

Economic Offences- Role of a Chartered Accountant

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Adv. Sagar Tilak

Economic Offence Laws

- **Prevention of Money Laundering Act: Enforcement Directorate (ED)**
- **Prohibition of Benami Property Transactions Act: Benami Prohibition Unit (BPU)**
- **Black Money Act: Income Tax Authorities**
- **Income Tax Act: Income Tax Authorities**
- **Goods & Services Tax Act: GST Authorities**
- **Companies Act: Serious Frauds Investigation Office (SFIO)**
- **Foreign Exchange Management Act (FEMA): Enforcement Directorate (ED)**
- **Prevention of Corruption Act (CBI)**

Benami Transaction – The Concept



Important Definitions from Amendment Act 2016

(26) **Property :**

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

(8) **Benami Property :**

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



Important Definitions

(10) **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

(12) **Beneficial owner:**

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



Important Definitions

(9) 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
- ii. A person standing in a fiduciary capacity
- iii. Any person being an individual in the name of his spouse or in the name of any child of such individual
- iv. Any person in the name of his brother or sister or lineal ascendant or descendant as a joint owner

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Important Definitions

(9) **Benami Transaction (continued) :**

- (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;



Adv. Sagar Tilak
sagartilak@gmail.com

Prohibition and Punishment u/s 3

- **Section 3(1)**
No person shall enter into any benami transaction
- **Section 3(2)**
Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.
- **Section 3(3)**
Whoever enters into any benami transaction on and after the date of commencement of the Benami Transaction (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.

Chapter VII

Section 53- Penalty for Benami Transaction

- **Section 53(1) Who shall be guilty?**

- ✓ To defeat provisions of any law
- ✓ To avoid payment of statutory dues
- ✓ To avoid payment to creditors



- **Section 53(2) Punishment:**

- ✓ Rigorous Imprisonment not less than 1 year, extended to 7 years **AND**
- ✓ Fine up to 25% of FMV of the property

- Fair Market Value is defined u/s 2(16) of the Act

Chapter VII

- **Section 54- Penalty for False Information**

- ✓ Knowingly gives false information
- ✓ to any authority under the Act
- ✓ in any proceedings under the Act

- **Punishment:**

- ✓ Rigorous Imprisonment not less than 6 months, extended to 5 years **AND**
- ✓ Fine up to 10% of FMV of the property

- **Section 54A:** Penalty of Rs.25000 for non-compliance.

- **Section 55: Sanction for Prosecution:**

No prosecution shall be instituted without prior approval of CIT, DIT, PCIT, PDIT.



Confiscation

Section 5: Property held benami liable to confiscation:

- Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government.
- Confiscation proceedings are separate proceedings. No time limit to pass the order of confiscation.
- Adj. Auth. gives opportunity of being heard u/s 27(1) before passing order.
- Administrator issues Notice to deliver possession within 7 days.
- Procedure of confiscation as prescribed under Rule 6 & 7 of Rules.



Restriction on re-transfer of Benami Property

- **Section 6: Prohibition on re-transfer of property by *benamidar***

- (1) No person, being a *benamidar* 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 sub-section (1), the transaction of such property shall be deemed to be null and void.

- **Once Benami then Benami forever!**



Prevention of Money Laundering Act

- **Section 3: Offence of Money Laundering:**

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowing is a party or is actually involved in any process or activity connected with the **proceeds of crime including its concealment, possession, acquisition or use** and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

- **Section 2(u): Proceeds of Crime:**

Any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country.

Practical Issues

- Possession of Proceeds of Crime
- Kolkata Project Management company case
- Bangalore NBFC Case
- Undisclosed Foreign Bank Accounts

PMLA & Benami Act (Property and Punishments)

- ▶ **Provisional Attachment**
- ▶ **Adjudicating Authority**
- ▶ **Appellate Tribunal**
- ▶ **Arrest or Prosecution for Punishment**



Punishments

Name of Act	Punishment
PMLA	Section 4 of PMLA RI not less than 3 years but which may extend to 7 years and Fine
PBPT	Chapter VII RI from 1 year to 7 years
Black Money Act	Section 49, 50, 51, 52, 53 RI from 6 months to 7 years
Income Tax Act	Chapter XXII RI from 3 months to 7 years
GST Act	Section 132. Imprisonment From 1 year to 5 years
Companies Act	Chapter XXIX Imprisonment from 6 months to 10 years

Bailable or Non-Bailable

- ✚ What is Bailable Offence?
- ✚ What is Non-Bailable Offence?
- ✚ Arrest Vs. Prosecution Complaint
- ✚ Rigours of section 45 and 212(6)

Burden of Proof and Presumptions

Name of Act	Burden of Proof and Presumption
PMLA	Section 24- Burden of Proof
PBPT	No provision
Black Money Act	Section 54: Presumption of culpable mental state
Income Tax Act	Section 278E- Presumption of culpable mental state
GST Act	Section 135- Presumption of culpable mental state

Power of the Authorities

- Power of Search
- Power of Arrest
- Power to summon and record a statement on oath

Important Points

CA as an Independent Director

CA Issuing Certificate including Project Report

Role of advisor to the transaction is most critical

Punishment for Abatement & Criminal Conspiracy

Amendment to Prevention of Corruption Act

Important issues

- Recording of statement is most critical
- Compounding of Offences
- Attendance in response to Summon
- Obtaining Acknowledgment of submissions made
- Agencies with power to arrest
- Anticipatory Bail
- Regular Bail

Questions ???

