9th Workshop on Direct Taxes

Tiger Global Judgement

Saturday, 11 July 2026

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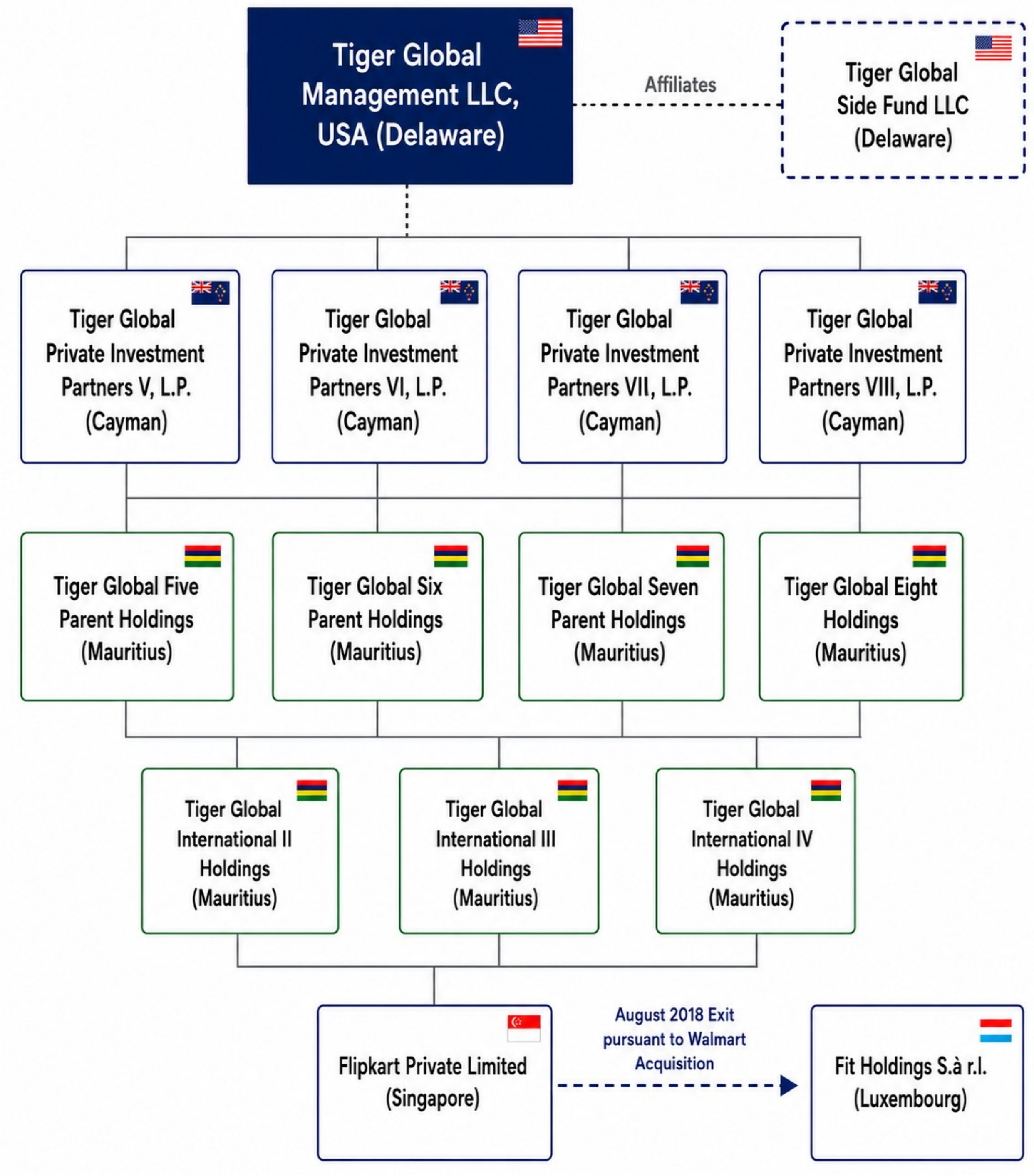
Investment Structure & Transaction Overview

Investment Structure & Exit Chain



Transaction Summary

Investment Window
- October 2011 – April 2015
- Acquisition of shares in Flipkart Private Limited (Singapore)
- Entire investment made prior to 1 April 2017, falling within the grandfathering period under the India–Mauritius DTAA.

