



Tax alert: Lower tax rate of 10% notified for royalties, FTS under India-Spain tax treaty

20 March 2024

The government has issued Notification No. 33/2024, dated 19 March 2024, notifying a lower tax rate of 10% for taxation of royalties and fees for technical services (FTS) under Article 13(2) of the India-Spain tax treaty.

Background:

India-Spain tax treaty

- The India-Spain tax treaty came into force on the 12 January 1995, vide Notification No. GSR 356(E), dated 21 April 1995.

Paragraph 7 of the Protocol¹ to India-Spain tax treaty dated 8 February 1993, amongst others, provides that if under any Convention or Agreement between India and a **third state which is a member of the Organisation for Economic Cooperation and Development (OECD)**, which enters into force **after 1 January 1990**, India limits its taxation at source on royalties or fees for technical services (FTS) **to a rate lower than the rate provided for in India-Spain tax treaty on the said items of income, the same rate as provided for in that Convention or Agreement on the said items of income shall also apply under this convention (i.e. India-Spain tax treaty).**

India-Germany tax treaty

- In the India-Germany tax treaty which entered into force on 26 October 1996, and Germany **was a member of the OECD at the time of entering into the said convention with India**, the Government of India limited the taxation at source on royalties and FTS **to a rate lower than that provided in the India-Spain tax treaty on the said items of income.**

Amendment to Article 13(2) of the India-Spain tax treaty

- The government has now, vide Notification² No. 33/2024 dated 19 March 2024 (**Notification**), substituted Article 13(2) of the India-Spain tax treaty [relating to Royalties and FTS], as follows:

¹ As per Para 7 of the Protocol to the India-Spain tax treaty *“The competent authorities shall initiate the appropriate procedures to review the provisions of Article 13 (Royalties and fees for technical services) after a period of five years from the date of its entry into force. However, if under any Convention or Agreement between India and a third State which is a Member of the OECD, which enters into force after 1-1-1990, India limits its taxation at source on royalties or fees for technical services to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of incomes, the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention with effect from the date on which the present Convention comes into force or the relevant Indian Convention or Agreement, whichever enters into force later.”*

² Notification No. 33/2024 F.No. 503/2/1986-FTD-I

*“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.**”.*

- Further, the **Notification** states that the amended Article 13(2) of the India-Spain tax treaty shall be applicable with effect from the Assessment Year (AY) 2024-25.

Comments:

Recently, the Supreme Court of India (SC) had held that a separate notification is required under section 90(1) of the Income-tax Act, 1961 to give effect to a tax treaty or to its Protocol changing terms and conditions that alters existing provisions of the law. Our tax alert on the SC ruling is given below:

<https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/in-tax-gbt-apex-court-interprets-mfn-clause-in-certain-tax-treaties-final-noexp.pdf>

Article 13(2) of the India-Spain tax treaty, prior to issuance of the **Notification** states that if the recipient is the beneficial owner of the royalties or FTS the tax so charged shall not exceed :

- i. in the case of royalties relating to the payments for the use of, or the right to use, industrial, commercial, or scientific equipment, 10% of the gross amount of the royalties;
- ii. in the case of FTS and other royalties, 20% of the gross amount of FTS or royalties.

This **Notification** now provides a lower tax rate of 10% under Article 13(2) of the India-Spain tax treaty (relating to taxation of royalties and FTS), applicable w.e.f. AY 2024-25, pursuant to the lower tax rate of 10% provided under Article 12 of the India-Germany tax treaty (relating to taxation of royalties and FTS).

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