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India – France Proposed Tax Treaty Reset: Executive Will Recalibrating Ancient Treaty Assumptions

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Gone are the days when multinational enterprises, investors, and tax professionals could afford to complacently rely on the continuity of long-standing DTAA benefits as a settled and permanent feature of cross-border tax planning. In an increasingly fluid geopolitical and economic landscape, where India today negotiates from a position of enhanced economic strength, strategic relevance, and policy clarity, bilateral tax treaties are no longer insulated from recalibration.

The proposed renegotiation of the India–France Double Taxation Avoidance Agreement (DTAA), is emblematic of this shift. India and France have reportedly agreed in principle to revise their DTAA, originally signed in 1992. Though the proposed protocol awaits formal signature, ratification and notification, the nature of the contemplated changes suggests a conscious reassessment of legacy treaty compromises, with a renewed emphasis on source-based taxation, certainty through express drafting, and preservation of India's sovereign taxing rights.

The contemplated revisions appear to span multiple core areas of cross-border taxation, viz. recalibration of dividend withholding rates based on the degree of shareholding, expansion of India's source-based taxing rights over capital gains on Indian equity shares, narrowing of the scope of taxation of fees for technical services to cases involving transfer of technical know-how, and deletion of the Most Favoured Nation (MFN) clause to address interpretational uncertainty following recent judicial developments.

If brought into force, these amendments could materially alter the tax landscape for French investors and service providers in India, while also signalling a broader policy shift towards treaty certainty, source-based taxation, and executive recalibration of legacy treaty provisions. Against this backdrop, the proposed amendments to the treaty protocol and their likely ramifications on India's cross-border tax framework and prevailing tax positions are analysed in ensuing paragraphs.

(I) Dividend Taxation: Existing Treaty Position vs Proposed Recalibration

Existing DTAA position

Under the current India–France DTAA, dividends paid by an Indian company to a French resident are taxable in India at a maximum rate of 10%, irrespective of the extent of shareholding. The treaty does not distinguish between controlling and minority stakes.

Under domestic law, dividends are deemed to accrue in India under section 9(1)(iv) of the Income Tax Act, 1961 (the Act) and are subject to withholding under section 195, with section 115A of the Act, prescribing a higher base rate, subject to treaty relief under section 90(2) of the Act.

Proposed amendment

The proposed protocol reportedly seeks to introduce a two-tier dividend taxation structure:

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- a reduced rate of 5% where the French company holds more than 10% in the Indian entity; and
- an enhanced rate of 15% where the shareholding is below 10%.

Comparative and likely implications

If implemented, this would mark a departure from the existing flat-rate regime and align the treaty with India's broader treaty practice of granting preferential rates to substantial economic participation. While minority investors may face a higher treaty rate than at present, the revised rate would still remain lower than the domestic law rate, preserving the beneficial override under section 90(2). Strategically, the change may incentivise longer-term and more meaningful equity participation over portfolio-style holdings.

(II) Capital Gains on Equity Shares: Threshold-Based Protection vs Full Source Taxation

Existing DTAA position

At present, the India–France DTAA allows India to tax capital gains arising from the transfer of shares of an Indian company only where the French investor holds more than 10% of the company's capital. In cases of shareholdings below this threshold, taxing rights generally rest with France.

This treaty limitation operates as a carve-out from section 9(1)(i) of the Act, which otherwise deems gains from transfer of Indian capital assets to accrue in India.

Proposed amendment

The proposed revision reportedly seeks to remove the 10% shareholding threshold entirely, thereby granting India taxing rights over capital gains arising from the transfer of Indian equity shares by French residents, regardless of the size of holding.

Comparative and likely implications

If notified, the treaty would no longer dilute India's domestic source rule under section 9(1)(i). For France-based Foreign Portfolio Investors and minority strategic investors, the treaty may cease to function as an exemption provision, with taxability governed instead by domestic concessional regimes under sections 111A and 112A of the Act. This change would align the India–France DTAA with India's post-BEPS policy stance that taxation should follow value creation rather than ownership thresholds.

(III) Fees for Technical Services: Broad Domestic Reach vs Treaty Narrowing

Existing DTAA position

The existing India–France DTAA permits India to tax fees for technical services, without an explicit and consistent requirement that technical knowledge be "made available" to the Indian recipient. This has historically allowed a wider scope for source-based taxation, broadly aligned with section 9(1)(vii) of the Act.

Proposed amendment

The proposed amendments reportedly aim to restrict FTS taxation to cases involving actual transfer of technical know-how, thereby excluding most routine consultancy, design, support, and advisory services from the scope of Indian taxation under the treaty.

Comparative and likely implications

If implemented, the treaty would diverge more clearly from domestic law by narrowing India's taxing rights on services income. French service providers may be able to invoke treaty protection under section 90(2) for services that do not result in transfer of technical knowledge. This may reduce litigation in an area that has historically witnessed expansive domestic interpretations and frequent disputes.

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(IV) Most Favoured Nation (MFN) Clause: Existing Treaty Benefit vs Proposed Deletion

Existing DTAA position

The India–France DTAA currently contains an MFN clause, under which France historically claimed entitlement to lower rates or more favourable provisions that India subsequently granted to other OECD countries. This clause had been a recurring source of interpretational disputes.

The honourable Supreme Court, in its 2023 ruling in the case of ‘Nestle SA’ [TS-616-SC-2023] clarified that MFN benefits do not apply automatically and require specific notification under section 90 of the Act.

Proposed amendment

The proposed protocol reportedly provides for complete deletion of the MFN clause from the treaty.

Comparative and likely implications

If the MFN clause is formally deleted, it may bring closure to long-standing disputes, align treaty operation with statutory requirements, and reduce MFN-driven litigation. More significantly, it would underscore the executive character of tax treaties and the authority of contracting States to amend even long-standing treaty protocols in response to judicial developments and sovereign tax priorities.

Executive Primacy, Treaty Fluidity and the End of Complacent Reliance

The proposed amendments, if effected, would serve as a broader reminder that DTAAs are dynamic executive instruments, not static commercial contracts. Even entrenched treaty benefits, such as MFN clauses or capital gains thresholds, may be renegotiated when economic realities, legal interpretations, or bilateral relations evolve.

Taxpayers and advisors may therefore need to reassess structures and positions that rely heavily on legacy treaty interpretations or assumed continuity of concessional provisions, particularly as India’s negotiating capacity and emphasis on source-based taxation continue to strengthen.

A Template for Future Treaty Realignments

If and when brought into force, the proposed amendments to the India–France DTAA may come to be seen as more than a bilateral adjustment. They could well serve as a template for similar renegotiations of older Indian tax treaties, particularly those containing MFN clauses, capital gains thresholds or broadly drafted service taxation provisions.

As India continues to recalibrate its treaty network in line with contemporary tax policy and judicial clarity, other partner jurisdictions may witness comparable efforts to rebalance taxing rights while preserving commercial certainty. The India–France renegotiation thus offers an early indication of how India’s future treaty diplomacy may unfold, measured, assertive, and firmly anchored in sovereign taxing rights rather than historical compromise.

Conclusion

If and when brought into force, the proposed amendments to the India–France DTAA could represent a measured but decisive rebalancing of taxing rights in favour of the source jurisdiction, while continuing to offer calibrated relief for genuine cross-border investment and service arrangements. The comparative shift from existing treaty rules suggests a deliberate move away from open-ended concessions towards certainty through codification and alignment with domestic tax policy.

In an evolving treaty landscape, certainty may increasingly lie not in the permanence of DTAA provisions, but in an informed appreciation of their conditional, negotiable, and executive-driven nature.

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