IMPORTANT INDIAN TAX CONSIDERATIONS FOR FOREIGN LAW FIRMS RENDERING SERVICES IN INDIA

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Background

India is a key destination for cross-border investments, acquisitions and commercial transactions. In this regard, several foreign law firms partner or collaborate with Indian law firms and financial advisors or act independently to advise Indian clients and multinational groups on transactions, arbitrations and various matters requiring foreign law inputs. Such collaborations have resulted in an increased frequency of foreign law firm personnel visits to India.

The growing frequency of foreign lawyer visits to India (including through secondments), coupled with the increasing volume of fees earned from Indian client mandates, has significantly heightened the Indian tax exposure of foreign law firms. The Indian tax authorities have, in recent years, adopted a more aggressive approach in scrutinising such arrangements, particularly from the perspective of permanent establishment ("**PE**"), taxation of legal fees, and withholding tax obligations. Against this backdrop, it is imperative for foreign law firms to carefully evaluate their India-related activities. This update discusses the key Indian tax issues relevant to foreign law firms and the practical measures that they can adopt to manage and mitigate these risks.

Issue 1: Taxation of Fiscally Transparent Entities

Foreign law firms are commonly structured as limited liability partnerships ("LLPs") or general partnership firms. Under the tax laws of several jurisdictions, LLPs or partnership firms are fiscally transparent and are generally not subject to tax in their own hands (the income being taxed directly in the hands of the partners or members). However, under Indian tax law, the partnership firm itself is liable to tax, and the profit distributed to partners is exempt in the hands of the respective partners.

Thus, when foreign law firms earn fees from Indian clients, a recurring issue that arises is whether the foreign law firm can claim benefits under India's double tax avoidance treaties ("**DTAAs**") with various countries.

This issue has been the subject matter of considerable judicial debate. In the case of *Linklaters LLP*[1], the Mumbai Income Tax Appellate Tribunal ("**ITAT**") held that a UK-based LLP, which was fiscally transparent under UK tax law, could claim the benefit of the India-UK DTAA in respect of legal fees earned from India because the entire income was liable to tax in the UK as all partners were UK-residents.

[1] [2023] 150 taxmann.com 222 (Mum. - Trib.)

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The position has recently been considered in a more complex factual scenario by the Delhi ITAT in the case of *Herbert Smith Freehills LLP*[2], where the partnership firm had partners resident in multiple jurisdictions. The tribunal held that the taxability of income must be determined partner-wise, based on the provisions of the applicable DTAA between India and country of residence of each partner.

While this decision provides welcome clarity on the availability of DTAA benefits to fiscally transparent entities, it also introduces practical complexities for international law firms whose partners resident in different tax jurisdictions advise an Indian client. Unless suitable administrative guidance is issued by the Indian tax authorities, taxpayers may continue to face challenges in claiming treaty benefits and obtaining appropriate withholding tax relief on a partner-wise basis. In addition, such an approach will also require foreign law firms to disclose confidential details such as the tax residency of each partner, their respective share of profits, etc.

Issue 2: Applicability of Independent Personal Services ("IPS") clause to legal services provided by Partnership Firms

The characterisation of legal services under the IPS article of tax treaties has been a contentious issue. In this context, a recurring question arises whether the IPS article is confined only to services rendered directly by an individual or whether it can also extend to professional services rendered through a partnership or LLP comprising legal professionals. The distinction is significant because, if the IPS article applies, income gets taxed in India only if the person has a fixed base in India or the total duration of stay in India during the relevant tax year is more than the thresholds prescribed in the relevant DTAA. Conversely, if the IPS article is held to be inapplicable, the income may be characterised as Fees for Technical Services ("**FTS**"), depending on the language of the applicable DTAA.

The scope of the IPS article varies considerably across India's DTAAs. For instance, Article 15 of the India-UK DTAA applies to "*income derived by an individual, whether in his own capacity or as a member of a partnership,"* whereas the India-US and India-France DTAAs extend the benefit to *"a person who is an individual or a firm of individuals (other than a company)"* and "*an individual or a partnership of individuals,"* respectively. The India-Netherlands DTAA adopts the broadest formulation by applying FTS to "*income derived by a resident of a Contracting State."* Accordingly, the applicability of the IPS article to foreign law firms must necessarily be examined with reference to the precise wording of the relevant DTAA.

While interpreting Article 15 of the India-US tax DTAA, in the case of *DCIT v. Chadbourne & Parke LLP*[3], the Mumbai ITAT held that legal services rendered by a US law firm constituted IPS and not Fees for Included Services ("**FIS**").

[2] [2026] 187 taxmann.com 916 (Delhi - Trib.)
[3] [2005] 2 SOT 434 (Mum. - Trib.)

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In contrast, in dealing with India-UK and India-Japan DTAAs in the cases of *Linklaters LLP v. DCIT*[4] and *DCIT v. Cyril Amarchand Mangaldas*[5], respectively, , the Mumbai ITAT noted that the IPS article under the respective DTAAs applies to "income derived by an individual" and held that the provision was intended to govern professional income earned by individuals and not by a partnership or LLP.

In view of the foregoing, the applicability of the IPS article to foreign law firms is inherently , the DTAA-specific and depends upon the precise language of the relevant DTAA.

Issue 3: PE Implications of Cross-border Secondment of Lawyers to India

Foreign law firms often depute lawyers to India for a limited period to work alongside Indian law firms or clients to assist on cross-border legal and regulatory matters, facilitate exchange of technical expertise, and better collaborate with Indian legal teams.

