

Prohibition of Benami Property Transactions Act: Your Questions And Answers



In August 1988, the DA Desai Law Commission had given its report on benami property transactions to the Rajiv Gandhi Government, the beginning of Benami Transaction Prohibition Law in India. The Benami Transactions (Prohibition) Amendment Act, 2016 is an amendment of the older Benami Transactions (Prohibition) Act 1988. It was first introduced in the Lok Sabha last year, on May 13 by Finance Minister Arun Jaitley, and was then referred to by a Standing Committee on Finance. The Committee submitted its report on April 28 and following that, it was passed in the Lok Sabha and Rajya Sabha on July 27 and August 2 respectively. The New Benami Act came into effect from November 1, 2016. The Benami Transactions (Prohibition) Act, 1988 will be renamed as the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act). It prohibits illegal benami transactions, under which up to seven years of imprisonment and penalty for those indulging in such activities could be handed out. Read on to know more...

Who is Benamidar?

Benami essentially means property without a name. In this kind of transaction, the person who pays for the property does not buy it under his/her own



CA. Sathesh TG

The author is a member of the Institute who may be contacted at sathesh.tg@gmail.com

name. The person on whose name the property has been purchased is called the Benamidar.

Benamidar means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name.

What is Benami Property and Benami Transaction?

Benami property means any property which is the subject matter of a benami transaction and also

includes the proceeds from such property.

“Benami transaction” means,—

- (A) a transaction or an arrangement—
 - (a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and
 - (b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration.
- (B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name;
- (C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;
- (D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious.

What are specifically excluded from the definition of Benami Transaction?

In the following situations benami transactions are not penalised as they are specifically exempted under the Act:

- (i) Where a Karta or a member of a Hindu Undivided Family, the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu Undivided Family;
- (ii) Where a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;
- (iii) Where an individual holds the property in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;
- (iv) Where any person holds the property in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and

the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual.

- (v) Where a transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in Section 53A of the Transfer of Property Act, 1882, if, under any law for the time being in force, such contract is registered and stamp duty is paid on such transaction.

What constitutes property for the purpose of Benami Transactions?

Literally, all assets, even gold or financial securities are covered under the Act. Property means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property.

What are the consequences of a Benami Transaction?

Any property, which is a subject matter of benami transaction, shall be liable to be confiscated by the Central Government. Earlier, any violation of the provisions of the Act would lead to imprisonment of up to three years, or a fine, or both. Now, under the amended Act, any offender would stand to be punished with imprisonment of up to seven years.

Anyone found guilty of entering into a Benami Transaction would be liable for both financial penalty and imprisonment:

- Financial Penalty of up to 25% of the fair market value of the property.
- Rigorous imprisonment for minimum of 1 Year to maximum of 7 year. If anyone gives incorrect

Property means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property.

information or explanation in response to any inquiry to any authority:

- Financial Penalty of up to 10% of the fair market value of the property and
- Rigorous imprisonment of minimum 6 months to maximum of 5 years.

How it affects the people?

As for the general public, it will not be much of an issue if their transactions are legal. People with unaccounted income will surely have a tough time. The following situations are some of my understanding about benami transactions and how it is going to affect people.

