

Linklaters Loss in India Tax Case May Raise Costs for Foreign Lawfirms

[Linklaters LLP](#), the second highest grossing U.K. law firm, was ordered to pay taxes in India on services provided by foreign lawyers in a ruling that may raise levies for overseas professional companies.

Linklaters will have to pay income taxes on fees its overseas employees earned if they worked for more than 90 days in India, the Mumbai Income Tax Appellate Tribunal ruled July 16. The London-based firm argued that it was exempt because it didn't have an office in the country during the 1995-96 tax year under review, according to the 111-page [ruling](#).

The decision may result in higher costs for overseas law and accounting firms providing professional services to Indian companies, said Pranay Bhatia, associate partner at Economic Laws Practice in Mumbai. Foreign law firms are banned from opening offices in India, and have been accused in a lawsuit of illegally practicing law there.

The ruling "has wide ramifications on all service sectors where foreign service providers are providing services to Indian residents," said Nishith Desai, managing partner of Mumbai-based Nishith Desai Associates, which specializes in tax-related cases. "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."

Linklaters is "reviewing the tribunal's decision," said firm spokeswoman [Sarah Peters](#), who declined to comment further.

Clifford Chance LLP, the highest-grossing U.K. law firm, has appealed against a Bombay High Court order about how much of the fees charged by the firm between 1996 and 1998 was taxable in India and the latest ruling means that company will also have to pay tax due, the tribunal said in its order.

Clifford Chance's London-based spokeswoman Anna Richards declined to comment.

Tax Treaty

The tribunal ruled that professional services are taxable under the India-U.K. tax treaty when a foreign firm's representatives visit India for more than 90 days in a 12-month period.

Linklaters can also benefit from the treaty's provision for avoiding double taxation, the ruling said.

Firms may have to pay 40 percent of their [income](#) as tax after the ruling, Economic Laws' Bhatia said.

"The entire fees for professional services earned by the assessee, in connection with the projects in India and which is thus sourced from India, is taxable in India," according to the ruling.

The tribunal noted that amendments were proposed to India's tax law this year that would negate previous court findings that income is only taxable in India to the extent the work has been carried out in the country.

The case is Linklater LLP v Income Tax Officer, Mumbai ITA 4896/5085/Mum/03.

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