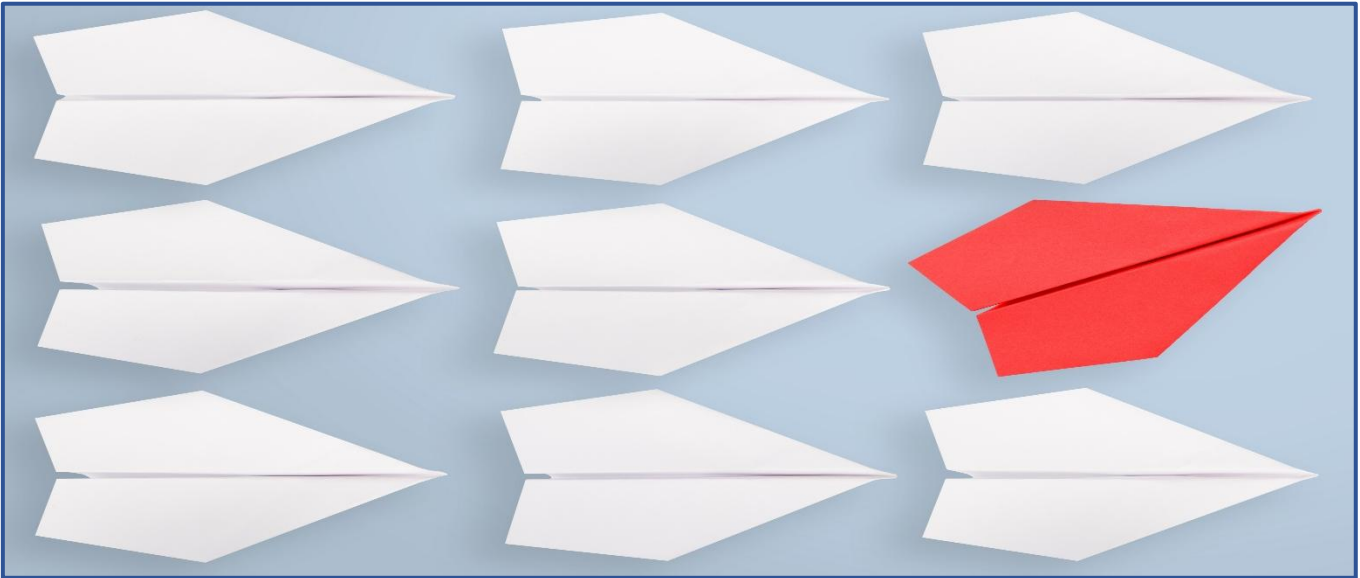


NEWS ALERT

11 June 2026



Tiger (Global) in a tax cage!

The Supreme Court ('SC') delivered a significant ruling in the case of Tiger Global International II Holdings and others¹ ('taxpayers') examining the applicability of General Anti-Avoidance Rules ('GAAR') to pre April 2017 cross-border structure. The judgment is expected to have far reaching implications for the availability of Tax Treaty benefits in respect of indirect transfers of Indian assets, the evidentiary value of a Tax Residency Certificate ('TRC') and the scope of scrutiny for treaty abuse even in existing structures.

Facts

The taxpayers are private limited companies holding valid TRCs of Mauritius, incorporated to undertake investment activities and earn long term capital appreciation. The Board of Directors of the taxpayers consisted of three directors, two of whom were Mauritian residents and one US

resident. The taxpayers engaged Tiger Global Management LLC to act as investment manager.

The taxpayers held equity shares in Flipkart Private Limited, a Singapore based company ('Flipkart Singapore'), deriving its share value substantially from assets located in India, primarily shares of the Indian subsidiary, Flipkart India engaged in the online retail business in India.

In August 2018, Walmart acquired 77 per cent stake in Flipkart Singapore, thereby making a significant entry into India's fast-growing online marketplace. As part of the 2018 acquisition, the taxpayers transferred their shareholdings in Flipkart Singapore to Fit Holdings S.à.r.l., a company incorporated in Luxembourg. These transfers resulted in the accrual of capital gains in the hands of the taxpayers.

¹ [2026] 182 taxmann.com 375 (SC)

This Supreme Court's ruling discussed in detail the taxation of cross-border share transfers, treaty interpretation and India's approach to taxing indirect transfers involving offshore holding structures.

