



SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No. 198

CBDT issues notification for allowing MFN benefit to Spain from AY 2024-25



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Jain Shimal & Co.



CBDT notification Dt. 19.03.2024

❖ CBDT has issued notification Dt. 19.03.2024, wherein it has been mentioned that, para 7 of Protocol, of DTAA between the Republic of India and Kingdom of Spain, contains a clause that

“if India enters into agreement with a third State which is a Member of the Organisation for Economic Cooperation and Development, which enters into force after the 1st January, 1990, India limits its taxation at source on royalties or fees for technical services to a rate lower than the rate provided for in this Convention on the said items of income, the same rate as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention;”

❖ The above clause is generally referred to as Most Favored Nation (MFN) clause in a DTAA, wherein two country agrees that if any of the country provides any favorable tax rate or treatment to any other country who is a member of OECD it shall allow the same benefit to the country with whom the DTAA is entered.

❖ Let's understand the impact of above MFN clause in case of Spain.

MFN clause in India-Spain DTAA

- ❖ Considering the above MFN clause, it could be seen that India had entered into an agreement with Germany in 1996 and Germany is a member of OECD at the time of entering into DTAA with India and since Germany fulfills both the conditions mentioned above the beneficial treatment or tax rate if any will be available to Spain.
- ❖ Accordingly, in the notification it has been mentioned that considering the Germany DTAA, it has been decided that Article 13 relating to Royalties and Fees for Technical Services shall be substituted and now the tax withholding for other royalties or fees for technical services **shall not exceed 10% which was earlier at 20%**.
- ❖ Hence, there has been a reduction in the tax withholding because of the MFN clause. Further, it has been mentioned that this new article **shall be applicable from Assessment year 2024-25**.

Our comments

- ❖ Below are few of our observations on this notification:
 - ❖ This notification only talks about 10% beneficial tax rate from Germany DTAA available to Spain but does not talk about benefit of make available clause which could be available to Spain because of Sweden, UK or Portuguese DTAA. So will there be a separate notification for same.
 - ❖ The notification talks about providing prospective effect whereas DTAA provides for such MFN benefit from the date DTAA is entered into with third country. Hence, it will be interesting to note whether CBDT can make such benefit available prospectively whereas in section 90(4) it has been mentioned that between Income tax act and DTAA whichever is more beneficial to assessee shall be available to him.
 - ❖ Further, can it be said that such a notification only has unilateral effect and cannot affect DTAA.
- ❖ The view taken by CBDT and the notification is in line with the view expressed by Hon'ble Supreme Court in case of Nestle SA v. A.O. Circle (International Taxation) wherein it was mentioned that if any amendment is made in DTAA it needs to be made effective by way of notification.

To Read full case Law CLICK HERE: <https://jainshrimal.com/any-modification-in-dtaa-shall-be-available-to-the-first-nation-only-via-notification-by-union-of-india/>



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