

Professional Conduct Committee – 2 August 2021

Adverse Finding - Member B

At a meeting of the Professional Conduct Committee (PCC) of Chartered Accountants Australia and New Zealand held in private on 2 August 2021 by videoconference in respect of Member B, 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); and
- By-Law 40(2.1)(k).

The PCC decided that for the reasons set out below the matters the subject of the Case Conference are sufficiently serious to warrant referral to the Disciplinary Tribunal. However, the PCC decided to propose that a Consent Agreement be made with the Member (Consent Agreement), which shall be entered on the Member's record, on terms that:

- the Member receive a severe reprimand;
- the Member pay to CA ANZ the sum of \$1,680 by way of contribution towards the costs of investigating and dealing with the matters the subject of the complaint and the Case Conference; and
- 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", with a link to the published decision,

without disclosing the Member's name and locality.

The PCC considered 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.

The PCC noted that if the Member does not accept the proposed Consent Agreement in the time provided, the Member will be automatically referred to the Disciplinary Tribunal for hearing.

Background

The Federal Court of Australia held that the Member and two other individuals (the respondents) were promoters of tax exploitation schemes involving the sale of interests in carbon credits.

The respondents promoted schemes to investors for the dominant purpose of enabling them to obtain a tax deduction, in the relevant tax year, of the full purchase price payable under an Emissions Reduction Purchase Agreement.

The Court found that the Member's participation and culpability were less than the other respondents, but still substantial. The respondents were ordered to pay substantial penalties.

Reasons

Issue 1 – The adverse finding & whether it brings discredit on the Member, CA ANZ or the profession of accountancy

The PCC determined that the Member was subject of an adverse finding by the Federal Court of Australia, in breach of By-Law 40(2.1)(e). Further, the Court's findings are available on the public record, were publicised by the media and relate to the Member's professional conduct as well as his competence as a chartered accountant, which in turn brings discredit upon him, CA ANZ and the profession of accountancy, in breach of By-Law 40(2.1)(k).

Issue 2 - Failure to observe a proper standard of professional care, skill and competence in the course of carrying out professional duties

The Member initially sought taxation advice from a barrister as to the tax deductibility of the particular carbon emissions scheme.

At the Case Conference, the Member stated that the relevant documentation outlined that the balance was payable once an actual trading scheme was up and running (i.e. on the assumption that that credit trading system would be up and tradeable) and as such any participants would be paying the balance of the amount due. However, the trading credit scheme never came to fruition.

In the PCC's view, it would have been prudent of the Member to amend the participants' tax returns closer to the date on which the original deductions were made, that is, after he knew that that full balance was not going to be payable and before the Australian Taxation Office became involved. The PCC considered that it was at this point in time that the Member failed to observe a proper standard of professional care, skill and competence in the course of carrying out professional duties, in breach of By-Law 40(2.1)(a).

Professional Conduct Committee Chartered Accountants Australia and New Zealand

1 September 2021