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RSM India Newsflash – CBDT clarifies that investments made prior to 1 April 2017 will not be subject to GAAR

Newsflash

CBDT clarifies that Investments made prior to 1 April 2017 will not be subject to GAAR

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1.0 Background

The General Anti-Avoidance Rule (“GAAR”), contained in Chapter X-A of the Income-tax Act, 1961 and now provided under Chapter XI of the Income-tax Act, 2025, serves as a key anti-abuse framework empowering the tax authorities to deny tax benefits arising from impermissible avoidance arrangements. Since its introduction, GAAR has been accompanied by specific carve-outs and grandfathering provisions, particularly in respect of investments made prior to 1 April 2017, to provide certainty to taxpayers and protect legacy structures.

Over time, interpretational issues have arisen regarding the scope and applicability of such grandfathering provisions, especially in cases involving the transfer of pre-1 April 2017 investments and whether the protection extends to income arising therefrom. In order to provide clarity and align the position under both the Income-tax Act, 1961 and the Income-tax Act, 2025, the Central Board of Direct Taxes (“CBDT”) has issued **Notification No. 54/2026 and 55/2026 dated 31 March 2026**, amending Rule 10U of the Income-tax Rules, 1962 and Rule 128 of the Income-tax Rules, 2026, respectively. Reference may also be drawn to the Supreme Court ruling in the case of **Tiger Global**, wherein the scope of GAAR applicability vis-à-vis pre-1 April 2017 investments and their subsequent transfers was a matter of judicial consideration.

In this Newsflash, we provide a brief overview of the amendments introduced vide Notification Nos. 54/2026 and 55/2026 clarifying the scope and applicability of GAAR, particularly in relation to grandfathering of pre-1 April 2017 investments under the Income-tax Rules, 1962 and 2026.

2.0 Notification 55/ 2026 dated 31 March 2026

2.1 The CBDT vide Notification No. 55/2026 dated 31 March 2026, has amended Rule 128 of the Income-tax Rules, 2026, which prescribes the circumstances in which the provisions of GAAR shall not apply.



2.2 The notification has brought in a change in Rule 128 of the IT Rules, 2026 (erstwhile Rule 10U of the IT Rules 1962), clarifying and substituting the following –

Prior to Amendment	Amended Rule
Rule 128(1)(d) of the IT Rules, 2026 (erstwhile Rule 10U(1)(d) of IT Rules 1962)	
“any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from transfer of investments made before the 1st day of April, 2017 by such person.”	“any income accruing or arising to, or deemed to accrue or arise to, or received or deemed to be received by, any person from the <u>transfer of such investments</u> which were made before 1 April 2017 shall not be subject to GAAR.”

Rule 128(2) of the IT Rules, 2026 (erstwhile Rule 10U(2) of IT Rules 1962)	
<p><u>“Without prejudice</u> to the provisions of clause (d) of sub-rule (1), the provisions of Chapter X-A shall apply to any arrangement, irrespective of the date on which it has been entered into, in respect of the tax benefit obtained from the arrangement on or after the 1st day of April, 2017.”</p>	<p><i>“The provisions of Chapter XI shall apply to any arrangement, irrespective of the date on which it has been entered into, in respect of the tax benefit obtained from the arrangement on or after the 1st April, 2017, except for that income which accrues or arises to, or deemed to accrue or arise to, or is received or deemed to be received by, any person from transfer of such investments which were made before the 1st April, 2017 by such person.”</i></p>

2.3 Prior to the amendment, Rule 128(1)(d) provided that GAAR shall not apply to income arising from the transfer of investments made before 1 April 2017, thereby incorporating the principle of grandfathering of legacy investments. However, Rule 128(2) stated that GAAR provisions would apply to any arrangement, irrespective of the date on which such arrangement was entered into, in respect of tax benefits obtained on or after 1 April 2017.

The interplay of these provisions, particularly the earlier use of the phrase “without prejudice” in sub-rule (2), gave rise to interpretational ambiguity as to whether the grandfathering protection under Rule 128(1)(d) would continue to hold good in cases where the tax benefit from such investments was realised after 1 April 2017.

Moreover, the **Hon'ble Supreme Court** in the case of **Tiger Global** ruling examined the scope of GAAR vis-à-vis treaty entitlement and grandfathering, and observed that GAAR may be invoked to deny tax benefits arising on or after 1 April 2017, even in respect of structures involving investments made prior to such date, particularly where the arrangement lacks commercial substance.

For a detailed reading of the judgement, please refer to our Newsflash - Supreme Court rules on GAAR, TRC and Treaty entitlement in Tiger Global–Flipkart case (dt 23 January 2026).

2.4 To address the above ambiguity, the Notification substitutes clause (d) of sub-rule (1) to more comprehensively cover income “accruing or arising, or deemed to accrue or arise, or received or deemed to be received” from transfer of investments made prior to 1 April 2017. This expanded scope ensures that the exemption is aligned with the charging provisions and covers all possible modes of taxation of such income.

Further, sub-rule (2) has been revised to clarify that although GAAR will apply to arrangements giving rise to tax benefits on or after 1 April 2017, a specific exception has been retained for income arising from the transfer of investments made prior to that date. This change helps bring clarity and ensures consistency in the application of the provisions.

This may reduce potential litigation risk and enhance tax certainty for taxpayers, particularly foreign investors and fund structures that have historically relied on the grandfathering provisions while structuring their investments in India.

3.0 Notification 54/ 2026 dated 31 March 2026

Similar amendments have also been carried out in Rule 10U(1)(d), and Rule 10(2) of the Income Tax Rules, 1962 **vide Notification No. 54/2026**.

Further, the accompanying **Explanatory Memorandum** states that the effect of the amendment is that the provisions of Chapter X-A “**shall not be invoked on or after**” the date of publication of the rules in cases where such income arises from the transfer of pre-1 April 2017 investments.

This is relevant as it provides insight into the intended operation of the amendment and suggests a restriction on the invocation of GAAR in such cases.

4.0 **Our Comments**

The Notification brings in some sigh of relief for foreign investors, but they still need to be mindful that Judicial Anti Avoidance Rules and Principal Purpose Test still continue to operate in parallel with GAAR. The same may be invoked by the Indian Tax Authorities to examine the structure where treaty abuse or shell/ conduit structures exist, and tax avoidance is the primary objective.

Further, the Explanatory Memorandum indicates that the effect of the amendment is such that the provisions of Chapter X-A shall not be invoked on or after the date of publication of the rules in cases where income arises from the transfer of investments made prior to 1 April 2017.

While the rules are stated to come into effect from the date of notification i.e. 31 March 2026, the extent to which such an amendment would apply to ongoing proceedings may need to be evaluated.

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This Newsflash provides a detailed analysis of the CBDT Notifications, which clarifies that investments made prior to 1 April 2017 will not be subject to GAAR. It may be noted that nothing contained in this Newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain thereof and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this Newsflash.

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