

Tax Hotline

May 02, 2002

FOREIGN CONSULTANCY FIRMS MAY FALL IN THE INDIAN TAX NET

In a dispute between Clifford Chance, a U.K. based solicitor firm and the income tax department, the Income Tax Appellate Tribunal, Mumbai ("Tribunal") recently gave a ruling that foreign consulting or solicitors firms would have to pay tax on the income earned from the business they do in India even if professionals, other than their partners, employed by these firms spend more than 90 days in a year in India. The ruling further states that the days spent by the employees of the foreign firm on activities other than the project they are working on would also be included for calculating the 90-day period.

The UK firm's stand was that it need not pay tax on its fees earned in India as the number of days of the visits to India by its partners did not add up to 90 days in a year. However, for the purpose of calculating tax, the Tribunal has interpreted the treaty between India and UK to include official visits by the employees who need not be partners of the firm.

This ruling would certainly cause difficulty and hardship to the many foreign consultancy and law firms who undertake substantial amount of work in India even if based abroad since it intends to bring them under the Indian tax net. Now, these firms would have to keep track of the days spent in India by their employees who are not necessarily partners.

Source: *The Economic Times*, May 2, 2002 (Bangalore)

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