

Practicing CA/CS/CWAs under the scanner with new PMLA amendment

Research & Advisory (Corporate Laws)

Tamanna Gaba (CS, LL.B, M.Com)

1. Introduction

Money laundering is a complex and highly sophisticated process that involves disguising the proceeds of illegal activities as legitimate funds. In order to combat this illegal activity, governments around the world have implemented laws and regulations aimed at preventing and detecting money laundering.

In India, the Prevention of Money Laundering Act (PMLA) was introduced in 2002 to tackle the menace of money laundering and terrorist financing. The objective of the Prevention of Money Laundering Act (PMLA) is to prevent and control money laundering activities and to confiscate and seize property derived from, or involved in, money laundering.

The Central Government *vide* Notification No. S.O. 2036(E), dated 03.05.2023 has notified the amendment to Section 2 of the Act. As per the amended norms, financial transactions carried out by practising CA/CS/CWA on behalf of their clients will now fall under the scope of the PMLA. This article discusses in detail the impact of the same.

1. Practicing CA, CS, and CWA will now be termed as a “person carrying on designated business or profession”

The Ministry of Finance has notified an amendment to Section 2(1)(sa) of the PMLA.

Section 2(1)(sa) talks about the “person carrying on designated business or profession.”

1.1 Section 2(1)(sa); pre amendment

As per section 2(1)(sa) of the PMLA, 2002:

“Person carrying on designated business or profession” means:

- (a) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino
- (b) inspector-General of Registration appointed under section 3 of the Registration Act, 1908 (16 of 1908) as may be notified by the Central Government
- (c) real estate agent, as may be notified by the Central Government

- (d) dealer in precious metals, precious stones and other high-value goods, as may be notified by the Central Government
- (e) 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
- (f) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time.

1.2 Section 2(1)(sa); post amendment

The Central Government by using the power specified under section 2(1) (sa) (f) notifies that the financial transactions carried out by a Practicing Chartered Accountant (CA), Company Secretary (CS) and Cost and Works Accountant (CWA) 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.

2. Impact of the inclusion of Practicing CA/CS and CWA under PMLA

2.1 Enhanced professional accountability and liability

Under the new provisions, these professionals will be required to verify that the financial transactions they conduct on behalf of their clients are not connected to illicit activities such as money laundering or financing of terrorism. Non-compliance with the regulations outlined in the Prevention of Money Laundering Act (PMLA) may attract severe penalties and legal action against them.

2.2 Increased compliance requirements

The provisions of PMLA will now apply to CAs, CSs, and CWAs, necessitating their compliance with various obligations such as maintaining records of financial transactions, identifying and verifying clients, and reporting suspicious transactions to the financial intelligence unit.

3. Will the provisions be applicable to the Lawyers as well?

As the current amendment includes the practicing Chartered Accountants, Company Secretaries, and Cost and Work Accountants only. Therefore, at present although the ambit of the PMLA Act has been widened still the lawyers seem to have been kept out of this.

Conclusion

The present amendment to the Prevention of Money-laundering Act, 2002, by the Central Government, has brought practicing CA/CS/CWA professionals, who carry out specific financial transactions on behalf of their clients, under the purview of PMLA. This move aims to enhance their professional accountability and liability and ensure compliance with the regulations outlined in the PMLA.

It aims to combat the illicit activities of money laundering and financing of terrorism by ensuring that the professionals carrying out financial transactions on behalf of their clients are not involved in such activities and strengthen the anti-money laundering framework in India.