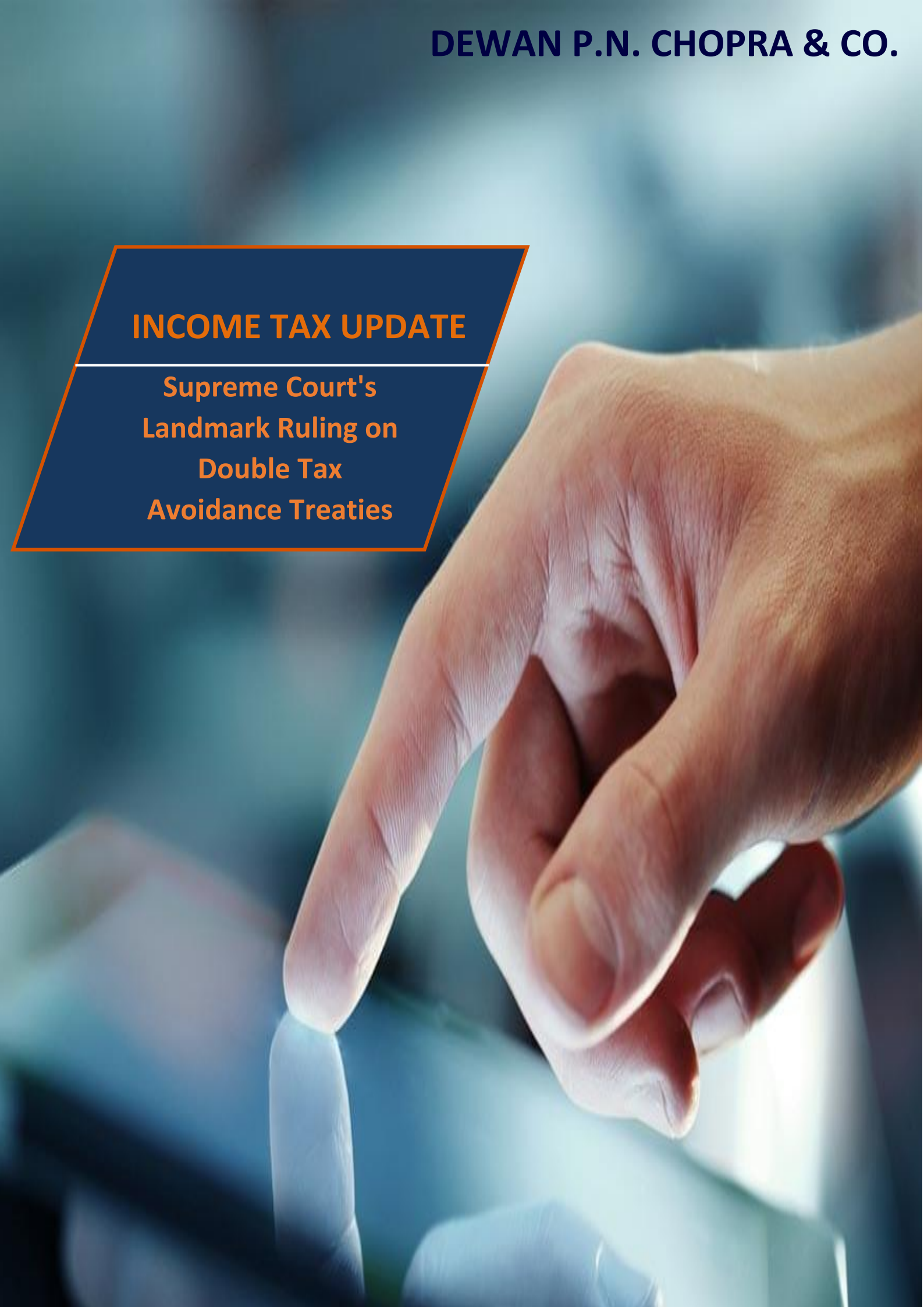


INCOME TAX UPDATE

**Supreme Court's
Landmark Ruling on
Double Tax
Avoidance Treaties**



Supreme Court's Landmark Ruling on Double Tax Avoidance Treaties (DTAA): Clarifying Notification Requirements and MFN clause

- Hon'ble Supreme Court in the case of **Nestle SA & Others [Civil Appeal No 1420/2023]** has ruled that the issuance of a notification under Section 90 of the Income Tax Act, 1961 (the Act) is an indispensable and obligatory requirement for a Court, Tribunal, or authority to give effect to a DTAA or any protocol altering its terms, thereby modifying existing provisions of law.
- The Supreme Court also concluded that, a stipulation in a DTAA or a Protocol with one nation, requires same treatment in respect to a matter covered by its terms, subsequent to its being entered into when another nation (which is member of a multilateral organization such as OECD), is given better treatment, **does not** automatically lead to integration of such term extending the same

benefit in regard to a matter covered in the DTAA of the first nation, which entered into DTAA with India. In such event, the terms of the earlier DTAA require to be amended through a separate notification under Section 90 of the Act.

- Furthermore, the Supreme Court held that, for a party to claim benefit of a “same treatment” clause, based on entry of DTAA between India and another state which is member of OECD, the relevant date is entering into treaty with India, and not a later date, when, after entering into DTAA with India, such country becomes an OECD member, in terms of India’s practice.

The Supreme Court observes that a "trigger" event, such as India granting favourable relief to a country per se does not cover all the benefits granted through the later instrument; Upholds Additional Solicitor General of India’s argument that grant of automatic benefits based on the other country's entry into OECD is 'unfeasible'.

For complete details, please refer Hon'ble SC's ruling in the case of Nestle SA & Others [Civil Appeal No 1420/2023] dated 19.10.2023:

https://main.sci.gov.in/supremecourt/2022/6394/6394_2022_8_1502_47832_Judgement_19-Oct-2023.pdf

DISCLAIMER: - The summary information herein is based on Hon'ble SC's ruling in the case of Nestle SA & Others [Civil Appeal No 1420/2023] dated 19.10.2023. While the information is believed to be accurate, we make no representations or warranties, express or implied, as to the accuracy or completeness of it. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, advice or solicitation. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.