

International Tax and MLI PPT in Practice: Treaty Entitlement, GAAR Interplay, and Substance Expectations

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Treaty entitlement in India has moved from a form-led TRC analysis to a substance-driven anti-abuse enquiry. A valid TRC and prescribed information remain essential, but they do not conclusively establish treaty access where the Revenue alleges treaty shopping, conduit features or lack of commercial rationale. The MLI Principal Purpose Test, domestic GAAR and recent jurisprudence, particularly Tiger Global[1], require taxpayers to demonstrate genuine residence, decision-making, risk control, commercial substance and non-tax reasons for the structure. Treaty claims should therefore be supported by contemporaneous documentation, robust governance records and a clear evidentiary narrative showing that the benefit is consistent with the treaty's object and purpose.

Introduction

Cross-border tax planning in India is increasingly assessed through an integrated anti-abuse lens. Treaty entitlement is no longer based only on residence certificates, legal ownership or literal treaty wording. The modern enquiry examines whether the claimant has genuine treaty residence, whether it is the beneficial owner where the relevant article so requires, whether the arrangement has commercial substance, and whether obtaining the treaty benefit was a principal or main purpose of the structure.

This shift is driven by the Multilateral Instrument ("MLI"), the Principal Purpose Test ("PPT"), India's domestic General Anti-Avoidance Rules ("GAAR"), and recent judicial developments. The Income-tax Act, 2025 ("2025 Act") and Income-tax Rules, 2026 ("2026 Rules"), retain the core treaty documentation framework, including the Tax Residency Certificate ("TRC") and Form No. 41. However, recent case law has made it clear that documentation is only the starting point. A defensible treaty claim must also be supported by evidence of governance, decision-making, risk assumption and non-tax commercial rationale.

Treaty Entitlement: The Foundation of International Taxation

Treaty entitlement begins with demonstration of residence in the other contracting state under the relevant tax treaty. For an Indian treaty claim, a non-resident must produce a TRC issued by the foreign jurisdiction and furnish prescribed information under section 159(8) of the 2025 Act read with Rule 75 of the 2026 Rules and Form No. 41. Rule 75(2) also requires maintenance of supporting records for verification by the income-tax authority.

The TRC remains a statutory necessity and carries significant evidentiary value. It establishes prima facie residence and continues to be relevant for administrative certainty. However, it is no longer safe to treat the TRC as conclusive in all circumstances. Where the facts suggest a conduit entity, treaty shopping, externally dictated decision-making or absence of meaningful commercial activity, the Revenue may examine the wider arrangement and deny treaty benefit if the legal conditions for anti-abuse action are met.

Beneficial ownership and substance are related but distinct concepts. Beneficial ownership is generally relevant to specific treaty articles, particularly dividends, interest and royalties. Substance is broader. It asks whether the entity performs real functions, assumes and controls risks, deploys capital, maintains independent governance and has a commercial reason to exist in the chosen jurisdiction. A structure supported only by formal incorporation, outsourced compliance and routine board approvals is likely to face greater scrutiny.

The MLI and the PPT: A New Era of Tax Treaty Anti-Abuse

The MLI was introduced under the BEPS project to modify bilateral tax

[1] *Hon'ble Supreme Court in AAR vs. Tiger Global International II Holdings [2026] 485 ITR 214 (SC)*



treaties without renegotiating each treaty separately. Its key anti-abuse objective is reflected in Article 6, which modifies treaty preambles to clarify that treaties are intended to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through evasion, avoidance or treaty shopping.

Article 7 contains the PPT. It permits denial of a treaty benefit where, having regard to all relevant facts and circumstances, it is reasonable to conclude that obtaining that benefit was one of the principal purposes of an arrangement or transaction, unless granting the benefit would be in accordance with the object and purpose of the relevant treaty provision. The benefit need not be the sole or dominant purpose; being one of the principal purposes may be sufficient.

The PPT is objective and fact-intensive. Relevant indicators include the timing of steps, design of the legal structure, economic effect, availability of alternative routes, actual decision-making, business rationale for the jurisdiction, personnel and premises, duration of operations and whether the claimant performs a meaningful commercial role. Tax efficiency alone should not be fatal; the concern arises where the tax benefit appears to be a principal driver, and the structure lacks independent commercial substance.

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GAAR in India: Domestic Anti-Avoidance Rule

India's GAAR is contained in Chapter XI of the 2025 Act. Section 178 permits an arrangement to be declared an impermissible avoidance arrangement, while section 179 identifies the core trigger: a main purpose of obtaining a tax benefit, together with at least one tainted element. These tainted elements include non-arm's-length rights or obligations, misuse or abuse of the 2025 Act, lack of commercial substance, or an arrangement entered or carried out in a manner not ordinarily employed for bona fide purposes.

