Will the Tiger Roar in Nepal? Decoding the Interim Order in *Dolma*

POSTED ON APR. 6, 2026

By

SHAILENDRA UPRETY
Message the Author

SRIJANA ADHIKARI
Message the Author

SHAILENDRA UPRETY

SRIJANA ADHIKARI

Shailendra Uprety is a chartered accountant and partner with S. Uprety & Associates, and Srijana Adhikari is a corporate lawyer and partner with S&S Jurists. Both are in Kathmandu and are PhD candidates in law at Tribhuvan University.

In this article, Uprety and Adhikari explore the tension between tax treaties and domestic/judicial antiabuse rules that has arisen in the *Dolma* tax case and draw parallels with the Supreme Court of India's *Tiger Global* decision.

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The interim order[1] issued by the division bench of the Supreme Court of Nepal in the *Dolma* tax case has again brought taxation to press headlines and into public debate. The case began with the Inland Revenue Department (IRD), the wing of government responsible for administrating VAT, income tax, and excise duty, granting a tax exemption to the Dolma Impact Fund, followed by the decision of the Council of Ministers to terminate the double tax avoidance agreement (DTAA) between Nepal and Mauritius.[2] It culminated with the filing of a public interest litigation (PIL) against the government's Dolma tax exemption decision in Nepal's Supreme Court. This article maps the events leading up to the interim order and analyzes the Supreme Court's order in light of provisions of DTAA, treaty law and other established practices. It then revisits the landmark

Tiger Global case decided by the Supreme Court of India.[3] It concludes that on whichever side the final verdict falls, the results will be consequential for the Nepalese tax landscape.

Background

According to Dolma Impact Fund I's 2024 annual report (published on its website), the company was incorporated under the laws of Mauritius on July 15, 2014, as a private limited liability company with limited life. The company is regulated and licensed by the Financial Services Commission, Mauritius, and holds a global business license as well as an authorization from the Financial Services Commission to act as a closed-end fund.[4]

Dolma has invested in ordinary shares, convertible preference shares, and convertible notes of eight companies that are incorporated in Nepal and whose principal place of business is Nepal. The objective of these investments is to entitle the company to returns in the form of dividends and profits on redemption of shares (capital gain). The company sold, and plans to sell, its shares in investee companies and applied for an advance ruling,[5] seeking the opinion of the IRD regarding tax exemption on the capital gains on sales.

Dolma claims that as an entity registered in Mauritius, it is entitled to treaty benefits under article 13(4) of the Nepal-Mauritius DTAA. Dolma previously applied for an advance ruling, but the IRD did not respond to the applications. However, following the Gen-Z movement and Nepal's change of government, authorities issued an advance ruling, with the appointment of Finance Minister Rameshwor Prasad Khanal, seasoned administrator and a reformist, being a crucial factor in the application's success.

Nepal-Mauritius DTAA and Its Termination

Nepal entered into an agreement with Mauritius on August 3, 1999, for the avoidance of double taxation and the prevention of fiscal evasion regarding taxes on income. Article 13(4)[6] of the DTAA, its most contentious provision, allocates taxing rights on the alienation of property to the contracting state in which the alienator is a resident. Therefore, in the case of investment made by Dolma, the capital gains on sale of shares are taxable in Mauritius, because Dolma is a resident company in Mauritius.

Alarmed by the loss of tax revenue, yet committed to honoring treaty obligations, the Nepalese government decided to scrap the DTAA after officially notifying Mauritius. At the Cabinet meeting held November 24, 2025, officials terminated the DTAA and announced that until the termination became effective, any new investment was to be approved only if the would-be investors abided by subsection 73(5) of the Income Tax Act (ITA), 2058 B.S. (2002 A.D.).

Moreover, according to a communiqué dated December 10, 2025, the IRD's director general dispatched a letter to the government of Mauritius, in accordance with article 29(1) of the DTAA, officially notifying Mauritius of the DTAA termination.[7] Two reasons were cited for termination of the DTAA: (1) change in domestic law and (2) international cooperation on taxes. The communiqué reminded Mauritius that Nepal enacted the ITA in 2002, three years after signing the DTAA in 1999, which incorporated tax antiabuse provisions in section 35 of ITA and a limitation on benefits provision in ITA subsection 73(5). Further, since the signing of the DTAA with Mauritius, significant reforms have been made in the global international taxation regime, especially the OECD's base erosion and profit-shifting initiative, which has paved the way for entering into a treaty compliant with international standards.

