

Switzerland suspends most favoured nation status to India

India inked tax treaties with Colombia & Lithuania that provided tax rates on certain types of income, lower than rates it provided to OECD nations

OUR CORRESPONDENT

NEW DELHI: The Swiss government has suspended the most favoured nation status (MFN) clause in the Double Taxation Avoidance Agreement (DTAA) between India and Switzerland, potentially impacting Swiss investments in India and leading to higher taxes on Indian companies operating in the European nation.

According to a December 11 statement by the Swiss finance department, the move follows the Supreme Court of India last year ruling that the MFN clause doesn't automatically trigger when a country joins the OECD if the Indian government signed a tax treaty with that country before it joined the organisation.

India signed tax treaties with Colombia and Lithuania that provided tax rates on certain types of income that were lower than the rates it provided

Highlights

- » Switzerland cited a 2023 ruling by Indian Supreme Court in a case relating to Vevey-headquartered Nestle for its decision to withdraw the MFN status
- » Post suspension of the MFN status, Switzerland will from Jan 1, 2025, levy a 10% tax on dividends due to Indian tax residents who claim refunds for Swiss withholding tax & for Swiss tax residents who claim foreign tax credits
- » 'This suspension may lead to increased tax liabilities for Indian entities operating in Switzerland, highlighting the complexities of navigating international tax treaties in an evolving global landscape'

to OECD countries. The two countries later joined OECD.

Switzerland in 2021 interpreted that Colombia and Lithuania joining the OECD meant a 5 per cent rate for dividends would apply to the India-Switzerland tax treaty under the MFN clause, rather than 10 per cent as outlined in the agreement. But post suspension of the MFN status, Switzerland will from January 1, 2025, levy

a 10 per cent tax on dividends due to Indian tax residents who claim refunds for Swiss withholding tax and for Swiss tax residents who claim foreign tax credits.

In the statement, the Swiss Finance Department announced suspension of the application of the MFN clause of the protocol to the agreement between the Swiss Confederation and the Republic of India

for the avoidance of double taxation with respect to taxes on income. Switzerland cited a 2023 ruling by Indian Supreme Court in a case relating to Vevey-headquartered Nestle for its decision to withdraw the MFN status. This means that Switzerland will tax dividends that Indian entities will earn in that country at 10 per cent from January 1, 2025.

According to the statement, in 2021, the Delhi High Court in the Nestle case upheld the applicability of the residual tax rates after taking into account the MFN clause in the double taxation avoidance treaty. However, the Indian Supreme Court, in a decision dated October 19, 2023, reversed the lower court's decision and concluded that, the applicability of MFN clause provided "was not directly applicable in the absence of 'notification' in accordance with Section 90 of the Income Tax Act".

Commenting on the deci-

sion of Swiss authority decision, Nangia Andersen M&A Tax Partner Sandeep Jhunjhunwala, said the unilateral suspension of application of the MFN clause under its tax treaty with India, marks a significant shift in bilateral treaty dynamics.

"This suspension may lead to increased tax liabilities for Indian entities operating in Switzerland, highlighting the complexities of navigating international tax treaties in an evolving global landscape," he said.

It also underscores the necessity of aligning treaty partners on the interpretation and application of tax treaty clauses to ensure predictability, equity, and stability in international tax framework, Jhunjhunwala said.

AKM Global, Tax Partner, Amit Maheshwari, said that the main reason behind the decision to withdraw MFN is of reciprocity, which ensures that taxpayers in both countries are treated equally and fairly.

SC's Nestle tax ruling fallout: Switzerland suspends MFN status for India under DTAA

Shishir Sinha

New Delhi

Switzerland has suspended the most favoured nation (MFN) status granted to India following an adverse court ruling against Nestle. This means increased tax liabilities for Indian entities operating in Switzerland.

From January 1, Indian companies will be subject to a higher withholding tax on income generated in Switzerland.

TAX DEMAND ON MNCs

The decision follows a ruling by the Supreme Court on October 19, 2023, that the Double Taxation Avoidance Agreement (DTAA) cannot be enforced unless notified under Section 90 of the Income Tax Act. Because of this, companies such as Nestle SA (the parent of Nestle India) and other Swiss, Dutch and French MNCs face a demand for

higher taxes on dividends.