Prior to effecting the share transfers, the taxpayers applied for certificates for 'NIL' withholding of tax under the provisions of Indian tax law. However, the Indian tax authorities issued withholding tax certificates prescribing withholding rates in the range of 6.05 per cent to 8.47 per cent for the three taxpayer entities.

Thereafter, the taxpayers approached the Authority for Advance Rulings ('AAR'), seeking a determination on the taxability of the capital gains arising from the share transfers under the provisions of the India–Mauritius Double Taxation Avoidance Agreement (the 'India–Mauritius Tax Treaty').

Decision of the AAR

The AAR, upon examining the organisational structure of the taxpayers, found them to be part of the Tiger Global Management LLC group, held through a complex web of entities in the Cayman Islands and Mauritius. It concluded that the effective control and management of the respondents did not vest with their Mauritian Boards but was exercised by Mr. Charles P. Coleman, a US resident individual. Though taxpayers maintained bank accounts in Mauritius, signing authority for transactions exceeding USD 2,50,000 was vested exclusively in Mr. Coleman. He was also declared as the beneficial owner in regulatory filings and exercised decisive influence through a non-resident director. On this basis, the AAR held that the 'head and brain' of the taxpayers was not in Mauritius but in the USA.

The AAR further found that the taxpayers had made no investments other than in the shares of Flipkart Singapore and inferred that the sole purpose of obtaining a TRC was to avail Tax

Treaty benefits. It further held that the Tax Treaty exemption was intended only for capital gains arising from the transfer of shares of an Indian company, and not from the sale of shares of a foreign company, even if such shares derived value from Indian assets. According to the AAR, neither the original Tax Treaty nor the amended provisions contemplated exemption for gains arising from the alienation of shares of a non-resident company.

The AAR concluded that the taxpayers were 'see-through' entities interposed to exploit treaty benefits, lacked beneficial ownership and commercial substance, and were disentitled to claim grandfathering under India-Mauritius Tax Treaty. Holding that the transaction was prima facie designed for avoidance of tax, the AAR applied the statutory bar under the domestic provisions and declined to give a ruling on the merits of treaty entitlement or capital gains taxability.

Decision of the Delhi High Court

The Delhi High Court ('HC') examined the Revenue's contentions that the respondents were not the beneficial owners of the capital gains, that their Board of Directors were controlled by group entities or an individual and that the investment structure constituted impermissible treaty shopping. Applying the doctrine of 'substance over form', the HC reiterated that beneficial ownership requires proof that the ostensible recipient of income lacks control or discretion over such income and is legally or contractually obliged to pass it on to another entity. Mere oversight for commercial alignment within a group structure does not negate beneficial ownership. The HC observed that no evidence was put up to demonstrate that the taxpayers were contractually or legally obligated to pass on the gains from the share transfer to Tiger Global Management LLC, or that they acted on its behalf. The HC further clarified that supervisory functions exercised by a parent entity or investment manager—

including appointment of directors or authorisation of key decisions—are consistent with legitimate corporate governance and do not justify lifting the corporate veil in the absence of evidence of fraud, sham or total lack of independence.

The High Court reiterated, relying on *Azadi Bachao Andolan* and *Vodafone*, that routing investments through Mauritius or availing treaty benefits is not impermissible per se. A valid TRC issued by Mauritian authorities was held to be sacrosanct and gave rise to a presumption of tax residence and beneficial ownership.

The HC rejected the AAR's interpretation that Article 13(3A) applied only to shares of Indian companies. It held that the provision must be interpreted in light of the Tax Treaty's object and purpose, which includes protection against taxation of indirect transfers where the underlying value is derived from Indian assets.

The High Court held that the AAR's order was illegal and unsustainable, noting its findings on tax avoidance as arbitrary. The High Court confirmed that the transaction was protected under India-Mauritius Tax Treaty. It quashed the AAR's order and upheld the taxpayers' claim, granting all related reliefs.

The Revenue appealed this decision before the Supreme Court.

Issue before the Supreme Court

The principal issue before the SC was whether the AAR was justified in rejecting the advance ruling application on the grounds that the transaction was prima facie designed to avoid tax and consequently declining to rule on the taxability of capital gains under the Income-tax Act, 1961 read with the India–Mauritius Tax Treaty.