Right to Taxation

Taxation is a sovereign right. It is only through the collection of taxes that a government can function and provide public goods and services to citizens. A country's taxation framework is governed by the source and residence principles. Under the source (territoriality) principle, a country has the right to tax all income generated within its borders. The rationale for source-based

taxation is that the country that provides resources and infrastructure to earn the income has the primary right to taxation. Conversely, the residence principle grants a state the right to tax all or worldwide income of its residents.

Article 13(5) of the Mauritius-Nepal DTAA is based on the residence principle. Unlike business profit (article 7), which is taxed in the country in which business is carried out, or dividend income (article 10(2)) or interest income (article 11(2)), which may be taxed by way of withholding tax, capital gains arising in a contracting state are not taxed in the source country, that is, the country in which the gains are earned, unless the taxpayer is a resident of the contracting state. In other words, Dolma's capital gains from Nepali investments are not taxed in Nepal. Moreover, withholding tax is not collected on these gains. It is an awkward situation faced by Nepal and other developing nations that are net capital importers and that need capital to fund infrastructure projects but are bound by treaties to forgo their right to collect taxes.

Treaty Shopping

Details of the shareholding or Dolma's ultimate beneficiaries are not disclosed in its annual reports or on its website. However, the annual reports do show that the company's founder and CEO is from the United Kingdom. Dolma exalts itself as being Nepal's first international institutional impact investor. But why was the investment made via Mauritius rather than directly from the United Kingdom to Nepal? The answer is article 13(5) of the Nepal-Mauritius DTAA, a provision that exempts capital gains from Nepali taxation. On the other hand, under the income tax act of Mauritius, any gains derived by global business license entities from the sale of shares and other securities are tax exempt in Mauritius.[8] Routing the investment through Mauritius allows Dolma to escape tax liability in both countries. This treaty shopping is likely why Dolma routed the investment through Mauritius.

This type of arrangement, in which multinational enterprises gain undue tax benefits by creating superficial arrangements or by seeking loopholes in treaties, is known as treaty shopping. Treaty shopping typically involves the attempt to or an act of indirect access to the benefits of a tax treaty between two jurisdictions by a person who is not a resident of one of those jurisdictions, often through complex structures and arrangements.[9]

Is Treaty Shopping Fair?

Everyone agrees that the tax regime should be fair, but there is no universal definition of fair tax. However, over time, through judicial precedents and developments in international law, a broad-brush consensus has developed that a transaction must have a purpose separate and apart from tax reduction or that the primary purpose of any transaction should not be to avoid taxes (business purpose test or principal purpose test). The principal vehicle for treaty shopping is the formation of shell companies.[10] These sham companies or facades generate income through underlying assets in a developing country but rob the country of taxes needed for development. This is considered to be unfair or unethical.[11]

Is it illegal? In a society governed by the rule of law, an action or transaction must violate the law before becoming illegal. An action may seem immoral but labeling it illegal requires some strict and minimum legal standard. Developing counties may adopt fiscal policies that may appear to be questionable but are tolerated in the interest of long-term development.[12] Parliamentary intention is reflected in enacted laws. Any transaction is taxable only if the law says it is taxable; absent this, it must be deemed nontaxable.[13] The advance ruling issued by the IRD looked at the text of the treaty and the ITA and decided that no capital gains tax could be collected on Dolma's capital gains.

Treaty shopping is not a new phenomenon.[14] It has gained prominence since the OECD began working on the BEPS project in 2013. Can the reluctance on the part of Nepal to notify Mauritius about changes in domestic law, especially, the introduction of section 73(5) of the ITA be construed as done with the intent to attract foreign investment? The key question is why, despite parliamentary capacity to amend laws, were the tax laws not changed accordingly, or tax provisions not included in a treaty or

protocol for amendment of the treaty not signed, or any attempt made in that direction until now? In the absence of a taxing provision or conversely, in the presence of an express article in the DTAA exempting capital gains, where does the government or court draw the authority to levy tax? Can tax be levied on a nonexistent provision of law? Questions remain unanswered.

The Matter Reaches the Supreme Court

Perturbed by the tax exemption granted to Dolma and its marauding the resources of Nepal, a PIL was filed[15] in the Supreme Court requesting, *inter alia*, that the court quash the IRD decision.[16] At the first hearing, the court issued a short-term interlocutory order, staying the implementation of the IRD and government decision and calling the parties for further hearing.