Quoting the ruling, the Swiss authorities acknowledged that its interpretation of Paragraph 5 of the Protocol to the India-Switzerland Double Taxation Avoidance Agreement (IN-CH DTA) is not shared by the Indian side.

“In the absence of reciprocity, it therefore waives its unilateral application with effect from January 1, 2025. For dividends due from and including January 1, 2025, the residual tax rate in the source state is limited to 10 per cent,” a statement from the Swiss authorities said.

However, the position adopted by the Swiss competent authority in its statement of August 13, 2021, remains applicable for income accruing during the 2018-2024 tax years.

Reacting to the Swiss action, External Affairs Ministry spokesperson Randhir Jaiswal said, “My understanding is that because of



Essentially, Switzerland feels it is not receiving the same treatment that India grants to other nations with more favourable tax treaties

EFTA, the DTAA will be renegotiated. I have no update on the MFN.”

Explaining the decision by the Swiss Authority, Sandeep Jhunjhunwala, M&A Tax Partner at Nangia Andersen,

said that effective January 1, the beginning of the tax year in Switzerland, this suspension may lead to increased tax liability for Indian entities operating in Switzerland.

“Beyond its immediate fiscal impact, this development reflects broader trends in international taxation, with countries like India increasingly asserting stricter interpretations of treaty provisions to protect domestic tax revenues,” he said.

According to Amit Maheshwari, Tax Partner at AKM Global, essentially, Switzerland is of the view that it is not receiving the same treatment that India grants to other countries with more favourable tax treaties. Further, the main reason behind this is of reciprocity, which ensures that taxpayers in both countries are treated equally and fairly.

“The fallout is that more countries may follow Switzerland,” Maheshwari concluded.

LIABILITY OF INDIAN COS MAY RISE FROM JAN 1

Swiss Scrap MFN Clause in Tax Treaty with India

Our Bureau

New Delhi: Switzerland announced that it will suspend the most favoured nation (MFN) clause in its Double Tax Avoidance Agreement (DTAA) with India effective January 1, 2025, in a move that may raise the tax outgo on dividend income for Indian entities operating in the European country.

The decision follows India's Supreme Court ruling in October 2023 in a case involving Swiss multinational Nestle SA.

Move may impact Swiss FPI, FDI commitment in future

323 Swiss cos present in country

\$9.77 b FDI from European nation to India during Apr 2000-March 2023

Switzerland had inked EFTA to invest **\$100 b** in India

\$10.77 b Bilateral trade in FY23



Swiss govt suspends MFN status for India post SC ruling

NEW DELHI: The Swiss government has suspended the most favoured nation status (MFN) clause in the Double Taxation Avoidance Agreement (DTAA) between India and Switzerland, potentially impacting Swiss investments in India and leading to higher taxes on Indian companies operating in the European nation.

According to a December 11 statement by the Swiss finance department, the move follows the Supreme Court of India last year ruling that the MFN clause doesn't automatically trigger when a country joins the OECD if the Indian government signed a tax treaty with that country before it joined the organization.

India signed tax treaties with Colombia and Lithuania that provided tax rates on certain types of income that were lower than the rates it provided to OECD countries. The two countries later joined OECD.

Switzerland in 2021 interpreted that Colombia and Lithuania joining the OECD meant a 5 per cent rate for dividends would apply to the India-Switzerland tax treaty under the MFN clause, rather than 10 per cent as outlined in the agreement.

But post suspension of the MFN status, Switzerland will from January 1, 2025, levy a 10 per cent tax on dividends due to Indian tax residents who claim refunds for Swiss withholding tax and for Swiss tax residents who claim foreign tax credits.

In the statement, the Swiss Finance Department announced suspension of the application of the MFN clause of the protocol to the agreement between the Swiss Confederation and the Republic of India for the avoidance of double taxation with respect to taxes on income.

Switzerland cited a 2023 ruling by Indian Supreme Court in a case relating to Vevey-headquartered Nestle for its decision to withdraw the MFN status.

This means that Switzerland will tax dividends that Indian entities will earn in that country at 10 per cent from January 1, 2025.

According to the statement, in 2021, the Delhi High Court in the Nestle case upheld the applicability of the residual tax rates after taking into account the MFN clause in the double taxation avoidance treaty.

However, the Indian Supreme Court, in a decision dated October 19, 2023, reversed the lower court's decision and concluded that, the applicability of MFN clause provided "was not directly applicable in the absence of 'notification' in accordance with Section 90 of the Income Tax Act".