Exit Transaction
- **August 2018** – Exit by Tiger Global International II, III, IV pursuant to Walmart's acquisition of the Flipkart Group
- Sale of Flipkart Singapore shares to **Fit Holdings S.à r.l. (Luxembourg)**
- **Consideration: ~USD 2.08 billion**

Nature of Asset Transferred
- Shares of **Flipkart Private Limited, Singapore**
- Value substantially derived from **underlying Indian assets,** attracting India's indirect transfer provisions.

Ultimate Beneficial Owner
- **Mr. Charles P. Coleman III** – Founder, Tiger Global Management LLC (USA).
- Ultimate Beneficial Owner of the Tiger Global investment structure.

Treaty Position

Treaty claim based on:
- **Article 13(4)** of the India–Mauritius DTAA
- **Valid Tax Residency Certificates (TRCs)**
- **Grandfathering** under the 2016 Protocol
- **CBDT Circular No. 789** & Azadi Bachao Andolan

Revenue's Allegation
- Mauritius entities lacked **commercial substance**
- **Effective management and control** exercised from the United States
- Mauritius entities acted as **conduit/"see-through" entities.**
- Treaty benefits denied on grounds of an impermissible avoidance arrangement under Chapter X-A (GAAR).

Statutory Framework
- **Section 9(1)(i)** (Indirect Transfer)
- **Sections 90(2A), 90(4) & 90(5)**
- **Sections 95–102 (Chapter X-A – GAAR)**
- **Rule 10U(1)(d) & Rule 10U(2)**
- **Articles 13 & 27A** of the India–Mauritius DTAA

Three Questions That Defined Tiger Global

Can Treaty Benefits Be Claimed?

Issue

- Did the Mauritius entities qualify for benefits under the India–Mauritius DTAA?
- Was a TRC sufficient to establish treaty entitlement?

Key Focus

- Treaty Eligibility vs Treaty Entitlement

Did the Structure Have Commercial Substance?

Issue

- Were the Mauritius entities genuine investment vehicles or conduit entities?
- Could GAAR be invoked despite the treaty claim?

Key Focus

- Commercial Substance • Effective Management • GAAR

Does Grandfathering Protect the Transaction?

Issue

- Did Article 13(3A) extend to the transfer of Flipkart Singapore shares?
- Could indirect transfers claim grandfathering?

Key Focus

- Grandfathering • Indirect Transfer • Article 13

The litigation revolved around these three fundamental questions, with each judicial forum adopting a distinct interpretation that ultimately culminated in the Supreme Court's definitive ruling.

From AAR to Supreme Court: Competing Interpretations

The dispute evolved not because the facts changed, but because each forum interpreted the same legal framework differently

