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A Ryan LLC Affiliate

Flip Structures

Tax and Regulatory Framework

June 2026

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From our Chairman and CEO

Over the last few years, the conversation around "flip structures" has undergone a visible shift. For a long time, externalization was regarded as a natural milestone in the growth journey of Indian businesses seeking global capital or overseas expansion. Today, however, several prominent startups are undertaking the reverse journey, relocating their holding structures back to India as they prepare for public markets, regulatory alignment, and deeper domestic integration.

The growing list of businesses including PhonePe, Groww, Zepto, Meesho, Pine Labs, Razorpay and Dream11, pursuing this "Home Coming" trend, reflects how rapidly commercial priorities and regulatory realities are evolving. Yet, while the market narrative has changed, the underlying question remains the same: what is the most efficient and sustainable ownership structure for the next phase of growth?

The answer is extremely inter-twined in a web of regulatory, tax and commercial considerations. Decisions taken at the structuring stage can often have consequences that emerge much later, including at the time of fundraising, IPO, acquisition, or regulatory scrutiny. The cost of leaving any of these threads unresolved is rarely visible when the decision is made. It surfaces years later before an IPO, an acquisition, or a regulatory review, when the structure is far harder to unwind. The complexities are real, but they are also solvable, provided each dimension is identified, evaluated, and addressed in the right sequence and with the right documentation.

This publication examines both dimensions of the flip-structure discussion. Part 1 focuses on internalization and analyses the principal implementation routes such as share swap, slump sale, inbound merger, and liquidation. Part 2 addresses externalization structures, including demerger, share-transfer, and slump-sale models adopted by Indian businesses seeking overseas holding structures.

More importantly, this publication seeks to highlight a broader point. In today's environment, group structuring decisions can no longer be approached as isolated legal or tax exercises. They increasingly influence capital access, governance expectations, operational agility, and regulatory outcomes. As Indian businesses continue to scale globally and capital markets become more discerning, the ability to build structures that are commercially robust, regulatorily sustainable, and future-ready will become an increasingly important strategic differentiator.

We hope you will find this thought leadership publication useful and would be delighted to have your input/suggestions.

Warm regards,

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Part 1: Internalization

Introduction

Internalization, also referred to as reverse flipping, is the process by which Indian-origin startups initially incorporated abroad (e.g., Singapore, US, etc.) migrate their corporate domicile back to India. In recent times, this structural realignment has been driven by the strengthening of Indian capital markets, improved regulatory clarity, tax rationalization, and the increasing attractiveness of domestic IPOs.

Between 2023 and 2025, several unicorns and high-growth startups—including PhonePe, Zepto, Groww, Meesho, Pine Labs, and Razorpay—have undertaken a reverse flip.

This document provides a comprehensive analysis of the regulatory and tax frameworks governing reverse flipping, detailing the available structuring routes along with relevant statutory and regulatory provisions.

Historical Context

Historically, Indian startups were incorporated abroad for:

- Ease of international fundraising via foreign venture capital and private equity investors
- Global investor confidence in familiar offshore legal frameworks (Delaware LLC, Singapore Pte Ltd)
- Cross-border exit flexibility, particularly via NASDAQ or SGX IPOs

However, the growth of Indian capital markets, policy reforms under the Companies Act 2013, exchange control regulations, and SEBI regulations, and the emergence of deep domestic liquidity pools have shifted incentives towards Indian re-domiciliation.

Why Reverse Flipping is Gaining Momentum

While there are many reasons due to which reverse flipping is gaining momentum, our experience indicates the following key drivers:

Competitive Valuations in Indian Markets

Domestic IPOs are no longer second-best. For mid-to-large Indian consumer and fintech businesses, Indian exchanges often deliver competitive—or even superior—valuations versus offshore markets, particularly when most revenues, brand equity, R&D and customers are in India. Listing in India also improves alignment between where value is created and where it is recognized, with liquidity available in Indian currency for founders, employees, and early investors.

Regulatory Simplification

Regulatory simplification has reduced the "penalty" for staying, or coming back, onshore. Fast-track inbound merger routes, clearer rules for cross-border mergers and share swaps, and automatic approval pathways have shortened timelines that were once 15–18 months into more manageable windows.

Tax and Policy Incentives

Tax and policy incentives have become more deliberate. Provisions that allow tax-neutral inbound mergers, the removal of "angel tax" friction, and targeted regimes such as the IFSC–GIFT City tax holiday all signal a clear policy direction that India wants to be the natural home for high-growth Indian businesses. Flexibility to list in GIFT City provides additional benefits.

Offshore Holding Structure Complexities

Offshore holding structures often trigger complex, overlapping tax considerations across multiple jurisdictions (corporate tax, capital gains, indirect transfer rules, GAAR, CFC, and POEM regimes). This makes it necessary to demonstrate real commercial substance—such as independent directors, local key personnel, decision-making, and office infrastructure—in the foreign entity to mitigate treaty-abuse risks and aggressive tax scrutiny by tax authorities.

Personal Mobility Challenges

Founders face personal mobility challenges when their primary residence, family, and lifestyle are in India; but the group's ultimate parent is overseas. Board control, key management responsibilities, and fundraising expectations may require them to spend material time outside India, complicating residency status, exposing them to multi-country tax rules, and creating conflict between investor expectations and personal constraints.

Key Considerations for Reverse Flipping

Exit Tax

Exit tax generally refers to tax triggered when a person or company changes tax residency or moves assets out of a country, treating that move as if all assets were sold at fair market value on the date of exit. Many countries use exit tax to prevent residents from shifting to low-tax jurisdictions and avoiding capital gains that have economically accrued while they were taxable there.

Example: If the parent company is incorporated in the US from inception, migrating outside the US can trigger significant inversion and exit tax exposure under US tax law. Similarly, under Singapore tax laws, there may be tax implications under the Singapore Income Tax Act on any gains derived from disposal of shares in the Indian company. However, where the entity has adequate substance or is tax-incentivized, the same may be mitigated.

Hence, it is crucial to evaluate the implications of exit tax in the jurisdiction where the foreign company is located upon reverse flip.

