

PMLA Notification dt. 3rd May 2023 – Duties & Responsibilities of Chartered Accountants

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Background – Prevention of Money Laundering Act (PMLA)

- **What is money laundering:**
- Generation of property/profits to individual or group by illegal activities of criminal nature by control the funds without attracting attention to the underlying activity or the persons involved. Criminals do this by disguising the sources, changing the form, or moving the funds to a place where they are less likely to attract attention.
- Money laundering is a serious crime that facilitates various illegal activities, such as drug trafficking, corruption, fraud, and terrorism financing.

- **What is money laundering offence :**
- Section 3 of PMLA, 2002 defines it as “Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.”

Background – Prevention of Money Laundering Act (PMLA)

- **What is money laundering offence : Key Indicators:**
- ➤ directly or indirectly attempts to
- ➤ indulge or knowingly assists or knowingly a party
- ➤ is actually involved in any process or activity connected
- ➤ proceeds of crime
- ➤ including its concealment, possession, acquisition or use
- ➤ projecting or claiming it as untainted property
- ➤ shall be guilty of offence of money laundering

The offense of money laundering involves knowingly engaging in financial transactions that conceal or disguise the origins of illicitly obtained funds. It typically involves three stages:

- i. placement (introducing illicit funds into the financial system),
- ii. layering (conducting complex transactions to obscure the audit trail),
- iii. integration (legitimizing the illicit funds by integrating them back into the economy).

Background – Prevention of Money Laundering Act (PMLA)

- **Proceeds of Crime:** - Section 2 (1) (u)

- It means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

Key Indicators:

- property derived or obtained,
- directly or indirectly
- by any person
- result of criminal activity
- relating to a scheduled offence
- the value of any such property
 - property is taken or held outside the country
- then the property equivalent in value held within the country or abroad

Background – Prevention of Money Laundering Act (PMLA)

Who is a beneficial owner?

- Beneficial owner is an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person.
- Beneficial owner is applicable only to legal entities such as company, partnership firms, trust etc. The criteria's are based upon the percentage of share holding or profit sharing.

Who is a reporting entity?

- Reporting entity means a banking company, financial institution, intermediary or a person carrying on a designated business or profession.
- Any other entity as notified by the central Government such as dealer in precious metals, real estate agent, as may be notified by the Central Government etc.

Background – Prevention of Money Laundering Act (PMLA)

Who is Person carrying on designated business or profession: Section 2(1)(sa)

“person carrying on designated business or profession” means,—

- (i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
- (ii) Inspector-General of Registration appointed under section 3 of the Registration Act, 1908 (16 of 1908) as may be notified by the Central Government;
- (iii) real estate agent, as may be notified by the Central Government;
- (iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
- (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
- (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time

Background – Financial Action Task Force (FATF)

What is FATF ?

- FATF is global money laundering and terrorist financing watchdog.
- It is inter-governmental body which sets and promotes global anti-money laundering and counter-terrorism financing (AML/CFT) standards, known as the FATF Recommendations that aim to prevent these illegal activities and the harm they cause to society.
- It sets international standards to ensure national authorities can effectively go after illicit funds linked to drugs trafficking, the illicit arms trade, cyber fraud and other serious crimes. It provides framework and leads global action to tackle money laundering, terrorist and proliferation financing thereby combating financial crimes.
- More than 200 countries and jurisdictions have committed to implement the FATF's Standards as part of a co-ordinated global response to preventing organised crime, corruption and terrorism.
- India has been a member of FATF since year 2010 and is to be assessed in the fourth round of mutual evaluations in this year i.e. 2023.

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In exercise of the powers conferred by sub-clause (vi) of clause (sa) of sub-section (1) of section 2 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government hereby notifies that the financial transactions carried out by a relevant person on behalf of his client, in the course of his or her profession, in relation to the following activities-

- (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, shall be an activity for the purposes of said sub-section.

Explanation 1. - For the purposes of this notification 'relevant person' includes –

- (i) an individual who obtained a certificate of practice under section 6 of the Chartered Accountants Act, 1949 (38 of 1949) and practicing individually or through a firm, in whatever manner it has been constituted;

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“Financial Transactions carried out by a relevant person on behalf of his Client in the course of his profession”:

- In the context of the prevention of money laundering, a **transaction** refers to any activity or movement of funds that involves the transfer, conversion, or use of money or other assets.
- These transactions can take various forms, such as **deposits, withdrawals, transfers, purchases, sales, or exchanges of goods and services.**
- Here in the notification **“Financial Transactions carried out by a relevant person on behalf of his Client in the course of his profession”** means actually carrying a financial transaction by Chartered Accountant in Practice, on behalf of client, in relation to certain defined activities.