Revenue's key contentions

The Revenue challenged the HC's order raising the following key contentions:

- the orders of the Withholding Tax Officer and the AAR were only prima facie and provisional and did not constitute a final determination of tax liability;
- the High Court erred in deciding the matter on merits.
- India, as the Source State, retains sovereign authority to examine treaty abuse and commercial substance and a Tax Treaty only allocates taxing rights without limiting India's powers.
- TRC is only prima facie evidence of residence; it does not override substance-based tests or GAAR.
- GAAR applies to arrangements lacking commercial substance, including indirect transfers and business investments, even if the investment is pre April 2017.
- The transaction involved an indirect transfer of shares of a Singapore company deriving value from Indian assets getting covered under Article 13(4) of India-Mauritius Tax Treaty.
- The Protocol signed in 2016 to the India-Mauritius Tax Treaty introduced a grandfathering provision applicable to direct transfers covered under Articles 13(3A) and 13(3B) and a specific Article for Limitation of Benefits (LOB). The present case involved indirect transfers falling under Article 13(4), to which the LOB clause did not apply. Consequently, once treaty abuse is established, the protection under the DTAA would no longer apply, and the transaction must be assessed under the provisions of the Indian Income-tax Act, 1961

Taxpayer's key contentions

The key contentions put forth by the taxpayers before the SC were as follows:

- Article 4 of the Tax Treaty exclusively determines residence, each State to determine who is 'liable to tax' under its domestic law; TRCs issued by Mauritius Revenue Authorities constitute sufficient evidence of residence and beneficial ownership and Indian authorities are not to reinterpret Mauritian law to challenge TRCs.
- Domestic doctrines like 'substance over form' or 'lifting the corporate veil' cannot override treaty provisions.
- The Protocol signed in 2016 clarified that the Articles related to curbing Treaty abuse will apply prospectively;
- GAAR applies prospectively only to post March 2017 investments; Gains from investments made pre April 2017 are grandfathered.

Decision of the Supreme Court

The Supreme Court allowed the Revenue's appeal and upheld the rejection of the order of AAR. The key observations of the SC are as follows:

Residential status and relevance of TRC

At the outset, the Court emphasised India's sovereign taxing powers and noted the evolution of both domestic law and treaty policy measures aimed at preventing treaty abuse. The Court held that a TRC acts as an 'eligibility condition' and is not 'sufficient evidence' of tax residency and does not, by itself, bar a deeper examination into commercial substance, control and the true nature of the arrangement.

Circular 789 and its relevance in the post-GAAR regime

With the introduction of GAAR and its treaty override, the statutory framework has undergone a complete transformation. Circulars,

though binding on the Revenue at the time of their issuance, are limited in operation to the legal regime then in force and cannot supersede subsequent statutory amendments. In view of the circulars and the judgments interpreting them having been overridden by later legislative changes, they afford no relief to taxpayers.

On the applicability of GAAR, the Court drew a clear distinction between 'investments' and 'arrangements'. It ruled that while income from the transfer of investments made pre April 2017 may be grandfathered, such protection is not available where the transaction forms part of an impermissible tax avoidance arrangement. While pre April 2017 investments were grandfathered, arrangements that continued to yield tax benefits beyond April 2017 remained within the ambit of GAAR provisions, preventing abuse of the grandfathering provisions. In such cases, GAAR may apply irrespective of when the underlying structure was created.

Article 13(4), the person claiming treaty protection must not only qualify as a 'resident' but also establish that the shares involved in the transaction are directly held by such person. Thus, an indirect sale of shares would not fall within the treaty protection contemplated under Article 13.

The Court further held that GAAR places the burden on the taxpayer to rebut the presumption of tax avoidance. On the facts of the case, the Court found sufficient prima facie material to indicate that the structure lacked commercial substance and was designed primarily to obtain a tax benefit. Consequently, the AAR was justified in refusing to admit the advance ruling application.

The Supreme Court affirmed that where a transaction is found to be pursuant to an impermissible avoidance arrangement, the taxpayer cannot claim treaty protection under Article 13(4) of the India-Mauritius Tax Treaty in respect of the resulting capital gains.

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The Supreme Court ruling provides critical insights into the applicability of GAAR post March 2017 applicability and the parallel operation of judicial anti-avoidance doctrines in evaluating Mauritius Tax Treaty claims for indirect transfers.

The ruling draws an important and nuanced distinction between 'investments' and 'arrangements' for the purposes of grandfathering under the provisions of GAAR. While the law continues to protect genuine pre April 2017 investments, the SC has underscored that legacy status alone cannot insulate a structure from scrutiny where the overall arrangement is alleged to be abusive or artificial. This interpretation aligns GAAR with its intended role as a deterrent against impermissible tax avoidance rather than a mechanical rule tied to the date of initial capital deployment.