Contract Continuity and Change-of-Control Provisions

Many commercial contracts include "change-of-control" clauses that can trigger on a reverse flip. Common issues that need to be addressed include:

Customer Contracts

SaaS/software licenses often include change-of-control restrictions or termination rights

Regulatory Licenses

Media, telecom, and fintech licenses may require re-approval post-ownership change

Debt Covenants

Lenders may require fresh approval for ownership restructuring

Lease deeds

Change-of-control restrictions prevalent in lease deeds for leasehold properties especially such properties leased by State Government

Before undertaking a reverse flip, such contracts must be analyzed and appropriately addressed.

ESOP Rollovers

Employees holding foreign company stock options must have those options rolled over to the Indian company's ESOP plan as part of the reverse flip. Mis-execution creates employee dissatisfaction and potential legal exposure, and this should be cautiously structured.

Multi-Jurisdiction Shareholder Complexities

When shareholders are spread across multiple countries (Singapore, US, UAE, UK, etc.), reverse flipping becomes more complex:

Tax Treaty Considerations

Each shareholder's country may have different tax claims on the transaction; treaty language determines taxing rights

Foreign Exchange Controls

A shareholder's home country may restrict repatriation of funds (especially common in FATF grey-list jurisdictions)

Withholding Tax Obligations

Different rates may apply based on shareholder residency and treaty eligibility

Valuation Currency

Fair value must be determined in consistent currency; exchange rate fluctuations impact gains

Exchange Control Regulations

Compliance with the prevailing exchange control regulations is a key consideration in any internalisation exercise. This includes adherence to pricing norms, sectoral caps, entry route restriction including specific norms for entity of a country that shares land border with India, reporting obligations, and the identification of any transaction-specific approvals or limitations that may impact the proposed structure.

Key Tax Considerations

Key tax considerations include:

- Tax consequences (such as capital gains, deemed income exposure, dividend etc.) pursuant to an internalisation / reverse flip
- Determination and continuity of acquisition cost and ownership tenure
- Transitional reliefs and applicability of tax treaty protections
- Approach to efficient distribution and upstream movement of funds
- Exposure under general and specific anti-abuse provisions

Stamp Duty

Stamp duty is a key cost element in an internalisation exercise and should be factored into the structuring analysis at the outset. Since stamp duty is a state-specific levy in India, the applicability and quantum can vary significantly depending on the nature of the transaction (e.g., business transfer, court-approved scheme), the location of the assets, and the relevant state legislation. Accordingly, stamp duty implications need to be evaluated on a case-to-case basis and appropriately planned for, as they may materially impact the overall transaction costs.

Common Methods for Reverse Flipping

Reverse flipping can be achieved through several routes, each with its own trade-offs. The following table provides examples of recent reverse-flips and the routes adopted by major companies:

Company	From Country	To Country	Main Mode
PhonePe	Singapore	India	Share-sale
Groww	US	India	NCLT approved inbound merger
Razorpay	US	India	Fast-track inbound merger
Zepto	Singapore	India	NCLT approved inbound merger
Meesho	US	India	NCLT approved inbound merger
Pine Labs	Singapore	India	NCLT approved inbound merger
Dream11	US	India	Fast-track inbound merger

At a high level, four broad methods are commonly used:

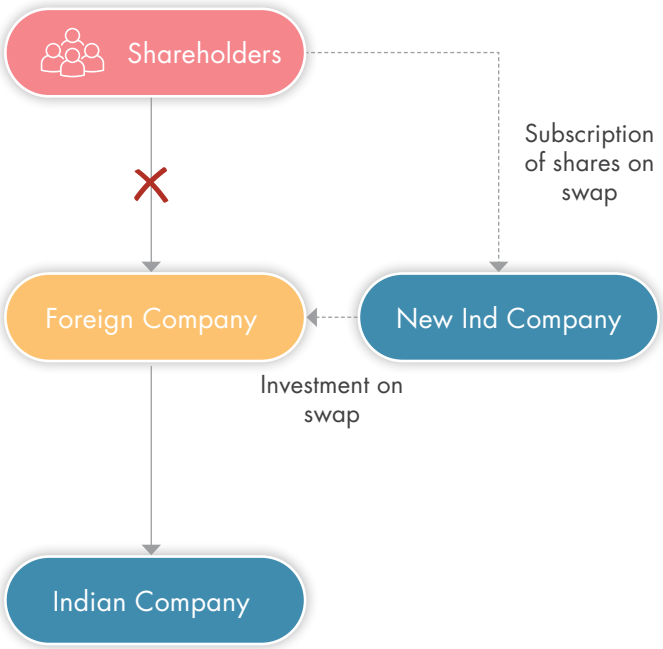
- **Share swap (or direct share sale):** Shareholders exchange shares directly for shares in a newly created Indian company
- **Slump sale:** Business undertaking transferred to new Indian company
- **Inbound merger:** Merger of foreign holding company into Indian subsidiary company
- **Liquidation:** Liquidation of foreign holding company with distribution of underlying Indian company shares

The following sections briefly discuss tax and regulatory implications of implementing each method.

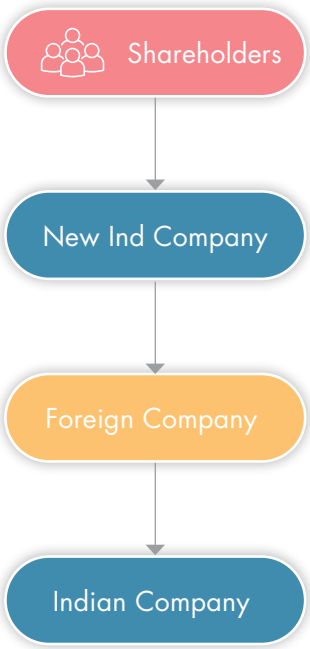
Share Swap (or Direct Share Sale)

In a share swap transaction, shareholders of the foreign holding company exchange their shares directly for shares in a newly created Indian company. The Indian company becomes the new holding company; the foreign company becomes its subsidiary and may later be liquidated or merged.

Proposed Structure



Resultant Structure



Key Implications for Shareholders

Tax on share transfer

Any transfer of foreign company shares by resident shareholders in consideration of Indian company shares is a taxable transaction triggering capital gains for the resident shareholders. Fair market value (FMV) of the shares of the Indian company is treated as consideration. For non-resident shareholders, a tax event is triggered only if the foreign company derives substantial value from India. Tax treaty benefits may be available to non-resident shareholders.

