The Economic Times | News

English Edition ▾ | 30 September, 2024, 12:51 PM IST | **Today's ePaper**

Rich Indians are now buying overseas properties in their children's names

ET Online Last Updated: Sep 26, 2024, 12:32:00 PM IST

Synopsis
Wealthy Indians are using the RBI's Liberalised Remittance Scheme to buy overseas properties in their children's names. The scheme allows remittances up to $250,000 per year. Legal and tax experts advise proper disclosure of these assets in income-tax returns to avoid penalties under the Black Money Act.


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Wealthy Indians are now buying properties overseas under the names of the kids through RBI's Liberalised **Remittance** Scheme (LRS), the Times of India has claimed in a report.

According to the report, Indians are increasingly investing in properties overseas, with locations such as California, Dubai's Emirates Hills and Palm Jumeirah, and London's Mayfair being popular choices. Recently, minors have begun investing in these overseas properties alongside their parents, especially in the UAE.

The LRS allows individuals to remit up to $250,000 per financial year for various purposes, including buying property. An amendment effective August 24, 2022, requires unused funds to be returned to India within 180 days if not invested. This has made it difficult to accumulate funds over time for property purchases. To navigate these restrictions, parents are now using minors to help remit enough funds for property purchases, the report claimed.

According to Tax partner Gautam Nayak at CNK & Associates, "Funds can be remitted abroad by a minor under LRS, using gifts from parents in India. Further, gifts from parents to children do not have any tax impact in India."

Legal advisor Anil Harish from DM Harish & Co, however, told TOI that any property purchased with remitted funds should be in the names of both the parents and the minors. Minors can legally own property in Dubai through a guardian or trustee, and this does not have regulatory implications from India's perspective.

Indians with overseas assets must disclose these in their income-tax returns, including in Schedule FA for the asset itself and Schedule FSI for any foreign income. Failure to do so can result in a penalty of Rs 10 lakh under the Black Money Act.

Tax expert Rutvik Sanghvi from Rashmin Sanghvi & Associates explained, "In case an overseas property is fetching income – say, rental income – it will be clubbed in the hands of the parent who has the higher income. A 'beneficiary' of an overseas asset where the income is clubbed with another individual does not have to file an I-T return. An exclusion is available under the fifth proviso to section 139(1)."

However, the process is complicated. If a minor co-owns property, they are not simply beneficiaries. Tax laws do not account for clubbing of assets for disclosure purposes. Additionally, the tax filing system does not currently allow minors to file returns unless they have earned income independently.

According to Gautam Nayak, a minor's tax return must be filed by a parent as a guardian, but the system requires proof of the minor having earned income through their own efforts. Only then can the guardian register and file the return for the minor.

There have been instances where minors received tax notices based on information from foreign countries. A case involving Nirmal Jain resulted in a penalty of Rs 10 lakh for each of three disputed years for failing to disclose his children's overseas assets in his ITR, despite reporting their income under clubbing provisions.

Tax experts recommend that the guardian managing a minor's assets should disclose these foreign assets in their tax return to adhere to regulations and avoid penalties.

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