

January 2026

## Tax Alert: Direct & International Taxation

**Bhatia & Bhatia**  
CHARTERED ACCOUNTANTS



### SUPREME COURT DELIVERS LANDMARK RULING IN TIGER GLOBAL MATTER

#### A Decisive Turn in the Taxation of Exit Gains and Treaty-Based Structures

On 15 January, 2026, the Supreme Court of India delivered a landmark judgment in the case of *The Authority for Advance Rulings (Income Tax) & Others v. Tiger Global International II Holdings & Others* (Civil Appeal Nos. 262–264 of 2026). The Court upheld the Authority for Advance Rulings' (AAR) threshold rejection of advance ruling applications and set aside the Delhi High Court's interfering order.

This ruling unequivocally affirms the primacy of India's General Anti Avoidance Rules (GAAR) and that judicial anti-abuse provisions prevails over tax treaty benefits where an arrangement lacks genuine commercial substance and is primarily designed to obtain unintended treaty advantages. Tax Residency Certificates (TRCs) are no longer conclusive, grandfathering protections are narrowly interpreted, and conduit structures will not shield capital gains from source-based taxation in India.

This decision constitutes one of the earliest and most explicit judicial applications of GAAR to override Double Taxation Avoidance Agreement (DTAA) benefits. It firmly aligns India with the global consensus on preventing treaty abuse, strengthens the country's position in international tax discourse, and is likely to influence investor behaviour, compliance practices, and future treaty negotiations.

## Factual Background and Procedural History

### Taxpayer Profile and Commercial Substance

The Taxpayers, Tiger Global International II, III, and IV Holdings, were Mauritius incorporated entities holding Global Business Licenses and regulated by the Financial Services Commission. They were established to undertake global investment activities for long-term capital appreciation and investment income.

The Taxpayers contended that their operations were controlled and managed by Mauritius resident boards, supported by valid TRC issued by the Mauritius Revenue Authority. Each entity maintained a board comprising two Mauritius-resident directors and one US-resident director, held bank accounts and accounting records in Mauritius, and complied with local regulatory obligations.

The Taxpayers engaged Tiger Global Management LLC, a US-based group entity, to provide investment-related services. However, records indicated that key investment, holding, and exit decisions were effectively taken outside Mauritius, with Mauritius-based directors primarily performing governance and compliance functions. While no contractual authority was conferred to conclude transactions, the tax authorities contended that substantive decision-making and control resided with the Tiger Global investment team in the United States.