Indian tax law prescribes a valuation framework that is primarily based on the intrinsic value of the company, with adjustments for specified assets such as immovable property, jewelry, and securities. The fair market value of preference shares is determined based on the price such shares would ordinarily fetch if sold in the open market on the valuation date.

Where the transaction involves a non-resident associated enterprise, the Indian transfer pricing provisions would apply. In such cases, the transaction is required to be undertaken at arm's length and is subject to the prescribed transfer pricing documentation, disclosures, and compliance requirements.

Further, the applicability of tax withholding or collection on the share transfer is primarily dependent on the residential status of the seller.

Exchange Control Regulations

To the extent the structure involves a transfer of shares between a non-resident and a resident shareholder, the pricing guidelines under extant exchange control regulations must be adhered to.

Key Implications for New Indian Company

Tax on Issue of Own Shares and Purchase of Foreign Company Shares

The Indian company will not be liable to any taxes on the issue of shares.

With respect to purchase of shares, the difference between the FMV of shares of foreign company (determined as per the Indian tax law) and the actual price paid (i.e., FMV of shares of issued by New Indian Company), if any may be treated as "income from other sources" and taxed accordingly. However, if the FMV of shares issued by the New Indian Company is adequate to compensate for the FMV of the foreign company's shares, there should be no income which is taxable in the hands of the New Indian Company.

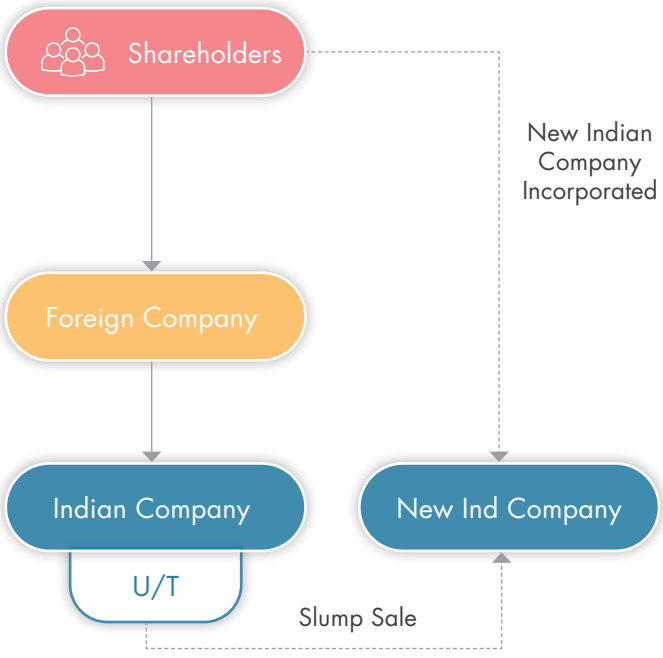
Exchange Control Regulations

The issuance of equity instruments by an Indian company to persons resident outside India, in consideration of the exchange of equity instruments of a foreign entity, is permissible under extant exchange control regulations. Accordingly, any such share swap transaction shall be subject to compliance with applicable pricing guidelines, sectoral caps, entry route restrictions, and reporting obligations as mandated under extant exchange control regulations. Upon completion of the share swap, the new Indian company becomes the holding company of the foreign entity and is thus governed by overseas investment provisions.

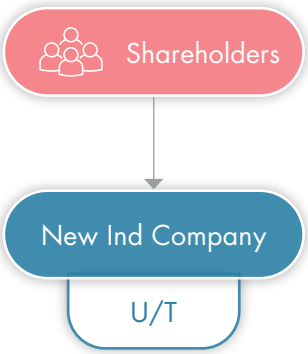
Slump Sale

In a slump sale, the business undertaking of an Indian company is transferred to a new Indian company. This results in foreign investors becoming direct shareholders in the Indian company.

Proposed Structure



Resultant Structure



Key Implications for the Seller

Tax on Transfer

In a slump sale, the seller Indian company is liable to pay tax on gains derived from the transfer of the business undertaking at the applicable rates based on the period for which the business undertaking has been held.

- **Long-term holding (>36 months):** The applicable rate of tax is 12.5% (excluding surcharge and cess)
- **Short-term holding (≤36 months):** Gains are treated as short-term capital gains and charged to tax at normal applicable rates

Mode of Computation of Profits on Slump Sale:

Capital gains on slump sale = Sale consideration – net-worth of the undertaking

Sale Consideration: The sale consideration for a slump sale is the higher of:

- **FMV 1:** FMV of the adjusted net asset value
- **FMV 2:** Amount of the consideration received

Net-worth

Net worth of undertaking = Tax written down value of depreciable assets + Book value of other assets and liabilities

Tax Withholding

There should not be any withholding tax requirement on transfer of business undertaking by one Indian company to another Indian company.

Other Considerations

- **Cost Base Step-up:** Shareholders do not get a stepped-up cost base in their shares merely because the business was transferred for a lump sum consideration. However, the asset acquired by the new Indian company must be recognized as per a purchase price allocation report, thereby enabling cost step-up in the tax books of the acquirer Indian company.
- **Cash Repatriation:** Cash consideration discharged by the new Indian company to the existing Indian company for slump sale gets trapped in the existing Indian company. Consequently, repatriation of such cash leads to further tax costs.

Inbound Merger

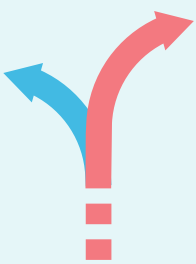
In a merger, two or more companies combine to form a single company. All assets, liabilities, and employees of the merging company (transferor) move to the new or existing company (transferee), and the transferor company automatically dissolves after the merger. In exchange, the shareholders of the transferor company receive shares from the transferee company to qualify for tax neutrality.

