

# Treaty eligibility (Tiger Global Case) and Recent development in India, Hong Kong, Australia and Singapore

Speaker



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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

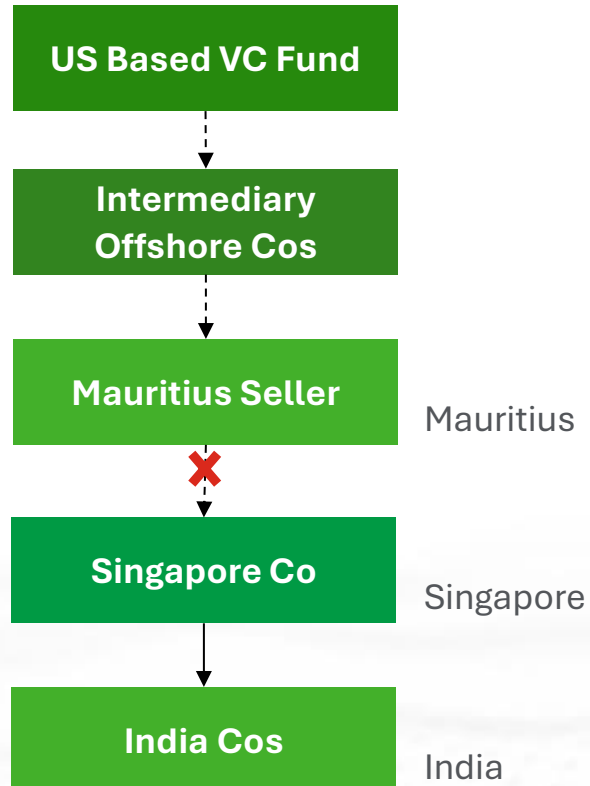
2016 **renegotiation** with Mauritius and Singapore levied exit taxes on post 2017 shares, grandfathering earlier investments

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

2

Approximate **\$160-170 bil**<sup>(3)</sup> 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** <sup>(4)</sup>

4

Tax Insurance Industry carries an exposure of **\$9- \$10bil** <sup>(5)</sup> 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?

## Indian Government

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



## Tax Insurers

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

## 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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