



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

JALGAON BRANCH OF WIRC OF ICAI

@E-Newsletter May 2017

Branch Management Committee

CA Pallavi Mayur
Chairperson

CA Ajay Jain
Vice-Chairman

CA Smita Bafna
Secretary

CA Sagar Patni
Treasurer

CA Pankaj Agrawal
Member

CA Nitin Zawar
Imm. Past Chairman

RCM CA Shruti Shah
Branch Nominee



Plot No 10, ICAI Bhawan, Gajanan Colony, Ring Road, Jalgaon-425001
Ph.0257-2232205 | Email: Jalgaon@icai.org
Web: www.jalgaon-icai.org

Chairperson Desk



Respected Members Greeting of the day !

The bells have started ringing, ICAI, the partner in Nation Building is strongly supporting the Government in getting ready for the introduction of Goods and Service Tax Act, from 1st July 2017.

In the month of May 2017 Jalgaon branch has conducted "GST ki Patshala" an intensive workshop of 9 days of 22 CPE hours.

Topics like Basics Concepts of GST , important definitions and concepts, Principals determining time and supply of goods and services, transitional provisions, Registration , different schedules, Return filing were covered.

Challenging in Implementation of GST and Opportunity for Chartered Accountants was also discussed in length.

CA Anilkumar Shah, Adv. M. R. Shirude, CA Kaushal Mundada, CA R. D. Jain, CA S. R. Maniyar, CA Aanand Nahar, CA Jayesh Lalwani were our eminent speakers.

The auditorium was house pack, our learned faculties enlightened the members. It was a very interactive workshop.

Again, a very important seminar on newly introduced ACT i.e. Real Estate Regulation Act (RERA) was jointly taken with CREDAI (Confederation of Real Estate Developers Association of India, Jalgaon)

Mahaguru of this subject matter CA Ramesh Prabhu, addressed the participants. The opportunities for Chartered Accountants along with the rules and regulations and duties and responsibilities was widely covered by CA Rameshji.

Also, an intensive workshop on GST was conducted for the students.

Dear Members, in the month of June, we are starting with GST sahayata Desk – just to solve the queries of the common man regarding GST.

We have National Refresher Course jointly with Ahmednagar at Shirdi and Sub regional Conference at Aurangabad in June. An appeal to all the members to participate in the programmes.

"Positive actions combined with Positive thinking results in Success"

Warm Regards,

**CA Pallavi Mayur
Chairperson**

Intensive Series of GST ki Pathshala





CA Vinay Kawdia

Preventing of Money Laundering Act, 2002- An overview

1. Introduction:

It is being realized, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. The Prevention of Money Laundering Act, 2002 was brought in to force in 2005 to prevent money laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. The Act also addressed the international obligations under the Political Declaration and Global Programme of Action adopted by the General Assembly of the United Nations to prevent money laundering. The act extends to the whole of India and came in to force w.e.f. 01.07.2005.

2. What is Money-Laundering?

"Money-Laundering" has the meaning assigned to it in section 3 of the Act in the following words:

Offence of money-laundering.—*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.*

Thus, u/s 3 of PMLA, as mentioned above, the offence is said to be committed on fulfillment of any of the following three conditions:

- a) acquiring, owning, possessing, using or transferring proceeds of crime; or
- b) knowingly entering into any transaction which is directly or indirectly related to proceeds of crime; or
- c) concealing or aiding in the concealment of the proceeds of crime.

Further, from the definition it appears that, in addition to commitment of any of the offence as above, the offender must also project or claim the proceeds of crime as untainted property, so as to be booked under PMLA.

The term 'Proceeds of Crime' is defined u/s 2(u) of the Act as follows:

"Proceeds of crime" 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;

The term 'property' is defined u/s 2(v) of the Act as follows:

"Property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

Untainted property, as understood in common parlance, means property which is free from blemishes, doubts and suspicion as to the source of acquisition thereof.