Whether All CAs are covered ?

In this notification “Financial Transactions conducted by a relevant person on behalf of his client in the course of his profession in relation to specified activities” are covered. Hence only those CAs who carry out these activities are covered.

FATF Recommendations

Paragraph 22 :

Designated Non-Financial Businesses and Professions (DNFBPs) - Customer Due Diligence

Requirements set out in Recommendations 10, 11, 12, 15, and 17, apply to designated non-financial businesses and professions (DNFBPs) in the following situations:

(d) Lawyers, notaries, other independent legal professionals and accountants – when they prepare for or carry out transactions for their client concerning the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

FATF Recommendations

Recommendations in Paragraph 10 : Customer due diligence (CDD) Measures :

- (a) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.
- (b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner. For legal persons and arrangements this should include understanding the ownership and control structure of the customer.
- (c) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.
- (d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

Recommendations in Paragraph 11 : Record Keeping :

- To maintain, all necessary records on transactions, both domestic and international,
- including records obtained through CDD measures, account files and business correspondence, including the results of any analysis undertaken
- for at least five years after the business relationship is ended, or after the date of the occasional transaction.
- to enable them to comply swiftly with information requests from the competent authorities.¹¹

FATF Recommendations

Recommendations in Paragraph 15 : New Technologies:

Identify and assess the money laundering or terrorist financing risks that may arise in relation to

- (a) the development of new products and new business practices, including new delivery mechanisms, and
- (b) the use of new or developing technologies for both new and pre-existing products.
- (c) ensure that virtual asset service providers are regulated for AML/CFT purposes, and licensed or registered

Recommendations in Paragraph 17 : Reliance on third parties:

- (a) DNFBPs relying upon a third party should immediately obtain the necessary information concerning elements (a)-(c) of the CDD measures set out in Recommendation 10.
- (b) DNFBPs should take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the CDD requirements will be made available from the third party upon request without delay.
- (c) DNFBPs should satisfy itself that the third party is regulated, supervised or monitored for, and has measures in place for compliance with, CDD and recordkeeping requirements in line with Recommendations 10 and 11.
- (d) When determining in which countries the third party that meets the conditions can be based, countries should have regard to information available on the level of country risk.

FATF Recommendations

Paragraph 23 :

Designated Non-Financial Businesses and Professions (DNFBPs) – Other Measures

The requirements set out in Recommendations 18 to 21 apply to all designated non-financial businesses and professions, subject to the following qualifications:

- (a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in paragraph (d) of Recommendation 22.

Recommendations in Paragraph 18: Internal controls and foreign branches and subsidiaries :

To ensure that their foreign branches and majority owned subsidiaries apply AML/CFT measures consistent with the home country requirements implementing the FATF Recommendations through the financial groups' programmes against money laundering and terrorist financing.

Recommendations in Paragraph 19: Higher-risk countries

To apply enhanced due diligence measures to business relationships and transactions with natural and legal persons, and financial institutions, from countries for which this is called for by the FATF.

FATF Recommendations

Recommendations in Paragraph 20: Reporting of Suspicious Transactions :

If a DNFBPs suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, by law, to report promptly its suspicions to the financial intelligence unit (FIU).

Recommendations in Paragraph 21: Tipping Off and Confidentiality

- DNFBPs are protected by law from criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU, even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.
- DNFBPs are prohibited by law from disclosing (“tipping-off”) the fact that a suspicious transaction report (STR) or related information is being filed with the FIU.

Duties and Responsibilities of Chartered Accountants

With respect to activities mentioned in the Notification -

➤ **Know Your Customer (KYC) Norms.**

- To be carried out prior to taking on a customer engagement as well as a one-time exercise.
- Periodic KYC on existing customers may be done according to the Risk Based Approach (RBA) carried out by the relevant persons

➤ **Client Due Diligence (CDD)**

- Perform robust due diligence on clients/ counterparties;
- Identify risk-related details about the client through sanctions screening
- Store customer KYC information for up to five years; and
- All identification documents secured through the CDD measures should be retained by for a period of at least five years as recommended under Chapter IV clause (3) of PMLA, 2002.

➤ **Maintenance of Records of Transactions** specified in section 12(1)(a) and 12 (1) (e) of PMLA r.w. Rule 3 of PMLR with respect to activities specified in the Notification

➤ **Reporting to Financial Intelligence Unit-India**

- Reporting cash and high volume transactions specified in Rule 3(1) of PMLR by 15th of next month.
- Filing Suspicious Transaction Report (STR) within seven days of forming suspicion.

