

Is Offshore Offshore Enough?

Recent Indian Supreme Court Tax Decision Impacts Global M&A which Derive Substantial Value from India

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Introduction

Cross-border M&A transactions routinely involve offshore holding structures. A typical exit involves selling shares in a foreign holding company whose value is substantially derived from operating businesses in another jurisdiction, such as India. For more than a decade, investors have relied on a broadly settled understanding that - even though India taxed indirect transfers under its domestic law, tax treaties, particularly those with Mauritius and Singapore, were understood to protect such offshore exits from taxation in India. This assumption has shaped fund and group holding structures, exit planning and deal pricing across India-focused investments and exits. On 15 January 2026, the Indian Supreme Court's decision in *Tiger Global*¹ disrupted this equilibrium. In doing so, it appears to have gone against the intent of the Indian Government. In this note, we discuss this landmark case and its implications for cross-border M&A which derive substantial value² from India.

What Is the Tiger Global Case and What Did the Supreme Court Rule

The case arose from PE fund Tiger Global's 2018 exit from Flipkart, in which Mauritius-based entities sold shares in a Singapore holding company to Walmart in a \$16 billion deal. The sellers claimed capital gains protection under the India-Mauritius tax treaty. The Supreme Court denied this treaty protection. Beyond the specific facts, the Court made a far-reaching observation that indirect share transfers are not protected under India's tax treaty. This means that these would be subject to capital gains tax in India.

The Court also denied treaty benefits on the ground that the Mauritius entities lacked real commercial substance and were effectively controlled from outside Mauritius. In doing so the Court refused reliance on tax residency certificates alone.

What Could Be the impact of This Decision

The ruling represents an interpretation that differs from the policy environment in which India has been actively seeking to facilitate global capital flows. In fact, the Supreme Court's decision on this aspect was not even the argument of Government tax counsel before the Court, making the outcome somewhat unanticipated. There is, therefore, every possibility that the Indian Government will clarify this aspect of the Court ruling.

The case impact could be particularly acute for holding structures from certain jurisdictions which have tax treaties with India that exempt such exits from taxation in India. As a result of the ruling, exits from these jurisdictions could now be subject to ~15% effective rate of taxation in India. Examples of such jurisdictions include Singapore, Germany, Mauritius, UAE, Luxembourg, Italy, and France. By contrast, treaties between India and Canada, UK and the US, which already allow India to tax such gains in India, are less affected.

¹ The Indian Supreme Court is the highest judicial body in India.

² Put simply, an off-shore entity derives substantial value from India when its tax FMV derives more than 50% value from Indian assets.

India today is the 4th largest economy in the world and home to several large businesses and who are subject to constant M&A flows. From a transactional standpoint, the ruling is likely to influence how tax risk is priced and allocated, how exits are planned, and how transaction documents are negotiated. Greater attention is likely to be paid to indemnities, escrows, and price adjustments, as well as to representations concerning control, governance, and decision-making, rather than mere legal residence of entities that hold Indian shares. Treaty eligibility can no longer be assumed based on incorporation or residency certificates alone. Genuine commercial rationale, local decision-making, and independent governance in intermediary holding jurisdictions may become important factors too. Tax W&I insurers are also assessing next steps.

We too are keeping an eye on developments in this space. If you would like to know more about it, please do reach out to us.

- *Ashwin Bishnoi (Partner) and Shaily Gupta (Partner)*



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