

International Tax Update

**Swiss authorities
suspend MFN clause
from Tax Treaty with
India**



Suspension of Most Favoured Nation Clause in Swiss-India Tax Treaty

- The Double Taxation Avoidance Agreement (DTAA)/ Tax Treaty between Switzerland and India was initially signed on 2 November 1994 and then amended by protocols in 2000 and 2010. Article 11 of the 2010 protocol contains a **Most Favoured Nation (MFN) clause**. This clause stipulates that if India, under any agreement with an OECD member (Organization for Economic Co-operation and Development), offers lower tax rates on dividends, interest, royalties, or fees for technical services than those in the DTAA, these lower rates shall also apply between India and Switzerland.
- After 2010, India signed treaties with Lithuania and Colombia, which later joined the OECD in 2018 and 2020, respectively. Based on the MFN clause, Switzerland interpreted that the lower residual tax rates (5% on dividends) in these treaties should apply retroactively to the Swiss-India DTAA,

effective from Lithuania's and Colombia's respective OECD accession dates. This interpretation allowed Indian tax residents to claim refunds for Swiss withholding tax from 2018 and 2020 onward, following the procedures outlined in the treaty.

- In 2023, the Indian Apex Court ruled that the MFN clause could not apply retroactively to countries that became OECD members after the protocol was signed. The Court also stated that the clause's applicability required specific notification under Section 90 of the Indian Income Tax Act. This interpretation diverged from Switzerland's view, leading the Swiss competent authority to acknowledge that there was no reciprocity in the application of the MFN clause between the two countries.
- In light of the Indian Apex Court's ruling and the absence of reciprocity, Switzerland decided to suspend its unilateral application of the MFN clause effective from 1 January 2025. Accordingly, income accruing on or after 1 January 2025 may be taxed

in the source State at the rates provided for in the DTAA regardless of the application of the relevant Protocol.

For complete details, please refer the announcement by the Swiss authorities:

<https://www.estv.admin.ch/estv/en/home/international-fiscal-law/international-by-country/sif/india.html>

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