Commenting on the decision of Swiss authority decision, Nangia Andersen M & A Tax Partner Sandeep Jhunjhunwala, said the unilateral suspension of application of the MFN clause under its tax treaty with India, marks a significant shift in bilateral treaty dynamics.

Switzerland suspends MFN status to India in tax avoidance agreement

RAVI DUTTA MISHRA &
AANCHAL MAGAZINE
NEW DELHI, DECEMBER 13

IN WHAT could potentially impact Swiss investments in India and higher taxes on Indian companies operating in Switzerland starting January 1, 2025, Bern has suspended the Most-Favoured-Nation (MFN) clause in the Double Taxation Avoidance Agreement (DTAA) that India and Switzerland entered originally in 1994 and amended in 2010, a statement released by the Swiss government dated December 11 showed.

This decision follows a ruling by the Indian Supreme Court last year, which determined that the DTAA cannot be enforced unless it is notified under the Income Tax Act. As a result, Swiss companies such as Nestlé face higher taxes on dividends. The Supreme Court ruling effectively overturned a Delhi High Court order that had ensured companies and individuals were not subject to double taxation while working in or for foreign entities.

Tax experts said that the move by the Swiss could "impact investments" in India as dividends would be subject to "higher withholding tax". Notably, India and four-nation European Free Trade Association (EFTA), an intergovernmental grouping of Iceland, Liechtenstein, Norway and Switzerland signed a free trade agreement where the EFTA countries committed investment worth \$100 billion investment in India over a 15-year.

However, the Swiss embassy said that there is no direct impact on the EFTA-India TEPA.

"In particular this week's decision does not negatively affect in-



The Swiss authorities said that the suspension was enforced due to a lack of "reciprocity" in the DTAA. File

vestment from Switzerland to India. The question of the interpretation by Switzerland and India of the most-favoured-nation clause concerns the residual tax rate applicable to dividends based on the double taxation agreement paid by a company of one contracting state to a resident of the other contracting state. However, the change in this residual rate has no impact on the validity of the double taxation agreement as such, or on any other treaties under international law concluded between Switzerland (independently or under the EFTA framework) and India," the embassy said in response to a query.

The Swiss authorities said that the suspension was enforced due to a lack of "reciprocity" in the DTAA by the Indian government. They added that for dividends due on or after January 1, 2025, the residual tax rate in the source state would be limited to 10 per cent.

"Based on the Indian Supreme Court ruling, the Swiss competent authority acknowledges that its interpretation of paragraph 5 of the Protocol to the IN-CH DTA is not shared by the Indian side. In the absence of reciprocity, it therefore waives its unilateral ap-

EXPLAINED E Likely impact of the move

THE MOVE by the Swiss authorities, according to tax experts, could "impact investments" in India as dividends would be subject to "higher withholding tax". Nearly 140 Indian companies have invested in an estimated 180 entities in Switzerland and are mostly active in the sectors of technology (32 per cent) and life sciences (21 per cent).

plication with effect from January 1, 2025. Accordingly, income accruing on or after this date may be taxed in the source state at the rates provided in the DTA IN-CH, regardless of paragraph 5 of the Protocol," the Swiss government statement said.

Amit Maheshwari, Tax Partner, AKM Global said that Switzerland has announced this in direct response to the Nestlé ruling pronounced by the Indian apex court in 2023 where the court held that MFN application is not automatic and it requires a separate notification from India to grant lower tax rates under the MFN clause.

He said that Switzerland is of the view that it is not receiving the same treatment that India grants to other countries with more favourable tax treaties and the main reason behind this is reciprocity, which ensures that taxpayers in both countries are treated equally and fairly.

Switzerland's investment flows in India amounted to \$9.95 billion between 2000 and 2023 according to the Ministry of Commerce and Industry and the International Monetary Fund (IMF) says that Swiss investments stocks in India amounted to \$35 billion in 2021.

Over 330 Swiss companies including Nestlé, ABB, Novartis, Roche UBS and Credit Suisse have invested in India, with a presence in various sectors such as machinery, electrical and metal (MEM), pharmaceutical, finance, construction, sustainable technologies and cleantech industry, as well as Information and Communications Technology services.

