



Taxation of non-residents through a Significant Economic Presence

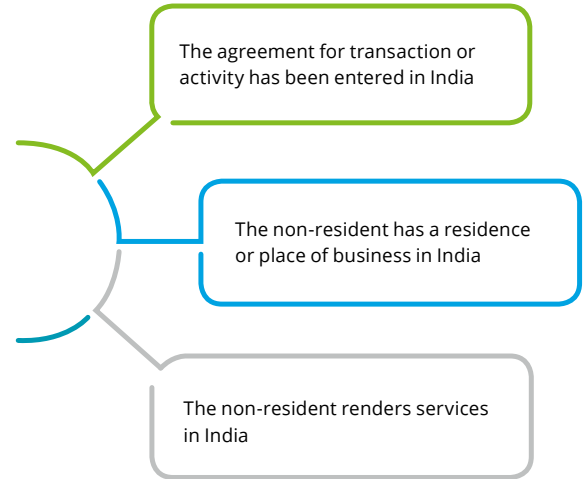
Widened scope under the Indian
Income tax law

Significant Economic Presence (SEP) Scope, applicability and safeguards



- SEP introduced in the Income-Tax Act, 1961 ('ITA') from April 1, 2018
- It expands the scope of income of a non-resident which accrues or arises in India that results in a 'business connection' in India for that non-resident. The resulting income, attributable to the SEP, is taxable in India.
- SEP is defined to mean:
 - Transaction in respect of any goods, services or property carried out by a non-resident in India, including the provision of download of data or software in India, subject to payment threshold to be prescribed; or
 - Systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means

SEP to trigger irrespective of whether or not:



Safeguards:

- India's existing treaties contain the conventional concept of permanent establishment (PE) for taxing business profits of a non-resident and the inclusion of SEP in the ITA will not be read into the tax treaties unless they are amended.
- Revenues and users not exceeding thresholds as may be prescribed, to remain outside of SEP



Who is impacted ?

Non-resident carrying on specified activities beyond thresholds may be prescribed

- Non-residents who do not have tax treaty benefits are directly impacted
- Non-residents who have tax treaty benefits need to consider consequential obligation, if any



Illustratively, which transactions may be covered?

- Sale or purchase of goods, services or property through digital means
- Any transaction involving download of data or software in India (like in-app purchases)
- Provision of online training / gaming services
- Provision of services of streaming of e-content (audio / video)
- Interaction with customers such as for trouble shooting, etc
- Websites, online database, cloud storage and computing services, with significant user base in India

SEP – some recent developments Around the world

Israel' step towards SEP

Israel Tax Authority have prescribed various illustrative 'digital factors' to constitute SEP for foreign e-commerce and online services companies that operate in Israel.

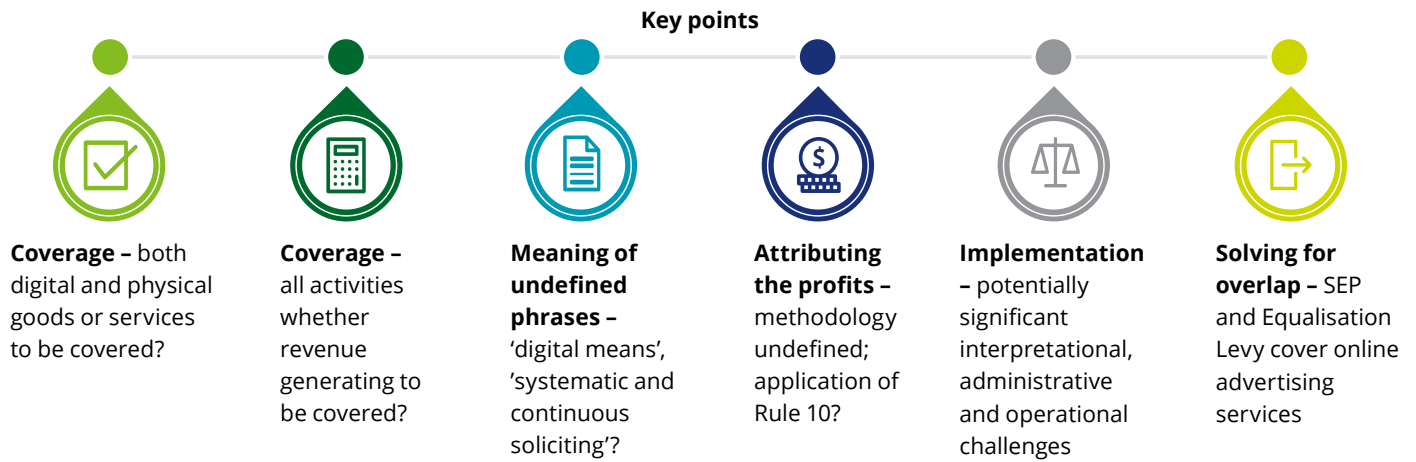


European Union (EU)'s proposal for taxation of Significant Digital Presence (SDP)

