



Practicing CA/CS/CMAs under the scanner with new amendment in PMLA [Sec 132 of ITA'61 – Sec 247 of ITA'25]



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The biggest development of the week is Notification No. S.O. 2036(E), dated 03.05.2023 amending Section 2 of the Prevention of Money Laundering Act (PMLA). The MoF has widened the ambit of the term "Reporting Entity" as defined in Section 2(1)(wa), read with sec. 2 (1)(sa) of the PMLA. As per the amended norms, financial transactions carried out by practicing Professionals (PPs) - CA/CS/CMA, on behalf of their clients will now fall under the scope of the PMLA. However, lawyers and legal professionals have been kept out of the new definition of entities covered under the Act. The government may have brought about the changes in the PMLA against the backdrop of rising cases of shell companies. One must remember that in March 2023, the government had widened the ambit of reporting entities under money laundering provisions to incorporate more disclosures for non-governmental organisations and defined politically exposed persons (PEPs) under the PMLA in line with the recommendations of the FATF.

The MoF has notified that the "financial transactions" carried out by these persons on behalf of their clients, in the course of their profession, in relation to the following activities shall be under the scanner -

- (i) buying and selling of any immovable property;
- (ii) managing of client money, securities or other assets;
- (iii) management of bank, savings or securities accounts;

- (iv) organisation of contributions for the creation, operation or management of companies;
- (v) creation, operation or management of companies, limited liability partnerships or trusts, and buying and selling of business entities,

The implications of this notification can be as follows –

1. The notification is only restricted to 'practising' CA/CMA/CS and not those in employment.
2. The notification is restricted to 'financial transactions' "in relation to" the activities as specified above. The limitation to 'financial transactions' has been widened by the words "in relation to". Hence wherever there are the specified financial transactions, any activity in relation to these transactions, whether direct or indirect, will be covered.
3. Hence even incase a CA/CMA/CS suggests any buying/selling of investments or properties or creation of a company or opening of a bank account where financial transactions may be done by the client, the sweep of the notification would hold the CA/CMA/CS responsible incase an illegal activity is carried on in relation to these.
4. The coverage of "financial transaction in relation to operation or management of companies" makes the sweep very wide. Hence incase an Income Tax/ GST return is filed by the client but the CA/CMA/CS assists in filing of the same, then the liability of such CA/CMA/CS may arise therein too, incase any activity is detected which deals with proceeds of crime.
5. If there is a transaction involving a client's use of funds or sourcing of funds, and the transaction is suspicious and may have implications relating to use of the money for money laundering or promotion of terrorism, then a professional, carrying such transaction,

cannot contend that he is not aware of the credentials of his client, because he is required to carry due diligence on his client; and it is the duty of the professional to report the same to the authorities.

If the PPs have any suspicion about client suspiciously involving in proceeds of crime, then the PPs should dig further in to the transaction. Further the PPs should maintain the record of the due diligence executed for a period of five years from the date of transaction.

All practising CA/CMA/CS have already taken note of this notification and thus should consider its impact on their professionals.

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