

The Tiger Global ruling: What it means

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English

January 21, 2026



For decades, foreign investors looking at India found a convenient gateway through a small island nation: Mauritius. Thanks to a tax treaty signed in 1983 between India and Mauritius, investors based in Mauritius could sell shares of Indian companies without paying capital gains tax in India. This arrangement was meant to attract foreign investment at a time when India was opening its economy.

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Many investors using it had nominal connections with Mauritius. Funds were often managed from the USA or Europe, but the investments were routed through Mauritian entities to take advantage of the treaty. Indian authorities were uneasy and kept challenging such structures but the Supreme Court, through its 2003 decision in *Azadi Bachao Andolan*, put its firm stamp of approval on such structures that had also been expressly blessed by a Government Circular. The Court recognised that “treaty shopping” was a common and accepted practice worldwide and that India itself may have

intended to offer these benefits to attract capital. It held that if an investor produced a valid Tax Residency Certificate (TRC) from Mauritius, Indian authorities could not question its right to treaty benefits. This position was reaffirmed in the famous Vodafone case in 2012, where the Court again stressed that legitimate tax planning was not the same as tax evasion.

For investors, the message was clear: A valid TRC was almost a passport to treaty protection.

Eventually the Govt of India managed to convince the Mauritian authorities to amend the treaty with effect from April 1, 2017; albeit with an express understanding that investments made prior to this date would not be taxed (called as “grandfathering”). The Indian government made necessary changes in the rules and made express announcements to this effect. At the same time, General Anti-Avoidance Rules (GAAR) were implemented in the Indian income tax law. Both these changes made it clear that the erstwhile Mauritius route is now closed while protecting the grandfathered investments made prior to April 1, 2017.

This equilibrium now stands radically upended with the Supreme Court’s recent decision involving Tiger Global, one of the world’s best-known investment funds.

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Enter Tiger Global

Tiger Global had invested in Flipkart nearly a decade ago through a Mauritius-based fund. When it later proposed to sell its stake—by transferring shares of a Singapore company that ultimately held Flipkart shares—it sought an advance ruling from Indian tax authorities. Tiger Global argued that the India–Mauritius treaty protected it from Indian tax.

The Authority for Advance Rulings (AAR), however, declined to give a ruling. It took the view that the structure appeared designed mainly to avoid tax. This was based on factors such as the involvement of US-based individuals in signing authority and their control over investment decisions.

Tiger Global challenged this in the High Court, which firmly rejected the AAR’s approach. The Court held that the fund had existed for many years, had genuine investment activity, and that decision-making formally rested with its Mauritian board. Importantly, the High Court reaffirmed the long-standing principle that a valid TRC could not be brushed aside.

But the story did not end there.

The Supreme Court Changes the Rules of the Game

When the matter reached the Supreme Court, it took a markedly different approach—one that reflects how the judicial attitude towards treaty shopping has evolved since *Azadi Bachao* and *Vodafone*.

First, the Court held that a TRC is no longer conclusive. It is only an entry ticket, not a guarantee. If the surrounding facts suggest that the entity has little real presence or purpose in the treaty country, tax authorities are entitled to look deeper.

Second, the Court made it clear that India's anti-avoidance framework and other changes made in the law to prevent "double non-taxation"—including the General Anti-Avoidance Rule (GAAR)—has fundamentally altered the legal landscape. Even though Tiger Global's original investment predated GAAR, the Court held that if a tax benefit arises after GAAR came into force, the arrangement can still be disregarded.

The Court said that even before GAAR, courts always had the power to look at the substance of a transaction rather than its form. This idea of "judicial anti-avoidance" implies that old structures are not automatically immune simply because they were created earlier.

One of the most unexpected conclusions reached by the Court was that grandfathering is not available to protect old investments if the holding Mauritian entity lacked substance. It disregarded the protection assurances given by the government by narrowly interpreting the relevant rule and by superseding the assurances by GAAR principles. There was another surprising

reason why Tiger Global lost. The Court closely examined the treaty itself and noted that it protected only certain types of transactions. The shares being sold were not shares of an Indian company, but of a Singapore company, sold to a Luxembourg buyer. The treaty, notwithstanding the language to the contrary, the Court surprisingly held, did not stretch that far.

In other words, even if Tiger Global had strong ties to Mauritius, the particular transaction it undertook fell outside the treaty's protective umbrella.

What This Means for Investors

Going forward, investors are likely to be challenged to demonstrate real commercial reasons for their structures—such as decision-making, management, and economic substance in the chosen jurisdiction to claim any favourable treaty entitlement.

This is not limited to Mauritius. The message applies equally to investments routed through any low-tax or treaty jurisdiction.

For older investments, the Court has left the door open for scrutiny if the arrangement lacks commercial logic. Facts will matter more than ever. Exits thought of as tax-free may now carry hefty tax bills and in several instances tax indemnities and insurances may come into play. Future indemnities and insurances would certainly be difficult to procure. The Tiger Global decision

induces a high degree of tax uncertainty for investors who plan their investments bearing in mind the prevalent law and assurances given by the governments from time to time. It also marks a change in judicial attitude, perhaps a reflection of the changing tax and trade atmosphere which has become inimical to bilateral and multilateral engagements between nations.

Himanshu Sinha and Komal Dani are tax partners, Arijit Ghosh is senior associate and Niraj Chowdhury is associate, Trilegal

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