In 2017, Section 234 of the Companies Act, 2013 was notified, allowing both inbound and outbound mergers under specific conditions. Inbound mergers may be undertaken through two routes: (i) the National Company Law Tribunal ("NCLT") route, and (ii) the fast-track merger route. Each of these routes is discussed below:

Two Primary Routes

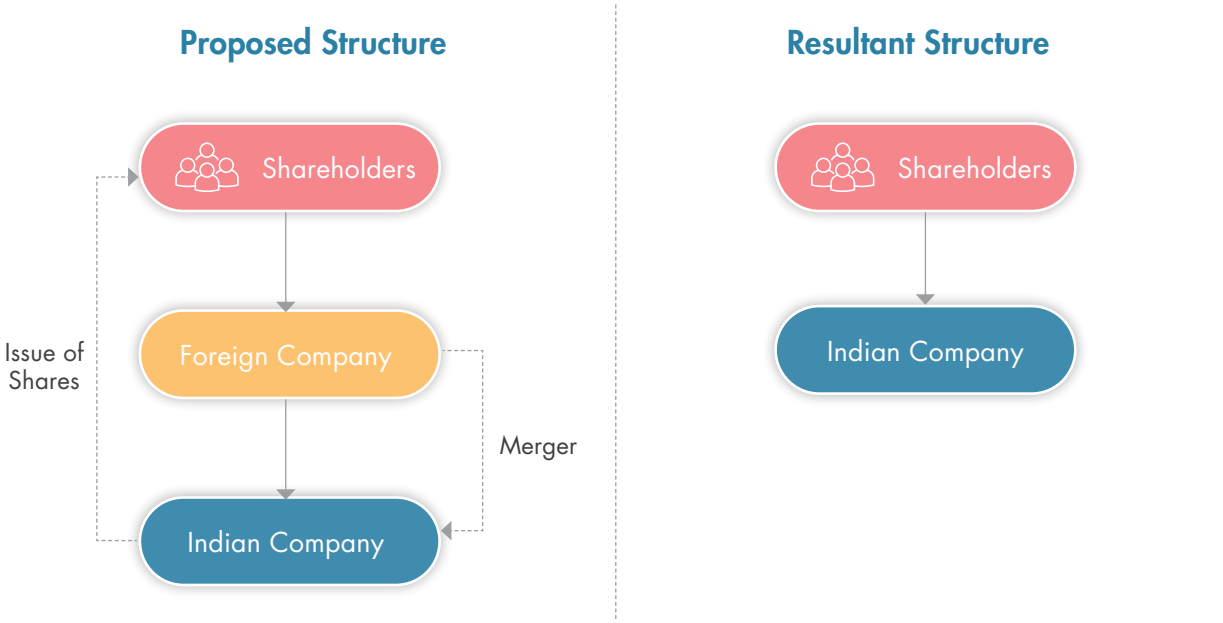
National Company Law Tribunal Route

The merger requires approval from the NCLT and must follow the same procedures as domestic mergers, such as filing with the NCLT, conducting shareholder and creditor meetings, and notifying tax and regulatory authorities.



Fast-Track Merger Route

Fast-track approval under Section 233 of the Companies Act, 2013 inter-alia allows schemes for cross-border merger of an overseas holding company into its wholly owned Indian subsidiary, making reverse flip more flexible.



Key Tax Implications

Tax on Transfer

Definition under Tax Laws

Under the Income-tax Act, a merger (referred to as an "amalgamation") is defined as such if it fulfills the following conditions:

- All assets and liabilities of the transferor entity are transferred to the transferee entity; and
- At least three-fourths of the shareholders of the transferor entity in value become the shareholders of the transferee entity

In the event the transferee company is a shareholder in the transferor company, no shares are required to be issued by the transferee company in lieu of such shares on amalgamation.

Tax Implications in the Hands of the Transferor Entity

Where the aforementioned conditions are met and the transferee entity is an Indian company, such "amalgamation" is not to be regarded as a transfer per domestic tax laws. Hence, the inbound merger would be tax-exempt in the hands of the transferor (i.e., foreign company) since the resultant company is an Indian company.

Tax Implications in the Hands of the Shareholders of the Transferor Entity

In an amalgamation, shareholders of the transferor entity receive shares in the transferee entity in lieu of their shareholding in the transferor entity. Under Indian tax laws, any transfer of shares in the transferor entity by the shareholders in an amalgamation is not liable to capital gains tax upon fulfillment of the following conditions:

- The shareholders of the transferor entity receive only shares in the transferee company in consideration of the transfer; and
- The transferee entity is an Indian company

Similarly, the transfer would also be exempt in the hands of foreign shareholders upon transfer of shares of the transferor company since the transferee company is an Indian company.

Additionally, similar to a domestic merger, the cost base and period of holding with respect to the shares of the Indian transferee company received by the shareholders on merger would include the cost and period of holding of the shares of the foreign transferor company.

Approvals under Indian Company Law

Under Indian company law, the merger scheme must be approved by the majority of shareholders and creditors, constituting 75% in value, of those present and voting in the NCLT convened meetings of shareholders and creditors (unless dispensed with).

Additionally, a notice with details of the scheme must be sent to the Indian income tax authorities. Approval is required from the Ministry of Corporate Affairs and the Official Liquidator (OL). Sectoral regulators' approval may also be required, as per applicable regulations.

However, a fast-track merger requires approval from creditors constituting 90% in value for the merger approval from the authorities.[1]

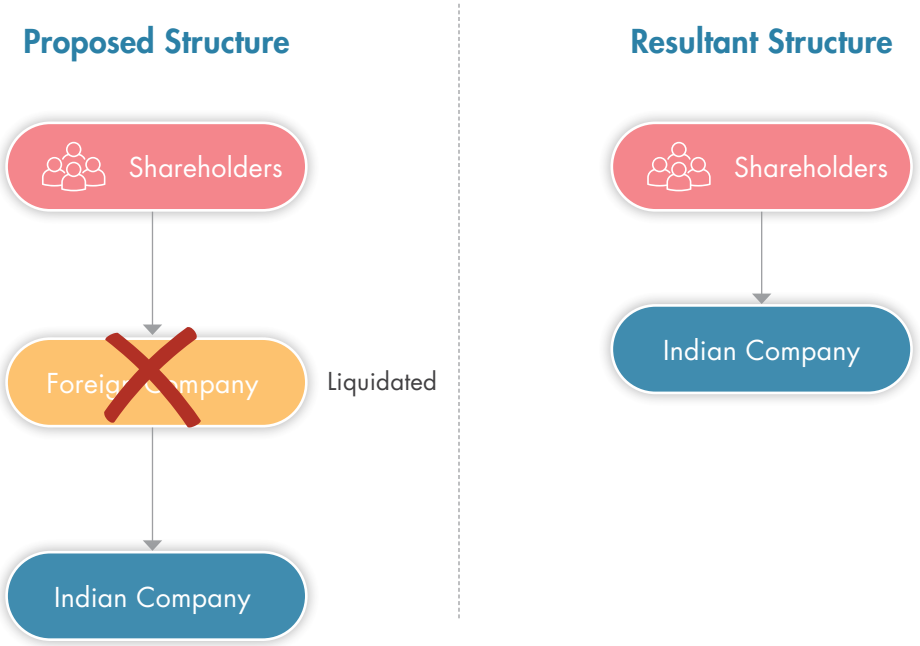
Exchange Control Regulations

The RBI has notified regulations wherein "deemed approval of RBI" is granted in cases where cross-border mergers adhere to the conditions as prescribed.

