



**THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA**
(SET UP BY AN ACT OF PARLIAMENT)

2023 OCTOBER

E-NEWSLETTER

PMILA



PREVENTION OF MONEY LAUNDERING ACT

THRISSUR BRANCH (SIRC)

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EDITOR'S NOTE



Dear Readers,

We welcome you to the September issue of our CA journal, where we dive into two thought-provoking articles that shed light on the evolving landscape of our profession.

In the first article, Dr. M.S Krishna Kumar, Advocate, provides a critical analysis of Chartered Accountants being designated as "Designated Professionals" under the Prevention of Money Laundering Act, 2002 (PMLA). This insightful examination delves into the implications and responsibilities that come with this designation. Dr. Krishna Kumar's article is a timely exploration of the evolving regulatory environment and its impact on our profession.

Our second article, authored by CA Jinu Rose Johnson, explores a different aspect of our profession in the digital age. She delves into how ChatGPT, an AI language model, can be effectively leveraged by Chartered Accountants to enhance their efficiency, accuracy, and overall value proposition to clients and the financial industry. Her article is a practical guide for CAs seeking to harness the power of AI in their practice.

We are grateful to both Dr. M.S Krishna Kumar and CA Jinu Rose Johnson for their insightful contributions. Their expertise and commitment to knowledge-sharing are exemplary, and their articles enrich our understanding of the evolving dynamics in the field of Chartered Accountancy.

As we navigate through these articles, let us reflect on the changing landscape of our profession and the opportunities that emerge from embracing new technologies and regulations. We encourage you to engage with these thought-provoking pieces and consider the implications for your own practice.

We appreciate your ongoing support and eagerly anticipate delivering more enlightening content in the upcoming months.

Jai Hind Jai ICAI

CA AJITH KAIMAL R
NEWSLETTER IN CHARGE

CHAIRMAN'S MESSAGE



Dear Esteemed Members,

It gives me great pleasure to update you on the recent activities and events at our organization. We continue to strive for excellence and provide valuable knowledge and support to our members and the community.

On September 2, 2023, we inaugurated our MSME Help desk with the esteemed presence of Shri. Krishna Teja, IAS, Hon'ble District Collector, Thrissur, as our Chief Guest. This initiative is a testament to our commitment to support and empower Micro, Small, and Medium Enterprises (MSMEs) in Thrissur. We aim to be a guiding light for businesses seeking assistance and direction.

A few days later, we hosted an Awareness Program about CPR in collaboration with the fire and rescue department. It was heartening to see almost 70 students from our branch actively participating in this vital program. Furthermore, the Station House Officer (SHO) of Nedupuzha Police Station graced us with a special address, underscoring the importance of community engagement and safety.

In our ongoing pursuit of knowledge and professional growth, on 05-09-2023, we conducted a CPE Seminar on "Power Point & Power Query." Our dedicated faculties, CA. Ragesh Parameswaran, CA. Amal George, and CA. Aneesh V, provided valuable insights and expertise. Such seminars are a cornerstone of our mission to keep our members updated with the latest trends and technologies.

On the September 16, 2023, we had the privilege of hosting a significant and enlightening event: a webinar focusing on "Company Audit" along with Tirunelveli branch, Tirupur branch & Thiruchirapalli branch of SIRC of ICAI. The featured faculty for this event was none other than CA. Sripriya Kumar, a distinguished professional and a Central Council Member in the field of finance and auditing. This session was designed to provide our members with an exceptional opportunity to delve into the intricate world of company audits, an indispensable aspect of the corporate landscape.

These events are a reflection of our commitment to knowledge sharing, community engagement, and professional development. Your active participation and support make these initiatives possible, and we are grateful for your continued involvement in our community.

I look forward to seeing you at our upcoming events and continuing our journey of growth and learning together.

