

Professional Conduct Committee – 16 March 2021

Professional competence, adverse or unfavourable finding, restriction on professional registration in Member's name, discredit – Member A

At a meeting of the Professional Conduct Committee (PCC) of Chartered Accountants Australia and New Zealand held in private on 16 March 2021 by videoconference in respect of Member A, the PCC decided that the Disciplinary Tribunal would be likely to find that the Member's conduct did not comply with:

- By-Law 40(2.1)(a);
- By-Law 40(2.1)(e);
- By-Law 40(2.1)(g);
- By-Law 40(2.1)(h); and
- By-Law 40(2.1)(k).

The PCC considered that this matter is sufficiently serious to warrant referral to the Disciplinary Tribunal.

However, the PCC decided to propose that an agreement be made with the Member which shall be entered on the Member's record, on terms that:

1. the Member receive a severe reprimand;
2. the Member pay to CA ANZ the sum of \$1,600 by way of contribution towards the costs of investigating and dealing with the matters the subject of the complaint and the Case Conference; and
3. the PCC will publish:
 - a) details of these sanctions on the website of CA ANZ; and
 - b) a notice in the digital and print magazine "Acuity",without disclosing the Member's name and locality, with a link to the published decision.

The PCC considers that it is in the public interest for this sanction to be published, but that there are no special circumstances which warrant disclosing the name of the Member.

Background

CA ANZ has become aware due to the Member's mandatory notification that the Member's tax agent registration was terminated by the Tax Practitioner's Board (TPB) with effect from 17 April 2020. The Member is unable to apply for re-registration for a period of 3 years, concluding on 17 April 2023.

The TPB found that the Member breached the Code of Professional Conduct as he:

- Acted dishonestly by making a false declaration to the TPB in his application for renewal of registration that he did not have outstanding tax obligations.
- Failed to comply with the taxation laws by not paying his own tax debts and debts of his associated entities when they fell due.

The TPB also found that the Member engaged in conduct which involved, among other things:

- Lodging amendments to 392 income tax returns (ITR's) for his clients for the 2018 financial year which each falsely declared that the amendment had been prepared in accordance with information supplied by the client and the Member had received an authority from them to lodge the

amendment. However, at no time did the Member in fact contact those clients to ascertain or seek substantiation of their relevant taxation affairs or request any authorities before lodging the amendments.

- Misleading at least one of the affected clients by advising them that the amendment was at the request of the Australian Taxation Office (ATO) when that was not the case.
- Failing to comply with the taxation laws by claiming amounts in his business activity statement and ITR to which he was not entitled including a significant bad debt expense deduction to cover discounts from fees charged for tax agent services.

The TPB also determined that the Member ceased to meet the tax practitioner registration requirement that he be a fit and proper person.

Reasons

The Member accepted that the decision of the TPB constituted an adverse finding within the terms of By-Law 40(2.1)(e) and a restriction on the Member's registration as a tax agent in accordance with By-Law 40(2.1)(g).

The Member addressed his conduct in lodging the 392 amendments to ITR's for his clients for the 2018 financial year. He said that in February 2019 he received a telephone call from the ATO and an email indicating that his firm had claimed quite highly in deductions for clients. The email said that the Member should review his clients' files. The Member did this. He looked at his data base and compiled a list of clients who had claimed highly and amended their tax returns by largely reducing the amounts claimed for meal allowances and motor vehicles.

The Member said he was put under a lot of pressure to meet the ATO's time frame. He lodged the amended tax returns on one day and emailed his clients about the amendments the next. The Member did not consider whether the claims did not need amendment, but automatically made the amendments in response to the email from the ATO. The Member admitted that he should have sought instructions from his clients before making the amendments and that he normally would have done so.

The Member did not believe that he had failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out his professional duties and obligations (in accordance with By-Law 40(2.1)(a)) and the principle of professional competence and due care (as set out in sections 100.5(c) & 130 of APES 110). The Member said he did all that he could to help his clients and avoid them being audited by the ATO. He said that while most clients were happy with the amendments that he had made, and paid any extra tax, a few were unhappy, but they could have lodged a further amended tax return and that was stated to them by the Member. The PCC noted the Member's comments but considered that, while the Member may have been well intentioned, this did not excuse the Member's failure to obtain instructions from his clients before lodging the amended tax returns. The PCC did not consider it was a sufficient response for the Member to say that the client could simply lodge a further amended tax return if they were not happy with what the Member had done.

The Member did not feel that he had failed to comply with the fundamental principle of integrity (as set out in sections 100.5(a), 110.1 and 110.2 of APES 110). The Member felt that he had acted with integrity at all times.

In relation to the Member's own tax obligations and those of any associated entities, the Member said that his lodgements were not late, only his payments, and only by a few days. There was a question on the annual renewal as to whether he had any tax liabilities, he replied that he did not, but he had a small outstanding provisional tax liability. There were issues with regards to bad debt write offs and discounts, but the Member did not feel he was in a position to contest these matters. Nevertheless, it is clear the Member has breached section 3.3 of APES 220.

The Member admitted that he had committed an act which may bring discredit on himself, CA ANZ or the profession (in accordance with By-Law 40 (2.1)(k) and as set out in sections 100.5(e) and 150.1 of APES 110).

The Member has now sold his business and left the profession.

The PCC considers that the Member has breached By-Laws 40(2.1)(e), (g), (h) and (k). The PCC also considers that the Member has breached By-Law 40(2.1)(a) and sections 100.5(c) and 130 of APES 110 in lodging the 392 amended tax returns without instructions from his clients.

The PCC does not consider that the Member has breached the fundamental principle of integrity (as set out in sections 100.5(a), 110.1 and 110.2 of APES 110). The PCC is of the view that the Member's actions in lodging the amended tax returns without instructions from his clients, while well intentioned, were not appropriate but demonstrated a lack of competence rather than being intentionally dishonest. It is to be noted that the Member sought instructions from his clients once the amended tax returns were lodged and thereby sought to confirm the information contained therein.

**Professional Conduct Committee
Chartered Accountants Australia and New Zealand**

16 March 2021