However, the applicability of this deemed approval framework to inbound mergers undertaken through the fast-track merger route had remained uncertain. The Reserve Bank has now addressed this issue through Notification No. FEMA 389(1)/2026-RB dated 29 May 2026, expressly extending the benefit of deemed approval to inbound fast-track mergers as well.

Liquidation of Foreign Company

Liquidation of the foreign company results in the distribution of shares of the underlying Indian company to the shareholders.



1. The threshold of 90% is proposed to be reduced to 75% vide the Corporate Laws (Amendment) Bill, 2026 ('Bill'). As on the date of this publication, the Bill has not be notified.

Key Tax Implications

Tax on Distribution

Taxability in the Hands of Shareholders

As per the provisions of the Indian tax laws, subject to the availability of tax treaty benefits, when a shareholder receives any money or other assets (including shares) from a company on its liquidation, such receipt is taxed as follows:

- The portion of the distribution attributable to the accumulated profits of the liquidating company immediately before its liquidation is treated as dividend income in the hands of the shareholder.
- The balance amount (i.e., the excess of the market value of the shares of the Indian company received over the amount assessed as dividend and the original investment) is chargeable to tax as capital gains in the hands of the shareholder.

Computation of Capital Gains

For capital gains purposes, the full value of consideration is the market value of the shares of the Indian company on the date of distribution, reduced by the amount assessed as dividend.

The cost of acquisition and period of holding are determined as per applicable provisions. Specifically, for shares received on liquidation, the cost of acquisition is generally the amount paid for acquiring the shares in the liquidating company.

Withholding tax implications in the Hands of the Distributing Company

In a scenario where capital gains tax implications arises in the hands of the shareholders as discussed above, the foreign company may be liable to withhold tax on the proportionate capital gains income subject to availability of benefits under the relevant tax treaty.

Other Alternative Methods

While the aforementioned options can be evaluated to achieve a reverse flip, there may be additional options, such as:

- **Capital reduction:** Reduction of capital base followed by distribution of assets to shareholders
- **Dividend distribution in kind:** Distribution of assets to shareholders as dividend in kind

These options should be evaluated in detail to determine which method achieves the objective most efficiently.

Quick Comparison Matrix: Reverse Flip Routes

Parameter	Share Swap	Slump Sale	Inbound Merger	Liquidation
Timeline	Quick	Fairly quick	Time-consuming (unless fast-track)	Depends on jurisdiction
Tax Efficiency	Taxable; Shareholder (seller) pays capital gains	Taxable; Indian transferor company (seller) pays capital gains	Tax-neutral if conditions met	Taxable: Tax on dividend and capital gains in the hands of shareholder
NCLT Approval Required	No	No	Yes (unless fast-track)	No
Cost Base Preservation	Yes	No	Yes	Yes
Complexity	Low	Medium	High	Medium

Part 2: Externalization

Background

Externalization as a concept refers to flipping the ownership of an Indian company to an overseas holding company. It is an involved exercise entailing tax and regulatory considerations that need to be planned efficiently. Global business models, the need for overseas capital, the availability of a deeper investor pool, better valuations, and stronger intellectual property laws have resulted in many companies choosing to externalize their holding structure over the last many years.

The key discussion points around externalization—the need for externalization, the areas warranting attention, and potential structures—have been outlined below.

Commercial Drivers and Strategic Rationale for Externalization

Access to Global Capital Markets

The primary driver for externalization continues to be access to global investor pools, especially venture capital and private equity funds that primarily invest via offshore vehicles. Institutional investors often operate under foreign-law-governed Limited Partnership Agreements (LPAs), rendering direct investments into Indian companies administratively burdensome and operationally inefficient.

Global Business Operations

Where the majority of business is in overseas markets, an externalized structure may be more suitable.

Valuation Arbitrage

Generally, offshore holding companies, particularly those incorporated in developed markets, command premium valuations—a phenomenon reflecting investor preferences for regulatory maturity, ease of exit, and tax certainty.

Intellectual Property Migration and Consolidation

Many Indian technology and consumer companies generate significant intellectual property (IP), including patents, trademarks, domain names, algorithms, and proprietary methodologies. Consolidating this IP within an overseas holding company structure facilitates:

- Centralized IP licensing to subsidiaries globally
- Optimized transfer pricing for IP utilization fees
- Simplified licensing arrangements with international partners
- Enhanced protection under international IP treaties

M&A and Exit Flexibility

Externalization substantially simplifies acquisition strategies and exit mechanisms. Overseas holding companies can execute cross-border M&A transactions with minimal friction in view of more developed tax and regulatory regimes. Additionally, externalized structures enable companies to list on overseas stock exchanges for raising funds or effecting exits.

Key Considerations for Externalization

Choice of Holding Company Jurisdiction

The choice of holding company jurisdiction should factor in:

- Access to a deep global investor pool
- Availability of experienced talent and advisors
- Ability to reach target markets
- Access to list on global capital markets (such as NASDAQ, SGX etc.)
- Local tax incentives
- Robustness of corporate, financial and regulatory framework

Exchange Control Regulations

Individual Investor Constraints

Indian individual investors are constrained by the Liberalised Remittance Scheme and Overseas Direct Investment (ODI) rules, including caps on how much they can invest offshore and restrictions on investing in overseas entities that themselves have, or intend to have, downstream investments.

Corporate SPV Constraints

Corporate/LLP SPVs must observe net-worth-linked ODI limits, layering restrictions, and sectoral Foreign Direct Investment (FDI) conditions.

