

All About Benami Transaction (Prohibition) Amendment

Act,2016

By: Lavina Bhargava

INTRODUCTION

The word 'benami' means without name. Benami transaction means any transaction of property which is done in the name of one person and consideration is paid by another person. Also it must be in the future benefit, directly or indirectly, to the person who has paid the consideration.

This type of transaction mainly take place in the real estate sector. The property can be moveable or immoveable, tangible or intangible, corporeal or incorporeal.

Before 1988, benami transactions were not illegal and there was no law for people who commit fraud by entering in such transactions. The only thing that was not allowed was to recover the property by the real owner from the benamidar.

Therefore, Benami Transaction (Prohibition) Act came into force in 1988 with intention of prohibiting benami transaction and right to recover the property held benami.

The main purpose behind this act is to nab those people with undisclosed income by prohibiting the benami transactions and to prevent tax evasion in the country.

This act was amended in 2016 and now referred as Benami Transaction (Prohibition) Amendment Act,2016.

The amended act seeks to amend the definition of benami transaction. It has established authorities and procedure to inquire into such matters and specified the punishment.

Under section 10 of The Benami Transactions (Prohibition) Amendment Act, 2016

" 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;

A transaction is said to be benami if:

It is made under some fictitious name

The benamidar is not aware of the property and is found to be too poor to purchase that property

The real beneficiary of the property i.e. the person who has financially dealt with it is not traceable.

There are 4 authorities appointed by the central government to enquire into the matter of benami transactions. They are:

The Initiating officer

The Approving authority

The Administrator

The Adjudicating authority

Punishment : Under section 53(2), Whoever is found guilty of the offence of benami transaction shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent. of the fair market value of the property.

Also that person can be prosecuted for tax evasion charges under income tax act of 1961.

Basically this amended act widened the scope of the 1988 act so that it can stop people to utilise the black money and to make India, a corruption free and a better country to invest it.

1. What is the meaning of Benami Transaction?

Ans. The meaning of benami transaction is given in section 9 of the act. It is any transaction which is made in name of one person which can be fictitious or who may be not aware of this transaction and the consideration is paid by the another person who is the real beneficiary of the property.

2. What are the exceptions of Benami Transaction?

Ans. A property will not be said to be benami if that property is held by:

- Karta of Hindu Undivided Family and the property is held for his benefit or for any member of his family and the consideration has been paid from some known sources of the Hindu Undivided Family.
- Any person transferring the property has a fiduciary relationship and is doing so for the benefit of another person such as trustee, partner or director of the company, or a depository or an agent of a depository under the Depositories Act, 1996 or any other person as may be notified by the Central Government regarding this.
- Any person transferring the property in the name of his spouse or in the name of his child and the consideration for such property has been paid from his known sources ;
- Any person transferring 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 himself appear as joint-owners in any document, and the consideration for such property has been paid from his known sources.

3. When did this Act come into force?

Ans. The initial act was Benami Transaction (Prohibition) Act, 1988. It was amended in 2016 and renamed as Benami Transaction (Prohibition) Amendment Act, 2016.

It came into force on 1st November 2016.

4. What is the objective of this act?

Ans. The main objective of this act is to stop people to commit fraud by prohibiting the benami transactions and to have right to recover the property held benami.

5. Why people enter into such transactions?

Ans. Many people earn a lot of money from unknown sources which is called the black money. To conceal such money, there are many ways. One of the ways is to invest in the properties and make benami transactions. By purchasing the property through benami transaction, person does not use his own name anywhere and does not show the transaction in his account and therefore, does not pay the income tax.

Since, the name of the actual beneficiary is not there, he/she can't be traced. In this way he can utilise that money.

Secondly, there is a limit of land that an individual can own for equal distribution of land. So they purchase land in the name of other.

6. Why there was a need for this act?

Ans. This act was needed to prevent:

Tax evasion

Money laundering

Balance equal distribution of land

7. What are the amendments done in the Benami Transaction (Prohibition) Amendment Act,2016?

The previous act of 1988 had only 9 sections. In the act of 2016, there are 72 sections.

