

## **Does Budget 2019 make 2nd house mandatorily 'self-occupied'? Experts differ**

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The interim budget 2019 had many announcements that can directly impact the individual tax payer. One of the measures announced was the proposal to exempt levy of tax on notional or deemed rent from a second house property. While making the announcement, Piyush Goyal in his budget speech said, "Currently, income tax on notional rent is payable if one has more than one self-occupied house. Considering the difficulty of the middle class having to maintain families at two locations on account of their job, children's education, care of parents etc. I am proposing to exempt levy of income tax on notional rent on a second self-occupied house."

As per the proposal, a second house property will be treated as 'Self-occupied property', if it is not let-out. As per current laws, a second house property lying vacant (not let out) or used by family members is considered as deemed to be rented out and tax has to be paid on notional rent earned from this property. However, there is no clarity among experts on the applicability of this proposal and therefore its tax implications.

One more thing that should be noted is that while extending the benefit of self-occupied property to a second house, budget 2019 has also restricted the maximum amount of deduction that can be claimed on the interest paid on housing loan.

According to tax experts, as per interim budget 2019 proposals, from FY 2019-20, the amount of deduction available on the interest paid on the housing loan for both the self-occupied houses has been restricted to Rs 2 lakh. Previously, individuals having a second house could claim deduction on the interest paid on the housing loan without any monetary limit. However, the total loss from the house property that could be set off was restricted to Rs 2 lakh in a financial year. Any unabsorbed loss which could not be claimed in the existing financial year was allowed to be carried forward for 8 assessment years for set-off with future income.

Post Budget 2019 proposals, as both the houses will be treated as self-occupied, therefore, any unabsorbed loss will not be allowed to be carried forward.

The question now arises that whether the second house of a taxpayer will be mandatorily treated as self-occupied or can still be treated as deemed to be let out depending on whether conditions for being termed as 'self occupied' as per section 23(2) are met or not. Chartered accountants have differing opinions in this regard.

Chartered Accountant Naveen Wadhwa, DGM, Taxmann.com says, "A taxpayer's second house can still be considered as deemed to be let out if it does not meet any of the conditions specified under Section 23(2) of the Income Tax Act. As per section 23(2), the value of the house shall be taken as nil (i.e., house is treated as self-occupied for tax purposes) if the said house is used by the owner for his own residential purpose or it could not be occupied by the owner due to his employment, business or profession at any other place and he has to reside at such other place in a rented house/house not owned by him. If any of the condition is satisfied by the individual, then, in that case, the second house will be treated as self-occupied property. However, this can also be interpreted as if the taxpayer has two houses and if no condition is satisfied as mentioned in Section 23(2) in respect of the second house, then the second house shall be considered as deemed to let-out property."

Corroborating his views, Shalini Jain, Tax Partner, People Advisory Services, EY India says, "The Interim Budget 2019 seeks to provide relief to the category of taxpayers who are required to pay tax on second house property which is either used by parents to live in or lying vacant. Those taxpayers will not have to pay tax on notional rent on the second property if it qualifies as a self-occupied house property as per Section 23(2) of the Income-tax Act, 1961. As per the provisions of this section, a house property can be considered as self-occupied only if the house property is occupied by the taxpayer for his residence or it could not be occupied by the taxpayer due to his employment, business or profession in another location and he had to reside in that other location in a property which is not owned by him. Hence, if either of the condition is not satisfied for a property which is not rented out, such house property would not be considered as self-occupied - it would be considered as deemed to be let out. However, if either of the two conditions is satisfied, the taxpayer will mandatorily be required to disclose both the houses as self-occupied and would not have an option to consider either of the houses as deemed to be let out."

Jain further explains this with an example. "Suppose Mr A owns a house in Delhi which is occupied by his family. Mr. A is working in Mumbai living in another house which is also owned by him. At present, Mr. A can declare only one house property as self-occupied and notional rent is taxable for the second house property. Now, as per the proposed provisions, Mr. A will be able to consider both the houses as self-occupied. However, the proposed provisions shall be beneficial if houses are acquired from own sources and there is limited or no expenditure on account of interest on housing loan or if the annual market rent (the value at which property is expected to be let out) is higher than the amount of overall interest expenditure. This is because the interest deduction limitation of Rs 2 lakh which currently applies to only one self-occupied house property will henceforth apply to both self-occupied properties together."

Taking a different view, Abhishek Soni, CEO, Tax2win.in, a tax-filing firm says, "Currently, if any assessee owns more than one house, then the provisions of notional rent apply even on the second vacant house or house occupied by, say, parents. As per the proposals of Interim Budget 2019, the provisions of notional rent on the second house will not be applicable. However, going through the wordings used in Section 23 (2) of the Income Tax Act, 1961, the second house also must be used by the assessee for his own residence. Now, the question arises whether both the house must be used for own residence so as to claim the benefit of amendment or even person using one house for own residence and another house lying vacant house will be treated as self-occupied. As this the grey area which can lead to litigations in the future, we are expecting the clarification on this issue by the CBDT. However, if individual wishes to avoid litigation with the income tax department, they should treat second house as self-occupied property."

Practising Accountant Sachin Vasudeva says, "As per the budget proposals, it is clear that individuals do not have any choice in treating their second house property as deemed to let out. From FY 2019-20, the second house property will be treated as self-occupied property only if it is lying vacant. No tax will be payable on the basis of the notional rent on such house if either that house is not let out i.e. lying vacant throughout the financial year or either occupied by your family let say your parents."

Chetan Chandak, Head of Tax Research, H&R Block India says, "From the budget proposals, it is not clear whether an individual will be able to claim the second house as deemed to let-out if the two conditions listed in section 23(2) are not satisfied. Individuals should remember that if the second house is treated as self-occupied property, then the interest deduction available on housing loan under section 24 for both the houses will be restricted to the aggregate of Rs 2 lakh.

This will reduce the possible tax benefit in the future from set-off of carried forward losses. And in absence of absolute clarity as to whether one can claim the other house as deemed to be let out, the tax officer may try to restrict the interest deduction under section 24 to Rs 2 lakh for both the houses put together."

*(Economic Times)*