Jai Hind Jai ICAI

CA JEEN PAUL
CHAIRMAN

A CRITICAL ANALYSIS OF CHARTERED ACCOUNTANTS BEING NOTIFIED AS “ DESIGNATED PROFESSIONALS” UNDER PMLA 2002



Dr M.S KRISHNA KUMAR, Advocate

1 Introduction

1.1 “Money Laundering” is as old as money itself though it was not the target of enforcement authorities internationally until the 70s. The term ‘money laundering’ probably was coined in the United States of America in 1920s, when police officers stumbled upon the ownership and use of “laundrettes” by criminal mafia groups especially the drug mafia to conceal their illicit income. The criminal groups were able to declare their illicit proceeds as profits gained through laundrettes, and hence the term ‘laundering’ was stated to be coined. The term was legally based in American Judgment US Vs \$ 4,255,625.39, (Federal supplement Vol.551, South District of Florida (1982) 314) rendered in the context of confiscation of Columbian Drug proceeds.

1.2 One of the first formal definitions of money laundering to gain international recognition is that found in the Vienna Convention. The key elements of this definition include the conversion of illicit cash to a less suspicious form, so that the true source or ownership is concealed and a legitimate source is created. This definition was used by many countries when they drafted anti-money laundering laws. A concise working definition as adopted by INTERPOL General Secretariat Assembly in 1995 defines money laundering as “any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources”

1.3 History of international Anti Money Laundering Regime (AML) dates back to UN Convention on Narcotic Drugs & Psychotropic Substances 1988 (also known as Vienna Convention) 1988 which criminalized only the drug proceeds. Thereafter UN Convention on Transnational Organized Crime 2000 (Palermo Convention) which came into force on 29 September 2003, widens the definition of money laundering to include the proceeds of all serious crime, and is in consonance with 1988 UN General Assembly Political Declaration. The broad objective of GPML

(Global Programme Against Money Laundering) which is based on the UN Conventions and internationally accepted standards such as FATF recommendations, is to assist all states to have in place a legislation on money laundering and to equip them with necessary knowledge, means and expertise required.

2 Predicate offence or Scheduled offence

A predicate offence is the underlying crime that produces the proceeds that are the subject of money laundering. To put it simply, a predicate offence for money laundering is the underlying criminal activity that generates proceeds that, when “laundered” would eventually lead to the offence of money laundering.

3 Offence of Money Laundering

3.As per the United Nations – Model Legislation on Money Laundering Confiscation and International Cooperation in Relation to the Proceeds of Crime (1999)- definition of offence of money laundering is as follows For the purpose of the law, the following shall be regarded as money laundering (a) *The conversion or transfer of property for the purpose of concealing or disguising the illicit origin of such property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequence of his or her actions* (b) *The concealment or disguise of the true nature, source, location, disposition, movement or ownership of property* (c) *The acquisition, possession or use of property - by any person who knows/who should have known/who suspects that such property constitutes proceeds of crime as defined herein*

4 Money Laundering Process

Money laundering is the process of making illicit proceeds or tainted money to appear legal or untainted. Three process involved in laundering are placement, layering and integration.

In the Placement stage the illegitimate funds are furtively introduced into the legitimate financial system. In the Layering stage, the money is moved around to create confusion, sometimes by wiring or transferring through numerous accounts. In the final stage, the illicit proceeds is integrated into the financial system through additional transactions until the "dirty money" appears "clean." A wide range of services such as creation of a corporate vehicle, purchase and sale of properties, and various other financial services, provided by professionals are vulnerable to money laundering. Even if the professionals are reluctant to aid criminals to launder money purposely, they may participate in the money laundering schemes unconsciously.

5. Financial Action Task force - FATF

5.1 Financial Action Task Force (FATF) is a 39 Member inter-governmental body created in the year 1989 based in Paris, which leads the global action to tackle money laundering, terrorist and proliferation financing. More than 200 countries and jurisdiction have committed to implement FATF standards as part of global response in preventing organized crime, terrorism and corruption. FATF Recommendations (40+9) provide and include robust framework of laws, regulations and operational measures to help national authorities take effective action to detect and disrupt financial flows that fuel crime and terrorism and punish those responsible for illegal activity. The 40+9 Recommendations are the basis on which the member countries are persuaded to meet the objective of tackling money laundering, terrorist financial and financing of proliferation, by effectively implementing the Recommendations in their national systems.

