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The Benami Transactions (Prohibition) Amendment Act, 2016

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The amendments of Benami Transactions (Prohibition) Act should further enhance India's attractiveness as an investment destination by encouraging greater transparency in ownership of property. Along with other regulatory changes such as implementation of Goods and Services Act (GST), Real Estate (Regulation & Development) Act (RERA) and Land Digitization, this amendment is a step in the right direction. In the short term, it will lead to a reduction in transaction volumes. However, in the long term, it will help aligning transactions with ethical standards and will increase international institutional investors and financial insitutions participation in this sector.

What is a Benami Transaction?

Benami (literally means 'without a name') transactions include

- Any property transaction, where the property is held by a person but the consideration for the same has been provided by another person; and the property is held for the future benefit of the person paid the consideration.
- A property transaction carried out in a fictitious name
- A transaction where owner of the property is not aware of or denies ownership
- A transaction where the person providing the consideration is not traceable or fictitious

However, as per the regulation the following transactions are excluded from the definition of Benami transactions

- A property acquired out of known sources of income of the Hindu Undivided Family (HUF) and held by the HUF
- Properties held by a person in fiduciary capacity *(where a fiduciary is responsible for managing the assets of another person, or a group of people)*
- Properties acquired from known sources in the name of spouse and child
- Properties acquired from known sources jointly with brother and sister or any lineal ascendant or descendant

The amendment to the Benami Transaction (Prohibition) Amendment Act is aimed at restricting generation and use of unaccounted money. Real estate is considered as one of the main avenues for investment of unaccounted money in India.

Penalty of holding a Benami Property

The Act lays down stringent measures to discourage Benami transactions. The re- transfer of the Benami Property is prohibited under the act and there is defined punishment for commencing any Benami Transaction after the date of commencement of the Bill which includes

For guilty of offence of a Benami transaction

- Penalty upto 25% of the fair market value of the property
- Rigorous imprisonment for minimum 1 year up-to 7 years

For false information

- Penalty upto 10% of the fair market value of the property
- Rigorous imprisonment for minimum 6 months up-to 5 years

According to the act Benami properties, the competent authority can acquire such properties without paying any consideration. For the purpose of the smooth implementation and monitoring, the act defines a hierarchical structure (See Table below) with different responsibilities.

Authority	Functions
Initiating Officer	Notice and Attachment of the Property
Approving Authority	Notice to furnish evidence
Adjudicating Authority	Confiscation and vesting of Property
Administrator	Possession and Management of Properties confiscated
Appellate Tribunal	Hear appeals against the orders of Adjudicating Authority

Impact on Real Estate

This act would be applicable on any kind of assets movable, immovable, tangible, intangible, corporeal or incorporeal. It also includes any right or interest or legal documents or instruments evidencing title to or interest in the property; where the property is capable of conversion into some other form, then the property in the converted form; and the proceeds from the property. The act is expected to adversely impact transaction volumes and lower property prices. The act will ensure that all real estate transactions shall be in the name of actual owner i.e actual person paying the consideration from her/his known sources.

One of the major problem in real estate transactions is clarity of title which limits investor as well as financial Institution participation in the sector. Transparency issue is one of the negative factor which limits the private equity and NBFCs

Conclusion

The amendment in the act is a means to reduce generation and utilization of unaccounted (black) money. This was a pivotal election promise made by the current government. Through this amendment the government seeks to clearly define ‚Benami' transactions, establish adjudicating authorities and an Appellate Tribunal to deal with Benami transactions, and specifies the penalty for entering into Benami transactions. Moreover, this will also increase the tax revenue for the Government by curbing unaccounted money into the system.

Along with other regulatory changes such as implementation of Goods and Services Act (GST), Real Estate (Regulation & Development) Act (RERA) and Land Digitization, this amendment is a step in the right direction in improving transparency in real estate transactions. In the short term it will lead to a reduction in transaction volumes. However, in the long term it will make India a more attractive investment destination, aligning transactions with ethical standards and will increase international institutional investors and financial insitutions participation in this sector.

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One of the major problem in real estate transactions is clarity of title which limits investor as well as financial Institution participation in the sector. Transparency issue is one of the negative factor which limits the private equity and NBFCs participation in the sector. The Act shall bring much needed clarity in ownership of property and will result in increased investor confidence.

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Along with other regulatory changes such as implementation of Goods and Services Act (GST), Real Estate Regulation Act (RERA) and Land Digitization, this amendment is a step in the right direction in improving transparency in real estate transactions. In the short term it will lead to a reduction in transaction volumes. However, in the long term it will make India a more attractive investment destination, aligning transactions with ethical standards and will increase international institutional investors and financial insitutions participation in this sector. Moreover, this will also increase the tax revenue for the Government.

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