On the date of the discussion of the continuation of the interim order, the division bench of Justices Mahesh Sharma Paudel and Bal Krishna Dhakal continued the interlocutory order after hearing arguments from both parties. The order halted the implementation of the IRD's letter to CDS and Clearing Ltd. (the main government instrumentality for collecting taxes on capital gains of listed shares in Nepal), which had advised CDS and Clearing Ltd. to not collect tax on capital gains. Further, the order blocked the repatriation of any funds unless the taxes have been paid as per the law. The Supreme Court found that the exemption granted to Dolma prima facie violated the LOB clause in subsection 73(5)[17] of the ITA. Moreover, because the DTAA was not ratified by the Parliament, the domestic law — the ITA — would prevail over treaty provisions. Other reasons cited for continuation of the interim order were "apparent legal error" in the decision of the government to exempt taxes and "irreparable loss" to the state.

In their written response to the Supreme Court, the respondents, state institutions and representatives, all took the same position that the capital gain was not taxed based on the resident principle of article 13(4) of the Nepal-Mauritius DTAA. Further, because the previous governments had not notified the government of Mauritius of their intention to terminate the DTAA, the DTAA should be interpreted in good faith and with "the principle of equality and reciprocity."

A Homer's Nod?

The interim order of the court hinges on the argument that, in the circumstance in which a DTAA was not ratified by the Parliament and a conflict arises between domestic law and treaty, domestic law would prevail. The court opines that it is only if a treaty has been ratified by Parliament that a conflict with domestic law leads to the treaty overriding the domestic law. In the absence of parliamentary ratification, a treaty is effective only when there is no conflict with domestic law. The issue to be analyzed is whether in a conflict between a parliamentary unratified treaty and domestic law, the treaty becomes a dead letter? The matter must be settled through combined reading of constitutional provisions, sections 6 and 9 of the Treaty Act, 2047 B.S. (1990 A.D.), and sections 73(1) and 73(4) of the ITA.

Article 126(2) of the previous Constitution of the Kingdom of Nepal, 1990, which was in force when the DTAA was signed, and article 279(2) of the current Constitution of Nepal, 2015, are similar regarding ratification of, accession to, acceptance of, and approval of treaties or agreements. Strict criteria requiring a two-thirds majority of Parliament are reserved for treaties involving peace and friendship, defense and strategic alliance, boundaries of the state of Nepal, and natural resources. Therefore, the constitution delegates power to the Parliament to enact appropriate laws to enter into treaties or agreements with foreign countries regarding subject matters not expressly mentioned in the Constitution.

Section 6[18] of the Treaty Act grants power to the Government of Nepal to sign and enforce a treaty, unless matters fall within the prerogative of the Parliament, and once a treaty is signed by the government, it is considered accepted. A similar intention of the Parliament lies in the text of subsection 73(1)[19] of the ITA, in which the government has been granted power to enter into a DTAA with foreign countries. Taken together, these grants of power affirm the right of Government of Nepal to enter into treaties.

The next issue is treaty benefit or protection, which has its roots in article 27[20] of the Vienna Convention on the Law of Treaties, 1969 (VCLT). Although Nepal has signed the VCLT, it has not yet ratified it. Still, the treaty binds Nepal in international forums as customary international law.[21] In a similar vein, subsection 73(4) of the ITA provides that where the government of Nepal has signed a DTAA with any foreign jurisdiction, those persons to whom the agreement applies may choose the provisions of either the DTAA or ITA, whichever is more beneficial.

In *pari materia* with subsection 73(4) of the ITA, subsection 9(1) of the Treaty Act states that:

> In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval *by the Parliament*, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws. [Emphasis added.]

This subsection is the basis on which the court's interim order was delivered. A narrow reading of it may lead one to conclude that unless the Parliament has ratified the treaty, if it conflicts with domestic law, domestic law will prevail over the treaty. This is an incorrect reading of the law.

The subsection should be read in conjunction with sections 4 and 6 of the Treaty Act. Section 4 lays down the procedure of ratification and accession of the treaties. Based on the nature of the ratification process under subsection 4(1), treaties can be classified into three categories: those requiring parliamentary ratification as mentioned in article 279(2) of the constitution; those not mentioned in article 279(2) of the constitution but requiring parliamentary ratification based on the terms of the treaty or any other reasons; and treaties that require no parliamentary ratification. For the present purpose, it is the enforceability of this third category of treaties that we must dissect.

