

April 2026

Central Board of Direct Taxes amends the Income-tax Rules to clarify applicability of grandfathering protection from General Anti Avoidance Rules

The Central Board of Direct Taxes (“**CBDT**”), *vide* notification¹ dated March 31, 2026, has amended Rule 128 of the Income-tax Rules, 2026 (“**IT Rules 2026**”) with effect from April 1, 2026, making 2 (two) targeted substitutions:

1. Rule 128(1)(d) of the IT Rules 2026 has been amended to expressly exclude any income accruing, arising, deemed to accrue or arise, received or deemed to be received by any person from transfer of investments ‘which were made’ before April 1, 2017 from the scope of General Anti-Avoidance Rules (“**GAAR**”); and
2. Rule 128(2) of the IT Rules 2026 has been revised to create a specific exception for income derived from the transfer of investments which were made before April 1, 2017.

Background

GAAR provisions under Chapter XI of the Income-tax Act, 2025 (formerly Chapter X-A of the Income-tax Act, 1961) are applicable to arrangements/transactions whose main purpose is to obtain a tax benefit (i.e. a reduction or avoidance or deferral of tax or increase in tax refund including as a result of a tax treaty, etc. as defined under the Income-tax Act, 2025). Investments made before April 1, 2017 were intended to be protected from the rigours of GAAR.

Rule 128(1)(d) of the IT Rules 2026 (equivalent to Rule 10U(1)(d) of the Income-tax Rules, 1962 (“**IT Rules 1962**”)) provided that the GAAR provisions would not be applicable to certain income. This included any income accruing, arising, or deemed to accrue or arise, or received or deemed to be received, by any person from transfer of investments made before the April 1, 2017 (“**Grandfathering Protection**”). However, Rule 128(2) of the IT Rules 2026 (equivalent to Rule 10U(2) of the IT Rules 1962) provided that the Grandfathering Protection would not be available 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 April 1, 2017.

The Grandfathering Protection came under a significant strain following the Hon’ble Supreme Court of India’s (“**Supreme Court**”) decision in the case of *The Authority For Advance Rulings vs. Tiger Global International II Holdings*². The Supreme Court had rejected the argument that the investment was grandfathered under GAAR by highlighting Rule 10U(2) of the IT Rules 1962. It also held that the prescription of the cut-off date of investment under Rule 10U(1)(d) of the IT Rules 1962 stands diluted by Rule 10U(2) of the IT Rules 1962, if any tax benefit is obtained based on such arrangement and in such cases the duration of the arrangement becomes irrelevant.

¹ CBDT notification no. 55/2026

² Civil Appeal No. 262 Of 2026

The CBDT's latest amendments provide much needed clarity and certainty to taxpayers (including to foreign investors) that the GAAR machinery cannot be used to bypass these grandfathering provisions.

Key takeaway

In the *Tiger Global* judgment (supra), the Supreme Court upheld the revenue's position across multiple dimensions, questioning conduit/shell structures, treating tax residency certificates as non-conclusive, and applying indirect transfer provisions. In the ruling, the revenue took a position that pre-April 1, 2017 structures can be challenged on substance grounds and GAAR can be applied to override treaty protection.

By amending the rules, income from transfer of investments made prior to April 1, 2017 have been accorded an explicit immunity from GAAR with effect from April 1, 2026.

Conclusion

The amendment is a significant move and provides certainty to investors, private equity funds, and strategic investors holding pre-2017 investments in India. The Supreme Court's ruling in *Tiger Global* judgment (supra) had raised concerns that even genuinely grandfathered investments could be re-examined under GAAR, effectively rendering the cut-off date redundant. The CBDT's targeted amendment to Rule 128 of the IT Rules 2026, restores the original legislative intent. It clarifies that income arising from the transfer of investments made prior to April 1, 2017, remains insulated from GAAR provisions.

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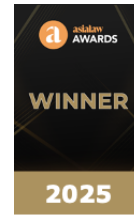
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