"person" includes —

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person, not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;

3. Proceeds of crime and scheduled offences:

Proceeds of crime 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;

To summarize, the person is liable to be booked under the PMLA if he is directly or indirectly connected with the proceeds of crime i.e. property derived as a result of criminal activity relating to scheduled offences only. In other words, if any property is derived through criminal or unethical activity relating to an offence not listed in Part A, B or C of the schedule of offences, the provisions of PMLA shall not be applicable.

4. What are the scheduled offences?

Section 2(y) defines "***scheduled offence***" means—

- (i) the offences specified under Part A of the Schedule; or
- (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or
- (iii) the offences specified under Part C of the Schedule;

4.1 The offences specified under Part A of the Schedule

Sr	Offence under the Act	Type of offence
1	OFFENCES UNDER THE INDIAN PENAL CODE	43 types of offences described under various sections of IPC
2	OFFENCES UNDER THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985	13 types of offences
3	OFFENCES UNDER THE EXPLOSIVE SUBSTANCES ACT, 1908	3 types of offences
4	OFFENCES UNDER THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967	15 types of offences
5	OFFENCES UNDER THE ARMS ACT, 1959	6 types of offences
6	OFFENCES UNDER THE WILDLIFE (PROTECTION) ACT, 1972	6 types of offences
7	OFFENCES UNDER THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956	4 types of offences
8	OFFENCES UNDER THE PREVENTION OF CORRUPTION ACT, 1988	5 types of offences
9	OFFENCES UNDER THE EXPLOSIVES ACT, 1884	2 types of offences
10	OFFENCES UNDER THE ANTIQUITIES AND ARTS TREASURES ACT, 1972	2 types of offences
11	OFFENCES UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992	2 types of offences
12	OFFENCES UNDER THE CUSTOMS ACT, 1962	1 type of offence
13	OFFENCES UNDER THE BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976	3 type of offence
14	OFFENCES UNDER THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986	1 type of offence
15	OFFENCES UNDER THE TRANSPLANTATION OF HUMAN ORGANS ACT, 1994	3 type of offence
16	OFFENCES UNDER THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000	4 types of offences
17	OFFENCES UNDER THE EMIGRATION ACT, 1983	1 type of offence
18	OFFENCES UNDER THE PASSPORTS ACT, 1967	1 type of offence
19	OFFENCES UNDER THE FOREIGNERS ACT, 1946	3 type of offence
20	OFFENCES UNDER THE COPYRIGHT ACT, 1957	4 types of offences
21	OFFENCES UNDER THE TRADE MARKS ACT, 1999	5 types of offences
22	OFFENCES UNDER THE INFORMATION TECHNOLOGY ACT, 2000	2 types of offences
23	OFFENCES UNDER THE BIOLOGICAL DIVERSITY ACT, 2002	1 type of offence
24	OFFENCES UNDER THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT, 2001	4 types of offences
25	OFFENCES UNDER THE ENVIRONMENT PROTECTION ACT, 1986	2 types of offences
26	OFFENCES UNDER THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974	2 types of offences
27	OFFENCES UNDER THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981	1 type of offence
28	OFFENCES UNDER THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF ACT, 2002	1 type of offence

4.2 The offences specified under Part B of the Schedule:-

Offence under Section 132 of The Custos Act, 1962 relating to false declaration, false documents etc. [if the total value involved in such offences is thirty lakh rupees or more]

4.3 The offences specified under Part C of the Schedule:-

An offence which is the **offence of cross border implications** and is specified in,—

Part A; or

the offences against property under Chapter XVII of the Indian Penal Code.

(4) The offence of willful attempt to evade any tax, penalty or interest referred to in section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

[Note: "**offence of cross border implications**", means—

(i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person transfers in any manner the proceeds of such conduct or part thereof to India; or

(ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.]

5. Burden of Proof.

Section 24: In any proceeding relating to proceeds of crime under this Act,—

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.

Therefore, burden shall be on the accused to prove that, no proceeds of crime are involved in the alleged money laundering.