5.2 A decade ago the FATF observed that among the Designated Non-Financial Businesses & Profession (DNFBP) some are 'gate keepers', who often involve in professional services in the domestic and international financial system thereby bringing themselves as potential but unwitting participants in money laundering of criminals. Those include lawyers, accountants and trust company service providers.

5.3 Recommendation -22 of FATF pertains to six broad categories of DNFBP such as (a) casinos, (b) real estate agents (c) dealers in precious metals (d) lawyers, notaries, other independent legal professionals and accountants (e) trust and company service providers. – As per Regulation 22 (d) the lawyers, notaries, other independent legal professionals and accountants – when they prepare for or carry out transactions for their client

concerning the following activities: (a) buying and selling of real estate; (b) managing of client money, securities or other assets; (c) management of bank, savings or securities accounts; (d) organisation of contributions for the creation, operation or management of companies; (e) creation, operation or management of legal persons or arrangements, and buying and selling of business entities. Recommendation -23 (a) provides that lawyers, notaries, independent legal professionals and accountants should be required to report suspicious transactions when on behalf of or for a client they engage in financial transactions as described in R-22 (d) above.

6. Mutual Evaluation of India's PMLA regime by FATF

FATF conducted Mutual Evaluation of India's PMLA 2002 and published a detailed report in June 2010, and placed key findings before the Govt of India. Based on the Key recommendations suggested by FATF the PMLA, 2002 was amended by Finance Act 2013. Thereafter in June 2013 FATF conducted and the report came with a finding that India has made sufficient progress for all core and key recommendations. Consequently, it is recommended that India is removed from the regular follow-up process. Thereafter due to COVID 19, India was not assessed in the 4th Round of Mutual Evaluation. In the meantime FATF Mutual Evaluation of India's AML regime was scheduled to commence in May 2023, but as per FATF sources the possible onsite visit would be November 2023.

7. Recent Amendments to PMLA designating Chartered Accountants as DNFBP

7.1 In the backdrop of FATF visit, the FATF Cell of Ministry of Finance, Department of Revenue in a communication dated 21st September 2022 sought for inputs to strengthen the regulatory framework especially on accounting professionals under DNFBP, from stake holders such as Institute of Chartered Accountants of India, Institute of Cost Accountants of India and Institute of Company Secretaries of India, during Sep 2022. Ministry of Corporate Affairs (MCA) was also asked to (1) identify, access and understand risks associated with accounting professionals (2) implement certification of AML/CFT programme for progressing in their career (3) professional bodies to document all measures taken such as regulator, disciplinary and other (4) adopt comprehensive code for Risk Based Approach to AML/CFT in line with FATF Part III-publication 2019 – FATF Guidance For Accounting Professionals, which is to be included in Code of Ethics.

7.2 Sec. 2(1) (sa) of PMLA 2002 defines the term 'persons carrying on designated business or profession' which means (a) Person carrying on activities for playing games of chance –cash/kind (b) Inspector General of Registration – Registration Act 1908 (c) Real estate agent as may be notified by Central Govt. (d) Dealer in precious metal, precious stones, and other high value goods as may be notified by Central Govt. (e) Person engaged in safe keeping/administration of cash & liquid securities on behalf of another person as may be notified by Central Govt. (f) persons carrying on such other activities as the Central Govt. by notification, so designate, from time to time (Sec. 2 (1) (sa) (vi)) By virtue of powers vested under Sec. 2 (1) (sa) (vi) of the Act, the Central Govt has issued the following notifications.

