

India special edition: Tiger case



Speakers



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Agenda

- 1** Current Market Practice
- 2** Headline Summary of Ruling
- 3** Impact of the Ruling
- 4** Key takeaways of the Ruling
- 5** Market Response

Current market practice involves zero Indian exit taxes for most PE trades

Intermediary jurisdictions (e.g. Mauritius/ Singapore/ Netherlands/ Cyprus) typical for India investment(s)

Currently, **“Nil” exit tax position**, relying on provisions of India’s tax treaties

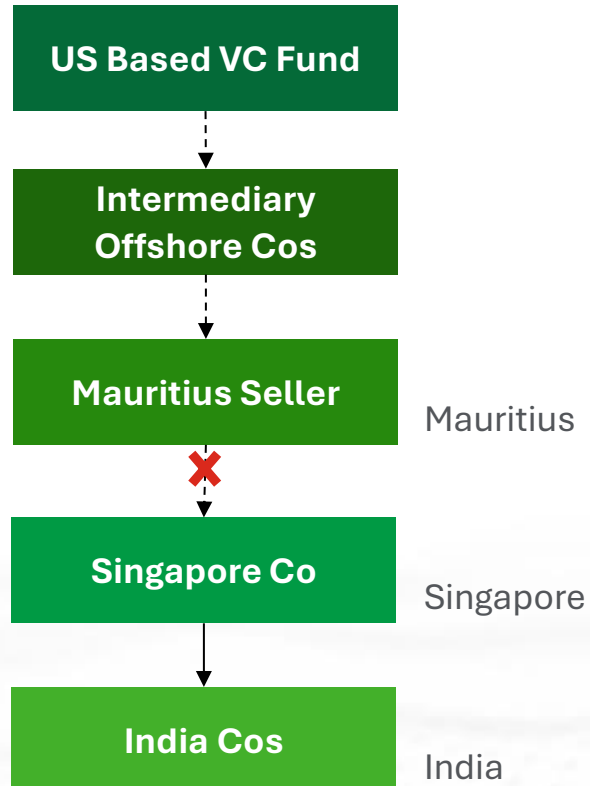
2016 **renegotiation** with Mauritius and Singapore levied exit taxes on post 2017 shares, grandfathering earlier investments

PEs continue to avail Nil Exit Tax position, using established structures that were not hit by the Treaty renegotiation, such as the following:

- Indirect Transfers
- Transfer value through hybrid/ debt instruments
- Using Treaties of countries like Netherlands, where 2017 type re-negotiation has not occurred

Headline Summary

Ruling calls into question entire Fund Structure



The Structure

Typical multi-tiered PE structure, whereby a US Fund uses Mauritius Holding Companies to invest in a Singapore company, deriving value from India

The Transaction

Exit business by selling Singapore Shares with NIL Tax

The Ruling

The Indian Apex Court, based on Facts, challenged the Seller's Mauritius Tax residency, citing effective control and management to be in U.S and denied Mauritius tax treaty benefit. **The Court further ruled that treaty protection cannot shield transactions that lack real commercial substance**

The Tiger ruling rewrites + reiterates India's stance on tax evasion

A landmark ruling—codifies principles of **SUBSTANCE** and **RATIONALE** over **FORM** and reiterated policymaker's **INTENT** of current Law [though based on **FACTS OF CASE IN POINT**]

Tax Residency Certificate

- TRC necessary but not sufficient for establishing residency

General Anti-Abuse Rules

- Structures not grandfathered
- Multi-Tier holding + pooling in tax friendly jurisdictions

Indirect Transfers

- Ambiguity created for treaty cover
- Abuse vs Genuine cases vs Intent

Substance over Form

- Bar for establishing substance enhanced
- Intent > Documented substance

Judicial Anti-Abuse Rules

- Where GAAR inapplicable, JAAR can still apply

Dual Non-Taxation

- Strong case for Triggering anti-abuse provisions

Whilst SC's reference to determine **PRIMA FACIE TAX AVOIDANCE**, observations hold **PERSUASIVE VALUE** for questioning **TREATY ELIGIBILITY**

The impact of the Ruling is pervasive, and the scale is large

1

Approximate **\$748 bil**⁽¹⁾ Gross FDI capital inflow into India since 2014. **Singapore** and **Mauritius**—combined account for **~45-50%**⁽²⁾

2

Approximate **\$160-170 bil**⁽³⁾ Indian exits by PEs/ VCs and **multi-billion dollar** exits by foreign corporates

3

Repatriation from India involving Treaty relief in the form of interest and dividend across corporates and funds is in **tens of billions of dollars** ⁽⁴⁾

4

Tax Insurance Industry carries an exposure of **\$9- \$10bil** ⁽⁵⁾ just on insuring Indian exit taxes

5

Credit/ debt securities transfers

Typical fund client: \$2-\$4 bil of annual exits;
\$1-\$2 bil of annual investments; plus
Annual repatriation/ flow through LP distributions from portfolio companies
Value at risk of ~ \$1+ bil

Sources : (1) Ministry of Commerce & Industry – Press release; (2) Government / DPIIT cumulative data; (3) Bain India Private Equity report 2024 and 2025; (4) FDI + FPI investment income per the balance of payment statements published by the Indian central bank; (5) Estimates as per industry sources;

Market response from various stakeholders

Fund Houses

- Need to understand **value at risk**—sell side, buy side, repatriations
- **Strategic communication** with LPs—distinguishing structural facts vis-a-vis the ruling
- Evaluating requirements of triggering **claw backs for past deals** and factoring potential additional **tax out-go for existing portfolio** companies/investments
- Back on the **drawing board for live/** yet to be closed deals—Plan B?

Tax Insurers

- **Historical deals**—US\$9-10 bil of tax risks underwritten on nil exit tax position
- **New Policies—Cautious approach** (higher factual scrutiny, enhanced safeguards, potential higher pricing)



Indian Government

- **Talks around reopening audits** for past years basis the Ruling—no official communication yet
- **Related policy changes** on the anvil?

Tax Authorities

- **Detailed scrutiny** initiated in multiple cases (especially for Mauritius treaty claims)
- **Line of questioning**—While substance being probed as before, more focus on rationale + intent



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