

Property through Company Transfer

Properties transferred thru Company transfer route would come under the anti-avoidance mechanism that the government is trying to bring through the introduction of General Anti-Avoidance Rule (GAAR). The implementation of GAAR has been postponed by a year, but once it is in place, such deals will be considered as tax evasion.

Many high value bungalows in Delhi and Mumbai are under the government's scanner for evasion of stamp duty. These include bungalows in Lutyens' Delhi and other upmarket neighbourhoods in Delhi such as Golf Links and Shantiniketan, as well as sea-facing apartments in south Mumbai, which are bought by the rich and the famous.

In such transactions, buyers of these luxury homes - which include many leading businessmen - acquire shares of the seller's shell company, which owns the property, instead of transferring the property in their name by paying stamp duty, the usual practice followed for buying homes.

This way, while the seller evades paying capital gains tax, the buyer pays only 0.25% taxes on the share transfer instead of the 6-8% stamp (registration) duty. In big deals running up to 150-300 crores, the tax evasion could be as high as 15-30 crore.

The state government is setting up a financial services cell to monitor such transactions. This cell will scrutinise all transactions involving financial instruments and matters pertaining to companies trading in properties and share market, with the aim to maximise revenue realisation... Transactions bordering on stamp duty evasion will also come under the purview of this new cell.

A recent deal, executed in a similar manner, came under flak from a Delhi court, and ever since, the state government has stepped up its vigil and has been monitoring big deals in the capital.

While at least half a dozen big bungalow (Super Premium) deals happened last year in the Lutyens' Bungalow Zone and Golf Links areas, the registrar's office in Delhi, said they have no record of any property transaction in LBZ in the past two years (simply because no registrations took place. All transactions were through co. transfers route)

This happened because the buyer did not need to register the property in his name; it continues to be registered in the name of the company he acquired.