

India's GAAR after Tiger Global: What foreign investors need to know

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The general anti-avoidance rule (**GAAR**) provisions have been part of India's tax framework for almost a decade, but their active and visible enforcement by the tax authorities has attracted public attention only in recent years.

GAAR is codified under Chapter X-A of the Income Tax Act, 1961 (**ITA 1961**) and Chapter XI of the Income Tax Act, 2025 (**ITA 2025**) (ITA 1961 and ITA 2025 are referred to as **ITA**). These provisions empower the Indian tax authorities to examine any arrangement, or part thereof, and invoke GAAR where the arrangement qualifies as an '*impermissible avoidance arrangement*' (**IAA**). The term '*impermissible avoidance arrangement*' has been defined under the ITA to mean an arrangement where the main purpose is to obtain a '*tax benefit*' and it:

- i. creates rights or obligations which are ordinarily not created between parties dealing at arm's length;
- ii. results in directly / indirectly misuse or abuse of the provisions of the ITA;
- iii. lacks commercial substance or is deemed to lack commercial substance in whole or in part; or
- iv. is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for *bona fide* purposes.

Once an arrangement is characterised as IAA, the GAAR provisions grant the tax authorities wide latitude to determine the appropriate tax consequences. These powers include, among other things, disregarding the arrangement in whole or in part, recharacterising the transaction, and denying benefits otherwise available under applicable tax treaties. Recognising the breadth of these powers, the ITA also lays down a structured procedural framework for invoking GAAR. This includes reference to the Principal Commissioner or Commissioner, issuance of a reasoned notice to the taxpayer inviting objections, and, in specified cases, reference to an approving panel (**AP**). These procedural safeguards are

intended to ensure that GAAR is applied judiciously and that arrangements are evaluated from multiple perspectives before any adverse consequences are imposed.

The GAAR regime places significant emphasis on the underlying commercial rationale of a transaction. In particular, transactions are required to demonstrate a genuine business purpose beyond the mere objective of seeking tax benefits. In assessing whether an arrangement lacks commercial substance or constitutes an IAA, the tax authorities are likely to examine factors such as the economic substance of the transaction, the alignment between the legal form and its actual business effect, the presence of genuine operational or strategic objectives, the situs of key decision-making, etc. This approach is reflected in the recent cases discussed in this piece where the Indian tax authorities have sought to invoke GAAR, either during assessment proceedings or in the course of appellate / writ proceedings before the court.

The Supreme Court's decision in the case of Tiger Global International II Holdings

In a landmark ruling in the case of Tiger Global^[1], the Supreme Court of India set aside the judgment of the Delhi High Court^[2] wherein the Delhi High Court had affirmed the benefit of grandfathering provisions under the India-Mauritius tax treaty. The Supreme Court confirmed the applicability of GAAR provisions to the transaction under consideration, held that a tax residency certificate (**TRC**) is not a conclusive proof of tax residential status and denied tax exemption on gains arising from indirect transfer of shares acquired prior to 1 April 2017 under the beneficial provisions of the India-Mauritius tax treaty. The Supreme Court's ruling seemingly broadens the scope of GAAR to investments made before 1 April 2017, provided such investments are 'arrangements' intended to evade tax.

The taxpayers in this case, Tiger Global International group entities (**TGI entities**), were private companies holding Category 1 Global Business Licenses. They were tax residents of Mauritius and were issued TRCs by the Mauritius revenue authorities. The TGI entities were set up with the objective of making investments to earn long-term capital appreciation. Between October 2011 and April 2015, they acquired shares of Flipkart Singapore. Subsequently, the shares were transferred to Fit Holdings SARL, and the gains from this transfer (resulting in the indirect transfer of shares of the Indian entity of Flipkart) were treated as exempt under the beneficial provisions of Article 13(4) of the India-Mauritius tax treaty, i.e., the residual clause, which allocates taxing rights to Mauritius. The tax authorities challenged the residency claims of the TGI entities (and consequently the availability of treaty benefits) in view of a *prima facie* finding that the effective management and control of TGI entities were not in Mauritius. It was argued that the Indian tax authorities retain the power to examine the substance of the transaction for treaty abuse, including issues of control and management and financial substance, even where an entity holds a TRC. Accordingly, the corporate veil must be pierced, and the provisions of the India-Mauritius tax treaty will not apply.

