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GAAR Amendment — CBDT Clarifies Pre-2017 Investment Exemption

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GAAR Amendment — CBDT Clarifies Pre-2017 Investment Exemption

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WHY IN NEWS

The **Central Board of Direct Taxes (CBDT)** notified the **Income-tax (Amendment) Rules, 2026**, clarifying that **General Anti-Avoidance Rules (GAAR)** will not apply to income arising from the transfer of investments made before **April 1, 2017**, even if the gains are realised after that date. The amendment resolves longstanding ambiguity triggered by the Supreme Court's **Tiger Global ruling** (January 16, 2026).

WHAT IS GAAR?

General Anti-Avoidance Rules (GAAR) are provisions in Chapter X-A of the Income Tax Act, 1961, that allow tax authorities to **deny tax benefits arising from arrangements that are primarily tax-motivated** rather than commercially driven.

PARAMETER	DETAIL
Effective from	April 1, 2017
Applicable when	Tax benefit exceeds ₹3 crore/year
Recommended by	Parthasarathi Shome Committee (2012)
Target	"Impermissible avoidance arrangements"
Authority	Assessing Officer can invoke GAAR; approval required from Approving Panel

What triggers GAAR?

A transaction is an "impermissible avoidance arrangement" if it:

1. Creates rights and obligations not at arm's length
2. Results in misuse or abuse of the tax treaty/provisions
3. Lacks commercial substance
4. Is not undertaken in the ordinary course of business

THE TIGER GLOBAL CASE

The **Tiger Global case** (January 16, 2026 Supreme Court ruling) concerned the taxation of Tiger Global's $1.6 billion gain from selling its stake in **Flipkart** to Walmart (2018):

- Tiger Global held the Flipkart stake through a **Mauritius-based entity**
- Under the India–Mauritius DTAA (Double Taxation Avoidance Agreement), capital gains on shares were historically exempt if held through Mauritius
- CBDT argued that GAAR could be invoked to deny the Mauritius DTAA benefit — even though the investment was made before April 2017 and before GAAR came into force
- The Supreme Court ruled in favour of CBDT, creating uncertainty for thousands of foreign investors with pre-2017 investments

THE CBDT AMENDMENT

UPSC RELEVANCE

"GAAR shall not apply to income arising from the transfer of investments made before April 1, 2017 — regardless of when the gains are realised."

SITUATION	GAAR APPLIES?
Investment made before April 1, 2017	❌ No
Investment made on/after April 1, 2017	✅ Yes (if other conditions met)
Tax benefit < ₹3 crore	❌ No

INDIA–MAURITIUS DTAA — BACKGROUND

The India–Mauritius DTAA was historically a **major tax planning route** for foreign investors:

- Until 2016, capital gains on Indian shares held through Mauritius were taxable only in Mauritius (which had no capital gains tax)
- **2016 Protocol:** India amended the DTAA to allow India to tax capital gains from April 1, 2017 onwards
- Investments made before April 1, 2017 were grandfathered — but GAAR created uncertainty

This amendment restores the grandfathering assurance.

SIGNIFICANCE FOR FOREIGN INVESTMENT

IMPACT	DETAILS
FPI confidence	Restores certainty for foreign portfolio investors with pre-2017 legacy investments
M&A transactions	Reduces tax litigation risk for old Mauritius/Singapore-route deals
India's investment climate	Signals a stable and predictable tax policy environment
Pending litigations	Expected to reduce large number of cases in appellate forums

UPSC RELEVANCE

GS Paper 3 — Economy:

- GAAR vs. SAAR (Specific Anti-Avoidance Rules) — distinction
- India's DTAA network — tax treaties and their misuse (treaty shopping)
- FDI and FPI policy — role of Mauritius and Singapore routes
- CBDT's role in interpreting tax law; Income Tax Act provisions

UPSC RELEVANCE

> "Tax certainty is as important as tax rates in attracting foreign investment. India's oscillation between aggressive enforcement and investor-friendly clarifications must give way to stable, prospective policy that does not unsettle existing commercial arrangements."

FACTS CORNER

- **GAAR:** Chapter X-A, Income Tax Act, 1961; Sections 95–102
- **Parthasarathi Shome Committee:** Set up in 2012 to review GAAR; recommended grandfathering investments before August 30, 2010 (later revised to April 1, 2017)
- **Mauritius DTAA:** Signed 1982; amended 2016 Protocol; transitional period 2017–2019 at 50% concessional tax; full taxation from April 1, 2019
- **Singapore DTAA:** Mirrors Mauritius route; similarly amended in 2016
- **Approving Panel:** Independent body under CBDT that must approve GAAR invocation by the Assessing Officer
- **Treaty Shopping:** Routing investment through a low-tax jurisdiction to claim DTAA benefits — the main abuse GAAR targets
- **CBDT:** Central Board of Direct Taxes; statutory body under Finance Ministry; administers Income Tax, Wealth Tax, etc.

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