

CBDT amends Income-tax Rules under GAAR Chapter

The Central Board of Direct Taxes (CBDT) has amended Rule 10U of Income-tax Rules, 1962 (IT Rules 1962) and corresponding Rule 128 of Income-tax Rules, 2026 (IT Rules 2026) dealing with GAAR provisions, vide Notifications No. 54 and 55/ 2026/F. No. 370142/15/2026-TPL dated 31 March 2026. The amendment in Rule 128 comes into effect from April 1, 2026, whereas the amendment in Rule 10U is to take effect from March 31, 2026.

Background

The General Anti-Avoidance Rules (GAAR) were introduced in India with effect from April 01, 2017 under Chapter X-A of the Income-tax Act, 1961 (now Chapter XI of the Income-tax Act, 2025). GAAR empowers tax authorities to declare an arrangement as an 'impermissible avoidance arrangement' if its main purpose is to obtain a tax benefit, and to thereafter re-characterize, disregard, or reallocate the tax consequences of such arrangement.

To protect existing investments and provide certainty, the GAAR framework includes a grandfathering provision under Rule 10U(1)(d), exempting income from transfer of investments made before April 01, 2017. However, sub-rule (2) of the said Rule 10U stated that GAAR applies to any arrangement in respect of tax benefits obtained on or after April 01, 2017, irrespective of when the arrangement was entered into, creating an interpretive conflict, especially because the said sub-rule was without prejudice to sub-rule 10U(1)(d). Similar provisions are also contained in Rule 128 of IT Rules 2026.

Supreme Court's verdict in Tiger Global

In the Tiger Global ruling¹, the Revenue referred sub-rule (2) to override the sub-rule (1)(d) protection, arguing that since the "tax benefit" was obtained after April 01, 2017, GAAR applied even if the underlying 'investment' was made pre-2017. The Apex Court referring to the said clause held that -

"By the use of the words 'without prejudice to the provisions of clause (d) of sub-rule (1)', Chapter XA is made applicable to any arrangement, irrespective of the date on which it was entered into, in respect of a tax benefit obtained from such arrangement on or after 01.04.2017. Therefore, the prescription of the cut-off date of investment under Rule 10U(1)(d) stands diluted by Rule 10U(2), if any tax benefit is obtained based on such arrangement. The duration of the arrangement is irrelevant."

¹ AAR v. Tiger Global International II Holdings [2026] 485 ITR 214 (SC)

Amendment in Income-tax Rules

CBDT has uniformly amended both the Rules – Rule 10U of IT Rules 1962 and Rule 128 of IT Rules 2026. A comparison of texts² reflecting the amendment in Rule 10U is tabulated as under:

Rule 10U	Existing Rule	Amended Rule
sub rule(1)(d)	(d) 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.	(d) 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 such investments which were made before the 1st day of April, 2017 by such person.
sub rule (2)	(2) Without prejudice 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.	(2) Without prejudice 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, 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 day of April, 2017 by such person.

The Explanatory Memorandum included in Notification No 54/2026 amending Rule 10U under IT Rules 1962 states as under:

*“The amendment will have the effect that the provisions of Chapter X-A shall not be invoked **on or after the date of publication of these rules** in the Official Gazette in a case where income 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 day of April, 2017 by such person.”*

² Uniform amendment made in the text of Rule 128 of IT Rules, 2026 vide Notification No. 55/2026/F. No. 370142/15/2026-TPL

The amendment addresses two critical aspects of the GAAR framework:

- Sub-rule (1)(d): Use of the word 'such' specifically anchors the carve out from GAAR applicability to identified pre-April 2017 investments.
- Sub-rule (2): Removal of the phrase '*Without prejudice to the provisions of sub-rule (1)(d)*' and introduction of an explicit carve out from GAAR applicability for income arising from transfer of investments made before April 01, 2017 reinforces that pre-April 2017 investments are protected from GAAR.

The Notifications are a welcome amendment clarifying and reinforcing that the GAAR provisions should not apply in respect of tax benefit obtained on or after April 01, 2017, from transfer of investments made before April 01, 2017. The intention of amendments appears to be clarificatory in nature thereby diluting the effect of Supreme Court's Tiger Global ruling, though they are not specifically made with retrospective effect. Further, the use of the word '**such**' in amended sub-rule (1)(d) could create new controversy as to whether investments acquired prior to April 1, 2017, whose form is changed due to any corporate action (such as merger, conversion, etc.) would continue to qualify for the relaxation from GAAR or not.

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