

India - France Tax Treaty Update: Protocol Signed, Revamp in Taxation on Dividend, Capital Gains and Technical Collaboration Arrangements

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On 23 February 2026, the Ministry of Finance, Government of India issued a press release stating that India and France have signed a protocol (Amending Protocol) to amend the existing tax treaty between them (Existing Treaty). The Amending Protocol aims to strengthen economic activity in both countries and facilitate greater cross-border investments and increasing technical collaboration. The Amending Protocol is set to revamp taxation of capital gains, dividend, business profits and fees for technical services under cross border transactions *inter-se* India and France.

Key amendments to the Existing Treaty

1. Capital gains on sale of shares

Under the Existing Treaty, a French resident investor was not taxed in India on gains earned from the sale of shares of an Indian company, provided (i) the Indian company did not derive more than 50% of its value, directly or indirectly, from immovable property situated in India, and (ii) the investor's shareholding in the Indian company was less than 10%. However, such gains were taxable in India where the investor held 10% or more of the shares of the Indian company, or where the shares derived more than 50% of their value, directly or indirectly, from immovable property located in India.

The Amending Protocol removes the 10% safe harbour threshold and grants full taxing rights to the country of residence of the target company. As a result, capital gains derived by a French resident from sale of shares of an Indian company will now be taxable in India, regardless of the percentage of ownership. From a practical standpoint, this represents a significant shift, moving away from ownership-based threshold toward a clear source-based principle.

Impact analysis:

1. Foreign Portfolio Investors (FPIs) (typically holding minority, sub-10% equity shares in companies) who have relied on the existing treaty threshold for tax protection, are set to face an increased Indian tax exposure going forward which may impact their portfolio allocation strategies.
2. No change for strategic investors which held at least 10% stake in Indian companies.
3. It appears that gains on transfer of debt investments and indirect transfer of shares would continue to be tax exempt. However, the fine print of the Amending Protocol is awaited.

2. Dividend

The Existing Treaty provides a uniform 10% tax rate on dividend income.

The Amending Protocol proposes to alter the taxability as under:

- (a) a reduced 5% rate for shareholders holding at least 10% of the capital of the dividend-paying company; and

(b) a 15% rate in all other cases.

Impact analysis:

While minority shareholders and FPIs are set to face a higher tax rate on account of the proposed amendment, shareholders holding at least 10% of share capital stand to benefit. The amendment enhances India's competitiveness for strategic foreign direct investment by materially lowering the tax on profit repatriation for strategic shareholders holding at least 10% of the share capital and provides a dividend tax rate on par with India's tax treaties with Mauritius, Hong Kong, Saudi Arabia, etc.

3. Introduction of Service Permanent Establishment (Service PE)

The Amending Protocol introduces a 'Service PE' construct within the scope of the Existing Treaty, expanding the circumstances under which a foreign enterprise can be considered as having a permanent establishment (PE) (ie a taxable presence) in the country where the services are performed. Under this framework, a foreign entity furnishing services through employees or other personnel in the country where services are performed (for example, India) for a specified duration would constitute a PE in that country, even in the absence of a fixed place of business.

Impact analysis

While the specific duration threshold and detailed text of the 'Service PE' provision are awaited, its introduction warrants proactive evaluation by French entities that have a presence in India or deploy personnel to India for service delivery. Such entities would be required to review their service arrangements / secondment arrangements, assess duration of employee presence in India, evaluate potential PE exposure and undertake corresponding Indian income-tax compliance obligations where applicable.

Concurrently, Indian residents engaging French entities for services that involve an on-ground presence of the French entity's personnel should reassess their withholding tax obligations in light of the proposed amendment. Notably, where a French entity constitutes a PE in India, the characterisation of income under the treaty may shift from '*Fees for technical services*' (FTS) to business profits attributable to the PE. This could significantly increase the withholding tax exposure, potentially up to 38.22% (being the applicable foreign company tax rate plus surcharge and cess), as compared to the 10% rate under the Existing Treaty where, in the absence of a Service PE clause, such payments may have been taxed as FTS.

4. Alignment of FTS taxation with the India-US tax treaty

The Amending Protocol proposes to revise the scope of taxing FTS to bring it in line with the India-US tax treaty and resultantly narrowing its applicability. While the detailed text is yet to be released, it is expected to incorporate a '*make available*' standard for taxation of FTS ie payments for technical services would now be taxable only if the service provider makes technical knowledge, skill, or know-how available to the service recipient in a manner that enables independent application by the service recipient in future.

Impact analysis

The amendment signals alignment with international treaty practice and would merit French investors to relook at their existing service arrangements to explore if the existing 10% tax rate can be reduced to NIL owing to make available test threshold and also, for Indian entities to reassess their withholding tax obligations and take necessary care to substantiate a NIL withholding tax position where '*make available*' condition is not met.

5. Deletion of the Most-Favoured-Nation (MFN) Clause

The Existing Treaty included a MFN clause, under which a lower tax rate or a more limited scope of taxation on certain income streams (such as dividend, interest, royalties, or FTS) would apply if such benefits were granted under a tax treaty that India subsequently concluded with a third country that is a member of the Organization for Economic Co-operation and Development (OECD). The applicability and automatic availability of the benefit under the MFN clause was the subject of litigation before the Supreme Court, in the case of *Assessing Officer Circle (International Taxation) vs M/s Nestle SA [Civil Appeal No(s). 1420 OF 2023]*. In this case, the Supreme Court ruled that such benefits can only be

availed if the same have been separately notified by the Central Government (which were not so notified in the case of the Existing Treaty). The Amending Protocol deletes the MFN clause and thereby any surrounding ambiguities surrounding its interpretation.

6. Incorporation of provisions of the Multilateral Instrument (MLI)

The Amending Protocol expressly proposes to incorporate provisions of the MLI that have been ratified by both India and France. Notably, amongst other provisions, this includes formal adoption of the 'Principal Purpose Test' for testing eligibility of tax treaty benefits within the treaty framework, thereby consolidating anti-abuse provisions directly into the treaty and removing interpretational ambiguities.

7. Seamless exchange of information for assistance in collection of taxes

The Amending Protocol proposes to update the provisions on exchange of information and intends to introduce a new article on 'Assistance in Collection of Taxes' as per international standards which will facilitate seamless exchange of information and strengthen tax cooperation between the countries.

Comments

While the press release summarises the changes to be undertaken pursuant to the Amending Protocol on a broad level, the detailed and precise changes to the language of the Existing Treaty are still awaited. The press release clarifies that the Amending Protocol shall be applicable once both the countries implement it after completing their respective internal procedures and subject to terms agreed between them.

It will be noteworthy to examine the fine print of the Amending Protocol to assess whether any grandfathering relief is proposed for existing FPI investors holding less than the 10% threshold, and to determine the precise effective date of the revised capital gains taxation provisions, particularly in relation to existing investments.

Multinational enterprises and investors must reassess cross-border structures, workforce deployment and contractual arrangements to ensure compliance and optimize post-tax returns. For French investors and Indian corporates operating between India and France, this presents both opportunities to optimize structures and a call to review exposure and compliance frameworks proactively.

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