Changes to reporting obligations

Professional standards



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Heather Brehcist sets out the changes to members' and students' reporting obligations

Important changes to a member's and student's obligation to report certain events to the CIOT and ATT will come into effect on 1 January 2021. These changes will only apply to events which happen ON or AFTER that date.

Current position

Currently, there are a number of circumstances where a member or a student must notify the Head of Professional Standards in writing within two months of the event taking place. These are set out in paragraphs 2.14-2.15 of Professional Rules and Practice Guidelines. You should also record the event on your annual return unless you have been advised that this is not necessary. These events are summarised

below and apply if you:

- are arrested on suspicion of a criminal offence (other than a ‘summary only’ road traffic offence);
- are charged with a criminal offence (other than a ‘summary only’ road traffic offence);
- are convicted of a criminal offence (other than a ‘summary only’ road traffic offence);
- are notified of disciplinary and/or regulatory action which is upheld against you by another professional body to which you belong or by a regulator;
- are dismissed for misconduct/gross misconduct by your employer; are disqualified as a director or trustee, or enter into a disqualification undertaking;
- receive a dishonest tax agent conduct notice; or
- receive a monitoring notice from HMRC under the Promoters of Tax Avoidance Schemes (POTAS) legislation.

They also apply if you enter into an individual voluntary arrangement with your creditors or become subject to a bankruptcy order.

What is new?

From 1 January 2021, you will also need to report if you have accepted a caution for a criminal offence and/or have committed a summary only road traffic offences. This applies only to events which happen ON or AFTER

1 January 2021.

Summary only road traffic offences comprise:

- careless driving (driving without due care and attention);
- driving whilst disqualified;
- excess alcohol;
- failure to stop or report an accident;
- failure to provide a specimen for analysis;
- no insurance;
- speeding*; and
- unfit through drink or drugs.

* Note that you will not need to report a speeding offence if you go on a driving awareness course or accept a fixed penalty for speeding.

Why have we made this change?

We undertook a review of the reporting obligations and sought legal advice following a question from a Taxation Disciplinary Board panel member as to why CIOT and ATT did not require the acceptance of a caution to be reported. While cautions can be given for relatively minor offences, they can also be given for much more serious offences.

In accepting a caution, an individual is accepting guilt; should they decline the caution they will then normally be prosecuted through the normal channels for the offence. (Note that too is a reportable matter.)

Similarly, a different source queried why summary only motoring offences were excluded from reporting.

The offences covered by these changes can be serious in nature. It is very likely that a member or student who is found guilty of a summary only motoring offence, or who accepts guilt through a caution, will have breached at least one of the Fundamental Principles which all members and students must observe. These are Integrity, Objectivity, Professional competence and due care, Confidentiality and Professional behaviour.

It is essential that the public can have confidence in the integrity and professional behaviour of our members and students. When a member or student breaches the rules of the CIOT and ATT, it reflects badly not only on CIOT and ATT but also the tax profession.

It is important that we have in place appropriate disciplinary processes to deal with breaches. This is particularly important at a time when HMRC's 'Call for evidence: raising standards in the tax advice market' is putting the profession's behaviour under the spotlight. The professional bodies set high professional standards for their members and students, and we are expected to enforce and be seen to enforce them.

Where a member reports a breach of the CIOT/ATT rules, our policy is ordinarily to refer them to the Taxation Disciplinary Board to consider whether any disciplinary

action is necessary. Although a member or student is required to notify their arrest or if they have been charged with a criminal offence, ordinarily they would not be referred to the Taxation Disciplinary Board unless or until they were convicted of the offence.

Conclusion

In adopting this change, we believe we can give clients and the general public confidence that members and students of the ATT and CIOT adhere to high professional standards. On the rare occasion where this is not the case, there is recourse to an independent disciplinary process. This is good not just for the CIOT and ATT but also the tax profession as a whole.

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