Section 6[22] of the Treaty Act empowers the government of Nepal to sign and enforce a treaty. This provision is a deeming section. It deems that except for the matters excluded in article 279(2) of the constitution, when a treaty is signed by the government of Nepal, Nepal or its government is considered a party to the treaty, and it is considered (deemed) accepted. Therefore, for the purposes of subsection 9(1), once a treaty has been signed, it is deemed to be as good as a ratified treaty. Separate parliamentary ratification is not required. The justices' reasoning, that treaty benefits cannot be availed in the absence of parliamentary ratification, appears to be a Homer's nod.

In the highly celebrated case of *Azadi Bachao Andolan*,[23] the Supreme Court of India spoke about DTAA ratification:

> When it comes to fiscal treaties dealing with double taxation avoidance, different countries have varying procedures. In the United States such a treaty becomes a part of municipal law upon ratification by the Senate. In the United Kingdom such a treaty would have to be endorsed by an order made by the Queen in Council. Since in India such a treaty would have to be translated into an Act of Parliament, a procedure which would be time consuming and cumbersome, a special procedure was evolved by enacting section 90 of the Act. . . .
>
> Section 90, as we have already noticed (including its precursor under the 1922 Act), was brought on the statute book precisely to enable the executive to negotiate a [double taxation avoidance convention] and quickly implement it. Even accepting the contention of the respondents that the powers exercised by the Central Government under section 90 are delegated powers of legislation, we are unable to see as to why a delegatee of legislative power in all cases has no power to grant exemption. . . .
>
> This Court is not concerned with the manner in which tax treaties are negotiated or enunciated; nor is it concerned with the wisdom of any particular treaty. Whether the Indo-Mauritius DTAC ought to have been enunciated in the

> present form, or in any other particular form, is none of our concern. Whether section 90 ought to have been placed on the statute book, is also not our concern. Section 90, which delegates powers to the Central Government, has not been challenged before us, and, therefore, we must proceed on the footing that the section is constitutionally valid. The challenge being only to the exercise of the power emanating from the section, we are of the view that section 90 enables the Central Government to enter into a [double taxation avoidance convention] with the foreign Government.

In our view, the position taken by the Supreme Court in India regarding the legality or constitutionality of a DTAA is correct. Even assuming that parliamentary ratification is needed in a conflict of domestic law and a DTAA, what would be the fate of other DTAAs that have not been ratified? Can they be assumed *ipso facto* to be void? Requiring parliamentary ratification of all treaties or agreements would be a misadventure.

Parallels With *Tiger Global*

The Supreme Court of India's judgment in the *Tiger Global* case has attracted the attention not only of investors and MNEs that have made investments or are vying for a piece of success in the fastest-growing economy, but also of students of international taxation, especially those interested in tax treaty interpretation. In the landmark judgment, the issue before the Supreme Court was whether "gains arising to the assessees (private companies incorporated in Mauritius) from the sale of shares held by them in Flipkart Pvt. Ltd (a private company incorporated in Singapore) to Fit Holdings S.A.R.L. (a company incorporated in Luxembourg) would be chargeable to tax in India under the Act read with the DTAA between India and Mauritius."[24]

Unlike the *Dolma* case, in which the shares sold are of Nepalese companies, in the *Tiger Global* case, the transacted company was based in Singapore, although it derived its value from underlying assets in India (Flipkart India Pvt. Ltd. and other group companies). The *Tiger Global* case sprouted from the decision of Indian tax authorities to deny the "benefits under the DTAA on the ground that they were not independent in their decision-making and that control over the decision-making relating to the purchase and sale of shares did not lie with them."[25] Further, upon appeal by the assessee to India's Authority for Advance Rulings (AAR), the AAR ruled that because the "head and brain" of the companies were not in Mauritius, their control and management were situated outside Mauritius, in the United States, and that the entire arrangement entered into by the assessee was intended to claim tax benefits under the DTAA. Therefore, treaty protection was denied.

On appeal, the Delhi High Court overturned the AAR decision by holding that "any attempt to pierce the corporate veil must be grounded in compelling evidence of tax fraud, sham transactions, or complete absence of economic substance" and that tax benefits cannot be denied based on the presumption that the assessee lacked economic substance. The Revenue appealed to the Supreme Court. The final verdict of the Supreme Court, which in some instances seems to ignore precedence,[26] found that Tiger Global is not entitled to a waiver of tax under the DTAA. Turning "a permissible avoidance" into "an impermissible avoidance" or "evasion" marked a resounding victory for advocates of general antiavoidance rules and judicial antiavoidance rules and proponents of the substance-over-form principle.