The Supreme Court ruled in favour of the tax authorities by observing that a TRC is not conclusive evidence of the eligibility to claim treaty benefits. Instead, given India's GAAR provisions, taxpayers claiming treaty benefits would need to demonstrate adequate operational substance in their country of tax residence. The Court noted that the tax authorities had proven that the transaction was an IAA based on the *prima facie* evidence which demonstrated that the arrangement was designed with the sole intent of evading tax and the taxpayers failed to furnish any material to rebut this presumption. Therefore, the Court held that GAAR should apply and accordingly, the treaty exemption under the grandfathering clause would not be available. Further, the court observed that an indirect transfer of shares of an Indian company will not be eligible for treaty protection.

Several aspects of the ruling warrant closer scrutiny. At the outset, much of the adjudication is focused on establishing how the GAAR provisions can apply to seemingly grandfathered investments, provided they are not investments but 'arrangements'. Unfortunately, there is little to no discussion regarding how the specific facts of the case demonstrate abuse of treaty provisions. Further, while the question before the court was quite narrow - i.e., whether the Authority for Advance Rulings was correct in rejecting the applications filed by the TGI entities for an advance ruling, by holding the fact pattern to be *prima facie* an arrangement for tax avoidance - the court made a number of damaging observations, such as that indirect transfers fall outside treaty protection. With respect, there is nothing in the text of the treaty that suggests that indirect transfers would not be covered. The observation of the court in this regard is that to claim treaty exemption, the taxpayer must establish that the movable property or shares forming the subject matter of the transaction are directly held by the taxpayer who is the resident of the contracting state. However, an important point to note is that indirect transfers would generally be dealt with in the residuary clause of the capital gains article (as also noted in the other parts of the ruling), which is extremely broad, and does not contain any limiting wording relating to direct holding of movable property or shares, as suggested by the court.

Another critical aspect that merits discussion is the court's observation that to claim treaty benefits, the taxpayer must prove that the transaction is taxable in its state of residence. This is, with respect, a fundamental misstatement of law. Given the plain text of the treaty, and established jurisprudence on this point, all that is required to access treaty benefits is to prove that the claimant is 'liable to tax' within the relevant jurisdiction. This is very different from there being an actual tax liability to be discharged.

The ruling also notes that the circulars issued earlier (assuring treaty benefits based on a valid TRC) would not apply any longer given the amendments to the domestic law, particularly the introduction of GAAR. However, it's unclear how any of these amendments would impact the ability to access treaty benefits. In fact, the amendment to consider a TRC as necessary but not sufficient evidence of tax residence was specifically considered but dropped. Further, it is settled law that unilateral amendments to domestic law cannot override treaty provisions.

From a procedural standpoint, it is pertinent to note that in the facts of the ruling, the mandatory framework (which also includes making a reference to the AP as discussed above) for invoking GAAR was not followed by the tax authorities, and the contention of invoking GAAR provisions was raised only during the writ proceedings against the order of the Authority for Advance Rulings. Even if the GAAR provisions are now formally invoked as a part of the assessment proceedings by following the due process, there is some concern that they may largely remain a formality. While in theory, the AP is technically free to arrive at a different conclusion given that the Supreme Court's observations were confined to the evidence placed before it, the scope for a contrary finding appears to be quite limited, given the Supreme Court's *prima facie* view on the classification of the transaction as an IAA.

GAAR scrutiny in another alleged treaty shopping arrangement: The Vedanta case

GAAR provisions have also been recently invoked in the case of *Vedanta Holdings Mauritius II Limited*, where the AP reportedly upheld the initiation of GAAR proceedings against the taxpayer. Based on the information available in the public domain, the matter appears to relate to an alleged structuring to claim the concessional 5% tax rate on dividends under the India-Mauritius tax treaty. Reportedly, the tax department's allegation is that after India abolished dividend distribution tax in April 2020, Vedanta Holdings Mauritius II Limited was incorporated in Mauritius and between 2021 and 2022, it acquired Vedanta Limited's shares through intra-group transactions solely to take advantage of the lower dividend withholding tax rate in the Mauritius treaty, without any corresponding operational substance. The reported tax exposure in the case is significant, estimated at approximately INR 1,308 crore. The taxpayer has challenged the order of the AP before the Delhi High Court by filing a writ petition^[3]. The tax authorities have also filed a counter-writ^[4] in the matter. As at the time of writing, the case is yet to be heard. The Court has granted interim relief by staying the operation of the AP's order as well as the consequent assessment proceedings.

Applicability to loss-creation cases: Telangana High Court in the cases of Ayodhya Rami Reddy Alla and Anvida Bandi

The practical application of GAAR provisions is also being tested in the courts in cases where taxpayers have reduced capital gains income by offsetting capital losses. In this regard, the case of *Ayodhya Rami Reddy Alla*^[5], a decision pronounced by the Telangana High Court, provided the first judicial interpretation of GAAR in India.

