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India and France Sign Amending Protocol to Revise DTAC

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During the recent visit of the French President to India, India and France signed an Amending Protocol to update the India-France Double Taxation Avoidance Convention (DTAC), originally signed in 1992. The protocol was inked by Ravi Agrawal, Chairperson of the Central Board of Direct Taxes (CBDT), and Thierry Mathou, Ambassador of France to India, on behalf of their respective governments.

Key Changes Introduced by the Amending Protocol

Capital Gains Taxation Rights

The amended pact grants full taxing rights on capital gains from the sale of shares to the country where the company is a resident, replacing earlier ambiguous provisions and aligning with global norms. This clarifies which jurisdiction has primary taxing authority.

Revised Dividend Tax Structure

The protocol replaces the uniform 10% dividend tax rate with a two-tier structure:

5% for shareholders holding at least 10% of capital

15% for other shareholders

This revision aims to balance tax incentives for larger investors while ensuring equitable tax treatment.

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Removal of Most-Favoured-Nation (MFN) Clause

The Most-Favoured-Nation clause has been deleted from the treaty, ending longstanding interpretational disputes over automatic entitlement to better tax terms offered to third countries.

Other Technical Updates

The definition of 'Fees for Technical Services' has been aligned with the India-U.S. DTAC.

The scope of Permanent Establishment (PE) is expanded to include Service PE (services performed beyond thresholds).

Exchange of Information provisions are updated, and a new Article on Assistance in Collection of Taxes is introduced, strengthening administrative cooperation.

Applicable provisions of the BEPS (Base Erosion and Profit Shifting) Multilateral Instrument (MLI) are incorporated into the treaty framework.

Significance of the Amendment

Greater Tax Certainty: The updated DTAC provides clearer rules on taxation of cross-border income, reducing ambiguity for investors and taxpayers.

Boost to Economic Cooperation: The reforms aim to strengthen bilateral economic ties, enhance the flow of investments, technology and personnel, and align the tax framework with international standards.

Business Environment Improvement: Improved clarity on tax rights and updated definitions are expected to encourage foreign direct investment (FDI) and facilitate ease of doing business between both nations.

What is a Double Taxation Avoidance Convention (DTAC)?

A DTAC is a bilateral treaty designed to avoid taxing the same income twice in two jurisdictions — the source country and the residence country — thereby preventing double taxation of individuals and businesses.

DTACs promote cross-border trade and investment by providing clear tax rules and reducing fiscal barriers.

Most-Favoured-Nation (MFN) Clause – Meaning

The MFN clause ensures that if one country grants tax benefits to a third country in a future treaty (e.g., lower withholding tax rates), the other party can automatically claim the same benefits.

Its removal in the India-France DTAC means benefits must now be explicitly stated in the treaty and cannot be claimed automatically based on other agreements.

BEPS (Base Erosion and Profit Shifting) Context

BEPS refers to tax planning strategies used by multinational enterprises to shift profits to low- or no-tax jurisdictions, eroding tax bases of other countries.

Incorporating BEPS standards into DTACs helps curb aggressive tax avoidance, enhances transparency, and aligns treaties with OECD-led global tax reforms.

Permanent Establishment (PE)

A PE is a fixed place of business through which a non-resident entity conducts economic activities, triggering tax liability in the source country.

Expanding PE to include Service PE reflects modern business practices where services are provided remotely or digitally beyond traditional physical presence.