



SATURDAY INTERNATIONAL TAX GYAN !!!

#taxmadeeasy

SITG No. 299

India - France DTA Amending Protocol 2026



28.02.2026

Jain Shimal & Co.

Introduction

- ❖ The original convention between the Government of the Republic of India and the Government of the French Republic for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital has come into force on 29 September 1992 on the notification by both the Contracting States
- ❖ The latest protocol was signed on **23 February 2026** (during French President Emmanuel Macron's visit to India). The Amending Protocol has been signed but is **yet to enter into force**, as the required domestic ratification procedures in both countries are still pending.
- ❖ The Amending Protocol signed on 23 February 2026 introduces significant changes to the India–France DTAA by expanding the scope of Permanent Establishment through inclusion of a Service PE clause, revising dividend taxation to a split-rate structure (5% and 15%), and deleting the Most Favoured Nation (MFN) clause. It also modifies the definition of Fees for Technical Services by incorporating the “make available” condition and strengthens source-based taxation rights in respect of capital gains. Overall, the amendment aligns the treaty with modern international tax standards while enhancing tax certainty and anti-avoidance measures.

Key Amendment #1: Capital Gains Taxation

"Capital Gains on Sale of Shares — Full Source Country Taxation"

Particulars	Old Article	Proposed Amendment
Taxing Right	Source country (India) could tax only if the seller held more than 10% of shares	Source country (India) gets full taxing rights regardless of the % of shareholding
Portfolio Investors	Largely exempt from Indian capital gains tax under the treaty, less than 10% holding	Sunset of portfolio exemption — all gains now taxable in India, even if holding is less than 10%
Scope	Limited source-based taxation	Comprehensive — covers all share transfer scenarios

Earlier Position (Pre-Amendment)

- ❖ Capital gains on sale of shares were taxable in the source country only in limited situations:
 - If the company derived its value principally from immovable property situated in that State or
 - If the shareholder held at least 10% participation in the company.

Portfolio investors with less than 10% shareholding generally enjoyed exemption from source taxation under the treaty.

Position After Amendment (Post-23 February 2026 Protocol)

- ❖ Full taxing rights are now granted to the country where the company whose shares are being transferred is resident.
 - The earlier threshold of minimum 10% participation has effectively been removed.
 - Source-based taxation on share transfers has been significantly strengthened.

Key Amendment #2: MFN Clause Deletion

"Most Favoured Nation (MFN) Clause — Deleted Entirely"

- ❖ **Earlier MFN Clause (Most Favoured Nation):** If India later signs a tax treaty with another OECD country and agrees to tax dividends, interest, royalties, FTS, or equipment payments at a lower rate or with a narrower scope, then France will automatically get the same benefit under the India–France treaty.
- ❖ **Position After Amendment (Post-23 February 2026 Protocol):** The MFN clause has been **done away with entirely** from the treaty. France can no longer automatically claim benefits granted to other countries under India’s treaties. The India–France DTAA will operate independently of other treaties.
- ❖ The deletion of the MFN clause removes automatic access to concessional benefits for dividends, interest, royalties, and equipment payments that were earlier claimable based on other OECD treaties. However, France may still benefit in respect of FTS due to the introduction of the “**make available**” condition, ensuring that only services involving transfer of technical expertise are taxable.
- ❖ This increased tax certainty, restricted treaty shopping, and prevent taxpayers from claiming lower rates without formal notification.

Key Amendment #3: Dividend Taxation

"Dividend Income — New Split Rate Structure"

Particulars	Old Article	Proposed Amendment
Substantial Holding (≥10% of capital)	10% (uniform)	5% (reduced)
Other / Portfolio Holding (<10%)	10% (uniform)	15% (increased)

Earlier Position (Pre-Amendment):

- ❖ A uniform **10% withholding tax (WHT)** applied on dividends if the recipient was the beneficial owner. The tax in the source country could not exceed 10% of the gross amount of dividend.
- ❖ The treaty also contained the **Avoir Fiscal mechanism**, under which benefits granted by French government to French residents would also be extended to Indian residents.

Position After Amendment (Post-23 February 2026 Protocol)

- ❖ The earlier uniform 10% rate has been replaced with a **split-rate structure**:
 - **5%** where the beneficial owner holds at least 10% of the company's capital.
 - **15%** in all other cases (i.e., minority shareholders holding less than 10%).