6. Reporting mechanism under the PMLA:

Section 12 of this Act and the Rules impose obligations on Banking companies [S. 2(e)], financial institutions [S. 2(l)], intermediaries of the securities market [S. 2(n)] and person carrying on designated business or profession [S. 2(sa)] to maintain records of transactions furnish information and verify identity of clients. [The nature and value of which is prescribed in rules]

With PMLA coming in to force, reporting entities i.e. banks, financial institutions, financial intermediaries and persons carrying on designated business or profession will have to mandatorily report to the Govt. all suspicious transactions [*defined in Rule 2(g)*] regardless of the value involved, other transactions of value over Rs. 10 Lakhs, cross border wire transfers of value more than Rs. 5 Lakh, transaction of purchase/sale of immovable property valued at Rs. 50 Lakhs or more as specified in detail in clause (A) to (F) of Rule 3 of the *The Prevention of Money-Laundering (Maintenance of Records, Etc.) Rules 2005*.

[For details please refer *The Prevention of Money-Laundering (Maintenance of Records, Etc.) Rules 2005*]

7. Attachment, adjudication and confiscation:

The act deals with the attachment of the *property* involved in the money laundering in accordance with *chapter III* of the Act. The attachments are done by Director or any person not below the rank of Dy. Director authorized to do so by him.

The adjudicating authority shall have the same powers as are vested in Civil Court under the Code of Civil Procedure, 1908 and every proceeding shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code.

8. Punishment for money-laundering:

Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine. **[Sec. 4]**

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule (i.e. offences under *The Narcotics Drugs & Psychotropic Substances Act, 1985*), the term of imprisonment may extend to ten years.

9. Money laundering vis-a-vis Income Tax Act, 1961:

A wilful attempt to evade tax or any other offence under the Income Tax Act is not a scheduled offense under the PMLA, 2002. On the contrary, wilful attempt to evade tax, penalty or interest under the *Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015* (Sec. 51) is a scheduled offense. [*Part C of the Schedule to PMLA*] and can give rise to proceedings under the PMLA.

Though the wilful attempt to evade tax or any other offence under the Income Tax Act is not a scheduled offense under the PMLA, in the context of Income Declaration of Scheme, 2016 or otherwise, any disclosure of income or property could attract the provisions of PMLA, if the property is as defined u/s 2(v) of the PMLA and the same is sourced out of *proceeds of crime* as defined u/s 2(u) of the PMLA.

[However, CBDT Circular No. 17/2016 dated 20.05.16 clarified that, the IDS 2016 incorporates the provisions of section 138 of the Income-tax Act relating to disclosure of information in respect of assessees. Therefore, the information in respect of declaration made shall be kept confidential as in the case of return of income filed by assessees.]

9.1 Judicial update:

Recently, Hon'ble Calcutta High Court in ***Rajmandir Estates Pvt. Ltd. vs. Pr. CIT [GA No. 509 of 2016 dt. 13.05.16]***, had an occasion to deal with the issue of validity of reopening of assessment by CIT u/s 263, in the backdrop of possible money-laundering.

The CIT in his order dated 22.03.13 passed under Section 263 opined that this was or could be a case of money laundering which went undetected due to lack of requisite enquiry and non-application of mind. He entertained the belief "that unaccounted money is laundered as clean share capital by creating a façade of paper work, routing the money through several bank accounts and getting it the seal of statutory approval by getting the case reopened u/s.147 *suo motu*. Accordingly he concluded that assessment order passed u/s 143(3)/147 was erroneous and prejudicial to the interest of the revenue. He, therefore, set aside the same and issued directions for a thorough enquiry.

Hon'ble High Court in its elaborate order after referring to the PMLA and observing various facets and evidences of possible money laundering under the peculiar facts of the case upheld the order of CIT u/s 263 in following words:

"We have indicated above the pieces of evidence which go to show that the Commissioner had reasons to entertain the belief that this was or could be a case of money laundering which went unnoticed because the assessing officer did not hold requisite investigation except for calling for the records. The fact that the assessing officer did not apply his mind to those pieces of evidence would be evident from the assessment order itself.

