

# EY Tax Alert

## Press Release on Amending Protocol to India-France tax treaty

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### Executive summary

This Tax Alert summarizes a Press Release<sup>1</sup> dated 23 February 2026 issued by the Ministry of Finance (MoF) announcing amendments to the India-France Double Taxation Avoidance Agreement (DTAA or tax treaty) vide an Amending Protocol signed by India and France.

The Press Release highlights that the Amending Protocol proposes to provide:

- ▶ Taxing rights to the source country (say, India) on capital gains arising from the transfer of shares of a company resident in that country (India), irrespective of the percentage of holding by a French resident, leading to sunset in respect of portfolio exemption present in the tax treaty.
- ▶ Deletion of Most Favored Nation (MFN) clause.
- ▶ Withholding tax rates on dividend income reduced from the present rate of 10% to 5% (in case of holding of at least 10%) and 15% in other cases.
- ▶ Narrow scope for Fees for Technical Services (FTS) and inclusion of Service permanent establishment (PE) clause.
- ▶ Amendment to Exchange of Information (EOI) provision and addition of a new Article on Assistance in Collection of Taxes.
- ▶ Incorporation of applicable provisions of Base Erosion and Profit Shifting Multilateral Instrument (BEPS MLI) in the DTAA that had already become applicable pursuant to MLI ratification.

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<sup>1</sup><https://www.pib.gov.in/PressReleaseDetail.aspx?PRID=2231751&reg=3&lang=1>

The Amending Protocol will be effective on completion of internal procedures under the laws of both the countries and subject to such terms as agreed between the two countries.

Similarly, France has also issued a press release in French dated 18 February 2026 providing a brief overview of the Amending Protocol.

The text of the Amending Protocol is not yet available in public domain.

## Background

Under the Indian Tax Laws (ITL), the Government of India (GoI) can enter into DTAA's with other countries and amend them through a protocol following bilateral negotiations. The protocol also forms an integral part of the DTAA.

In exercise of such powers, a DTAA was signed between India and France, and the same has been in force since 1 August 1994.

The India-France DTAA has been the subject matter of various updates over the years<sup>2</sup>. Furthermore, India and France signed and ratified the OECD Multilateral Convention (MLC) as well, which is effective for India from 1 October 2019, while for France it was effective from 1 January 2019.

In this context, India and France, which are long-standing strategic partners, advanced negotiations through 2025 and signed a Protocol to amend the existing India-France DTAA during President Emmanuel Macron's official visit to India in February 2026. In this regard, the Central Board of Direct Taxes (CBDT) has issued a Press Release on 23 February 2026, announcing the signing of an Amending Protocol for revising the India-France DTAA.

While the text of the Amending Protocol is not available, as per the Press Release, the amending protocol updates the India-France DTAA to the latest international standards to balance the interests of both India and France and provide greater tax certainty to taxpayers, and to boost the flow of investment, technology and personnel between India and France, thereby strengthening economic relations between the two countries.

The Press Release provides that the Amending Protocol will be effective subsequent to the completion of internal procedures under the laws of both the countries and subject to such terms as agreed between the two countries.

Similarly, France has also issued a press release dated 18 February 2026 in French, providing a brief overview of the Amending Protocol. It highlights that this development strengthens the legal security of French companies operating in India and aims to simplify investments and ensure that French companies are

placed on an equal footing with their international competitors.

## Details of the Amending Protocol as per the Press Release

- ▶ **Source country taxation rights broadened for capital gains taxation**
  - The Amending Protocol proposes to grant full taxing rights to the source country (say, India) on capital gains arising from the transfer of shares of a company resident in that country (India). Currently, such taxing rights are limited to cases where the taxpayer (say, a resident of France) holds at least 10% participating interest in the company (India), whose shares are alienated. Under the Amending Protocol, the source country can tax these gains irrespective of the percentage of shareholding of the taxpayer.
  
- ▶ **Deletion of MFN Clause**
  - The Amending Protocol proposes to delete the MFN clause which provides for favorable treatment with respect to reduced scope and lower rate of tax with reference to taxation at the source of income in the nature of dividend, interest, FTS or royalty or payments for the use of equipment, subject to certain conditions.
  - This amendment is likely to put an end to any litigation that has arisen on application of the MFN clause<sup>3</sup>.
  
- ▶ **Lower rate of dividend taxation**
  - As per the Amending Protocol, dividend income is proposed to be taxed at the rate of 5% for a holding of at least 10% of capital and 15% for all other cases, instead of the earlier single rate of 10%.
  