GAAR consequences may be wider than treaty denial. They can include recharacterisation, disregard or combination of steps, look-through, reallocation of income or expenses, and denial of treaty benefit. Rule 128 of the 2026 Rules prescribes exceptions, including the Rs. 3 crore aggregate tax-benefit threshold specified FII-related exclusions and grandfathering for income from the transfer of investments made before 1 April 2017.

PPT and GAAR overlap but are not identical. PPT is treaty-based and focuses on whether treaty access itself was one of the principal purposes of the arrangement. GAAR is domestic law, applies a main-purpose threshold, requires tainted elements and may produce broader consequences. In practice, the Revenue may analyse the same facts through treaty LOB provisions, beneficial ownership, PPT-type reasoning, GAAR and judicial anti-avoidance principles, subject to the procedural safeguards applicable to each route.

CBDT Notification Nos. 54/2026 and 55/2026 clarify that GAAR will not apply to income from transfer of investments made before 1 April 2017, irrespective of when the arrangement was entered into and even if the tax benefit is realised on or after that date. This clarification is significant for legacy investments, though disputes may continue where the Revenue alleges that the benefit arises from a broader post-cut-off restructuring or arrangement rather than from the transfer of a grandfathered investment itself.

Substance Expectations: The New Normal

Substance is now the practical centre of treaty defence. The enquiry is no longer satisfied by showing that an entity was legally incorporated and held a TRC. Taxpayers should be able to explain why the entity exists, why the chosen jurisdiction was commercially relevant, what functions the entity performed, who made key decisions, where risk was controlled and how capital was deployed.

Useful evidence would include board minutes reflecting real deliberation, investment memoranda, delegation matrices, banking mandates, financial statements, local expenditure, employee or director capability, risk-monitoring records and contemporaneous papers recording commercial drivers. Substance is not a single numeric threshold; it is a cumulative evidentiary narrative showing that the entity had a genuine role beyond obtaining a tax outcome.

Indian Case Law: Judicial Approach to Treaty Entitlement, GAAR, and Substance

Indian case law reflects an evolution from strong respect for legal form to a more substance-orientated



approach. In Azadi Bachao Andolan[2], the Supreme Court upheld the significance of a TRC and recognised that treaty shopping was not per se illegal unless the arrangement was abusive. In Vodafone[3], the Court emphasised corporate separateness and the taxpayer's right to arrange affairs within the law, while also recognising that sham or colourable arrangements may be disregarded.

Those decisions remain important, but they must now be read in the context of GAAR, treaty anti-abuse provisions, beneficial ownership requirements and the MLI framework. A TRC still has evidentiary value, but it does not automatically prevent scrutiny where the facts indicate that the claimant may be a conduit or that the arrangement lacks commercial substance.

Tiger Global is now central to this debate. The Delhi High Court in Tiger Global[4] had adopted a taxpayer-favourable approach by giving significant weight to the TRC, treaty grandfathering and the absence of clear evidence of sham. The Supreme Court's 2026 ruling[5] reversed that approach and restored the AAR's rejection of the applications at the threshold. The Court accepted that

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authorities may examine whether a transaction is prima facie designed for tax avoidance and whether treaty benefit should be denied despite formal documentation.

The key takeaways from Tiger Global are that a TRC is necessary but not conclusive; the Revenue may examine control, management, bank-operation protocols and investment-manager dominance; the distinction between an "investment" and a wider "arrangement" may be relevant; and treaty entitlement must be tested against commercial substance and non-tax business rationale. The ruling materially strengthens the Revenue's ability to challenge interposed holding structures where the factual record is weak.

Practical Application: PPT and GAAR in Indian Tax Administration

CBDT Circular No. 01/2025[6] clarifies that the PPT applies prospectively from the date of entry into effect of the MLI for the relevant treaty, that treaty-specific grandfathering provisions such as those in the India-Mauritius and India-Singapore treaties are not affected by the PPT, and that PPT application is a fact-based exercise. It also permits reference to the OECD Commentary and the UN Model Tax Convention as supplementary guidance.

Key Considerations for Taxpayers

Taxpayers should approach treaty claims as if they were building a litigation file from the outset. The following areas are particularly important:

- **Substance:** Demonstrate real economic activity, decision-making authority, governance and operational presence in the residence jurisdiction.
- **Commercial rationale:** Document the non-tax business reasons for the structure, including commercial, regulatory, financing or operational considerations.
- **Documentation:** Maintain robust supporting records, including the TRC, Form No. 41, board minutes, investment memoranda, delegation matrices, banking mandates, financial statements, local expenditure records and evidence of independent management.
- **Review of existing structures:** Reassess existing holding and investment structures, particularly legacy structures, exit planning, internal reorganisations close to monetisation events and post-2017 steps affecting pre-2017 investments, considering the PPT and GAAR framework.