The case arose from a series of transactions involving Ramky Estate and Farms Limited (**REFL**). REFL allotted shares to the taxpayer and M/s Oxford Ayyapa Consulting Services Private Limited (**Oxford**) on a private placement basis. Within a short period, the taxpayer acquired shares of REFL from Oxford, following which REFL issued bonus shares in the ratio of 5:1, significantly reducing the per-share value. The taxpayer then sold the shares of REFL to its related entity, Advisory Services Private Limited (**ADR**), the consideration for which was financed by Oxford. As a result of the post-bonus share valuation, the taxpayer incurred a

short-term capital loss, which was set off against long-term capital gains arising from the sale of shares in another group company.

In light of these transactions, the tax authorities initiated GAAR proceedings and issued a show-cause notice (**SCN**). The taxpayer challenged the SCN before the High Court in a writ petition. While dismissing the writ petition, the Court permitted the tax authorities to proceed under GAAR and, notably, appeared to endorse the *prima facie* applicability of GAAR at that stage itself, notwithstanding the pending proceedings under the ITA (similar to that in the case of TGI entities).

Against this, the taxpayer subsequently approached the Supreme Court^[6], which granted interim relief to the taxpayer by directing that no further proceedings be taken pursuant to the SCN.

The Telangana High Court once again adjudicated on the applicability of GAAR provisions in the case of *Anvida Bandi*^[7]. In this case, the tax authorities alleged that the taxpayer's purchase and sale of shares of an Indian listed company, followed by the set-off of losses against gains, constituted an IAA attracting the application of GAAR. The matter was referred to the GAAR AP, which concluded that the transactions amounted to an IAA. The said order was challenged before the Telangana High Court by way of a writ petition.

Allowing the writ petition, the Telangana High Court set aside the AP's findings and held that the transactions constituted genuine trading activity. The Court noted that the taxpayer had transacted through recognised stock exchanges and a demat account, had no knowledge of the identity of the counterparty, and was a regular investor engaged in similar transactions. In the absence of cogent evidence to suggest tax avoidance as the main purpose, the Court held that GAAR could not be invoked.

While both cases involved the transfer of shares followed by the set-off of capital losses against capital gains, the key distinguishing factor leading to divergent outcomes appears to be that in the latter case, the shares were transferred through a recognised stock exchange, without knowledge of the identity of the counterparty, whereas the former case involved transfers between related parties.

Applicability of GAAR to court-approved schemes

Another notable instance of GAAR invocation arose in the case of *Hinduja Global Solutions Limited (HGSL)*. As per the intimation^[8] filed by HGSL with the Bombay Stock Exchange, the tax authorities sought to characterise the scheme of arrangement between HGSL and NXTDigital Limited [approved by the National Company Law Tribunal (**NCLT**)] and involving the demerger of NXTDigital's digital, media, and communication business into HGSL as an IAA, which is stated to have resulted in a tax reduction of approximately INR 281.59 crores. The AP reportedly concurred with this view, observing that the primary purpose of the arrangement was to obtain a tax benefit and that it lacked commercial substance.

HGSL has challenged the GAAR proceedings before the Bombay High Court^[9], which has granted a stay in the matter, and the matter is partly heard. In its preliminary observations, the Court noted that the income tax authorities were given notice before the sanction of demerger by the NCLT, and the tax authorities did not raise any objections at that stage. The Court, while granting a stay, also considered the submission of the petitioner that the ITA itself provides for carry forward and set off of losses of the demerged undertaking in the hands of the resulting company, and thus, the GAAR provisions under Chapter X-A of the ITA 1961 have been wrongly invoked. This is a significant matter, in that it raises an important question regarding the ability of the tax authorities to override a court-sanctioned scheme. A circular^[10] issued by the Central Board of Direct Taxes (CBDT) provides that GAAR will not apply to schemes where the court has explicitly and adequately considered the tax implications while sanctioning them. It will be interesting to see how this intersects with jurisprudence to the effect that the tax department cannot question the sanctity of a court-approved scheme at the stage of implementation.

Preliminarily, it appears that once a scheme is sanctioned, while the tax department can examine cases of tax evasion, their conduct at the scheme stage is relevant. Where the income-tax authorities are served with notice in scheme proceedings, their failure to object at that stage may be a meaningful factor against subsequent GAAR invocation.

