

# India, France amend tax treaty, remove MFN clause

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India and France have signed an Amending Protocol to their bilateral Double Taxation Avoidance Convention (DTAC) that is expected to provide greater certainty to taxpayers, boost cross-border investment, flow of technology and personnel between both the countries. The protocol proposes changes to dividend taxation, capital gains rules and the most-favoured nation (MFN) clause, among others.

The protocol was signed here by Ravi Agrawal, Chairperson of the Central Board of Direct Taxes (CBDT), and Thierry Mathou, Ambassador of France to India, during the recent visit of French President Emmanuel Macron, according to a finance ministry press statement.

Among the significant changes, the taxation of dividends will now follow a two-tier structure instead of the existing flat 10 per cent withholding tax rate. Dividends will attract 5 per cent tax for shareholders holding at least 10 per cent

of the company's capital and 15 per cent in all other cases, subject to the protocol's entry into force. Under the current treaty, dividends paid from India are subject to 10 per cent withholding tax, with scope for reduction through the most-favoured nation (MFN) clause.



**AMONG THE CHANGES, THE TAXATION OF DIVIDENDS WILL NOW FOLLOW A TWO-TIER STRUCTURE INSTEAD OF THE EXISTING FLAT 10% WITHHOLDING TAX RATE**

The Amending Protocol now deletes the MFN clause that existed both in Article 7 of the treaty and in the protocol itself, thereby ending long-standing interpretational disputes that had reached the Supreme Court. The court had ruled that MFN benefits require a separate government notification, creating uncertainty for taxpayers.

Abheet Sachdeva, partner-M&A tax at Nangia Global, said the protocol serves the twin objectives of resolving treaty-benefit ambiguities and achieving equitable distribution of taxing rights.

“The dividend rate rationalisation, coupled with deletion of the MFN clause, will provide a clear impetus for French foreign direct investment (FDI) into India. At the

same time, full capital gains taxing rights with the source state is an important balancing measure that protects Indian revenue,” he noted.

For fees for technical services (FTS), the 10 per cent rate remains unchanged, but the definition has been narrowed and aligned with the more precise wording used in the India-US DTAC.

The treaty now introduces a Service Permanent Establishment (PE) provision, whereby services performed in India beyond agreed thresholds for related or unrelated parties will trigger PE and source-country taxation of attributable profits.

According to the official FAQs, the protocol incorporates all relevant base-erosion and profit shifting (BEPS) Multilateral Instrument provisions already applicable between the two countries, including modification of the preamble, introduction of the Principal Purpose Test to prevent treaty abuse, an anti-fragmentation rule, and updates to dependent agent PE rules. It further strengthens administrative cooperation by updating the exchange of information article and introducing a new article on assistance in collection of taxes as per global standards. Exemptions on interest income for certain French entities have been retained, while royalties taxation remains untouched.