Legal Issue	AAR [2020] 429 ITR 288 26 Mar 2020	Delhi HC [2024] 468 ITR 405 28 Aug 2024	Supreme Court [2026] 485 ITR 214 15 Jan 2026
Tax Residency Certificate (TRC)	• TRC is **not conclusive** of treaty entitlement. • Revenue may examine the **real residence, beneficial ownership and control** behind the structure.	• Valid **TRC**, read with the LOB clause, is sufficient unless the Revenue establishes fraud or sham. • CBDT Circular No. 789 continues to bind the Department.	• TRC establishes **residence**, but **not automatic treaty entitlement**. • Tax authorities may independently examine the **commercial reality** of the arrangement.
Commercial Substance & Effective Managemen t	• Mauritius companies functioned as **conduit / see-through entities**. • Effective management and key investment decisions rested with Tiger Global Management LLC (USA).	• Mauritius entities had **independent boards, bank accounts and governance**. • Investment manager's role did not displace board autonomy or commercial substance.	• Treaty benefits require **demonstrable commercial substance**. • Incorporation in a treaty jurisdiction cannot substitute **effective management and genuine business purpose**.
Grandfatheri ng under Article 13	• Article 13(3A) applies only to shares of a **company resident in India**, and since these were **shares of a Singapore** company, **grandfathering never** attached at all	• Investments made **before 1 April 2017** remained protected under the **2016 Protocol**. • Article 13(3A) extended to the transaction.	• Article 13(3A) protects only **direct transfers of Indian shares**. • Sale of Flipkart Singapore shares was governed by **Article 13(4)**; grandfathering therefore unavailable.
GAAR (Chapter X-A)	• Arrangement prima facie designed to obtain treaty benefits. • Application rejected under **Section 245R(2)(iii)**.	• Rule 10U(1)(d) excluded pre-1 April 2017 investments from GAAR. • No basis to invoke anti-avoidance provisions.	• Rule 10U(1)(d) must be read with **Rule 10U(2)**. • Where the **tax benefit arises after 1 April 2017**, GAAR may still apply notwithstanding the original investment date.
Indirect Transfer	• Treaty protection unavailable for transfer of **foreign company shares** deriving value from India.	• Article 13 read with the Protocol protected the transaction despite being an indirect transfer.	• Transfer of Flipkart Singapore shares constituted an **indirect transfer of Indian assets**. • Such gains remain taxable where treaty protection is unavailable.
Final Outcome	• Application rejected; treaty benefit denied.	• AAR order quashed; treaty benefit allowed.	• HC reversed; AAR restored; gains taxable in India.

Synthesis
The divergence across the three forums lay not in the underlying facts, but in the weight accorded to the TRC, commercial substance, grandfathering under the India–Mauritius DTAA, and the interaction between treaty protection and GAAR.

Five Enduring Doctrines Emerging from Tiger Global

Beyond deciding the dispute, the Supreme Court clarified the principles governing treaty entitlement, grandfathering, and the interaction between treaty protection and India's anti-avoidance framework.

Treaty Entitlement ≠ Treaty Eligibility

Court held:

- TRC establishes **residence,** not automatic treaty entitlement.
- Revenue may examine the **commercial reality** of the arrangement.

Significance:

- Treaty benefits depend on both **legal eligibility and commercial substance.**

Commercial Substance Prevails

Court held:

- Commercial substance is the **decisive test.**
- Effective management and genuine business purpose **outweigh legal form.**

Significance:

- Shell or conduit structures cannot rely solely on **treaty residence.**

Grandfathering Has Defined Limits

Court held:

- **Article 13(3A)** protects only transactions **expressly covered** by the treaty.
- Indirect transfers remain **outside its scope.**

Significance:

- Grandfathering is an **exception;** not a blanket exemption.

GAAR overrides treaty benefits

Court held:

- **GAAR** operates **within the treaty framework**, legitimate transactions retain treaty protection.

Significance:

- Treaty protection is **unavailable for impermissible avoidance** arrangements.

Burden of Proof Shifts to the Taxpayer

Court held:

- Once the Revenue establishes **prima facie avoidance,** the taxpayer must substantiate treaty entitlement.
- Mere documentary compliance is **insufficient.**

Significance:

- Substance must be supported by **contemporaneous evidence.**

Tiger Global is more than a treaty case: it establishes a substance-oriented framework for evaluating treaty entitlement, grandfathering and GAAR in cross-border investment structures.

CBDT's Legislative Response to Tiger Global

Following the Supreme Court's ruling in Tiger Global, the CBDT issued Notifications No. 54/2026 and 55/2026 to incorporate the Court's interpretation of the interplay between Rule 10U(1)(d) and Rule 10U(2) of the Income-tax Rules, 1962, and the corresponding Rule 128 of the Income-tax Rules, 2026.