- ▶ **Narrow FTS scope and introduction of Service PE clause**
  - Article 13(4) of the India-France DTAA defines FTS as payments made in consideration for services of a managerial, technical or consultancy nature. The Amending Protocol proposes to narrow the definition of FTS in the India-France DTAA to align it with the definition in the India-US DTAA. Basis this, source taxation will arise only if the services are of a

<sup>2</sup> Amended in the year 2000 and 2009 vide notification - Amending Notification No. S.O. 650(E), dated 10 July 2000; Amending Notification No. S.O. 2106(E), dated 12 August 2009

<sup>3</sup> Refer to Supreme Court (SC) decision [(2023) 458 ITR 756 (SC)] dated 19 October 2023. Refer EY Tax Alert titled, "Supreme Court rules notification to be mandatory to invoke most favored nations clause", dated 21 October 2023

technical or consultancy nature, and the make available condition is satisfied.

- However, the Service PE provision is proposed to be introduced. The scope and breadth of the Service PE clause will need to be determined post review of the exact text of the Amending Protocol. Many of India's tax treaties, like those with the UK, USA, Singapore, have a Service PE provision with reference to services provided within India and, at times, with extremely lower threshold trigger when services are rendered to Associated Enterprises (AE), with the exclusion provided to services falling within the meaning of FTS or Fees for Included Services (FIS).

▶ **Other amendments**

- To enable and facilitate seamless exchange of information and strengthen mutual tax cooperation between India and France, the provisions on EOI are proposed to be updated and a new Article on Assistance in Collection of Taxes, as per international standards, is proposed to be introduced.
- Furthermore, the applicable provisions of BEPS MLI are also proposed to be incorporated.

## Comments

The negotiations to modify the India-France DTAA is a step towards aligning the DTAA to international standards in order to reduce any ambiguity and provide greater tax certainty, including strengthening mutual tax cooperation between India and France.

Although the precise amendments to the DTAA may be clear once the text of the Amending Protocol is released publicly, the proposals outlined in the Press Release, such as removal of the MFN clause, granting India capital gains taxing rights, and the introduction of a Service PE clause, significantly enhance India's position regarding its taxation rights under the tax treaty.

The proposed capital gains treatment under which the source country is granted full rights to tax capital gains regardless of the shareholding percentage on sale of shares aligns with India's tax treaty philosophy and amendments made to India's tax treaties with Singapore, Mauritius and Cyprus w.e.f. 1 April 2017. One will need to wait for the text of the Amending Protocol to determine whether the amendment protects past investments by way of grandfathering. To recollect, the amendment does not impact exclusive residence taxation rights available in respect of indirect transfers<sup>[4]</sup>, or gains arising from transfer of assets such as mutual funds, compulsory convertible debentures (CCDs)/ optionally convertible debentures (OCDs) etc. With the proposed amendments, the India-France DTAA will, qua capital gains, be less favorable as compared to the India-Belgium DTAA or the India-Netherlands DTAA, which provide portfolio exemption.

Dividend rate change will benefit French shareholders with substantial holdings in Indian companies (>10%) due to lower withholding tax rate of 5%. However, smaller French shareholdings (<10%) in India will face a higher dividend tax of 15%.

<sup>[4]</sup> Refer Andhra Pradesh High Court ruling in the case of Sanofi Pasteur Holding SA [(2013) 354 ITR 316 (Andhra Pradesh) dated 15 February 2013. Also refer EY Tax Alert titled "High Court in India rules on taxation of indirect transfer under India-France Double Taxation Avoidance Agreement" dated 18 February 2013

Revision of FTS to FIS by comparing it with the India-US tax treaty is a welcome step. There is also an introduction of a Service PE clause. Once the Amending Protocol is officially published, one will need to see if make available services will remain outside the scope of the Service PE clause, similar to the India-US tax treaty, including the exact scope of FTS revision.

With the proposal to delete the MFN clause in the tax treaty, the long running dispute about whether taxpayers could automatically import lower rates/narrower scopes based on the MFN Clause from third state tax treaties, will come to an end. Equipment leasing, including aircraft lease, will trigger source taxation in India, though, post the SC decision in one of the cases<sup>[5]</sup>, this was contentious. But with the deletion of the MFN clause, the terms of the Amending Protocol alone will determine the scope of source taxation in India.

Furthermore, it may be noted that the India-France DTAA is already a Covered Tax Agreement for MLI purposes and various provisions of MLI, including the Principal Purpose Test (PPT) provisions are already effective.

<sup>[5]</sup> [2023] 458 ITR 756 (SC)[19-10-2023]

**Note - Text of the Amending Protocol is currently not available. A detailed Tax Alert on the development will be issued once the Amending Protocol is available.**

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