7.3.1 Notfn N0.2036E – dated 3rd May 2023 - By virtue of powers vested under Sec. 2 (1) (sa) (vi) of PMLA, 2002 the following activities were notified – financial transactions carried out by a relevant person on behalf of his client in the course of his/her profession in relation to following activities (a) buying and selling of any immovable property (b) managing of client money, security or other assets (c) management of bank, savings or securities accounts (d) organization of contributions for the creation, operation and management of companies (e) creation, operation and management of companies, LLP, Trusts, and buying and selling of business entities

7.3.2 The term “Relevant person” includes(i) an individual who has obtained a CoP under Chartered Accountants Act, 1949 (ii) an individual who has obtained a CoP under Company Secretaries Act, 1980 (iii) an individual who has obtained a CoP under Cost & Works Accountants Act, 1959

7.4 Thereafter by Notfn N0.2135E – dated 9th May 2023 – by virtue of powers vested under Sec. 2 (1) (sa) (vi) of PMLA, 2002 the following activities were notified - when carried out in the course of business on behalf of or for another person, as the case may be (a) acting as a formation agent of companies and limited liability partnerships; (b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a firm or a similar position in relation to other companies and limited liability partnerships; (c) providing a registered office, business address or accommodation, correspondence or administrative address for a company or a limited liability partnership or a trust; (d) acting as (or arranging for another person to

act as) a trustee of an express trust or performing the equivalent function for another type of trust; and (e) acting as (or arranging for another person to act as) a nominee shareholder for another person.

Explanation.– to above Notfn No. 2135E – dated 9th May 2023 For removal of doubts, it is clarified that the following activities shall not be regarded as activity for the purposes of sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Act, namely:-

(1) any activity that is carried out as part of any agreement of lease, sub-lease, tenancy or any other agreement or arrangement for the use of land or building or any space and the consideration is subjected to deduction of income-tax as defined under section 194-I of Income-tax Act, 1961 (43 of 1961); or (2) any activity that is carried out by an employee on behalf of his employer in the course of or in relation to his employment; or (3) any activity that is carried out by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of a company to the extent of filing a declaration as required under clause (b) of sub-section (1) of section 7 of Companies Act, 2013 (18 of 2013); or (4) any activity of a person which falls within the meaning of an intermediary as defined in clause (n) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003).

7.5 By Notification dated 3rd May 2023 Chartered Accountants were notified as ‘relevant person’ among the three designated professionals. Later on by Notification dated 9th May 2023 activities carried out by the professionals were notified which would attract PMLA 2002, and at the same time the notification also provided exclusion to certain services covered under Explanation, to the notification dated 9th May 2023. Seeing the language of notification dated 9th May 2023 it appears that only the notified activities were carried out in the course of business, by or on behalf of another, it is attracted under Sec. 2(1) (sa), and not as a professional service/activity.

8. Impact of Chartered Accountants being notified as DNFBP under PMLA 2002

8.1 As stated above, while Sec. 2 (1)(sa) of PMLA 2002 defines the term ‘person carrying on designated business or profession’ , according to Sec 2 (1) (wa) of the Act “reporting entity” means a banking company, financial institution, intermediary or a person carrying on a designated business or profession. (as defined under Sec. 2 (1) (sa) of the Act) A conjoint reading of the above would indicate that a reporting entity includes DNFBP.

8.2 Now let us examine the statutory provisions to be complied by such DNFPB as per the Act., as contained in Chapter IV of PMLA 2002. As per Sec. 11A –, every reporting entity shall verify the identity of their clients, beneficial owner, with identification such as Aadhar, Passport or any other valid document of identification prescribed. In terms of Sec.12, every reporting entity shall maintain record of all transactions, furnish to the Director the nature and value of prescribed transactions, maintain records of identity/correspondence with clients, for a period of five years after the business relation between the client and reporting entity has ended. As per Sec.12AA of the Act, every reporting entity shall take additional steps to examine the ownership and financial position, including source of funds of the client in the manner prescribed. Sec.13 empowers the Director, Financial Intelligence Unit, (FIU) to impose fine on his own motion or on an application made by any authority, officer or person; may conduct enquiry on reporting entity' either issue a warning or impose penalty of minimum 10,000/- max 1,00,000 for each failure. Apart from this The Prevention of Money- Laundering (Maintenance of Records) Rules 2005. (PML Maintenance of Records Rules) which has to be complied as required by such reporting entities