Round-trip Avoidance

Externalization could create a structure where an overseas Holdco (with Indian and foreign investors) holds or will hold an Indian operating company, so any "round-trip" (India > overseas > India) configuration must be demonstrably driven by commercial needs and be fully compliant with the Indian regulations.

Key Tax Considerations

Key tax considerations include:

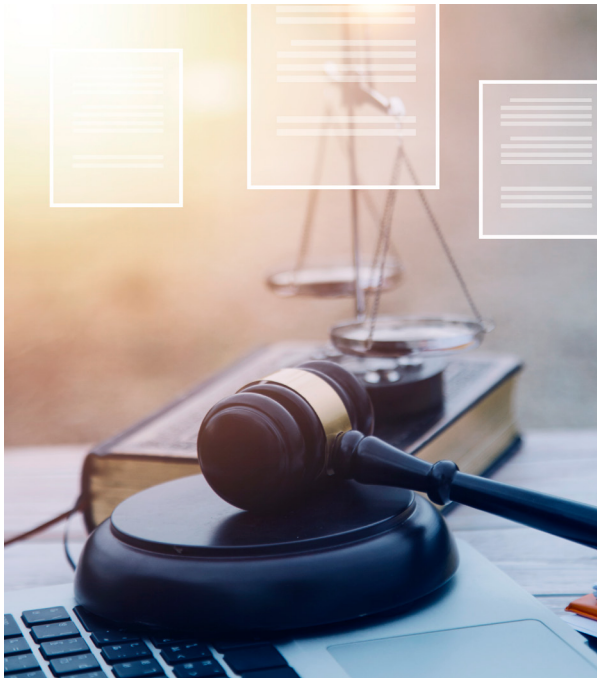
- Capital gains tax on the initial flip
- Preservation or step-up of cost base and holding period
- Grandfathering and treaty benefits
- Post-flip exposure on offshore share transfers under India's indirect transfer rules
- GAAR and other anti-avoidance provisions
- Transfer pricing and capital gains issues where IP and other intangibles are migrated overseas and must be supported by arm's-length valuations

Real Commercial Substance

The overseas Holdco must have independent board control, decision-making, employees, premises, and functions to withstand treaty-shopping, POEM and anti-abuse challenges. Additionally, ESOPs and employment arrangements need careful planning.

Stamp Duty

Stamp duty represents a significant transactional cost in restructuring exercises and must be built into the commercial evaluation of the structure. Given that stamp duty is governed by state-specific legislation, its applicability and rate depend on the nature of the transaction and the location of assets, requiring a case-by-case assessment.

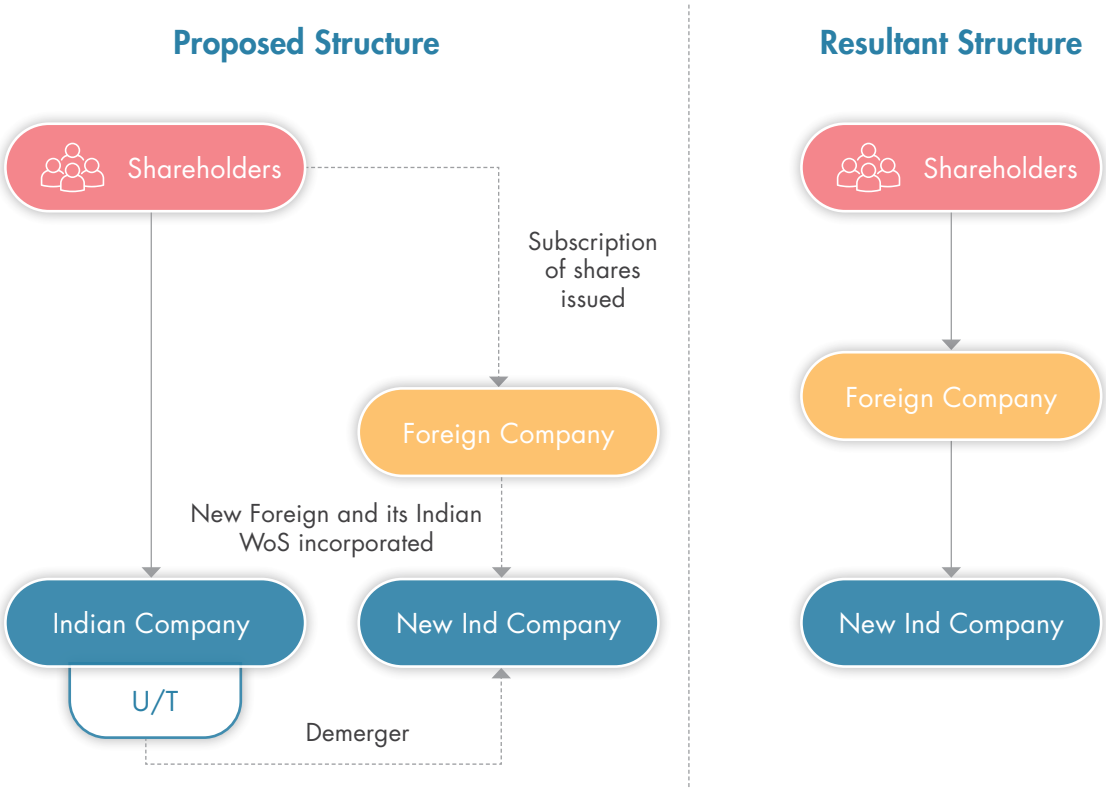


Prevalent Externalization Structures

Demerger

In a demerger route, a foreign holding company is incorporated in the overseas jurisdiction. The foreign holding company subsequently incorporates an Indian subsidiary, which becomes the proposed "resulting company."

The business undertaking in the existing Indian company (i.e., demerged company) is transferred to the Indian subsidiary of the foreign holding company pursuant to an NCLT-approved scheme of arrangement under Sections 230–232 of the Companies Act, 2013. In consideration, shares of the foreign holding company are issued to the shareholders of the demerged company.



Tax Implications

A demerger is tax-exempt in the hands of the shareholders and demerged company if the conditions prescribed under domestic tax laws are satisfied.

One of the key conditions for availing this tax neutrality is that the resulting company must issue its shares to the shareholders of the demerged company on a proportionate basis as consideration for the demerger and the undertaking from the demerged company must be transferred to the Indian company. An exception to the former condition is provided where the resulting company itself is a shareholder of the demerged company.