From a policy perspective, the judgment reinforces India's sovereign right to safeguard its tax base and prevent treaty shopping, particularly in cases where income is structured to escape taxation in both the source and the residence states.

The Supreme Court ruled that the taxpayers' sale of shares in a Singapore company falls outside Article 13(3A) of the India-Mauritius Tax Treaty, as it targets only shares in Indian resident companies. Despite this broad residual wording covering all unspecified alienations in Article 13(4), the SC has held it to apply solely to direct holdings by the Mauritian resident taxpayers, excluding indirect transfers deriving substantial value from Indian assets. Therefore, indirect transfers by Mauritian taxpayers would lack treaty protection under India Mauritius Tax Treaty, allowing India to exercise its taxing right on such income.

The Supreme Court has held that the primary aim of the Tax Treaty is to prevent double

taxation, not to facilitate tax avoidance or evasion. To claim treaty benefits, taxpayers must demonstrate that the gains are subject to tax in their state of residence.

Article 4 of the India-Mauritius Tax Treaty deems a person to be a resident if liable to tax in that state due to domicile, residence, place of management or similar criteria. A person is considered to be liable to tax even if the domestic law of the resident state exempts it. Actual payment of tax in the resident state is not determinative of treaty eligibility.

At a practical level, the decision is likely to have a chilling effect on aggressive reliance on treaty protection in complex investment exits, especially where holding structures involve multiple jurisdictions and passive entities. Investment funds and multinational groups may need to reassess their structures, decision making authority and risk assumption matrix. Robust documentation demonstrating commercial rationale, operational substance and non tax drivers will assume greater importance during assessments and litigation.

While the ruling is closely tied to facts, it sets a binding precedent on the non conclusive nature of TRCs and the potential applicability of GAAR to pre April 2017 arrangements, marking a decisive shift towards substance oriented treaty interpretation by Indian Courts.

Notifications amending GAAR

The SC held the sale of Flipkart shares as taxable in India, overlooking the grandfathering benefit available to such investments. The SC relied on substance-over-form and treaty-interpretation principles and held that the structure was designed with the intent to avoid tax.

Although the judgment formally dealt with treaty eligibility and indirect-transfer issues, its reasoning and outcome gave rise to the concern that tax avoidance and treaty abuse could be

used by the Revenue Authorities to reassess gains on investments made pre April 2017, even in cases where the statute was intended to protect them.

The ambiguity was whether income from the transfer of pre April 2017 investments is genuinely shielded from GAAR scrutiny, in view of two competing factors:

- the original GAAR framework and related circulars had excluded certain pre April 2017 investments from the applicability of GAAR;
- The Tiger Global ruling indicated that gains from those very legacy holdings could still be taxed if the structure was deemed 'abusive,' leaving investors and advisers uncertain about whether the carve-out in the rules retained any real significance.

The Central Board of Direct Taxes ('CBDT') issued clarificatory notifications in March 2026² to remove any ambiguity and reaffirm the applicability of grandfathering provisions.

The amendment explicitly states that GAAR will not apply to income from the transfer of investments made pre April 2017, even if the tax benefit arises after that date.

The notification clarified that while GAAR can still apply to other tax-abusive arrangements (e.g., treaty-shopping, structures for indirect-transfer structures, etc.), the carve-out for legacy investment transfers would be upheld.

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The notifications mark a critical intervention to restore the balance between investor certainty and anti-avoidance enforcement, following the interpretational disruption caused by the Supreme Court's ruling in Tiger Global. While the judgment appeared to dilute the effectiveness of grandfathering for pre April 2017 investments, the CBDT's clarifications restores the intended statutory protection by excluding such investment transfers from the ambit of GAAR.

While the notifications affirm grandfathering on legacy investments, it would be important to analyse the entire structure, including beneficial ownership and substance to verify whether the arrangement would continue to be impermissible for tax purposes.

Should you wish to discuss any of the above issues in detail or understand the applicability to your specific situation, please feel free to reach out to us on coe@jmpadvisors.in.

JMP Advisors Private Limited

12, Jolly Maker Chambers II, Nariman Point, Mumbai 400 021, India

E: info@jmpadvisors.in, W: www.jmpadvisors.com

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² Notification No. 54/2026 dated 31 March 2026 and Notification No. 55/2026 dated 31 March 2026

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