



# India triggers the most favoured nation clause under its DTC with Spain

Tax Alert



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## India triggers the most favoured nation clause under its DTC with Spain.

Thereby permitting the application of the reduced rate of 10% to royalties for technical services, rather than the 20% provided for in article 13 of the DTC.

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Article 13 of the [Convention between the Republic of India and the Kingdom of Spain for the Avoidance of Double Taxation \(DTC\)](#) (Official State Gazette of 07/02/1995) regulates the **taxation of royalties and fees for technical services**.

More specifically, article 13.2 of the DTC provides that the royalties or fees for technical services are to be **taxed at source**, at a maximum rate of **20%** (while specifying that certain royalties relating to the use of, or the right to use, industrial, commercial or scientific equipment are to be taxed at 10%).

Meanwhile, article 7 of the protocol to the DTC includes a **most-favoured nation clause** (the “MFN clause”) whereby, in the event that any DTC signed between India and another OECD Member State after 1 January 1990 limits the taxation at source of such royalties to a lower rate, that same rate shall also apply under the DTC between India and Spain. In such case, the above-mentioned lower taxation rate will be applicable:

- as of the date on which the India-Spain DTC entered into force; or
- as of the date on which the Indian Convention or Agreement in question entered into force, where such date is later.

Since the execution of the above Protocol, India has signed DTCs meeting the requirements of the MFN clause with a number of countries, not least the India-Germany DTC, which entered into force on 26 October 1996 (when Germany was already a member of the OECD) and reduced the tax on royalties and payments for technical services to under 20%. The MFN clause could therefore be applicable as a result of this DTC.

### Notification issued by the Indian authorities on 19 March 2024

19 March 2024 saw the publication of a [Notification of the Indian Ministry of Finance](#) stating that the terms for triggering the MFN clause under the DTC with Spain had been met, and setting the taxation rate for royalties and payments for technical service at 10%, by reference to the India-Germany DTC.

Specifically, according to the above notification, article 13.2 of the DTC is now worded as follows (text only available in English):

*“2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the royalties or fees for technical services, the tax so charged shall not exceed ten per cent of the gross amount of royalties or fees for technical services.”*

It also notes that this new rate will be triggered with effect from 2024/2025. It thus appears reasonable to consider that, in line with the Convention, the maximum rate applicable to royalties and payments for services under article 13 of the Spain-India DTC may not exceed 10%.

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