The tremors of the judgment have been felt worldwide. By stating in no uncertain terms that the judiciary can invoke judicial antiavoidance rules to protect tax sovereignty and prevent tax abuse, the case has rewritten the rules of India's international taxation regime. Whether the aftershocks will be felt in Nepal, time will tell.

The Way Forward

The final date of the hearing of the *Dolma* case has not yet been listed. The matter is still *sub judice*. But the battle of formalism and purposivism continues. Whether the court decides that Dolma is entitled to treaty protection as per the letter of the law, and that the investor, who relied on the treaty and the ITA and invested in Nepal hoping to get a tax exemption, will in

fact get a tax exemption on capital gains, or rather that judicial antiavoidance rules will prevail and Dolma will be denied tax exemption, the verdict will be consequential.

FOOTNOTES

[1] Order in the case of *Bhesh Raj Luitel v. Office of Prime Minister and Council of Ministers*, No. 082-WO-0730 (Feb. 11, 2026).

[2] Inland Revenue Department release, "Press Release Regarding the Formal Notification of Amendment in Domestic Tax Legislation Concerning Anti-Treaty Shopping Provision to Its Key Treaty Partners" (Nov. 12, 2025).

[3] *Authority for Advanced Rulings (Income Tax) v. Tiger Global International II Holdings*, Civil Appeal Nos. 262/2026, 263/2026, and 264/2026 (Jan. 15, 2026).

[4] Dolma Fund Management, "Creating Value, Driving Impact: Annual Report 2024," at 56 (2024). The annual report states that "the Company is classified as a Professional Collective Investment Scheme in accordance with the Securities (Collective Investment Scheme and Closed-end Funds) Regulations, 2008 issued under the Securities Act, 2005 of Mauritius. The Company's registered office is at c/o Tri-Pro Administrators Ltd, Level 5, Maeva Tower, Bank Street, Cybercity, Ebène, Republic of Mauritius."

[5] Income Tax Act, section 76 (2002) states: "If any person makes an application in writing to the Department for the removal of any confusion as to the application of this Act to any arrangement proposed or accepted by such person, the Department may issue its version by an advance ruling as prescribed, by notifying the person in writing."

[6] Agreement Between the Government of Nepal and the Government of Mauritius for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, art. 13(4) (Aug. 3, 1999) ("Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.").

[7] Inland Revenue Department release, "Formal Notification of the Government of Nepal's Decision to Terminate the Double Taxation Avoidance Agreement With Mauritius," Dec. 10, 2025.

[8] The Income Tax Act, section 4, 1995 (Mauritius) states: "Subject to this Act, income tax shall, in and for every year (a) be paid to the Director-General by every person on all income, other than exempt income, derived by him during the preceding year." Further, second schedule, Part II exempt income, subpart C — miscellaneous (8) of the same act exempts tax on "gains or profits derived from the sale of shares, debt obligations or other securities of a company holding a Category 1 Global Business License or Category 2 Global Business License under the Financial Services Act 2007 by a non-resident."

[9] OECD, "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances: Action 6 — 2015 Final Report," at 17 (2015).

[10] Dolma Impact Fund, "Official Statement From Dolma Impact Fund," at 1 (2025); Dolma has clarified that "it is not a shell company with unknown investors."

[11] Reuven S. Avi-Yonah and Haiyan Xu, "Evaluating BEPS: A Reconsideration of the Benefits Principle and Proposal for U.N. Oversight," 6 *Harv. Bus. L. Rev.* 186, 207 (2016) ("The sole purpose of such legal structures is to avoid taxation created by tax law.").

[12] *Union of India v. Azadi Bachao Andolan*, (2003) 263 ITR 706 (SC). ("There are many principles in fiscal economy which, though at first blush might appear to be evil, are tolerated in a developing economy, in the interest of long term development.")

[13] This is also the consistent approach of the Supreme Court of Nepal. *See District Development Committee, Dang v. Suva Sandesh Poultry and Hatchery (Dillibahadur Dangi)*, N.K.P. 2078, Vol. 8, D.N. 10725 (Supreme Court) (Nepal) ("In a country governed by rule of law, tax cannot be levied or collected except with express authority of law." (authors' translation)).