NOTIFICATION NO. 54/2026

F. No. 370142/15/2026-TPL • 31 March 2026

Income-tax (Tenth Amendment) Rules, 2026 — Amending Rule 10U of the Income-tax Rules, 1962

- **Rule 10U(1)(d) substituted:** Chapter X-A shall not apply to income accruing, arising or received from transfer of investments made before 1 April 2017 by that person.
- **Rule 10U(2) substituted:** Chapter X-A applies to any arrangement, irrespective of the date entered into, in respect of tax benefit obtained on or after 1 April 2017, except income from pre-2017 investments.
- **Effect:** The pre-amendment Rule 10U(2) carve-out (read against the taxpayer in Tiger Global) is now expressly mirrored as an exception within Rule 10U(2) itself—eliminating the post-2017 tax-benefit trigger for genuinely pre-2017 investments.

NOTIFICATION NO. 55/2026

F. No. 370142/15/2026-TPL • 31 March 2026

Income-tax (Amendment) Rules, 2026 — Amending Rule 128 of the new 2026 Rules

- **Rule 128(1)(d) substituted:** Introduces the equivalent carve-out under the new Income-tax Rules, 2026.
- **Rule 128(2) substituted:** Chapter XI (the renumbered GAAR chapter in the new Code) applies to any arrangement irrespective of date, for tax benefits obtained on or after **1 April 2017, excluding income from pre-2017 investments.**
- **Effect:** Ensures the same carve-out continues under the new Income-tax Act, providing symmetry with Notification No. 54/2026.

Supreme Court of India – 15 January 2026
(Authority for Advance Rulings (Income-tax) v. Tiger Global International II Holdings [2026] 485 ITR 214)

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Notification 54/2026 – 31 March 2026
(Amends Rule 10U of the Income-tax Rules, 1962)

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Rule 10U – Restated Architecture
(Grandfathering preserved for pre-1 April 2017 investment income; GAAR applies only to other post-1 April 2017 tax benefits)

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Notification 55/2026 – 31 March 2026
(Amends Rule 128 of the Income-tax Rules, 2026)

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Rule 128 – Equivalent Framework under the 2026 Rules
(Mirrors Rule 10U, preserving identical grandfathering and GAAR treatment under the 2026 Rules)

Tiger Global: Implications for International Tax

The judgment extends beyond the India–Mauritius DTAA, reinforcing a substance-oriented approach to treaty entitlement that is likely to influence future cross-border tax planning, compliance and dispute resolution.

Immediate Implications:

The New Threshold for Treaty Entitlement

- **TRC is necessary, but not conclusive** of treaty entitlement.
- **Commercial substance supersedes legal form** in determining treaty entitlement.
- **GAAR overrides treaty benefits** where the arrangement is impermissible
- **Grandfathering** has a limited and defined scope.
- **Indirect transfers** remain outside Article 13(3A) protection.

Continuing Principles:

Treaty Framework Continues to Operate

- India–Mauritius DTAA **continues to govern eligible transactions.**
- **Grandfathering survives** for transactions expressly covered by Article 13(3A).
- **Notifications 54/2026 & 55/2026** restore GAAR grandfathering for pre-2017 investments.
- **Legitimate commercial structures** continue to receive treaty protection.

Implications for Taxpayers:

Design for Substance, Not Form

- Build **commercial substance from inception.**
- Document **effective management and board decision-making** contemporaneously.
- Evaluate structures through both **treaty** and **GAAR** lenses.
- Treat documentation as litigation evidence, not merely compliance.

Future Outlook:

The Future of International Tax

- Increased scrutiny of **treaty entitlement** and holding structures.
- Greater reliance on **GAAR** in cross-border disputes.
- Stronger focus on **beneficial ownership, POEM and commercial substance.**
- Tiger Global is likely to shape future treaty and investment litigation.

Tiger Global marks a defining shift in Indian international tax jurisprudence, from formal treaty eligibility to substantive treaty entitlement, with commercial substance emerging as the cornerstone of cross-border investment taxation.

THANK YOU

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