Moreover, nearly 140 Indian companies, including TCS, Infosys, HCL Tech, Wipro, Dr Reddy's Labs and Eureka Forbes, have investments in an estimated 180 entities in Switzerland. These companies are mostly active in the sectors of technology (32 per cent) and life sciences (21 per cent). According to the IMF, Switzerland is the 8th largest recipient of Indian FDI stocks, amounting to \$3.7 billion.

"This seems to have been disregarded after the said ruling since Swiss authorities announced in August 2021 that based on the most favoured nation clause between Switzerland and India, the tax rate on dividends from qualifying shareholders would be reduced from 10 per cent to 5 per cent, effective retroactively from July 5, 2018. However, the subsequent ruling in 2023 contradicted the same. The fallout of this is that more countries may follow Switzerland after this," Maheshwari said.

He said that this could impact Swiss investments in India as di-

vidends would be subject to higher withholding now and income accruing on or after January 1, 2025, may be taxed at the rates provided for in the original double taxation treaty between Switzerland and India, regardless of the most favoured nation clause.

Sandeep Jhunjhunwala, M&A Tax Partner at Nangia Andersen, said Switzerland's decision to suspend the unilateral application of the MFN clause under its tax treaty with India marks a significant shift in bilateral treaty dynamics. He said that the move, grounded in the Indian Supreme Court's Nestlé ruling rejecting the automatic applicability of the MFN clause, highlights the growing emphasis on reciprocity and mutual agreement in interpreting treaty provisions.

"Effective 1 January 2025, the beginning of the tax year in Switzerland, this suspension may lead to increased tax liabilities for Indian entities operating in Switzerland, highlighting the complexities of navigating international tax treaties in an evolving global landscape. Beyond its immediate fiscal impact, this development reflects broader trends in international taxation, with countries like India increasingly asserting stricter interpretations of treaty provisions to protect domestic tax revenues.

It further underscores the necessity of aligning treaty partners on the interpretation and application of tax treaty clauses to ensure predictability, equity, and stability in the international tax framework," Jhunjhunwala added.

A query emailed to Commerce and Industry Ministry and Finance Ministry was unanswered at the time of publishing.

Swiss Shock: EFTA member lobs back India's MFN tax volley

From Jan. 1, Indian entities in Switzerland face higher tax liabilities as country responds to Supreme Court ruling that voided tax treaty benefit

Vikas Dhoot
NEW DELHI

In a development that could hurt India's investment climate and affect firms' international taxation math, Switzerland has decided to suspend the Most Favoured Nation (MFN) treatment for India under the two countries' 30-years old double-taxation avoidance agreement (DTAA), citing an October 2023 ruling against its validity by the Supreme Court on 11 petitions that were combined with a Nestle plea.

A statement by Swiss authorities dated December 11, said the MFN clause under the DTAA will no longer hold from January 1, 2025, considering that India's apex court had said it does not get automatically triggered until notified under the Income Tax Act.

"On the basis of the Indian Supreme Court ruling, the Swiss competent authority acknowledges that its interpretation of para. 5 of the Protocol to the IN-CH DTA is not shared by the Indian side. In the absence of reciprocity, it therefore waives its unilateral application with effect from 1 January, 2025," a Swiss government communiqué stated.

Terming this as a significant shift in bilateral treaty dynamics, Nangia Andersen's tax partner Sandeep Jhunjhunwala said this would mean increased tax liabilities for Indian enti-



ties operating in Switzerland and increases the complexities of navigating international tax treaties in an evolving landscape.

"Previously, Indian companies benefited from a reduced tax rate of 5% on dividends and other incomes, thanks to Switzerland's earlier application of MFN benefits. With the reversion to a 10% residual rate starting January 1, these firms face higher tax liabilities, reducing their competitiveness compared to businesses from countries still benefiting from MFN provisions," reckoned Ajay Srivastava, director of the Global Trade Research Initiative (GTRI).

"Beyond its immediate fiscal impact, this development reflects broader trends in international taxation, with countries like India increasingly asserting stricter interpretations of treaty provisions to protect domestic tax revenues," Mr. Jhunjhunwala noted, adding this underscores the need to align treaty partners on the interpretation and application of tax treaty clauses to

ensure predictability, equity, and stability in international tax framework.

