

# Gatekeepers

Summary of the NBA discussion  
report for trust offices

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NBA

# Introduction

The new Trust Office Supervision Act came into effect in the Netherlands on 1 January 2019 and aims to further improve integrity and professionalism in the trust sector. The sector currently consists of approximately 110 trust offices. The size and distribution of these offices varies greatly; this ranges from small offices with just a few employees to Dutch divisions of international organisations. A total of approximately 19,000 companies (called 'target companies') are managed, the sector has an added value of around 3 billion Euros and offers direct employment to 3,500 FTE. In fact, the term 'trust office' is confusing because a trust office has nothing to do with the Anglo-American legal concept of a trust. A trust office does not manage assets, but performs administrative and managerial services for companies. The term 'company service provider' is more appropriate.

The emergence of the trust sector is directly linked to the internationally competitive tax climate in the Netherlands. This can be demonstrated by, for example, the participation exemption, the absence of withholding tax on interest and royalty incomes, a network of international tax treaties to prevent double taxation and the opportunity to make specific advance arrangements with the tax authority (via so-called 'rulings'). Add to that the excellent financial structure, a solid legal system and political stability, and the Netherlands seems perfectly quipped to serve as an intermediary for international capital flows.

Although the Panama Papers affair was two years ago, the trust sector remains in the political and public spotlight. That is why the sector has a problem with its image, despite recent improvement initiatives like the CTC Label by the Stichting Assured Quality & Trustworthy Organisations (AQTO). The political debate is primarily focusing on fiscal structures within which trust offices must operate. In this regard, there is said to have been a shift in public ethics. Although companies are not obligated to pay the maximise amount of tax, the public expects every company to at least pay an acceptable amount (fair share). In the current debate, fiscal structures aimed at minimising the overall tax burden of international groups are seen as undesirable, even if they are - technically- in keeping with existing legal frameworks.

# NBA discussion report

Trust offices must adopt an effective approach when justifying their role as gatekeepers of the Dutch financial system. This is the most important thesis in the 'Gatekeepers' discussion report, which focused on three observations:

1. Public accountability is still not being given sufficient attention
2. Ethical operational management requires more than just a handbook
3. Accountants also serve as gatekeepers

Transparent reporting about provided services is an excellent way to demonstrate accountability to the public. Paying serious attention to the ethical and controlled operational management identified in legislation means developing a new policy, introducing appropriate organisational measures and continuously assessing their effectiveness. Although accountants play a modest role in the sector, they can also play an active role as gatekeepers when it comes to implemented fiscal structures.

For each observation in the report, a discussion theme with accompanying assertions has been formulated. These themes have been highlighted below.

## Discussion theme 1: **Public accountability requires content**

- 1** Each trust office must implement a clear vision and appropriate policy when it comes to corporate social responsibility, with regards to their own organisation as well as managed target companies. The office must publish this policy and these goals on its website, under its general business information.
- 2** Each trust office must use its own website to communicate about the realisation of public goals, the organisation's governance, achieved results and intended improvement plans. They must compile a public report every year.
- 3** By issuing auditor's reports for the public reports of trust offices, accountants can play a role in improving public confidence in trust offices.

## Discussion theme 2: A public-oriented integrity policy is essential

- 1 A trust office must periodically update its vision and strategy, also in relation to the quality of operational management. When doing so, a specific approach must be identified for the gatekeeper function.
- 2 All trust offices must clearly define norms for operational management, particularly in relation to the compliance function and audit function.
- 3 Large trust offices must establish a Supervisory Board, while smaller offices could appoint an independent external sparring partner with sufficient public involvement.

## Discussion theme 3: Accountants must be active in their public role

- 1 Accountants must effectively perform their role as gatekeepers and trustees of public confidence if they are involved when particular fiscal structures are set up. They must evaluate the acceptability of such structures.
- 2 Every audit firm must establish a committee to compare fiscal structures and accompanying recommendations against the firm's own principles and the expectations of the public.
- 3 To improve trust in the sector, there must be periodic sector discussions between the DNB, trust offices and their accountants.

## Sharing Knowledge

In this programme, the NBA has bundled the collective knowledge of Dutch professional accountants to timely identify risks in social sectors or relevant themes. In doing, emphasis has been placed on governance, operations, reporting and audits. Accountants share their findings and signals anonymously in order to maintain client confidentiality. The NBA Identification Board then gauges the signals from a social perspective and applies a social assessment. The result of this is a so-called public management letter, an open letter or a discussion report. The 'Gatekeepers' discussion report was the 21st topic to be selected by the Identification Board. It was based on information derived from various sources and through dialogue with De Nederlandsche Bank (DNB), Dutch Tax Authorities, Holland Quaestor (HQ), Stichting Assured Quality & Trustworthy Organisations (AQTO) and several accountants and advisors in the sector.

## More information

If you are interested in this project, please contact our project manager Michèl Admiraal RA at NBA in Amsterdam (m.admiraal@nba.nl). He is also the author of this discussion report.



The NBA has published twenty Public Management Letters (PML's) concerning specific sectors or theme's



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