

India, France sign protocol to amend double taxation treaty

END TO DISPUTES. Most-favoured nation clause has been deleted from the protocol

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India and France have signed the protocol to make changes to the Double Taxation Avoidance Convention (DTAC), said the Central Board of Direct Taxes (CBDT) on Monday.

According to a statement by the board, the amending protocol provides full taxing rights in respect of capital gains arising from sale of shares of a company to the jurisdiction where the company is situated. It deletes the so-called most-favoured nation (MFN) clause from the protocol to the DTAC, thereby bringing to rest all issues relating to it.

DIVIDEND TAX

The amending protocol modifies the taxation of income from dividends by replacing a single rate of 10 per cent of tax, with a split rate of 5 per cent for those holding at least 10 per cent of capital and 15 per cent of tax for all other cases. It also modifies the definition of fees for technical services by aligning it with the definition in India US Double Taxation Avoidance Agreement, and expands the scope of permanent establishment by adding service PE.

The amending protocol updates the provisions on exchange of information and introduces a new article on assistance in collection of taxes, according to international standards. "This will

NEW FRAMEWORK

- Provides full taxing rights in respect of capital gains arising from sale of shares of a company, to the resident jurisdiction of the company
- Modifies the taxation of income from dividends by replacing a single rate of 10% of tax with a split rate of 5% for those holding at least 10% of capital and 15% for all other cases
- Tweaks the definition of fees for technical services by aligning it with the definition in India-US DTAA, and expands the scope of 'permanent establishment' by adding service PE clause



facilitate seamless exchange of information and strengthen mutual tax co-operation between India and France," said the statement.

The changes introduced through the amending protocol will come into effect subsequent to the completion of internal procedures under the laws of both the countries and subject to the terms agreed between the two countries.

"The amending protocol updates the India-France DTAC to the latest international standards, in a manner that balances the interests of India and France, and updates it in accordance with international standards," it said.

INVESTMENT FLOW

Further, it will provide greater tax certainty to the taxpayers and boost flow of investment, technology and personnel between India and

France, the statement concluded.

Commenting on the development, Manoj Purohit, Partner at BDO India, said France was one of the few countries that offered exemption to a French resident on investments made in equity shares of Indian companies.

The proposed amendment which is expected to tax gains without the erstwhile limit of 10 per cent will surely have some reaction from the capital market and the investor community.

"Considering the kind of gains the Indian capital market has been offering over the years to its investors, the taxing of gains could have only a marginal impact, as the investor community would still look at India as its preferred investment destination," he said.

According to Abheet Sachdeva, Partner at Nangia

Global, the proposal to bifurcate dividend withholding tax under separate slabs namely, 5 per cent (where investor/ shareholder holds 10 per cent or more capital) and 15 per cent otherwise, will serve as an impetus to attract French FDI to India, and enable existing as well as potential French firms to upstream higher net-India tax profits back to the home country.

COURSE CORRECTION

Sonam Chandwani, Managing Partner at KS Legal & Associates, said the amendment to the India-France DTAC represents a decisive and overdue course correction that excises the MFN clause, a provision that had become a litigation minefield following the SC's landmark ruling in Nestle SA (2023), where it held that MFN benefits under tax treaties do not flow automatically without a separate notification under Section 90 of the Income Tax Act.

Aditya Bhattacharya, Partner, King Stubb & Kasiva, Advocates and Attorneys, said the amendment brings the treaty in line with the deletion of the MFN clause in a major clarity measure and closes the door on long-standing interpretational disputes besides reducing litigation, giving both taxpayers and the administration a more predictable framework.

With inputs from Suresh Plyengar, Mumbai