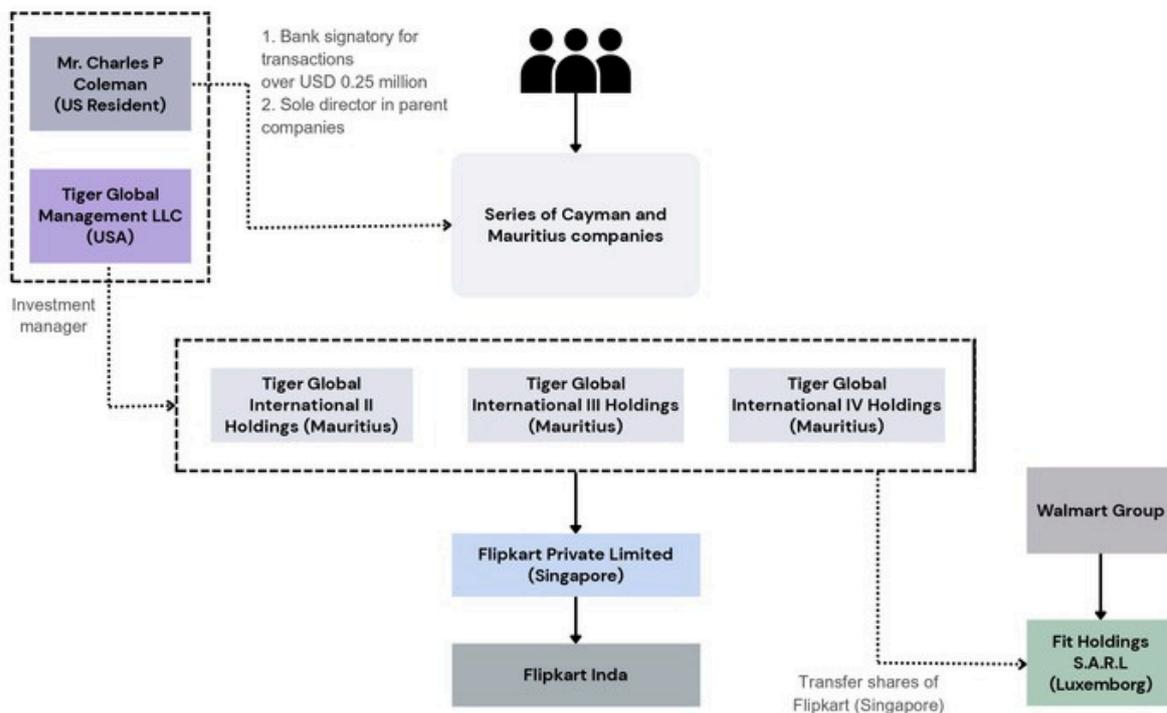


Figure 1: Facts and group structure of Tiger Global

## **The Transaction**

In 2018, as part of Walmart Inc's global acquisition of the Flipkart group, the Taxpayers transferred their shareholding in Flipkart Singapore to a Luxembourg based entity and realized a gain of approximately INR 144 Billion (USD 2.06 Billion).

## **Indian Asset Nexus**

Flipkart Singapore held investments in Indian companies and derived a substantial portion of its value from assets located in India, resulting in an indirect transfer of Indian assets under Section 9(1) of the Income Tax Act, 1961.

## **Timeline and Grandfathering**

The Taxpayers had acquired Flipkart Singapore's shares between October 2011 and April 2015, prior to the 1 April 2017 cut-off date for grandfathering capital gains exemptions under the amended India–Mauritius DTAA.

## **Proceedings Before Indian Tax Authorities**

The Taxpayers applied for nil withholding certificates under section 197, claiming capital gains exemption under the India–Mauritius DTAA on the basis of grandfathering. The Revenue Authorities rejected the claim, asserting that the Mauritius-based entities were mere conduit companies effectively controlled by their US parent.

The Taxpayers then approached the AAR seeking clarity on taxability of the Transaction. The AAR rejected the applications under section 245R(2), citing prima facie evidence of tax avoidance: effective control rested in the US, the entities were “see-through” vehicles established to exploit treaty benefits, and that the DTAA exemption did not apply to the sale of shares in a Singapore company.

The Delhi High Court quashed the AAR order, holding that a valid TRC is sacrosanct absent fraud, parental influence does not negate independence without clear abuse, the Taxpayers were legitimate investment vehicles with substantial substance, and grandfathering extended to indirect transfers.

Aggrieved, the AAR appealed to the Supreme Court.

## **Core Holdings of the Supreme Court**

### **1. Treaty Benefits Denied for Impermissible Arrangements**

Where unlisted equity shares are transferred pursuant to an impermissible arrangement crafted primarily to avoid tax, taxpayers forfeit the right to claim exemption under Article 13(4) of the India–Mauritius DTAA. The Court reaffirmed that the objective of a DTAA is to prevent double taxation and promote commercial relations—not to facilitate avoidance arrangements that erode national tax bases. Capital gains from transfers after 1 April 2017 (when treaty amendments and GAAR became fully operative) are taxable in India where the arrangement is abusive in substance.

## **2. TRC is Not Infallible**

A Tax Residency Certificate satisfies the eligibility condition under Section 90(4) but is not conclusive proof of entitlement to treaty benefits. Post-GAAR, possession of a TRC does not preclude examination of commercial substance. Revenue Authorities may look beyond formal documentation where artificiality is evident, consistent with the 2016 Protocol to the India–Mauritius DTAA.

## **3. GAAR Supersedes Treaty Benefits in Cases of Abuse**

GAAR operates as a supervening anti-abuse framework capable of overriding DTAA benefits where an arrangement is impermissible and intended principally for tax avoidance. Grandfathering under Rule 10U protects the date of initial investment (pre-2017) but does not shield subsequent abusive arrangements. The burden of proof rests on the taxpayer to demonstrate genuine commercial purpose.