It has widened the scope of the original act Benami Transaction (Prohibition) Act, 1988 and has been made strict.

It has clearly defined the meaning of benami transaction, its exceptions.

It has established the authorities to enquire into such matter.

It has amended the penalty for entering into benami transactions.

It has established an appellate tribunal for hearing appeals regarding benami transaction.

In the previous act there was section for confiscating the benami property but not the procedure. In the amended act, the procedure is given.

8. What is the role of the authorities in investigation?

- First step of the investigation is taken by the Initiating Officer- if he has a reason to believe that any person is benamidar, he shall sent a show cause notice to him and if identity of the beneficiary is known, then notice shall also be send to him.

- If he believes that the person in possession of the property is held benami, he can hold the property for not more than 90 days from issuing the previous notice with the prior permission of the approving authority.(Section 24)
- The initiating officer after making all inquiries and taking all the evidence into account can within those 90 days issue notice to continue to hold the property with prior permission of the approving authority till the order is passed by the adjudicating authority.
- If an order is passed by the approving authority to continue holding the property, the Initiating Officer will refer the case to the Adjudicating Authority. The Adjudicating Authority will examine all documents and evidence relating to the matter and shall issue notice within 30 days from the date of reference received. If the property is owned jointly by one or more persons, then the adjudicating authority will serve notice to each of them.
- After making inquiries and taking into account all material facts and evidence, he provide opportunity to the person of being heard.
- After hearing the person, the adjudicating authority shall make an order confiscating the property held to be a benami property.
- After such order has been passed, the administrator receive and manage the property in the prescribed manner and condition.
- The amended act has also established an Appellate Tribunal for hearing appeals against the order of adjudicating authority.

9. What is the punishment for entering into Benami Transaction?

Ans. Punishment is provided in section 53 of the act which says that it shall be not less than 1 year and may extend to 7 years and shall also be liable to pay fine that can extend up to 25% of the market value of the property.

10. What are the actions taken by Income Tax department in prohibiting the Benami Transactions ?

Ans.

- The income tax department plays a vital role in implementing this act in the country.
- It has recently warned public to not enter into benami transactions and have cautioned them that violation of this new law will invite criminal proceedings and rigorous

imprisonment upto 7 years. The department has published its alert in the national newspapers.

- It has also published that any person who will provide false information to authorities under Prohibition of Benami Property Transactions Act, 2016, are also prosecutable and can be liable for imprisonment up to 5 years and also shall be liable to pay fine up to 10 per cent of fair market value of benami property.
- Recently IT department has launched New Benami Transactions Informants Reward Scheme, 2018 under which a person will be rewarded Rs.1 Crore for sharing information about the benami transaction in a prescribed manner to the Joint or Additional Commissioners of Benami Prohibition Units (BPUs). The identity of the whistle-blower will be kept safe and would not be disclosed by the government.

This scheme is launched with the objective to encourage people to contribute in the efforts of the income tax department and to help them make India corruption free country.

11. What are the aftermaths of this Act?

- **Ans.** This act was basically made for people who does illegal transactions by using name of others. So there is need to worry for such people. For the people who have shown their transactions in their books of accounts, it will not affect them.
- All domestic benami transactions done since 1988 will fall under the purview of this amended act. Re transferring the property to the beneficiary owner will be invalid i.e. there is no way to escape from this trap.
- It has brought transparency in the real estate sector by adding correct title to the property. Buyers confidence has increase as they will be buying at reasonable price from the real owner of the property. Also Lenders confidence has increased as now there will be no multiple ownerships, unknown ownerships, and false ownerships. When titles are not clear, then it is very risky for the banks to provide loans on such property. So, bad debts have reduced.
- Government has setup 24 BPUs across the country which are supervised by the IT department. These units have worked and also tracked the benami properties and issued many notices.
- But the government has failed to establish the adjudicating authority, it has been since two years but there is no such authority as provided in the newly amended act.
-