- Mr. A purchases gold worth ₹5 lakh and the amount is paid by Mr. X who is not traceable is a benami transaction.
- Mr. E, an NRI from England purchased an apartment for ₹1 crore and made payment of ₹75,00,000 officially by cheque from his NRE account and ₹25,00,000 unofficially in cash. For the registration, stamp duty payment, TDS as well as in all correspondence and documentation, ₹75,00,000 was used as official consideration of property, which was purchased in his name. In such case, while, cash was involved, this may not be a Benami Transaction.
- Mr. J, an NRI from UAE purchases a house worth ₹50 lakh in the joint name of his father and himself and payment has been done from his NRE account is not a Benami Transaction.
- Mr. F an NRI residing in US purchased a Flat in the name of his son Mr. S is not a Benami Transaction.
- Mr. K gifts ₹15 lakh to his father, who invested in Equity Shares in his own name with an intention to return the gift to his son in future, is a Benami Transaction.
- Mr. L, an NRI and a resident of Germany, invested in equity shares of various listed companies of ₹100,00,000 in the name of his wife Mrs. M and himself as joint holders from an account not disclosed to tax authorities (unknown source), is a Benami Transaction.
- Mr. L, an NRI and a resident of Germany, invested in equity shares of various listed companies of ₹100,00,000 in name of his wife Mrs. M and himself as joint holders from his NRO account, is not a Benami Transaction.
- Mr. X sells a property worth ₹2 crore and value disclosed for stamp duty purpose is ₹1.5 Crore. A cheque of ₹1.5 crore is received and balance in cash. Amount disclosed to income tax authorities is ₹1.5 crores. Mr. X invested in Mutual Fund ₹50 lakh in the joint name of Mrs. Y his wife and himself out of the Cash is a Benami Transaction.
- Mr. G, an NRI holds deposits worth ₹10 lakh in the joint name of his brother's wife and himself is a Benami Transaction.
- Mr. R, resident Indian deposited ₹25 lakh in the name of his married daughter who is residing abroad. She denies the ownership and has no knowledge about the transaction, is a Benami Transaction.
- Mr. P, an NRI from Switzerland sold a Benami property for ₹5,00,00,000 by cheque and deposited the sale proceeds in his NRO bank account. The amount in the bank account is a Benami Property.
- Mr. Q has owned a Benami office property since 2010. As he is still holding the property on November 1, 2016, this would also be considered as a Benami Transaction as per the new Amended Act and will be subject to the authority and penalty of the Amended Act.
- Mr. R, an NRI from China sold a Benami residential property for ₹1,50,00,000 by cheque, deposited the sale proceeds in his NRO bank account, paid taxes and filed income tax return. He buys another property from his after-tax paid proceeds in his own name. Whether the transaction of buying and holding 2nd property is a Benami Transaction, is debatable.
- Mr. Father takes a loan to construct a building on his own land. Mr. Son makes the repayment of loan and Mr. Son has all chance of inheritance of that property in future. Whether it is a Benami Transaction is also debatable.
- Mr. A deposited Specified Bank Notes

Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government. Earlier, any violation of the provisions of the Act would lead to imprisonment of up to three years, or a fine, or both. Now, under the amended Act, any offender would stand to be punished with imprisonment of up to seven years.

An Initiating Officer can issue a notice to any benamidar on suspicion. The officer may then hold the property for 90 days from the day the notice was issued, subject to permission from the Approving Authority. Upon the end of the 90 day period, the Initiating Officer may pass an order to continue holding the property following which, he/she may refer the case to the Adjudicating Authority. The Adjudicating Authority will then examine all the documents and evidence, and then pass an order on whether the property will be held as benami.

(Demonetised Currency) and Mr. B is holding the same with an intention to transfer it to Mr. A in future is a Benami Transaction.

Who are the Authorities in Charge and what are their roles?

As per the new act, there are four authorities who will conduct inquiries or investigations:

- i) Initiating Officer,
- ii) Approving Authority,
- iii) Administrator, and
- iv) Adjudicating Authority.

An Initiating Officer can issue a notice to any

benamidar on suspicion. The officer may then hold the property for 90 days from the day the notice was issued, subject to permission from the Approving Authority. Upon the end of the 90 day period, the Initiating Officer may pass an order to continue holding the property following which, he/she may refer the case to the Adjudicating Authority. The Adjudicating Authority will then examine all the documents and evidence, and then pass an order on whether the property will be held as benami.

Based on this order, the Administer will receive and handle the property subject to conditions as prescribed. A Joint /Additional Commissioner of Income-tax, an Assistant / Deputy Commissioner of Income-tax, and a Tax Recovery Officer would be notified to perform the functions and exercise the powers of the Approving Authority, Initiating Officer and Administrator, respectively.

Conclusion

There will not be many issues to common man if the transactions are legal. If by mistake, somebody has entered into a Benami Transaction, seek an experienced professional's help to remedy the same. ■