Notifications issued by the CBDT clarifying grandfathering for pre-2017 investments

The CBDT has recently issued notifications^[11] dated 31 March 2026 amending Rule 10U of the Income Tax Rules, 1962 and Rule 128 of the Income Tax Rules, 2026 to clarify that the GAAR provisions will not apply on or after 31 March 2026 to income accruing or arising to, deemed to accrue or arise to, or received or deemed to be received by, any person from the transfer of investments made before 1 April 2017. The carve-out is specific to such transfer income; GAAR may still apply to other income arising from the same arrangement. In effect, these notifications dilute the impact of the Tiger Global ruling to the extent that the Supreme Court had denied grandfathering benefits for capital gains. While this is likely to provide some relief, the notifications leave several questions unanswered, such as the availability of treaty protection for indirect transfers.

Key takeaways and the path ahead

For taxpayers and advisors, the cases discussed above are not merely doctrinal developments — they redefine how transactions and corporate restructurings are conceived, documented and defended. Several practical implications emerge - first, tax planning based primarily on legal form, rather than underlying substance, is becoming increasingly untenable. The expectation post-Tiger Global is that holding entities in treaty jurisdictions must be able to demonstrate genuine decision-making, rather than relying on superficial markers of residence. In sum, this means a board composition with locally resident directors and board meetings convened in the jurisdiction with documented deliberation of substantive matters.

It also requires an operational footprint in terms of employees, premises, expenses; as well as treasury and bank-signatory arrangements that demonstrate local control. A TRC remains necessary, but it is no longer sufficient.

Second, transaction documentation must anticipate GAAR scrutiny. The diligence question for advisors at the structuring stage has fundamentally changed to whether the documented substance can withstand a GAAR examination years later. Contemporaneous board materials, commercial rationale memoranda, and inter-company documentation prepared at the time of the original transaction will carry materially more weight than reconstructions prepared during the course of a tax scrutiny.

More immediately, tax warranties and indemnities in transaction documents must be reviewed for GAAR exposure on historic restructurings within the target entities, particularly where loss set-offs, mergers, demergers, or treaty-protected exits have occurred recently. It would be important for buyers to ensure that there are specific representations on commercial substance, business purpose, and arm's-length dealing. On the other hand, the sell-side must ensure that GAAR-specific indemnities are not all-encompassing such that they turn on the tax authorities' subjective view rather than on seller conduct.

Third, while court-sanctioned schemes are not immune from GAAR-scrutiny, the procedural context in which they arise is significant. The practical implication from the Bombay High Court's interim observations in the Hinduja case is that parties to court-sanctioned schemes should ensure that communication with the tax-department is not an empty formality: it is important to communicate early and fully, and create a contemporaneous record of disclosure. Such a disclosure may become an important defence in any subsequent GAAR proceeding.

Fourth, following the Tiger Global and Ayodhya Rami Reddy Alla decisions, the procedural framework underpinning the GAAR provisions will assume significant importance. The focus shifts to two parallel strategies: factually differentiating from these cases, and keeping constitutional remedies open where the GAAR process reflects irregularities. The CBDT's 31 March 2026 notification, which excludes pre-2017 investments from GAAR, shows that the executive is conscious of concerns around overreach. However, this remains a limited carve-out rather than a broader rethinking of GAAR's scope.

Lastly, deal economics should now price in GAAR risk. Where exit transactions may be vulnerable on substance-based challenges, the potential tax exposure must be approached as a probability-weighted outcome rather than a binary one, with appropriate provisioning reflected in the deal model where warranted.

To summarise, GAAR is no longer a rarely used provision reserved for exceptional cases; it has become a regular tool in tax administration, with its scope and application being shaped case by case in real time. The Supreme Court's intervention in Tiger Global has clearly shifted the emphasis toward substance over form. The CBDT's subsequent notification also indicates that

the executive is willing to step in and recalibrate where the judicial approach is perceived to go too far. As we look toward the remainder of 2026, the pending high stakes matters in the Hinduja and Vedanta cases will likely provide further clarity on the boundaries and application of the GAAR provisions. These decisions will be closely watched not just for their immediate impact on the parties involved, but for the precedents they set in defining what constitutes sufficient commercial substance and genuine business purpose.

For taxpayers and practitioners, the real takeaway is not just the familiar point that substance now matters more than form. It is more practical: decisions made today will be tested years later against standards that did not fully exist at the point of the transaction. As a result, transaction structuring must be approached from the outset with a focus on building robust, commercially defensible arrangements capable of withstanding scrutiny, rather than merely optimising legal form.