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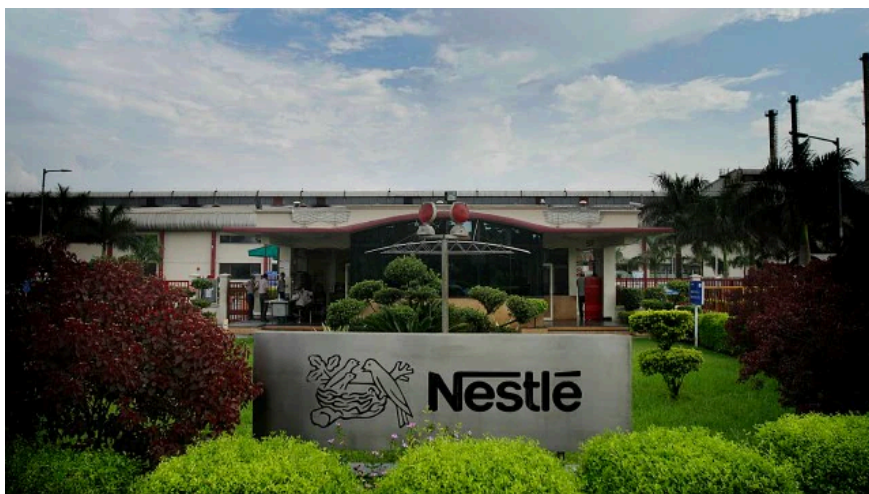
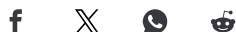
The Swiss move poses risk to the \$100 billion investment commitment in India over a 15-year period by the four-nation European Free Trade Association signed in March this year.

Written by Ravi Dutta Mishra, Aanchal Magazine New Delhi | Updated: December 14, 2024 08:17 IST



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Following a Supreme Court order, Swiss companies such as Nestlé face higher taxes on dividends.

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In what could potentially impact Swiss investments in India and higher taxes on Indian companies operating in Switzerland starting January 1, 2025, Switzerland 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”. This poses risk to the \$100 billion investment commitment in India over a 15-year period by the four-nation European Free Trade Association (EFTA), an intergovernmental grouping of Iceland, Liechtenstein, Norway and Switzerland under a trade pact signed in March this year.

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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 application 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

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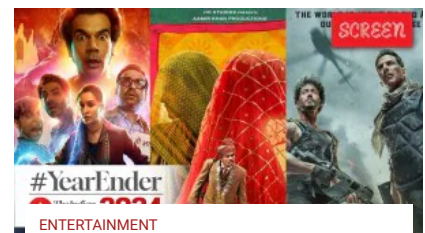
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separate notification from India to grant lower tax rates under the MFN clause. He said that Switzerland is of the view that it is not receiving the same treatment that India grants to other countries with more favourable tax treaties and the main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

“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 shareholdings 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.

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He said that this could impact Swiss investments in India as dividends 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.

The [Supreme Court ruling had said that a country could claim benefits under a DTAA](#) from the date of its treaty agreement and not from a later date when another country gained from entering a new treaty.

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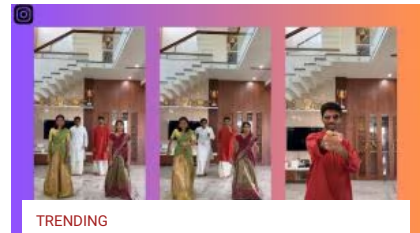
The case addressed bilateral treaty issues, including whether a country could invoke the MFN clause when the third country in the DTAA was not an Organisation for Economic Co-operation and Development (OECD) member at the time of signing, and whether the MFN clause could automatically apply or required a notification to take effect.

Nestlé SA, Concentrix Services Netherlands, and other multinational companies had argued that since the Netherlands, Switzerland, and France are members of the OECD, the beneficial 5-per-cent withholding tax rate in treaties with Slovenia, Lithuania, and Colombia should apply to them as well.



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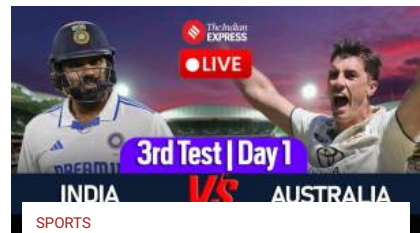
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OPINION

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

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Ravi Dutta Mishra is a Principal Correspondent with The Indian Express, covering policy issues related to trade, commerce, and banking. He has over five years of exper ... [Read More](#)



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