Sameer Gupta, national tax leader at EY India, indicated that all may not be lost in this bilateral economic tangle. "As per the Court's decision, the MFN clause will only take effect once both countries issue notifications... once India provides the required notification, Switzerland can reactivate the treaty provision," he averred.

Mr. Srivastava, however, warned that this suspension not only brings tax challenges for Indian firms in sectors like financial services, pharmaceuticals, and IT, that have operations in Switzerland, but also introduces frictions with other trade and investment partners over the MFN clause interpretations that could hurt inbound and outbound investment flows. If disputes over reading MFN clauses persist, Indian businesses could face similar hurdles in other jurisdictions as well, he said.

"Proactive negotiations to clarify and harmonize interpretations of treaty provisions are essential to safeguard Indian firms' interests abroad. Additionally, India must ensure that its treaty frameworks reflect contemporary business realities, particularly in the digital and service sectors, to reduce tax uncertainties and promote global competitiveness," Mr. Srivastava underlined.

Tax blow to Swiss arms of India Inc

PRIYANSH VERMA

New Delhi, December 13

THE TAX LIABILITY OF several Indian companies, which have operations in Switzerland, including bellwether IT and pharma firms, may rise with the central European country announcing a decision to increase the withholding tax on dividends their Swiss arms pay to Indian parents under the 'source rule', from 5% to 10%, effective January 2025.

Switzerland cited a 2023 ruling by the Supreme Court in Nestle India case for the move. The SC ruled that the bilateral double taxation avoidance agreement (DTAA) between the countries doesn't automatically entitle it to a lower withholding tax in India for dividends transferred to the Swiss parents, unless a notification to this effect is issued by the Indian tax authorities.

Citing this ruling, Switzerland has now withdrawn the most favoured nation (MFN) status to India in regard to dividend taxation, which means absence of non-discriminatory reciprocal treatment. Currently, subsidiaries of Swiss firms in India pay 10% withholding tax on dividends paid to parents. Dr Reddys Laboratories, Infosys, Wipro, Tech Mahindra, HCC, HCL are among Indian companies with presence in Switzerland & are likely to be impacted by the move, according to industry sources.

"This suspension (of MFN treatment) may lead to increased tax liabilities for Indian entities, highlighting the complexities of navigating international tax treaties in an evolving global landscape," said Sandeep Jhunjhunwala, M&A tax partner at Nangia Andersen.

Cloud Over Investments

►► From Page 1

The court had held that the MFN clause under the DTAA does not get automatically triggered until notified under the Income Tax Act, 1961.

“On the basis of the Indian Supreme Court ruling, the Swiss competent authority acknowledges that its interpretation of para 5 of the Protocol to the IN-CH DTA is not shared by the Indian side,” said a recent statement issued by the Swiss authorities. “In the ab-

sence of reciprocity, it therefore waives its unilateral application with effect from 1 January 2025.”

Switzerland said, however, that income accruing during the 2018-2024 tax years will not be impacted by this change.

The Supreme Court had disposed of 11 petitions at the time, setting aside a Delhi High Court ruling. Besides Nestle, the decision also applied to companies from France and the Netherlands.

The ruling led to a flurry of tax notices being issued to Swiss

companies operating in India. While all of them deposited income tax as demanded, they may have a hard time getting the credit for this back home as the levy is applicable prospectively.

The MFN clause enables treaty nations to pay a lower rate of tax at source on dividends, interest, royalties and fees for technical services.

Experts said the move has implications for investment commitments of over \$100 billion made under the four-nation European

Free Trade Agreement (EFTA) inked with India in March.

“This would especially impact Indian companies having ODI (overseas direct investment) structures with subsidiaries in Switzerland and will raise the Swiss withholding tax on dividends from 5% to 10% from January 1, 2025,” said Kumar Manglam Vijay, partner, JSA

Advocates & Solicitors.

BROADER IMPACT

Experts said the suspension may

not only lead to increased tax liabilities for Indian entities operating in Switzerland but may have a broader impact.

“Switzerland’s decision to suspend the unilateral application of the MFN clause under its tax treaty with India, marks a significant shift in bilateral treaty dynamics,” said Sandeep Jhunjhunwala, M&A tax partner at Nangia Andersen. “Grounded in the Indian apex court’s Nestle ruling, which rejected the automatic applicability of MFN clause, this move underscores the growing emphasis on reciprocity and mutual agreement in the interpretation of treaty provisions.”