8.3 In terms of Notfn No. GSR 799E dated 28th December 2020 while notifying the precious metals, precious stones as “persons carrying on designated business or profession”, a threshold limit of 10 lakhs was fixed, when carried out in single operation or several operations that appear to be linked. Similarly by Notfn No. GSR 798E dated 28th December 2020 while notifying the ‘real estate agents’ those engaged in providing services in relation to sale or purchase of real estate and having annual turnover of Rupees twenty lakhs or above, only had been covered under the category of ‘DNFPB”

8.4 Though the notifications dated 3rd May 2023 and 9th May 2023 neither specifically mandate the CA as notified DNFBP to follow the procedure set out under PMLA- Chapter IV/Rules as applicable to ‘reporting entities’, nor exclude them from application of the provisions/rules, an uncertain compliance looms large over the practising professionals (CAs). Recent reports in the press indicate that ICAI in a statement has said that accountants have become reporting entity and hence have to do KYC of all clients with whom they are entering into transactions and maintain records.

8.5 While other designated business/professionals were safeguarded with threshold exemption (precious metals dealers & real estate agents) no such limit is proposed for the accountant professionals notified recently. While the Chapter IV (PMLA 2002) obligations on banking companies, financial institutions & intermediaries, along with compliance of PMLA Maintenance of Records Rules 2005, would not be an issue to those institutions who have a dedicated team of staff to take care AML compliance and also can afford to meet the expenses for such compliance related work. This cannot be expected from a Proprietary CA firm or a small partnership CA firm. Even for a bigger CA firm, it would never be viable to place a dedicated team to take care of PMLA compliance.

8.6 Shri Rajat Mohan a Chartered Accountant has filed a Writ Petition before the Hon’ble Delhi High Court challenging the recent notification dated 3rd May 2023 on the ground that bringing the CAs (and other professionals) within the definition of reporting entities has put an ‘onerous obligations’ on them with consequence of non compliance leading to criminal prosecution. The Hon’ble High court has ordered notice to the Central Govt. The Petitioner, further contended before the Hon’ble Delhi High Court that “The scope and application of PMLA is extremely rigorous and strict and even a bona fide oversight shall put the life, liberty careers of the reporting entities under threat. A sword of Damocles would always remain hanging on the head of the petitioner,”

9. Conclusion

Whatever be the compulsions in the light of ensuing FATF review of PMLA slated to be in November 2023, the notification of CAs and other accounting professionals (CMA and CS) without placing sufficient safeguards in the statute/rules by way of threshold exemption or waiver from maintenance of records mandated etc, puts on severe pressure on the said professionals who are already overloaded with numerous compliance in the field of direct taxes, indirect taxes, company law etc. Though Sec.14 of PMLA grants immunity to reporting entity, directors its employees for civil and criminal prosecution for furnishing information, the same would be debatable in the context of individual professional, partnership firm who do not have wherewithal to defend themselves (unlike banks & financial institutions) in case of challenge by the clients. The whole issue can be put to rest if the Government by invoking the powers vested under Sec. 12 (5) the Central Govt, may, by notification, exempt an reporting entity or class of reporting entities from any obligation under Chapter IV of PMLA or issues statutory guidelines safeguarding the interest of audit professionals at large.

Glimpses

SEP 23



05.09.2023

CPE SEMINAR ON "POWER POINT & POWER QUERY"

FACULTIES:- CA.RAGESH PARAMESWARAN, CA. AMAL GEORGE, CA. ANEESH V



16.09.2023

WEBINAR ON "COMPANY AUDIT"

FACULTY: CA. SRIPRIYA KUMAR, CENTRAL COUNCIL MEMBER

Glimpses

SEP 23



02.09.2023

INAUGURATION OF MSME HELP DESK,
CHIEF GUEST: SHRI.KRISHNA TEJA IAS, HON'BLE DISTRICT COLLECTOR, THRISSUR.



AS A PART OF WEEKLY ACTIVITIES, WE CONDUCTED AN AWARENESS PROGRAMME
ABOUT CPR, LED BY FIRE AND RESCUE DEPARTMENT.
SPECIAL ADDRESS BY SHO OF NEDUPUZHA POLICE STATION.

PMILA



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