

# DESAI SAKSENA & ASSOCIATES

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## Friday Tax Alert

### **CBDT PRESS RELEASE DATED 23 FEBRUARY 2026 – INDIA AND FRANCE SIGN PROTOCOL AMENDING THE INDIA–FRANCE DTAC**

#### **1. Background**

During the recent visit of the President of France to India, the Government of India and France signed an Amending Protocol to the India–France Double Taxation Avoidance Convention (DTAC) originally signed on 29 September 1992. The Protocol was signed by the Chairperson, CBDT (India) and the Ambassador of France to India on behalf of their respective Governments.

The stated objective of the Protocol is to update the treaty in line with current international standards, provide greater tax certainty to taxpayers, and facilitate cross-border investment, technology transfer, and movement of personnel between the two countries.

#### **2. Key Substantive Changes**

##### **2.1 Capital gains on sale of shares**

- The Protocol grants **full taxing rights** in respect of capital gains arising from the sale of shares of a company **to the State in which such company is resident**.
- In practical terms, gains from shares of an Indian company will be taxable in India, while gains from shares of a French company will be taxable in France, subject to domestic law and treaty conditions.
- This aligns the India–France treaty with India’s broader policy of source-based taxation of capital gains arising from shares of Indian companies.

#### **Key Implications:**

- France-based investors holding shares in Indian companies should reassess their India exit tax models and treaty reliance going forward.
- Indian groups with French shareholdings need to evaluate French domestic tax and relief mechanisms, as exemptions in the other State may no longer be available.

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## **2.2 Deletion of MFN clause**

- The Protocol **deletes the “Most-Favoured-Nation” (MFN) clause** from the Protocol to the DTAC.
- This **puts to rest the long-standing controversy** around whether more beneficial terms granted by India to other OECD countries (e.g., lower withholding tax rates) automatically extended to France.

### **Key Implications:**

- Taxpayers can no longer rely on the MFN clause to claim automatically imported beneficial provisions from India’s treaties with other countries.
- Existing structures and historical positions relying on the MFN clause should be reviewed to assess potential litigation exposure, tax risks, and the possible need for advance rulings or dispute-resolution mechanisms.

## **2.3 Dividends – Split withholding rates**

- The existing **single 10% withholding tax rate on dividends** is being replaced with a **two-tier rate structure**:
  - **5%** where the beneficial owner holds **at least 10% of the capital** of the dividend-paying company; and
  - **15%** in all other cases.

### **Key Implications:**

- Significant shareholdings ( $\geq 10\%$ ) in India–France cross-border structures can benefit from a **reduced 5% WHT on dividends**, subject to satisfaction of beneficial ownership and other treaty conditions.
- Portfolio investors and minority shareholders should factor in a higher 15% rate where the 10% shareholding threshold is not met.
- Corporate groups may consider restructuring shareholdings to consolidate ownership above the 10% threshold where commercially feasible.

## **2.4 Fees for Technical Services (FTS)**

- The Protocol **modifies the definition of “Fees for Technical Services”**, aligning it with the definition in the India–US DTAA.

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- While the press release does not reproduce the full wording alignment with the India–US treaty typically introduces the “make available” requirement, thereby narrowing the scope of services taxable as FTS.

## **Key Implications:**

- Indian and French service-providers and recipients must reassess whether cross-border technical, consultancy and support arrangements still fall within FTS under the amended treaty or move to business profits/royalties analysis.
- Where the amended FTS definition is narrower, there may be opportunities to reduce or eliminate withholding tax on certain service payments, subject to PE analysis.

## **2.5 Permanent Establishment (PE) – Introduction of Service PE**

- The Protocol **expands the scope of “Permanent Establishment” by adding a Service PE clause.**
- A Service PE typically arises where services are furnished in the other Contracting State through employees or other personnel for a specified duration within a defined time period.

## **Key Implications:**

- Indian or French enterprises sending personnel to the other country for projects, consulting, installation, training or similar activities face a **higher risk of constituting a PE** once the relevant day-count threshold is met.
- Groups must track the presence days of employees/consultants in the other jurisdiction and revisit pricing, documentation and profit attribution policies to mitigate PE disputes.

## **3. Administrative and Anti-Avoidance Enhancements**

### **3.1 Exchange of information & assistance in collection**

- The Protocol **updates the Exchange of Information (EOI) provisions** in line with international standards.
- It also **introduces a new Article on Assistance in Collection of Taxes**, enabling cooperation in the collection of tax claims.

## **Key Implications:**

- There will be **greater transparency** and easier information-sharing between Indian and French tax authorities, increasing detectability of mismatches and aggressive arrangements.

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- Taxpayers with unresolved tax demands in one country may see **cross-border collection support** from the other, making it more difficult for taxpayers to shield assets in the other jurisdiction.

## **3.2 Incorporation of BEPS Multilateral Instrument (MLI) provisions**

- The Protocol **formally incorporates into the DTAC the applicable provisions of the BEPS Multilateral Instrument (MLI)**, which were already applicable through the BEPS Multilateral Instrument following ratification by both India and France.

### **Key Implications:**

- Anti-abuse measures such as the **Principal Purpose Test (PPT)** and other MLI-driven changes are now embedded directly within the treaty text, increasing legal clarity.
- Treaty-based arrangements must continue to satisfy a robust **substance and business-purpose** test to withstand scrutiny.

## **4. Entry into force and effective date**

- The Protocol will enter into force after both countries complete their respective domestic ratification procedures., and in accordance with the terms agreed between India and France.

### **Key Implications:**

- Monitor announcements from CBDT and French authorities on completion of ratification and effective dates.
- Consider the timing of transactions (dividends, exits, service contracts) that may straddle the cut-over from the existing to the amended treaty.

## **5. Key takeaways for businesses**

### **1. Re-evaluate holding and exit structures**

- Re-work India-exit models for French investors and French-exit models for Indian investors in light of full source-country taxation of share gains.

### **2. Review dividend flows and shareholding patterns**

- Identify group companies where shareholding can be consolidated to enjoy the 5% dividend WHT rate; update inter-company loan vs. equity mix accordingly.

### **3. Reassess cross-border services and presence**

- Map all India–France service lines, people movements and project durations to determine potential Service PE exposure and FTS re-characterisation.

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## **4. Strengthen documentation and substance**

- Ensure robust commercial justification, substance in both jurisdictions and documentation reflecting arm's length pricing, considering BEPS/MLI and enhanced EOI/collection provisions.

## **5. Prepare for increased cooperation between tax authorities**

- Expect more coordinated audits and information requests, especially for groups with historic positions relying on the MFN clause or aggressive treaty claims.

## **6. Conclusion**

The Amending Protocol significantly modernises the India–France DTAC, clarifies long-disputed positions (especially on capital gains and MFN) and tightens anti-avoidance and administrative cooperation provisions. Businesses with India–France cross-border operations should proactively review structures, cash-flow models and compliance frameworks to align with the new regime and leverage available opportunities.

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