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KEEP AWAY FROM BENAMI TRANSACTIONS



Income Tax Department

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INTRODUCTION

“Benami” means “no name” or “without name”. Benami properties are those that are held by an owner through proxies. The property is purchased in the name of or held in the name of a person who has neither paid for it nor actually enjoys it. It may even be held in the name of a non-existent person. Such front person is known as 'Benamidar'. This name is only an alias for the actual owner, the 'Beneficial Owner'. Thus, the Benami property transaction is where the 'Beneficial Owner' buys the property in the name of a Benamidar but seeks to enjoy it himself.

Thus, a 'Beneficial Owner' is a person (whether his identity is known or not) for whose benefit the benami property is held by a Benamidar. Sometimes the Benamidar does not know or cannot disclose the identity of the real owner. He may have only taken money and placed some signatures. Even in these conditions, the property will be benami.

Illustrations :

- (a) Mr. A buys a house in the name of his sister-in-law Mrs. B. Payment has been made by A and he and his family start to live in that house. Even if B is a rich lady, the transaction is Benami. B is the Benamidar and A is the beneficial Owner .
- (b) Fixed Deposits kept in the name of fictitious persons is a Benami Property.
- (c) Cash kept by Mr. A in bank locker in the name of his employee/relative who denies knowledge, is a Benami Property.
- (d) Mr. P wants to take a liquor license from the government. He pays the money in the name of his employee Mr. K and the contract is awarded to Mr K, but Mr. P is deriving benefit from the liquor license. The transaction is benami transaction. Mr. K is the Benamidar, Mr. P is the Beneficial Owner and profits from such liquor business will be the Benami property.

MOTIVE BEHIND ENTERING INTO BENAMI TRANSACTIONS AND ENACTMENT OF A LEGISLATION TO PROHIBIT BENAMI TRANSACTIONS

1. Over the years, it was noticed that people had begun to enter into Benami transactions in real estate, shares, fixed deposits, vehicles and even in contracts. The main motives were to avoid payment of statutory dues or taxes, defrauding banks and creditors by avoiding making payments to them and to disguise the real ownership of a property to prevent detection of the illegal activity that produced it.
2. Therefore, to curb this activity, the Benami Transactions (Prohibition) Act, 1988 is in force since 1988. The Benami Transactions (Prohibition) Amendment Act, 2016 amended the original Act and renamed it as Prohibition of Benami Property Transactions Act, 1988. This Act prohibits anyone from entering into Benami Transactions.
3. As per provisions of the Act, any Benami property can be confiscated and can vest with the Government of India. Benami transactions are also punishable with imprisonment and fine for both, the Benamidar as well as the Beneficial Owner.

IMPORTANT DEFINITIONS UNDER THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT

- a) BENAMI TRANSACTION
- b) PROPERTY
- c) BENAMI PROPERTY
- d) BENAMIDAR
- e) BENEFICIAL OWNER

BENAMI TRANSACTION

There are four types of Benami Transactions :-

- (a) a transaction or an arrangement—
 - (i) 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
 - (ii) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

However, exception are provided, when the property is held by:

- ➔ a Karta, or a member of a Hindu undivided family and 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;
- ➔ a person standing in a fiduciary capacity and includes a trustee, executor, partner, director of a company, etc..
- ➔ any person 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;
- ➔ any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendent 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; or
- (b) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or
- (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.

BENAMI PROPERTY

- (a) Any property* which is the subject matter of a *Benami* Transaction, and
- (b) Proceeds from such property*

* Property means assets of any kind, whether

- (a) Movable, or Immovable, Tangible, or Intangible, Corporeal (Having a physical material existence – Furniture and fixtures) or Incorporeal (Having a conceptual existence but no physical existence- Copyrights and patents)
- (b) It includes any right or interest or legal documents or instruments evidencing title to or interest in the property and
- (c) It also includes the converted form of any property where such property is capable of conversion

(d) Therefore, all forms of assets come under the definition of property, bringing into its scope real estate, shares, vehicles, fixed deposits, bank deposits, bank lockers and private lockers etc..

BENAMIDAR

An actual person or a fictitious person:

- a) In whose name the Benami property is transferred* or held and
- b) Includes a person who lends his name

*Transfer includes :

- (a) Sale or
- (b) Purchase, or
- (c) Any other form of transfer of-
 - (i) Right
 - (ii) Title
 - (iii) Possession, or
 - (iv) Lien

WHAT IF THE BENAMI PROPERTY IS RE-TRANSFERRED BY THE BENAMIDAR

Re-transfer of the property by the Benamidar to the Beneficial owner or any other person acting on his behalf is prohibited and such re-transfer shall be deemed to be null and void.

Illustration : If A, the Beneficial Owner purchases a property in the name of Benamidar B. To avoid confiscation, Benamidar B re-transfers the Benami property either to A, the Beneficial Owner or to P, a person acting on behalf of the Beneficial Owner. Both these transactions are null and void.

OFFENCES AND PROSECUTION

The offences under The Prohibition of Benami Property Transactions Act, 1988 are non-cognizable:

- (a) **Punishment for entering into benami transaction prior to 01.11.2016:** Both Benamidar as well as Beneficial owner are liable to face imprisonment for a term which may extend to three years or with fine or with both.
- (b) **Punishment for entering into benami transaction after 01.11.2016:** Any person (Benamidar and Beneficial Owner) who enters into a Benami Transaction in order to defeat the provisions of any Law or to avoid payment of statutory dues or to avoid payment to creditors and any other person who abets or induces any person to enter into the Benami Transaction shall be guilty of the offence of Benami Transaction.

Rigorous imprisonment from 1 to 7 years and fine upto 25% of the Fair Market Value:

Consequences of giving False information:

Any person who gives false information or furnishes false document before any authority under this Act is punishable with rigorous imprisonment from six months to 5 years and also liable to fine upto 10% of the Fair Market Value of the property.

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This brochure should not be construed as an exhaustive statement of the law. For details - reference should always be made to the relevant provisions in the Acts and the Rules.