



## Tax alert: Amending Protocol of 2026 to the India-France tax treaty

**24 February 2026**

The government has issued a press release dated 23<sup>rd</sup> February 2026 relating to the Protocol amending the India-France tax treaty.

### **Background:**

#### **India-France tax treaty**

- The India-France tax treaty regarding avoidance of double taxation, came into force on 1 August 1994 vide Notification No. GSR 681(E) dated 7 September 1994, as amended by Notification No. SO 650(E), dated 10 July 2000.
- The government has issued a press release dated 23<sup>rd</sup> February 2026 relating to the signing of a Protocol amending the India-France tax treaty (Protocol). While the press release does not contain the text of the Protocol, it highlights the amendments / changes which have been carried out in the India-France tax treaty. The relevant changes in the Protocol (subject to the exact text) stated in the press release are as follows (note that we have mentioned the same from the perspective of India being the source country):

#### **Article 14<sup>1</sup> of India-France tax treaty [relating to capital gains income]**

- Currently, with respect to alienation of shares, Article 14(5) of the India-France tax treaty gives right to the source-country, i.e. India, to tax capital gains if such shares represent participation of at least 10% of the share capital of the Indian company.
- The Protocol amends Article 14 of the India-France tax treaty to provide full taxing rights in respect of capital gains arising, from sale of Indian company shares to India (i.e. jurisdiction where such company is a resident). The threshold of 10% participation would now not be relevant.

#### **Most Favoured Nation (MFN) clause under the India-France tax treaty**

- As per the MFN clause under the earlier protocol to the India-France tax treaty, if after 1 September 1989, under any tax treaty between India and another OECD<sup>2</sup> member country, India limits its taxation at source on dividends, interest, royalties, fees for technical services (FTS) or payments for the use of equipment, to a rate lower or a scope more restricted than the rate or scope provided for under the India-France tax

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<sup>1</sup>“.....4. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that Contracting State. For the purposes of this provision, immovable property pertaining to the industrial or commercial operation of such company shall not be taken into account.

5. Gains from the alienation of shares other than those mentioned in paragraph 4 representing a participation of at least 10 per cent in a company which is a resident of a Contracting State may be taxed in that Contracting State.

6. Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.....”

<sup>2</sup> Organization for Economic Co-operation and Development

treaty, then such lower scope or rate would also apply under the India-France tax treaty.

Further, it specifies certain lower rate or scope of taxation of dividends, interest, royalties, FTS and payments for the use of equipment as per the India-Germany and India-USA tax treaties which would also apply under the India-France tax treaty.

- The Protocol now deletes the MFN clause.

### Article 11<sup>3</sup> of India-France tax treaty [relating to dividend income]

- Currently, the tax charged in the source state (i.e., India) for dividends paid by an Indian company to a French resident shall not exceed 10% of the gross amount of the dividends, provided the recipient is the beneficial owner of the dividends. There is no minimum shareholding requirement under the current article. The 10% rate applies irrespective of the holding in Indian companies.
- *The Protocol now replaces the single 10% taxation rate of dividends with a split rate of 5% (for those holding at least 10% of capital) and 15% in all other cases.*

### Article 13 of the India-France tax treaty [relating to taxation of FTS]

- As per Article 13 of India-France tax treaty, royalties, FTS and payments for the use of equipment arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in that other Contracting State.

Further, the term 'FTS' has been defined to mean payments of any kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 15, in consideration for services of a managerial, technical or consultancy nature.

- The Protocol modifies the definition of 'FTS' under the India-France tax treaty by aligning it with the definition of 'FTS' under the India-USA tax treaty.

While the press release does not reproduce the text of the revised FTS definition under the Protocol to the India-France tax treaty, as per the India-USA tax treaty "fees for included services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:

- (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received; or
- (b) **make available** technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.

### Article 5 of the India-France tax treaty [(relating to Permanent Establishment (PE))]

- The Protocol expands the scope of PE to include a Service PE concept.

### Article 28 of the India-France tax treaty (relating to Exchange of Information)

- The Protocol updates the provisions on Exchange of Information and introduces a new Article on Assistance in Collection of Taxes, as per international standards, which would enable and facilitate seamless exchange of information and strengthen mutual tax co-operation between India and France.

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<sup>3</sup>"1. Dividends paid by a company which is resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends...."

## Multilateral Instrument (MLI)

- The Protocol also incorporates within the India-France tax treaty, provisions of the OECD's Base Erosion and Profit Shifting (BEPS) MLI within the India-France tax treaty, that had already become applicable consequent to the signing and ratification of MLI by India and France.
- While the MLI provisions incorporated into the Protocol are not available in the press release, some of the MLI articles based on the ratification of MLI by India and France are as follows:
  - Article 6 of the MLI relating to purpose of covered tax agreement
  - Article 7 of the MLI relating to the Principal Purpose Test (PPT) on prevention of treaty abuse.
  - Article 9 of the MLI relating to capital gains of shares/interest deriving value principally from immovable properties
  - Articles 12, 13, on PE related BEPS measures under the MLI.

### Comments:

- The Protocol brings in a significant update to the India-France tax treaty.
- Amendment to the coverage of capital gains and dividend rate may impact taxability in India of French tax resident shareholders, holding less than 10% of the shares / capital of an Indian company. One may also want to consider the text of the Protocol (once available) to evaluate impact in the context of indirect transfer of shares of an Indian company.
- The introduction of service PE clause under the India-France tax treaty expands the scope of PE on account of services which may be rendered in the source country. One would need to see the number of days threshold which would be mentioned for this purpose.
- Removal of the MFN clause would reduce dependency on tax treaties with other OECD member countries negotiated by either India or France, thereby, ensuring treaty benefits remain confined to what is explicitly negotiated between India and France.

As per the press release, the Protocol shall enter into effect subsequent to completion of internal procedures under the laws of both countries and subject to the terms agreed between the two countries. It may be pertinent to note that currently, the text of the Protocol is awaited, and one may await its notification in the official gazette for application.



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