The dividend article has been simplified by removing older complex mechanisms.

Key Amendment #4: Fees for Technical Services (FTS) & Service PE

"Fees for Technical Services (FTS) — Narrowed & Realigned" & Service PE clause introduced

- ❖ **Earlier Position (Pre-Amendment):** The definition of **Fees for Technical Services (FTS)** did **not contain the “make available” condition**. Taxability depended on whether the service was managerial, technical, or consultancy in nature.
- ❖ **Position After Amendment (Post-23 February 2026 Protocol):** The definition of FTS has been aligned with the **India–US DTAA**, introducing the **“make available” condition**. Now, technical or consultancy services are taxable only if they **transfer technical knowledge, skill, or know-how** to the recipient enabling independent use.
- ❖ Narrow FTS scope due to “make available” condition, mere provision of service may not trigger FTS tax.
- ❖ **Service PE concept introduced**
- ❖ Further, earlier there was no Service PE concept in India France DTAA. However, with the introduction of Service PE expands source-based taxation for cross-border service arrangements. Increased compliance exposure for IT companies, consulting firms, engineering firms, and professional service providers.

Key Amendment #5: Exchange of Information & Tax Collection Assistance

"Strengthening Transparency — EOI & Assistance in Collection of Taxes"

- ❖ **What is Exchange of Information (EOI):** Exchange of Information (EOI) is a treaty mechanism that allows tax authorities of two countries to **share relevant financial and tax-related information** to ensure proper tax compliance.
- ❖ **What Has Changed Under the Amending Protocol:** The EOI Article has been **updated and strengthened** in line with OECD global standards. A **new Article on Assistance in Collection of Taxes** has been introduced.
This allows:
 - India to request France to recover Indian tax dues from a French resident.
 - France to request India for similar assistance.
- ❖ The amendment improves cooperation between India and France by strengthening information sharing and enabling mutual assistance in tax recovery. It enhances enforcement against tax evasion and round-tripping while increasing compliance responsibilities for cross-border taxpayers, aligning the treaty with global transparency standards.

India–France DTAA Amendment: Opportunities & Challenges

❖ Positive Impacts:

- India gains full capital gains taxation rights on share transfers, strengthening source-based taxation and increasing revenue.
- Deletion of the MFN clause reduces treaty shopping and eliminates interpretational disputes.
- Introduction of Service PE expands taxation of service-based business activities carried out in India.
- Strengthened Exchange of Information (EOI) and tax recovery provisions improve enforcement and curb tax evasion.

❖ Challenges & Concerns:

- Dividend WHT increases from 10% to 15%, raising the tax burden.
 - Capital gains on Indian shares now fully taxable in India, earlier treaty-based relief effectively withdrawn.
 - Introduction of Service PE may trigger tax liability for routine employee deputation.
 - Increased compliance burden including PE evaluation, profit attribution, and tax filings.
- ❖ The amendment strengthens India's taxing rights and improves treaty clarity but increases tax exposure and compliance obligations for certain categories of investors and service providers.

Our Comments

- ❖ While the amended treaty grants full taxing rights to the country of residence of the company whose shares are transferred, the position regarding indirect transfers remains unclear pending the official protocol text. If the earlier real estate–rich company clause continues to apply, foreign-to-foreign share transfers deriving substantial value from Indian assets may still give rise to interpretational issues and potential litigation.
- ❖ Further, it will be interesting to see if there is any grandfathering clause for change in capital gain tax in DTAA.
- ❖ In our understanding, the dividend tax structure could have been designed with a lower rate for minority shareholders and a relatively higher rate for substantial stakeholders to provide greater benefit to small and retail investors. Such an approach would promote wider participation in cross-border investments while maintaining balanced revenue considerations.

Disclaimer

- ❑ This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- ❑ The official text of the Amending Protocol has not yet been released or notified. Accordingly, the analysis and observations presented herein are based on the press release issued by the Government of India and other publicly available sources.
- ❑ Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- ❑ This presentation is based on the information available with us at the time of preparing the same, all of which are subject to changes which may, directly or indirectly impact the information and statements given in this presentation.
- ❑ Neither Jain Shrimal & co., nor any person associated with us will be responsible for any loss however sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments and seek appropriate professional advice.