[14] Simone M. Haug, "The United States Policy of Stringent Anti-Treaty-Shopping Provisions: A Comparative Analysis," 29(1) *Vand. L. Rev.* 191 (1996).

[15] Filing PIL matters in tax cases is not a new phenomenon. One is reminded of the verdict of the Ncell tax case *(Dwarika Nath Dhungel et al. v. Government of Nepal*, Decision No. 10163), in which a "group of civil society members" approached the Supreme Court to levy tax on offshore transactions. The case was decided against Axiata (acquirer of Ncell), and it was forced to pay about $348 million in taxes to Nepal. Further, after Axiata raised the issue in arbitration before the ICSID, the case was decided in favor of Nepal. (*Axiata Investments (UK) Ltd. and Ncell Private Ltd. v. Federal Democratic Republic of Nepal*, ICSID Case No. ARB/19/15.)

[16] The PIL seeks to quash the IRD decision dated Oct. 14, 2025, which had granted an exemption on tax on capital gains on the sale of shares of Jitumaya Suri Hydropower Ltd.

[17] Income Tax Act, section 73(5) 2058 B.S. (2002 A.D.) ("In cases where Subsection (4) is applicable, any of the following entities shall not be entitled to enjoy tax exemption or tax deduction facility: (a) An entity who is considered as a resident of the other party of the agreement for purposes of the agreement, and (b) Where Fifty percent or more portion of the vested ownership of that entity is owned by natural persons or by the entities in which any natural person has no interest and, for purposes of the agreement, the persons or entities are residents of both Nepal and of the other country party to the agreement.").

[18] Treaty Act, section 6 2047 B.S. (1991 A.D.) ("A treaty on any matters other than those as mentioned in Section 4 or Clause (2) of article 126 of the Constitution, may be signed as per the decision of Government of Nepal and Nepal or Government of Nepal shall be considered a party to that treaty, and such treaty shall be considered to have been accepted.").

[19] Income Tax Act, section 73(1) 2058 B.S. (2002 A.D.) states that "if any income of any person is taxable pursuant to this Act or the laws in force and the same income is also taxable in a foreign country, the Government of Nepal may conclude an international agreement with the foreign country for the avoidance of double taxation." The Mauritius-Nepal DTAA was signed when Income Tax Act, 2031 B.S. (1974 A.D.) was in effect. Section 48 of the same act empowered "His Majesty's Government to enter into an agreement with a foreign country to avoid double tax, if the income of any person was taxable as per the Act or laws of Nepal and was also taxable in the foreign country." Further, the power to enter into an agreement with foreign governments for the implementation of the act was also contained in the earlier ITA, 2019 A.D. (1962 B.S.).

[20] Vienna Convention on the Law of Treaties, art. 27 (1969) ("A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.").

[21] The argument that Nepal is bound by the DTAA but not bound by the VCLT seems contradictory at the first reading because both treaties have been signed by the government of Nepal but lack parliamentary ratification. The distinction lies squarely in art. 82 of the VCLT, which requires the compulsory ratification after signature as per art. 81. Corresponding provisions requiring mandatory parliamentary ratifications as stipulated in art. 82 of the VCLT are absent in the DTAA. (Art. 82 of VCLT states that "the present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.")

[22] Income Tax Act, section 73(5), *supra* note 7.

[23] *Azadi Bachao Andolan*, *supra* note 12.

[24] *Tiger Global*, *supra* note 3, at 10.

[25] *Tiger Global*, *supra* note 3, at 24.

[26] The observation of Justice R. Mahadevan that "for the treaty to be applicable, the assessee must prove that the transaction is taxable in its State of residence" finds no basis in law. Moreover, the departure from Circular no. 789, the precedent of *Azadi Bachao Andolan*, and the long-standing practice of treating the tax residency certificate as proof of residence have rattled investors. Last but not least, denial of the grandfathering clause under the Protocol for Amendment of the Convention for Avoidance of Double Taxation Between India and Mauritius, which was signed on May 10, 2016, and which provided for source-based taxation of capital gains arising from the alienation of shares acquired on or after April 1, 2017, signals the departure of the Supreme Court from established practices and raises concerns of instability and uncertainty in the tax regime. It seems that justices were more inclined to pass judgment based on their "patriotic duty" rather than on the text of the law.

END FOOTNOTES

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