Existing structures should be reassessed, particularly where treaty benefit depends on legacy investments, holding entities with limited activity, exits after internal reorganisation, or

2 *Hon'ble Supreme Court in Union of India vs. Azadi Bachao Andolan [2003] 263 ITR 706 (SC)*

3 *Hon'ble Supreme Court in Vodafone International Holdings BV v. Union of India [2012] 341 ITR 1 (SC)*

4 *Hon'ble Delhi High Court in Tiger Global International III Holdings vs. AAR [2024] 468 ITR 405 (Delhi)*

5 *Hon'ble Supreme Court in AAR vs. Tiger Global International II Holdings [2026] 485 ITR 214 (SC)*

6 *Circular No. 01/2025 dated 21 January 2025*

post-2017 steps affecting pre-2017 investments. The taxpayer should separately test each basis for treaty access - residence, LOB compliance, grandfathering, beneficial ownership and business purpose - rather than relying on a single document or proposition.

Applicability of the MLI: Impact of the Supreme Court's Decision in the Case of Nestle[7] and the Subsequent Jurisprudence

The MLI operates as an overlay to existing bilateral treaties. It applies only where both treaty partners have listed the treaty as a Covered Tax Agreement and have adopted the relevant MLI provisions without reservations that prevent matching. India ratified the MLI and issued a notification[8] under section 90(1) of the 1961 Act giving effect to India's MLI position.

The Supreme Court's decision in Nestle (supra), though dealing with MFN clauses, has influenced the debate on whether MLI modifications require treaty-specific domestic notification. The Court held that, in India's dualist system, treaty provisions affecting domestic rights and obligations require notification under section 90(1) of the 1961 Act before they can be enforced.



Tribunal rulings such as Sky High Appeal XLIII Leasing[9] and Kosi Aviation Leasing[10] have applied this reasoning to the MLI and taken the view that Articles 6 and 7 cannot be enforced for a treaty unless the relevant modification is specifically notified. CBDT Circular No. 1/2025 proceeds on the contrary premise that India's general MLI notification is sufficient for Covered Tax Agreements. Until appellate clarity emerges, treaty-specific MLI enforceability should be verified carefully.

Conclusion: The Road Ahead

The combined effect of the MLI, PPT, GAAR and recent case law is that treaty claims must now be prepared, not merely asserted. A valid TRC and prescribed information remain essential, but they are only the foundation. The claimant must also demonstrate that the structure has commercial substance, real governance, business rationale and consistency with the object and purpose of the relevant treaty provision.

Azadi Bachao Andolan[11] and Vodafone[12] continue to protect genuine legal form and legitimate tax planning. Tiger Global[13], however, confirms that those principles do not insulate arrangements lacking substance or commercial purpose.

> "The practical standard is clear: treaty benefits are more defensible when the structure is commercially credible, operationally real and capable of withstanding a cumulative anti-abuse review."

The Revenue can look beyond formal documentation where the facts suggest conduit features, externally controlled decision-making or an impermissible avoidance arrangement.

Going forward, taxpayers should maintain contemporaneous evidence of substance, governance and non-tax commercial rationale. Legacy structures and proposed transactions should be stress-tested under treaty conditions, PPT, GAAR, SAARs and beneficial ownership principles. The practical standard is clear: treaty benefits are more defensible when the structure is commercially credible, operationally real and capable of withstanding a cumulative anti-abuse review.

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7 *Hon'ble Supreme Court in Assessing Officer (International Taxation) vs. Nestle SA [2023] 458 ITR 756 (SC) – The Review Petition [[2024] 165 taxmann.com 334 (SC)] as well as the Curative Petition [[2025] 178 taxmann.com 728 (SC)] against the said decision has also been dismissed by the Hon'ble Supreme Court*

8 *Notification No. 57/2019 dated 9 August 2019*

9 *Hon'ble Mumbai Tribunal in Sky High Appeal XLIII Leasing Company Ltd. v. ACIT [2025] 177 taxmann.com 579 (Mumbai - Trib.)*

10 *Hon'ble Delhi Tribunal in Kosi Aviation Leasing Ltd vs. ACIT [2025] 179 taxmann.com 166 (Delhi – Trib.)*

11 *Hon'ble Supreme Court in Union of India vs. Azadi Bachao Andolan [2003] 263 ITR 706 (SC)*

12 *Hon'ble Supreme Court in Vodafone International Holdings BV v. Union of India [2012] 341 ITR 1 (SC)*

13 *Hon'ble Supreme Court in AAR vs. Tiger Global International II Holdings [2026] 485 ITR 214 (SC)*