YOUR
MONEY

Non-disclosure of foreign property invites ₹10 lakh penalty per yr

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Many high-net-worth individuals who allegedly own undeclared properties in Dubai have received notices from the tax office. Buyers must comply with the Foreign Exchange Management Act (FEMA) and the Income-Tax Act when buying property abroad.

"As the United Arab Emirates is a tax-free zone, black money is often routed through hawala to Dubai, then banked and invested in property. Cash deposits in Dubai bank accounts are not scrutinised for tax implications as they are in India. However, if the sender is a resident Indian, the source of funds could be questioned in India," says Vivek Jalan, partner, Tax Connect Advisory Services.

Remittance and purchase

A resident Indian can acquire property abroad by remitting funds through the Liberalised Remittance Scheme (LRS) route. "Under LRS, all resident individuals, including minors, may remit up to $250,000 per financial year for permissible transactions, including buying property abroad. In the case of minors, the LRS declaration should be signed by the natural guardian," says Shefali Mudra, tax expert, ClearTax.

"For remittances under LRS for property purchases, tax collected at source (TCS) at 20 per cent applies for amounts over ₹7 lakh," says Sandeep Jhunjhunwala, partner, Nangia Andersen.

The money sent abroad should come from a legitimate source. "The person should have declared this money in their income tax return (ITR)," says Naveen Wadhwa, vice-president, research and advisory, Taxmann.

"What is not permitted is obtaining any finance for such acquisition, or investing in such properties with the original intent to sell or assign rights before the property is handed over," says Moin Ladha, partner, Khaitan & Co.

Sometimes, the husband sends money abroad in his spouse's name to surmount the $250,000 limit. The spouse must get proportionate ownership in the property. Any amount gifted to a spouse is not taxable in her hands. "Earnings from the gifted amount, however, will be clubbed with the husband's income proportionately (in the same ratio as the amount gifted by the husband and wife's funds) and taxed," says Wadhwa.

Holding stage

An Indian resident must report the property in their ITR under the Foreign Asset (FA) schedule. "Failure to disclose is considered a violation under the Black Money Act and results in a penalty of ₹10 lakh for each financial year for which disclosure was not made," says Wadhwa.

Rental income from a foreign property is taxed under the head "Income from House Property". This income must be declared in the Foreign Source Income (FSI) schedule of the ITR. "This income is added to the taxpayer's income and taxed at the applicable slab rate. A standard 30 per cent deduction on gross rental income is allowed for maintenance and repairs," says Jhunjhunwala.

If tax is paid abroad on rental income, the taxpayer may claim a foreign tax credit in India.

Sale of property

Gains from the sale of foreign property by an Indian tax resident are taxable in India. Properties held up to 24 months get classified as Short-Term Capital Gains (STCG) and are taxed at the individual's slab rate. For properties held over 24 months, Long-Term Capital Gains (LTCG) rate applies. They get taxed at 12.5 per cent without indexation benefits if purchased on or after 23 July, 2024, and at 20 per cent with indexation benefits if purchased before this date. Foreign tax credit is available in India for capital gains tax paid abroad.

Vishal Dhawan, chief financial planner, Plan Ahead Wealth Advisors suggests getting a tax advisor who understands the tax laws in both jurisdictions and also understands Double Taxation Avoidance Agreement (DTAA) provisions between that country and India.

SECTION 54 BENEFIT AVAILABLE ON SALE OF OVERSEAS PROPERTY

- Section 54 of the Income-Tax Act provides tax exemption on capital gains arising from the sale of a residential property, provided the gains are reinvested in purchasing or constructing another residential property within a specified period
- This benefit is also available on the sale of a foreign property
- The gain must be long-term
- The property in which the gain is reinvested must be situated in India

Source: Taxmann