The question for consideration is whether in the presence of materials discussed above the Commissioner was justified in treating the assessment order erroneous and prejudicial to the interest of the revenue. That question in the facts and circumstances has to be answered in the affirmative."

It is important to note that, Hon'ble High Court distinguished some of the Supreme Court precedents cited by the appellant to support his case *inter alia* on the ground that The Prevention of Money Laundering Act, 2002 was not there on the statute at that point of time. Therefore, though offences under the Income Tax act, 1961 *per se* are not scheduled offences for the purpose of PMLA, nevertheless assessing officer can proceed in assessment or CIT can direct further investigation in order to verify possibility of income/ assets added or declared u/s 68, 69, 69A etc. of the IT act being sourced out of *proceeds of crime* as defined u/s 2(u) of the PMLA, so that further action under PMLA, if necessary, can be taken.

Conclusion:

It has to be kept in view that India has a problem of black economy, which is unaccounted and many a time the holders of black money also launder the black money in order to acquire legitimate assets. Legal or illegal income which evades tax and illegal income that comes within the exempted taxation slab constitute the unreported Gross Domestic Product or black economy. Laundering the black money and laundering proceeds of crime are two different issues, although there is frequent overlap between the two. While laundering black money is to be handled through taxation laws or similar laws, the laundering of proceeds of crime is to be handled through special anti-money-laundering laws. **[Dr. M. C. Mehanathan in his commentary on the Law of Prevention of Money Laundering in India published by Lexis Nexis (2014 edition)]**

Poser: Whether the event of Money Laundering which took place prior to 2005 can be booked under PMLA 2002?

Ans. PMLA 2002 [*The Act*] has come in to force w.e.f. 01.07.2005 and accordingly, the offence of money laundering committed on or after the said date is liable to be booked under the Act.

In simple words, u/s 3 of PMLA, the offence is said to be committed on fulfillment of any of the following three conditions:

- a) acquiring, owning, possessing, using or transferring proceeds of crime; or
- b) knowingly entering into any transaction which is directly or indirectly related to proceeds of crime; or
- c) concealing or aiding in the concealment of the proceeds of crime.

The term 'Proceeds of Crime' is defined u/s 2(u) of the Act as follows:

"Proceeds of crime" 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;

Therefore, it appears that, irrespective of the date of performance of criminal activity (which may be prior to 01.07.2005) relating to a scheduled offence resulting in to acquisition of proceeds of crime, one can be booked under the Act if today he is enjoying the said proceeds of crime by any means, which is the charging event.

Ex: Suppose Mr. X committed an offence under THE PREVENTION OF CORRUPTION ACT, 1988 on 01.01.2005 [Scheduled offence under Para 8 of part A of schedule to the Act] and acquired some property out those criminal proceeds. If he is enjoying, etc. the said property even today, he is liable to be booked under the Act.

Forthcoming Events of December 2017

Date	Subjects	Speaker	CPE Hours	Venue
9th & 10th June 17	VIBRANT National Residential Refresher Course	CA Bimal Jain, CA Kapil Goel, CA Madhukar Hiregange, CA K K Chythanya, CA Padam Kincha, Adv. C B Thakkar	12	Hotel Sun-n-Sand, Shirdi
21-Jun-17	3rd International Yoga Day	Mrs. Hemangi Sonawane	NA	ICAI Bhavan, 10, Gajanan Colony, Ring Road, Jalgaon
16-Jun-17	Seminar on Communication Skill Jointly with Jalgaon WICASA	CA Kunal Kamat	NA	ICAI Bhavan, 10, Gajanan Colony, Ring Road, Jalgaon
17th & 18th June 2017	Two Days WIRC Sub Regional Conference	CA Kapil Goel, CA Khushroo Panthaky, CA Jayesh Gogri, CA Madhukar Hiregange, CA Ramesh Prabhu, CA Anil Bhandari, Major Gen. Neeraj Bali, CAGirish Ahuja	12	Aurangabad Branch, ICAI Bhawan

Thank you



Programs of May 2017

