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LAW OFFICES INDIA

DIRECT TAX ALERT

Swiss tax authorities suspends unilateral application of the Most Favored Nation clause in the India-Switzerland DTAA

(SHALL BE EFFECTIVE FROM 1ST JANUARY 2025)

Swiss Tax authorities suspends application of MFN clause in India-Switzerland DTAA

In its decision in the case of **Assessing Officer (International Taxation) vs. Nestlé SA¹**, the Hon'ble Supreme Court had interpreted the Most Favoured Nation ('**MFN**') clause in the Double Taxation Avoidance Agreement ('**DTAA**'). The Court accepted the Income-tax Department's view that a separate notification under the Income-tax Act, 1961 is required to give effect to MFN clause in a DTAA (specifically India- Switzerland DTAA). Additionally, it ruled that the relevant date for another state/country to be a member of the OECD would be the date of its entering into the tax treaty with India and not a later date after entering into tax treaty with India.

Following this decision, the Swiss tax authorities have announced **the suspension of the unilateral application of the MFN clause** in the India-Switzerland DTAA, effective from 1 January 2025, due to differing interpretations of the MFN clause by Indian Courts and Authorities.

As a result, from 1 January 2025, the withholding tax rate on dividend income earned by Indian shareholders from Swiss companies will increase to 10%, compared to the previous rate of 5% which was applicable under the MFN clause of the India-Switzerland treaty (as per the interpretation of the Swiss Tax Authorities). However, this higher withholding tax rate will not apply to dividend income earned during the tax years 2018-2024.

¹ Civil Appeal No. 1420 of 2023

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