



CBDT Shields Pre-2017 Investments from GAAR

Notifications 54/2026 and 55/2026 — What They Mean for Foreign Investors

GAAR

RULE 10U

INCOME TAX

CROSS-BORDER TAX

FOREIGN INVESTMENT

Background: The Supreme Court's Tiger Global Judgment

1 January 15, 2026 — The Ruling

Supreme Court ruled Tiger Global's Mauritius entities could **NOT** claim capital gains tax exemption under India-Mauritius DTAA Article 13(4). The structure was deemed an "**impermissible tax avoidance arrangement**" under GAAR.

2 The Critical Interpretation

GAAR applies to arrangements generating tax benefits **on or after April 1, 2017**, regardless of when the investment was originally made — creating massive uncertainty for billions in legacy foreign investments.

3 The Fallout

Billions of dollars in pre-2017 cross-border investments through treaty jurisdictions — Mauritius, Singapore, Netherlands — suddenly faced retroactive GAAR scrutiny on exit.

75

Days to Fix

Time between the Supreme Court ruling (Jan 15, 2026) and CBDT's corrective notification action — a remarkably swift executive response.

- ❏ The Tiger Global precedent threatened to unravel decades of treaty-based foreign investment structures across PE, VC, and FPI categories.

Notifications 54/2026 and 55/2026 — The Fix

Notification 54/2026

Applies to	Income Tax Act, 1961
Effective	March 31, 2026
Amends	Rule 10U (Income Tax Rules, 1962)
Scope	All pre-April 1, 2017 investments
Issued by	CBDT (Central Board of Direct Taxes)

Notification 55/2026

Applies to	Income Tax Act, 2025
Effective	April 1, 2026
Amends	Rule 128 (Income Tax Rules, 2026)
Scope	Forward-looking GAAR carve-out
Issued by	CBDT (Central Board of Direct Taxes)

"GAAR provisions shall not apply with respect to any income derived from the transfer of investments made before April 1, 2017" — regardless of arrangement entry date or actual sale timing.

Together, these twin notifications create a seamless grandfathering shield covering both the existing tax framework (ITA 1961) and the incoming consolidated statute (ITA 2025), ensuring no gap in protection for qualifying pre-2017 investors.

Who Gets Grandfathering Protection?

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Foreign PE/VC Funds

Funds with pre-2017 India investments through treaty jurisdictions — Mauritius, Singapore, Netherlands. **Exit timing no longer triggers GAAR.** Legacy portfolio positions are fully shielded on transfer income.



Foreign Portfolio Investors (FPIs)

Legacy positions held via Mauritius or Singapore structures since before April 2017 are now protected. FPIs can exit pre-2017 positions without GAAR exposure on capital gains.



Non-Resident Indians (NRIs)

Pre-2017 overseas investment structures routing through treaty jurisdictions receive GAAR immunity on transfer income. Existing NRI holding structures need not be restructured.



Indian Companies

Outbound subsidiaries and cross-border structures established before April 2017 benefit from the carve-out. Intra-group transfers of pre-2017 investments also qualify for protection.

Four Critical Limitations You Must Know

1

Person-Specific Protection

Only the **original investor** receives grandfathering. Subsequent transferees and secondary buyers do **NOT** inherit exemption status. If you acquired a pre-2017 position in 2019 or later, you are **NOT protected** under these notifications.

2

Income-Specific Scope

Protection covers **only "income from the transfer of the investment itself."** Other tax benefits arising from the arrangement — management fees, royalties, interest income, dividend stripping — are **NOT covered** and remain subject to full GAAR scrutiny.

3

Other Rules Still Apply

Judicial anti-avoidance doctrines (substance over form, beneficial ownership), treaty abuse rules under domestic law, and the **MLI Principal Purpose Test (PPT)** remain fully operative. A GAAR exemption does **not** mean a free pass from all anti-avoidance provisions.

4

Post-2017 Exclusion — Zero Protection

Investments made **on or after April 1, 2017** receive zero GAAR protection under these notifications. The Tiger Global precedent stands in full force for post-2017 structures. No grandfathering, no carve-out, no exceptions.

 **Warning:** Relying on these notifications without a tranche-level investment audit is a compliance risk. Mixed pre/post-2017 fund structures require careful segregation of protected and unprotected positions.

What This Means for Different Stakeholders

CA Professionals & Tax Advisors

- Audit client portfolios for pre-2017 cross-border investments immediately
- Maintain distinct documentation separating protected (pre-2017) from unprotected (post-2017) investment tranches
- Update assessment documentation to reflect GAAR applicability by tranche
- Review **Form 10U** filing accuracy for all affected clients
- Advise on MLI PPT exposure for treaty-based structures

Startup Founders with Foreign Investors

- Identify which investors entered pre-2017 vs. post-2017 at the cap table level
- Ensure board resolutions and **FIRC copies** documenting original investment dates are readily available
- Flag pending assessments where GAAR was invoked on qualifying pre-2017 investments to assessing officers
- Future funding rounds may need tranche-level structuring to preserve grandfathering


PE/VC Fund Managers

- Review all portfolio companies for pre-2017 entry positions and document tranche dates
- Separate protected and unprotected investment tranches in fund-level documentation
- Reassess exit timelines — pre-2017 positions no longer carry GAAR risk on transfer income
- Update LP reporting to reflect reduced regulatory risk on legacy positions

Your Pre-2017 Investment Protection Checklist



This seven-step checklist applies to all entities with cross-border investment structures predating April 1, 2017 — including PE/VC funds, FPIs, NRIs, and Indian companies with outbound subsidiaries. Completing this checklist before the next assessment cycle is critical to securing grandfathering protection under Notifications 54/2026 and 55/2026.

 **Key Documents Required:** Board resolutions, Foreign Inward Remittance Certificates (FIRCs), Form 10U filings, transfer pricing documentation, and treaty benefit claim records — all segregated by investment tranche date.

What This Tells Us About India's Regulatory Direction

Speed of Response

A **75-day turnaround** from Supreme Court judgment to corrective notification signals executive commitment to investment certainty. CBDT's swift action under both ITA 1961 and ITA 2025 frameworks demonstrates institutional agility.

Grandfathering Principle

India is explicitly protecting **legitimate legacy investors** while preserving anti-avoidance tools for future structures. The carve-out is surgical — targeted, time-bound, and person-specific.

Investment Destination Stability

The amendment reassures global investors that India **respects the "rules of the game"** at the time of investment. Retrospective uncertainty — India's historic Achilles heel — is being actively addressed.

Future Enforcement

Post-2017 structures face **full GAAR scrutiny**. The Tiger Global precedent stands for arrangements made after the GAAR effective date. Cross-border tax planning now requires more sophisticated compliance than ever.

 **Critical Clarification:** This is **NOT** a rollback of GAAR. It is a targeted carve-out for pre-2017 investments only. Post-2017 cross-border tax planning requires more sophisticated compliance than ever before. The Tiger Global ruling remains good law for all post-2017 arrangements.

Critical Timeline and Action Items



Immediate Action Items

- Complete tranche-level investment audit separating pre-2017 and post-2017 positions across all cross-border structures
- Gather and organize FIRC, board resolutions, and Form 10U filings before the next assessment cycle
- Flag any pending GAAR-based assessments on pre-2017 investments to assessing officers with reference to Notifications 54/2026 and 55/2026
- Review post-2017 structures for MLI PPT and GAAR exposure — enhanced compliance required

Need Expert Guidance?

Assess your cross-border investment structures with specialists who understand the nuances of GAAR, Rule 10U, and treaty-based planning.

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