

Beyond Headlines

Investment vehicles

We were thrilled by the positive response to our first newsletter and appreciate your feedback. It helps us ensure each edition remains **relevant** and **insightful**.

In this issue, we highlight key updates on **cross-border investment vehicles** and their role in facilitating investments into and out of India. We also explore critical tax considerations for structuring such investments.

Globeview updates

Last month was eventful for our team, as we worked on diverse projects, including:

Conceptualizing strategies for consolidating group entities through merger and demerger and eliminating cross holdings.

Assisting on buy side for acquisition of controlling interest in a company undergoing debt restructuring under IBC.

Conducting tax due diligence on Indian targets including a listed company.

Advising US based investors on acquisition of Indian company shares and consulting on carry structure for their Indian managers.

Reviewing open litigation under “Vivad Se Vishwas 2.0” – a new dispute resolution settlement scheme.

Cross-border Investment Vehicles

Investment vehicles are a key tool for efficiently deploying and moving funds within group entities or for acquisitions. These structures are used globally to achieve various commercial, financial, and regulatory objectives. However, they can come under tax scrutiny if they lack commercial substance or are driven solely by tax motives. Let's explore some recent developments in this area and key takeaways.

Delhi HC's positive ruling in case of Tiger Global's divestment of Flipkart

In 2018, Tiger Global's investment entities in Mauritius ('Tiger Holding Mauritius') sold shares of Flipkart Private Limited ('FK Singapore') to a Walmart group entity in Luxembourg. A significant portion of FK Singapore's value came from its investment in Flipkart India.

Tiger Holding Mauritius was indirectly owned by private equity funds, comprising nearly 500 investors from 30 jurisdictions. Tiger Global Management LLC, USA ('Tiger Global USA') acted as investment manager of Tiger Holding Mauritius.

Under the India-Mauritius tax treaty (DTAA), capital gains on shares acquired before April 1, 2017 (as in this case) by a Mauritius tax resident are taxable only in Mauritius. Tiger Holding Mauritius sought confirmation of this tax position from the Indian Authority for Advance Rulings (AAR).

However, the AAR rejected the plea, arguing that real control of Tiger Holding Mauritius resided with Tiger Global USA, making them ineligible for treaty benefits at the time of the share sale.

In a writ petition challenging the AAR's decision, the Delhi High Court ruled in favor of Tiger Holding Mauritius. Among its key observations, the HC noted that:

- US entity had no direct ownership in the Mauritian investment vehicles,
- Tiger Holding Mauritius had a valid Tax Residency Certificate ('TRC'),
- It met the expenditure threshold prescribed under the Limitation of benefits ('LOB') clause of DTAA and
- The entity did not lack economic substance.

Takeaways for inbound structures

The court has reaffirmed importance of a TRC by regarding it is a sacrosanct document unless the Revenue can prove fraud, sham transactions, or illegal activity. It should be ensured that investment vehicles have substantial business activities, decision-making processes, and control in the jurisdiction where they claim tax residency.

- Local directors, operations, and expenses above LOB thresholds help substantiate business presence.
- Board meetings, decision-making authority, and control over bank accounts should demonstrate that the entity is actively managed from the tax residency jurisdiction.

- It is also critical to meet the requirements under general anti avoidance rules ('GAAR') and principal purpose test ('PPT') under tax treaties.
- Proper documentation of the business and commercial rationale for transactions is increasingly necessary to defend tax risk.

According to a recent update from Taxsutra, the Supreme Court is set to review the tax department's special leave petition concerning the Mauritius DTAA, specifically addressing the LOB clause and allegations of treaty shopping. We anticipate further clarifications from this ruling.

Takeaways for outbound structures

These principles are equally relevant for outbound structures where an Indian parent establishes overseas subsidiaries through investment vehicles in countries like UAE, Singapore, Netherlands etc.

Companies must clearly document and justify that the Place of Effective Management (POEM) is outside India to avoid tax complications.

In the case of **flip structures**, which are sometimes used for various business purposes, companies should be mindful of both tax and regulatory complexities, as these structures are increasingly being scrutinized by tax authorities as well as regulators like the RBI.

Boost to inbound mergers

On another note, recent changes to merger rules now permit fast-track mergers between a foreign holding company and its Indian wholly owned subsidiary, provided there is prior RBI approval. This amendment simplifies the process for reverse flip structures, signaling the government's intent to ease such transactions.



We're proud to share that our colleagues, **Chirag Chordia** and **Rishabh Bhandari**, recently addressed aspiring CAs on the topic of International Taxation and Transfer Pricing at a WICASA Pune event.

We look forward to bringing you more updates in our next edition. Until then, feel free to reach out to us at contact@globeviewadvisors.com for any discussions.

About Globeview Advisors LLP

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