

## THE WORLD

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### Indian Tax Troubles for International Firms?

Posted by Anthony Lin

Tax troubles are rearing their head again for international law firms in India, following a Mumbai tax tribunal's ruling Friday that British legal giant Linklaters owes taxes on fees earned on work that was referred from India but was not necessarily performed in the country. Here's an [analysis](#) by Kian Ganz of Mumbai-based legal blog Legally India.

Linklaters, like other foreign firms, is barred from having offices in India, but the Mumbai Income Tax Appellate Tribunal (ITAT) applied a retrospective 2010 amendment to Indian tax laws deeming foreign service providers to have a "permanent establishment" or "fixed base" if their employees--like many international lawyers--spend more than 90 days a year in India. Work by such providers on behalf of Indian clients is considered taxable, even if performed outside of India.

Indian tax authorities claim Linklaters owes taxes at rates of up to 40 percent on some £3.32 million (\$5.06 million) of India-related revenue from 1995 and 1996. Revenue from other years was not at issue in the case before the tribunal but could presumably be targeted under the 2010 amendment as well.

The tribunal reached an opposite conclusion to the Bombay High Court, which last year decided a similar case against another Magic Circle firm, [Clifford Chance](#). In that January 2009 ruling, the court said the firm could only be taxed on work physically performed in India.

A ruling by the Mumbai ITAT is appealable to the Bombay High Court, but the tribunal said in its Friday ruling that the retrospective amendment to the tax code meant the Clifford Chance decision was "no longer good law." Indian tax authorities have appealed the Clifford Chance case, and it is now pending before the Supreme Court of India.

The ruling raises the prospect that international law firms and other professional service providers will face higher costs in servicing Indian clients. But the matter is far from settled.

Top Indian tax lawyer Nishith Desai of [Nishith Desai Associates](#), who is not involved in either case, told Ganz the retrospective tax code amendment could be vulnerable to appeal on constitutional as well as international law grounds.

"We have certainly not seen the end of the story in this regard, and this matter would definitely be the subject matter of further litigation," Desai said.

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