigation, securities litigation and financial analysis. She can be reached at (301) 664-6893 or Stephanie.Kelly@WatkinsMeegan.com.