## **4. Substance Over Form and Parallel Anti-Avoidance Rules**

Even absent GAAR invocation, Judicial Anti-Avoidance Rules (JAAR) and the “substance over form” doctrine empower authorities to deny treaty benefits to artificial or conduit structures. These powers constitute an extension of India’s sovereign right to tax income arising within its territory.

## **5. Alignment with Shome Committee Principles on Abuse**

The ruling resonates with the Shome Committee’s recommendations: anti-avoidance measures should target abusive, contrived arrangements rather than legitimate commercial choices. The Court distinguished between protected investments and engineered arrangements, safeguarding genuine investments while denying protection to structures designed primarily for tax benefits

## **Far-Reaching Implications**

### **1. Global Alignment and India’s International Standing**

Although it is one of the first rulings explicitly applying GAAR to override treaty benefits, the Supreme Court’s reasoning is closely aligned with OECD BEPS principles (particularly Action 6), and with judicial precedents from South Africa, Australia, the United Kingdom, and other jurisdictions. Global tax administrations increasingly affirm that anti-abuse frameworks must prevail over DTAAAs where arrangements are artificial and aimed at unintended treaty advantages. By prioritizing substance, economic reality, and sovereign taxing rights, India has positioned itself as a responsible and forward-looking participant in the international tax order. The judgment reinforces India’s commitment to protecting its tax base while honouring bilateral commitments in good faith, thereby enhancing its credibility among multilateral bodies (OECD, G20) and peer jurisdictions.

## 2. Re-evaluation of Indian Investments

Global investors must now recalibrate expected tax costs, risk profiles, and routing strategies. Many may shift toward jurisdictions offering stronger commercial substance and governance, accepting less favorable treaty outcomes in exchange for reduced controversy risk. While India's market depth, growth prospects, and domestic demand remain compelling, short-term foreign inflows, particularly portfolio and opportunistic capital, may face moderation.

## 3. Heightened Scrutiny for Exit Transactions

Venture capital and private equity investors who historically used treaty-favoured jurisdictions must re-examine structures for robust substance and governance at both investment and exit stages. The ruling is expected to have implications such as elevated cost of capital, reduction in post-tax returns, etc. and may increase reliance on tax insurance, potentially affecting India's relative competitiveness among emerging markets.

## 4. Increased Compliance

TRCs alone no longer provide a safe harbor. Revenue Authorities will scrutinize substantive decision-making, economic risk, and commercial rationale. Pre-2017 investment dates may retain grandfathering eligibility, but ongoing arrangements must demonstrate authentic purpose to withstand GAAR scrutiny.

## 5. Greater Vigilance Required by Payers for Withholding Tax

Payers can no longer rely solely on TRCs. They must undertake substance and risk assessments of recipients, including decision-making presence and operational reality. Enhanced contractual safeguards, indemnities, gross-up clauses, and advance withholding certificates will become critical risk-mitigation tools.

## 6. Need for Regulatory Guidance

Timely and clear guidance from the Central Board of Direct Taxes (CBDT) is essential to ensure consistent application, minimise interpretational disputes, and reduce litigation. While the CBDT has indicated that unjustified reassessments will not ensue, formal notifications and circulars are awaited.

## Recommendations

- Immediately review existing Mauritius, Singapore, and other treaty-jurisdiction structures for GAAR compliance.
- Stress-test exit positions and consider advance rulings or lower withholding applications where uncertainty persists.
- Strengthen documentation of commercial rationale, local decision-making, and economic substance.
- Incorporate robust tax protections in transaction documents.

We are happy to assist with in-depth impact assessments and strategic planning as you navigate this landmark development.

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Founded in 1981, our firm is dedicated to providing unparalleled financial services to our clients and assisting in navigating the business landscape. With a commitment to deliver exceptional services while upholding the highest ethical standards, our team of over 125+ professionals, led by 11 experienced partners, brings a diverse range of expertise to the table. This allows us to act as your trusted advisor for all aspects of your financial needs, including Audit & Assurance, Taxation (both domestic and cross-border), Valuations, Mergers & Acquisitions and Corporate Finance. We operate as a progressive and well-structured full-service firm with a Pan India presence and a network of various international forums, groups & chambers. We deliver end-to-end business solutions through a dedicated panel of experts, maintaining long-term trust and reliance from our clients.



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