In case of issuance of shares by the foreign holding company, an interpretational issue arises on whether the foreign holding company qualifies as a resulting company or not. With adequate planning, one could evaluate the tax neutrality on such demergers.

Exchange Control Regulations

Where shares are issued by a non-resident company to a resident, such issuance should be based on a valuation determined using an internationally accepted pricing methodology, and is subject to relevant reporting through the authorized dealer banker.

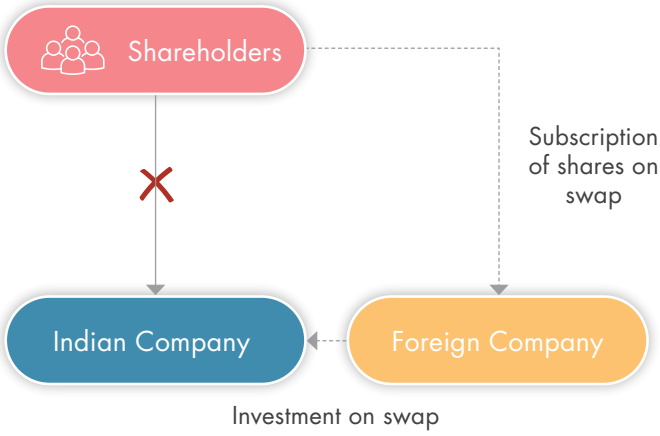
In addition, exchange control regulations restrict direct investments by Indian individuals in overseas entities that have subsidiaries or step-down subsidiaries. Accordingly, companies must ensure strict compliance with these regulations, as any non-compliance could lead to regulatory scrutiny by the RBI. Further, the LRS limits applicable for resident individuals also need to be carefully considered.

Direct Share Transfer/Share Swap

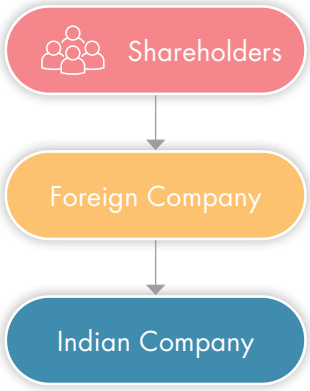
In a direct transfer or share-swap structure, shareholders of the Indian company transfer their shares to a foreign holding company against either monetary consideration or issue of shares of the foreign company. This route repositions ownership of the Indian entity offshore without altering the legal identity of the Indian operating company.

Shareholders execute a share transfer agreement. The foreign holding company becomes the immediate parent of the Indian entity upon completion of the transfer. Cross-border voting, management, and control rights transition to the offshore parent.

Proposed Structure



Resultant Structure



Tax Implications

Taxation for Shareholders

Any transfer of Indian company shares by non-resident and resident shareholders in consideration of foreign company shares is a taxable transaction triggering capital gains for the shareholders. Fair market value of the shares of the foreign company is treated as consideration. Tax treaty benefits are available to non-resident shareholders.

The foreign holding company would be required to withhold tax on distributions made to non-resident shareholders at the applicable rates and deposit the same with the tax authorities. In respect of resident shareholders, the foreign company may consider adopting a position that it is not required to withhold tax under the provisions of the Income-tax Act.

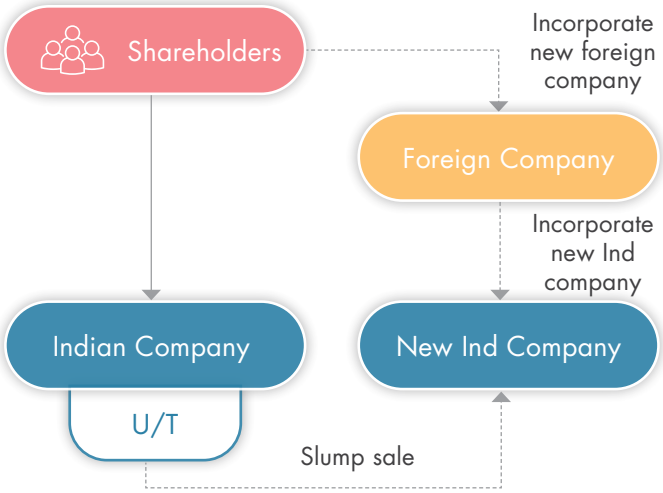
Exchange Control Regulations

Where shares are transferred from a resident to a non-resident, pricing rules must be adhered to, and reporting through the authorized dealer bank is required. Acquisition of foreign company shares by Indian residents must be consistent with the Overseas Investment Rules and Directions, 2022, including valuation and financial commitment limits.

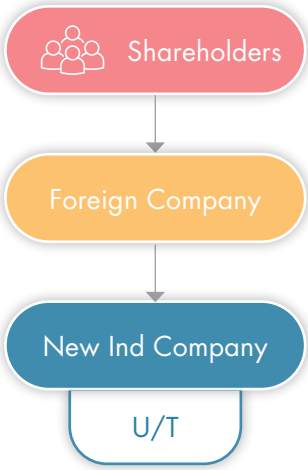
Slump Sale

In a slump sale transaction undertaken as part of an externalization structure, the business undertaking of an Indian company is transferred to an Indian wholly-owned subsidiary of the foreign company.

Proposed Structure



Resultant Structure



Tax on Transfer

In a slump sale, the Indian company (seller) is liable to pay tax on the gains arising from the transfer of the business undertaking to the new Indian company. The taxability depends on the period for which the undertaking has been held.

- **Long-term holding (>36 months):** Gains qualify as long-term capital gains and are taxable at 12.5% (excluding applicable surcharge and cess)
- **Short-term holding (≤36 months):** Gains are treated as short-term capital gains and are taxable at normal applicable rates

Mode of Computation of Profits on Slump Sale

Capital gains on slump sale = Sales consideration – net-worth of the undertaking

Sale Consideration

The sale consideration for a slump sale is the higher of:

- **FMV 1:** FMV of the adjusted net asset value
- **FMV 2:** Amount of the consideration received

Net-worth

Net worth of undertaking = Tax written down value of depreciable assets + Book value of other assets and liabilities

Tax Withholding

There is no withholding tax requirement on transfer of business undertaking by one Indian company to another Indian company.

