

# India Restores GAAR Grandfathering: CBDT Clarifies Non-Applicability to Pre-2017 Investments



On 31 March 2026, the Central Board of Direct Taxes (“CBDT”) issued two Notifications amending the General Anti-Avoidance Rules (“GAAR”) to provide a grandfathering benefit in respect of income derived from the transfer of investments made prior to 1 April 2017.

The first Notification amends Rule 10U of the Income-tax Rules, 1962, applicable under the Income-tax Act, 1961. The second Notification amends the corresponding Rule 128 of the Income-tax Rules, 2026, applicable under the Income-tax Act, 2025, which comes into force on 1 April 2026. These amendments provide long-awaited clarity on the scope of the GAAR in relation to investments made prior to 1 April 2017.

The clarification comes in the wake of the Supreme Court’s ruling in Tiger Global case, which had created significant uncertainty regarding the continued availability of grandfathering protection for such investments.

## The Pre-Amendment Framework and the Source of Uncertainty

GAAR, introduced with effect from 1 April 2017, empowers tax authorities to disregard or recharacterise arrangements deemed to be impermissible avoidance arrangements (IAAs), including denial of treaty benefits.

At the same time, Rule 10U of the Income-tax Rules, 1962 contained an important safeguard, providing that GAAR would not apply to income arising from the transfer of investments made prior to 1 April 2017.

However, this protection was undermined by a competing provision Rule 10U(2) of the Income-tax Rules, 1962. A “without prejudice” clause allowed GAAR to apply to tax benefits obtained on or after 1 April 2017, irrespective of when the underlying arrangement was entered into.

This inconsistency gave rise to interpretational ambiguity.



## The Supreme Court's Intervention in Tiger Global case

In Tiger Global case, the Supreme Court held that the "without prejudice" clause effectively overrides the grandfathering provision.

The Court concluded that:

1. GAAR could apply even to pre-2017 investments,
2. where the tax benefit arose post-2017, and
3. the arrangement lacked commercial substance.

This interpretation significantly diluted the grandfathering protection and exposed investments, particularly those routed through jurisdictions such as Mauritius to GAAR scrutiny.

This created significant interpretational uncertainty and risked rendering the grandfathering provision largely ineffective.



## The CBDT Amendments: Restoring Certainty

The CBDT has now intervened to realign the rules with their original intent.

The amended rules (Rule 10U under the Income-tax Rules, 1962 and Rule 128 under the Income-tax Rules, 2026) provide that:

1. GAAR shall not apply to any income arising from the transfer of investments made before 1 April 2017,
2. irrespective of when the transfer occurs, and
3. even if the underlying arrangement itself is not grandfathered.

In effect, the amendments create a clear carve-out:

While GAAR may apply to arrangements and tax benefits generally, it cannot be invoked in respect of capital gains arising from the transfer of pre-2017 investments.

The explanatory memorandum further clarifies that GAAR shall not be invoked on or after 31 March 2026 in such cases.

## A Critical Distinction: Transfer Income v Other Income

Importantly, the protection is not absolute in all respects. The exemption applies specifically to income from transfer (i.e., capital gains). Whilst, other income arising from the same investment (e.g., dividends, interest) remains subject to GAAR.

Thus, the decisive factor is the nature of income and not merely the date of investment.

## Legal Effect: Overruling Tiger Global in Substance

While not expressly overturning the Supreme Court, the amendments effectively neutralise its practical impact in this area.

The interpretational conflict relied upon by the Court has now been legislatively resolved. The "without prejudice" clause can no longer be used to override grandfathering in the context of transfer gains.

As a result, grandfathering has been transformed from a qualified protection into a substantive and enforceable exclusion from GAAR for pre-2017 investment exits.



## Implications for Investors

### 1). Certainty for Structures

Investors holding pre-2017 assets now benefit from clear and unambiguous protection, regardless of:

- i. timing of exit;
- ii. availability of treaty benefits; or
- iii. perceived commercial substance of the original structure

### 2). Relief for Treaty-Based Investments

The clarification is particularly significant for investments routed through treaty jurisdictions such as Mauritius, which had relied heavily on grandfathering provisions following treaty amendments effective 2017.

### 3). Reduction in Litigation Risk

The amendments are expected to:

- i. curtail disputes arising from the Tiger Global interpretation; and
- ii. provide a strong defence in pending and future proceedings.

### 4). Alignment with Government circulars

The changes restore consistency with earlier government circulars that pre-2017 investments would be protected from GAAR.

## Effective Dates and Unresolved Issues on Retrospective Application

The amendments to the Income-tax Rules, 1962 are effective from 31 March 2026, whereas those relating to the Income-tax Rules, 2026 apply from 1 April 2026.

Given their clarificatory language and alignment with original intent, taxpayers may argue for retrospective application in ongoing disputes.



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