Broadly, under the secondment arrangement, the remuneration may be structured in two ways: (i) the foreign law firm continues to pay the salary to the seconded lawyer and recovers the cost from the Indian entity on a reimbursement basis; or (ii) the Indian entity directly pays the salary and other employment benefits to the seconded lawyer during the period of secondment.

The principles governing secondment arrangements have been specified by the Supreme Court ("**SC**") in *DIT v. Morgan Stanley & Co. Inc.*[6], wherein the SC held that employees of a foreign enterprise who are deputed to India and continue to render services on behalf of the foreign enterprise will give rise to a service PE for the foreign enterprise under the applicable DTAA, subject to such activity being continued for more than the threshold number of days prescribed under the relevant DTAA. Subsequently, in *Centrica India Offshore Pvt. Ltd. v. CIT*[7], the Delhi High Court held that the mere fact that salary is reimbursed on a cost-to-cost basis does not, by itself, preclude tax exposure. The court emphasised that the decisive factors are: (i) who is the real employer; (ii) what is the degree of supervision and control; and (iii) whether the secondees continue to perform services for the foreign enterprise. These points determine the substance of the secondment arrangement and the Indian tax consequences.

Accordingly, foreign law firms should carefully structure secondment arrangements and ensure that the contractual documentation reflects the commercial substance of the arrangement. Particular attention should be paid to identifying the entity exercising day-to-day supervision and control over the secondee, the economic employer, the entity responsible for the secondee's work, and whether the secondee continues to perform services on behalf of the foreign law firm.

[4] [2018] 172 ITD 459 (Mum. - Trib.) and
[2023] 200 ITD 503 (Mum. - Trib.)
[5] [2023] 154 taxmann.com 99 (Mum. - Trib.)
[6] (2007) 292 ITR 416 (SC)
[7] (2014) 364 ITR 336 (Delhi)

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Where the seconded lawyer works exclusively under the supervision, direction and control of the Indian entity and the foreign law firm merely facilitates salary payment, the risk of attributing the lawyer's activities to the foreign law gets significantly reduced. Conversely, where the lawyer continues to act for or represent the foreign law firm while in India, the Indian tax authorities may contend that the foreign law firm has a service PE, fixed place PE or dependent agent PE, depending on the facts and the applicable DTAA provisions.

Issue 4: Virtual Service PE Negated

The increasing globalisation of legal services has enabled foreign law firms to advise Indian clients without establishing a physical office in India. Today, a significant portion of legal services, including transaction structuring, legal due diligence, contract drafting, negotiations, regulatory advice and dispute strategy is delivered through video conferencing, emails, virtual data rooms and other digital platforms. Consequently, foreign law firms are able to service Indian clients extensively while their lawyers remain outside India, often generating substantial fee income from Indian clients.

This has given rise to an important question - whether extensive legal services rendered remotely/ virtually to Indian clients can constitute a service PE for foreign law firms under an applicable DTAA.

In the case of *Clifford Chance PTE Ltd.*[8], the Delhi High Court held that legal advisory services rendered by Clifford Chance (Singapore) to Indian clients virtually from outside India did not result in the creation of a service PE. The Delhi High Court clarified that a *"virtual"* services PE could not be read into the DTAA in the absence of express language to that effect.

This principle is supported by the recent decision of the Bombay High Court in *Benteler Automotive China Investment Ltd.*[9], where the court observed that merely because services were rendered to an Indian customer through video conferencing or similar technological platforms, it could not be said that the services were rendered in India. These decisions reinforce the principle that under DTAAs which require a physical presence to constitute a PE, virtual delivery of professional services from outside India will not, by itself, result in a service PE or satisfy the requirement that services have been rendered in India.

Way Forward: Managing Indian Tax Exposure

The Indian tax treatment of foreign law firms continues to evolve with increasing cross-border legal engagements and recent judicial developments. The tax implications depend not only on the nature of the legal services rendered but also on the legal structure of the foreign law firm, the provisions of the applicable DTAA, the mode of deployment of personnel in India,

[8] [2026] 485 ITR 407 (Delhi)
[9] [2026] 487 ITR 373 (Bombay)

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and the manner in which cross-border engagements are executed. Consequently, there is no "one-size-fits-all" approach to managing Indian tax exposure.

Foreign law firms should, therefore, adopt a proactive risk management framework, with particular emphasis on the following aspects:

- **Review DTAA entitlement at the outset:** Evaluate whether the foreign law firm is eligible to claim DTAA benefits, particularly where it is organised as a fiscally transparent LLP or partnership, and maintain adequate documentation supporting such claim.

- **Monitor the presence of personnel in India:** Establish internal protocols to track the duration and purpose of visits by partners, associates and secondees to India in order to manage PE exposure under the applicable DTAA.

- **Structure secondment arrangements appropriately:** Ensure that secondment documentation accurately reflects the commercial arrangement, particularly with respect to supervision, control, economic employer responsibilities and remuneration of the secondees.

- **Evaluate the characterisation of legal fees:** Analyse whether legal fees are taxable under the IPS, business profits or FTS/ FIS article of the applicable DTAA, having regard to the specific DTAA language and judicial precedents.

- **Periodically reassess India-facing operations:** As business models, personnel deployment and judicial precedents continue to evolve, foreign law firms should periodically review their India-related operating model to identify and mitigate emerging tax risks.

Given the high level of scrutiny of the Indian tax authorities on cross-border professional service arrangements, an early assessment of tax risks and timely restructuring of operating models can significantly reduce the likelihood of tax disputes while enabling foreign law firms to continue servicing Indian clients in a commercially efficient and tax-compliant manner. This also applies to other professional services firms, like chartered accountancy firms or consulting firms, who do not directly operate in India.

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