Post-slump sale, the Indian company may be liquidated or merged into another group entity subject to regulatory approvals and commercial considerations.

Other Alternative Methods

While the aforementioned options can be evaluated to achieve externalization, there may be additional options, such as:

Merger

Merger of existing Indian company with a new Indian company set up under a foreign holding company and issue of preference shares.

Buyback of shares

Interposing a new foreign holding company and buying back of shares from existing shareholders.

Capital reduction

Interposing a new foreign holding company and cancelling shares from existing shareholders via capital reduction.

These options should be evaluated in detail to determine which method achieves the objective most efficiently."

Quick Comparison Matrix: Externalization Routes

Parameter	Demerger	Share-swap/Share Transfer	Slump Sale
Timeline	Time-consuming (unless fast-track)	Quick	Fairly quick
Tax Efficiency	Tax-neutral if conditions met	Taxable; shareholders (seller) pay capital gains	Taxable; Indian company (seller) pays capital gains
NCLT Approval Required	Yes (unless fast-track)	No	No
Cost Base Preservation	Yes (preserved)	Yes (preserved)	No
Complexity	High	Low	Medium

Concluding remarks

Both internalization and externalization are transformative events that fundamentally alter a company's legal and economic DNA. While the drivers may differ—seeking domestic market alignment in one, or global capital access in the other—the execution risks are similar.

To navigate these complex exercises successfully, companies must address critical areas, such as:

Evaluate all available routes and compare trade-offs

There is no single "best" path; the choice of structure depends on the company's specific priorities regarding timeline, tax leakage, and continuity.

For Internalization: Companies must weigh the speed of a Share Swap (which is quick but triggers immediate capital gains tax for shareholder) against the tax neutrality of an Inbound Merger (which preserves cost base but takes few months via the NCLT or fast-track route). Other options like Slump Sale or Liquidation offer intermediate timelines but come with their own tax inefficiencies, such as "trapped cash" or dividend taxes.

For Externalization: The choice often lies between a Demerger (tax-neutral if conditions are met, but complex) and a Direct Share Transfer (simple to execute but tax-inefficient for shareholders).

Assess exit tax and jurisdictional implications

Moving a company's domicile is often treated by tax authorities as a "deemed sale" of assets.

Exit Tax Risks: Jurisdictions like the US or Singapore may levy significant exit taxes on unrealized gains when a company migrates assets or residency to India.

Substance Requirements: To mitigate claims of treaty abuse or aggressive tax avoidance (GAAR), the offshore entity must demonstrate "real commercial substance"—including independent directors, local key personnel, and office infrastructure—rather than existing solely as a shell.

Review all material contracts for change-of-control provisions

A reverse flip or externalization effectively changes the ultimate parent of the operating entity, which can inadvertently trigger termination clauses.

Commercial Risks: SaaS and software license agreements often contain "change-of-control" restrictions that require renegotiation.

Financing & Licensing: Lenders may demand fresh approval for ownership restructuring under debt covenants, and regulated sectors (media, telecom, fintech) may require re-validation of operating licenses.

Plan carefully for ESOP rollovers and employee retention

Employees are major stakeholders in startups, and their equity incentives must survive the transition intact.

Existing options in the foreign entity must be "rolled over" to the new Indian entity (or vice versa). Poor execution here can lead to legal exposure and significant employee dissatisfaction if the value or vesting terms are negatively impacted.

Manage multi-jurisdiction shareholder complexities

Share Capital tables often include a mix of founders, angels, and institutional funds spread across globe. Each shareholder's tax liability depends on their residency and the specific tax treaty (DTAA) between their country and India; hence, the restructuring entity must determine the correct withholding tax rates, which vary by jurisdiction and treaty eligibility.

Ensure compliance with all exchange control regulations

India's exchange control regulations impose strict boundaries on cross-border transactions.

The above corporate restructuring is not merely a legal filing; it is a strategic maneuver and 'once in a lifetime event' for corporates that impacts every facet of the business—from tax liabilities and shareholder value to operational continuity. Given the interplay of the Companies Act, Income-tax Act, and exchange control regulations, engaging professional tax and legal guidance is essential to avoid costly pitfalls and ensure a seamless transition.

About Dhruva Advisors

Dhruva Advisors India Pvt. Ltd., a Ryan LLC affiliate, is a leading tax and regulatory advisory firm delivering high-impact solutions across India and key global markets. In a rapidly evolving tax environment, we help clients navigate complexity with clear, practical, and insight-driven guidance.

Founded in 2014, Dhruva has grown into one of India's most respected tax firms, operating from 12 offices across India and international locations in Dubai, Abu Dhabi, Saudi Arabia, and Singapore. Our leadership team includes 29 Partners, 9 Senior Advisors, 17 Associate Partners, and 43 Principals, supported by nearly 500 professionals with deep technical expertise and a strong commitment to client outcomes.

Dhruva Advisors has been consistently recognized by International Tax Review, earning the 'India Tax Firm of the Year' award for five consecutive years (2017–2021) and maintaining a 'Tier 1' ranking through 2026. These accolades reflect our focus on accountability, innovation, and a client-first mindset.

Our expertise spans tax disputes, global structuring, advisory, and regulatory strategy. We support clients across industries including Aerospace & Defense, Agro & Chemicals, Automotive, Conglomerates, Education, Energy & Resources, Financial Services, Healthcare, IT & ITeS, Manufacturing, Pharma & Life Sciences, Private Equity, Real Estate, Transportation, Telecom, and Media.

Wherever tax complexity exists, Dhruva delivers clarity.

Our recognitions

Dhruva Advisors has consistently been ranked as 'Tier 1' firm in General Corporate Tax, Indirect Tax, and Transfer Pricing, maintaining top-tier rankings through 2026.

Awarded 'India Tax Firm of the Year' at the ITR Asia Tax Awards for five consecutive years (2017–2021).

Recognized as the 'India Disputes and Litigation Firm of the Year' at the ITR Asia Tax Awards in 2018 and 2020.

Dhruva Consultants achieved ITR World Tax Ranking 2026:

- Tier 1 – Indirect Tax
- Tier 2 – General Corporate Tax, Transfer Pricing, Transactional Tax
- Other Notable: Tax Controversy

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