

Note on Prohibition of Benami Property Transactions

Key Highlights of the Benami Transactions Prohibition Act 1988 vis-à-vis Amendment Act, 2016

Benami Transactions Prohibition Act 1988	Amendment Act, 2016
9 Sections	71 Sections
Acquisition of Property	Confiscation of Property
Benami Transaction Rules absent	Benami Transaction Rules notified
No Administrators	Administrators defined
Imprisonment for 3 years or Fine or both	Rigorous imprisonment for a period not less than 1 year and Fine

Key Definitions:

Benami Property: Any property which is the subject matter of a benami transaction and also includes the proceeds from such property.

Benami Transaction:

(A) A transaction or an arrangement –

- a) where a property is transferred to, or 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.

Except where the property is held by:

- i) A Karta or a member of a HUF, 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 HUF.
- ii) 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) Any person being an individual 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) 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 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 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;

Explanation relating to Section 53A of Transfer of Property Act, 1882:

- i) Consideration for such property has been provided by the person to whom possession of the property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;
- ii) Stamp duty on such transaction or arrangement has been paid; and
- iii) The contract has been registered

Benamidar: 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.

Beneficial Owner: A person, whether his identity is known or not, for whose benefit the benami property is held by the benamidar.

Fair Market Value : In relation to a property means:

- i) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and
- ii) where the price referred to sub clause (i) is not ascertainable, such price as may be determined in accordance with such manner as may be prescribed

Transfer : Transfer includes sale, purchase or any other form of transfer of right, title, possession or lien.

Person : Person shall include— (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 under sub-clauses (i) to (v).[Section 2(23)]

Prohibition of Benami Transaction:

Section 3: Whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall, be punishable in accordance with the provisions contained in Chapter VII.

Confiscation of Property:

Section 5: Any property which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government.

Re-transfer of Benami Properties:

Section 6: (1) No person, being a benami shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf.

(2) Where any property is re-transferred in contravention of the provisions of subsection (1), the transaction of such property shall be deemed to be null and void.

(3) The provision of subsections (1) and (2) shall not apply to a transfer made in accordance with the provisions of section 190 of the Finance Act, 2016.

Authorities to Administrate the Transactions:

Initiating Officer	Assistant Commissioner or Deputy Commissioner of Income Tax
Approving Authority	Additional Commissioner or Joint Commissioner of Income Tax
Administrator	Income tax Officer as per Section 2(25) of Income Tax Act
Adjudicating Authority	As appointed u/s 7 of BTP Act
Appellate Tribunal	As established u/s 30 of BTP Act

Process of Initiation

IO to issue Show Cause Notice

Benamidar as well as Beneficial Owner

Provisional attachment with approval of Approving Authority

IO to pass Order

If provisional attachment is there

Revoke the attachment

Continue the attachment

If provisional attachment is not there

For attachment of Property

Release Order

Matter to be referred to the Adjudicating Authority : Where the order continuing provisional attachment of the property has been passed by the Initiating Officer, he shall **within fifteen days from the date of attachment**, draw up a statement of the case and **refer it to the Adjudicating Authority**

Adjudicating Authority to issue Notice:

- a) Benamidar; b) Beneficial Owner; c) Any interested Party including Banking Company;
d) Any person who has made a claim in respect of the Property



Adjudicating Authority may attach property or not

Suo Motu Attachment: The Adjudicating Authority in the course of proceeding has reason to believe that any property other than the property referred by the Initiating Authority is benami, it shall provisionally attach the property.

Civil Court have no jurisdiction: No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any authorities, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this act to determine, and no injunction shall be granted by any court or other forum in respect of any action taken in pursuance of any power conferred by or under this Act.

Appeal to High Court:

Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within a **period of sixty days** from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.

Imprisonment

Section 53:

- (1) Where any person 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, the beneficial owner, benamidar 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;
- (2) Whosoever is found guilty of the offence of benami transaction referred to in subsection (1) 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 percent of the fair market value** of the property.

Section 54:

Any person who is required to furnish information under this Act knowingly gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with **rigorous imprisonment** for a term which **shall not be less than six months** but which may extend to five years AND shall also be liable to fine which may extend to **ten percent of the fair market value** of the property.

Section 55:

No prosecution shall be instituted against any person in respect of any offence under section 3, 53 or section 54 without the previous sanction of the Board.