Suspicious Transactions

"Suspicious transaction" means a transaction including an attempted transaction, whether or not made in cash, which to a person acting in good faith-

- (a) gives rise to a reasonable ground of suspicion that it may involve proceeds of an offence specified in the Schedule to the Act, regardless of the value involved; or*
- (b) appears to be made in circumstances of unusual or unjustified complexity; or*
- (c) appears to have no economic rationale or bona fide purpose; or*
- (d) gives rise to a reasonable ground of suspicion that it may involve financing of the activities relating to terrorism;*

Explanation. - Transaction involving financing of the activities relating to terrorism includes transaction involving funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by a terrorist, terrorist organisation or those who finance or are attempting to finance terrorism.

- Examples**

- A client who authorizes fund transfer from his account to another client's account.
- A client whose account indicates large or frequent wire transfer and sums are immediately withdrawn.
- A client whose account shows active movement of funds with low level of trading transactions.
- A client having unusual credits in the books of accounts & bank statements which are not related to the activities of the business entity.
- A client having unusual transactions in cash or not through appropriate banking channels;
- A client having huge turnover unable to realize its debtors;

KYC Norms as per Code of Ethics – Volume-I- R320.3 A6 (For Attest Functions)

1. Where Client is an individual /proprietor

A. General Information

- Name of the Individual PAN No. or Aadhar Card No. of the Individual
- Business Description Copy of last Audited Financial Statement

B. Engagement Information - Type of Engagement

2. Where Client is a Corporate Entity

A. General Information

- Name and Address of the Entity Business Description
- Name of the Parent Company in case of Subsidiary Copy of last Audited Financial Statement

B. Engagement Information

- Type of Engagement

C. Regulatory Information

- Company PAN No. Company Identification No. Directors' Names & Addresses
- Directors' Identification No.

3. Where Client is a Non- Corporate Entity

A. General Information

- Name and Address of the Entity Copy of PAN No. Business Description
- Partner's Names & Addresses (with their PAN/Aadhar Card/DIN No.)
- Copy of last Audited Financial Statement

B. Engagement Information Type of Engagement

General Procedure to deal with Non Compliance

i. Identification of non-compliance:

The Financial Intelligence Unit identifies instances where a reporting entity has failed to submit required information or documents.

ii. Show cause notice issuance:

The Financial Intelligence Unit initiates the process by issuing a show cause notice to the reporting entity. This notice outlines the specific non-compliance issue, provides a deadline for responding, and states the potential consequences if the non-compliance is not rectified.

iii. Response submission:

The reporting entity is given a specified timeframe to respond to the show cause notice. The response should address the reasons for non-compliance, provide any supporting documents or evidence, and present a plan to rectify the situation.

iv. Assessment and decision-making:

The Financial Intelligence Unit reviews the response submitted by the reporting entity and evaluates the reasons provided for non-compliance.

- They assess the validity of the reasons, the seriousness of the non-compliance, and any mitigating factors. Based on this assessment, a decision is made regarding the appropriate action.

v. Consequences:

If the Financial Intelligence Unit determines that the noncompliance was wilful or significant, they may impose penalties, fines, or take other enforcement actions as per the applicable laws. The specific consequences will depend on the severity of the non-compliance and the provisions outlined in the regulations.

Consequences of Non Compliance

- The Action to be taken against a defaulting Reporting Entity is to be recorded in an order and a copy of the order is to be furnished to every person who is a party to such proceedings.
- If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then he may—
 - (a) issue a warning in writing; or
 - (b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or
 - (c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or
 - (d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.
- No prosecution is contemplated by Chapter IV of the PMLA for defaults in compliance.
- Infact, Section 14 of the PMLA contemplates that no civil or criminal proceeding shall lie against the Reporting Entities, its directors and employees for furnishing information.

Matters to be Deliberated

- 1. Provisions of Code of Ethics –
 - - Whether practicing CAs are allowed to carry out Financial Transactions on behalf of Clients
 - - Whether CAs can get involved in buying & Selling of Real Estate for Clients.
 - - Whether CAs can handle bank accounts of Clients
- 2. Coverage of activities ,carried out by CAs as Insolvency Professional, Liquidator, Tax payments in escrow accounts, Project Finance, Acting as advisor or consultant to an issue, Acting as registrar to an issue and for transfer of shares/other securities, Capital structure planning and advice regarding raising finance, Working capital management.
- 3. Procedure of Reporting to FIU
 - Whether direct reporting or through ICAIU
- 4. Format of Reporting
- 5. Red Flag Indicators for Suspicious Transactions

“In a conflict between the heart and the brain, follow your heart.”

— **Swami Vivekananda**

THANK YOU !!
