

Form E: the forensic accountant's role

Rakesh Kapila considers possible shortcomings in the financial statements submitted by the parties in matrimonial proceedings

IN BRIEF

- ▶ Undertaking an overview of Form E.
- ▶ Providing examples of primary inaccuracies in Form E.

Form E is the financial statement on each party's position prepared in financial proceedings arising out of divorce or judicial separation. It can also be used as a guide to the format for voluntary financial disclosure before the issue of proceedings.

Although Form E is complex and needs to be completed with care, it is important that disproportionate costs are not incurred in its preparation. In particular, following the submission of each party's Form E with supporting documents, significant time costs may be incurred in preparing questionnaires to be exchanged subsequently to obtain clarification and further information. This article highlights the key types of anomaly which can be identified in reviewing a client's draft Form E or in reviewing the other party's Form E before time is spent in reviewing the supporting documents and undertaking follow-up procedures.

An overview

The primary financial data in Form E relates to the assets, liabilities, income and income needs of the party. In this context, it is important to ensure that there are no inadvertent or deliberate understatements of assets and income or overstatements of liabilities and income needs, given that inaccuracies may arise because of reliance on outdated information or missing documentation.

An overview of Form E can be undertaken systematically to ensure that:

- ▶ there is consistency between 'related' sections such as those on assets and income, eg whether adequate account is taken of dividends arising from shares noted in Form E;
- ▶ references to 'one-off' or exceptional data are not intended to be misleading, eg 'temporary' decreases in income;
- ▶ there is consistency with primary supporting information, eg Form P60 in respect of a party's annual salary;
- ▶ comparable information is provided on a consistent basis, eg bank balances for various accounts should be provided for around the same dates; and

- ▶ valuation information, whether relating to property, shares or businesses, is based on the most recent available information.

Missing information

It is important at the outset to establish if there is a 'pattern' of missing information, either within the Form E being considered or in relation to the supporting information underlying the Form E. If it seems that there are numerous 'gaps' in relation to the Form E being reviewed, it is likely to be necessary to consider carefully the questions to be raised to obtain relevant information and to investigate independent lines of enquiry. Typical examples of missing information include the following:

- ▶ there are either missing pages from key documents or the documents provided cover a relatively short period, eg bank statements and tax returns provided for one year only;
- ▶ there are no references to assets held off-shore;
- ▶ there are no references to investments which may be held by third parties as nominees; and
- ▶ there are no references to trusts of which the party submitting the Form E may be a beneficiary.

Follow-up procedures

In many instances, it will be necessary to seek clarification in relation to the contents of Form E and to request missing or supporting information. It may also be appropriate to undertake 'independent' research and investigations to ensure that all relevant and important information has been included in the Form E which is being reviewed. Follow-up procedures after reviewing the other party's Form E may include contacting third parties directly to ensure that the information provided is complete and accurate, eg contacting a business partner, a company's external accountants or financial intermediaries involved in managing the party's investments.

Conclusions

A careful scrutiny of a draft Form E prepared by a client can enhance the credibility of the final document disclosed to the other party. Conversely, a critical appraisal of the other party's Form E can result in the receipt of comprehensive responses at an early stage. In either scenario, forensic accounting assistance may help legal advisers to achieve a cost-effective approach.

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Examples of inaccuracies

Examples of some key inaccuracies identifiable in a completed Form E include the following:

Understated assets	Pension rights relating to personal plans, previous employment, SERPS and S2P	Assigned insurance policies or misclassified, eg term/endowment
	Cash arising from recent asset depletions, eg surrendered policies	Amounts owed by owner-managed business
	Outdated property valuations	'Deferred' assets, eg share options
Overstated liabilities	Bank account data covering various dates, allowing unrecognised transfers	Trading business valuations based on net assets or outdated financial data
	Recent increased borrowings unmatched by cash requirements	Loans from friends/family not supported by audit trail/documents
	Estimated CGT based on inadequate account of reliefs or double-counted	Tax liabilities on future income, eg payments on account made to HMRC
Understated income	Future income from unoccupied properties or through rent reviews	Omission of income received by way of directors' current accounts
	Drawings recognised in lieu of salary	Omission of deferred bonuses
	Omission of non-cash benefits	Income based on outdated documents
Other anomalies	High interest income but low bank balances	Various shareholdings disclosed but omission of dividend income
	Insurance policy premiums but omission of insurance policy/insured assets	Payments to stockbrokers but omission of shareholdings

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