EU proposes to establish a taxable nexus of a digital business based on revenue, number of users / contracts for digital services

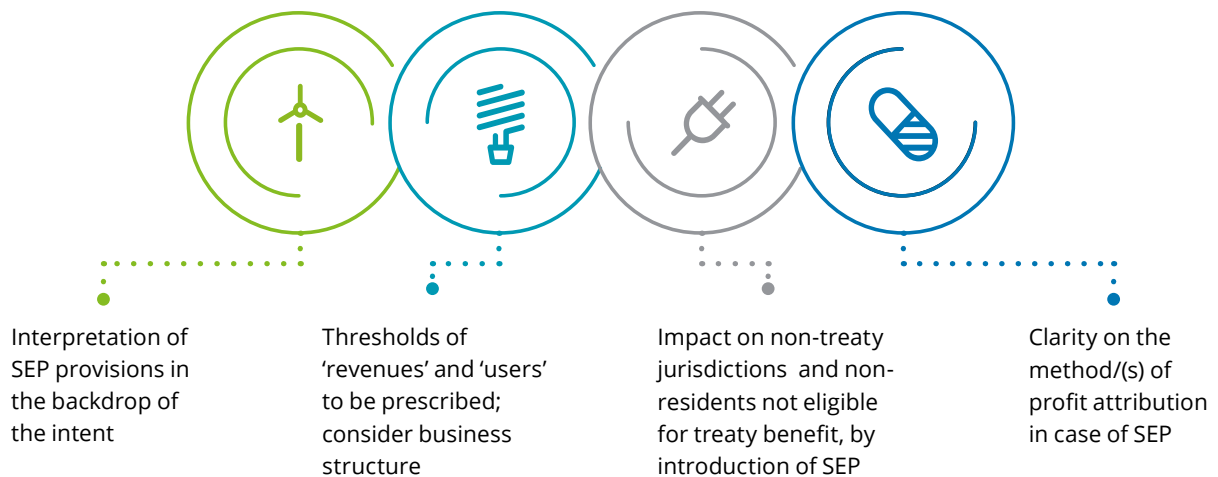
Key considerations

Points to ponder



Way forward

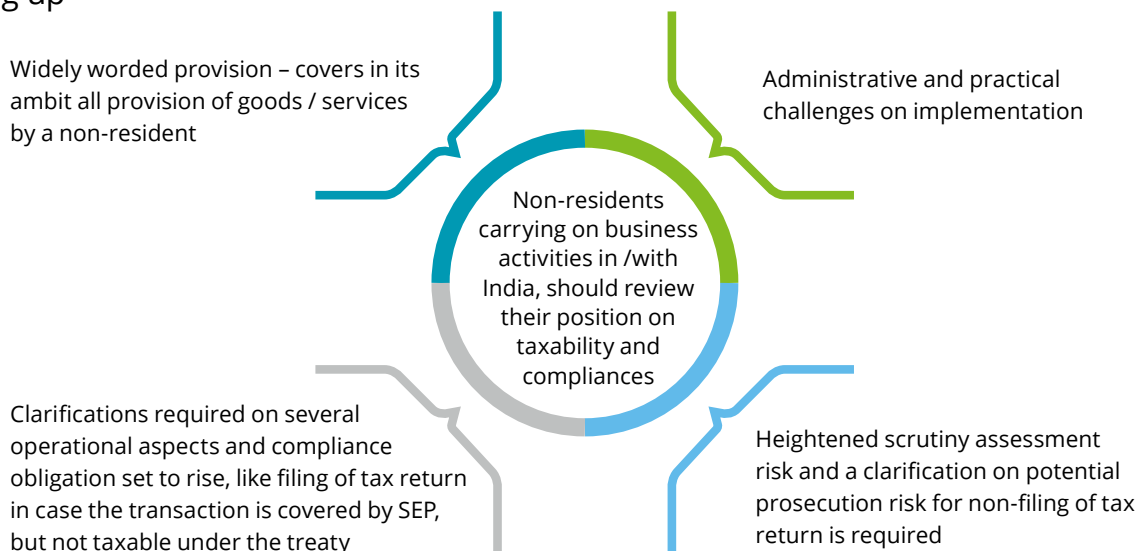
Areas to look out for



Re-negotiation of existing tax treaties by India for inclusion of SEP

Key takeaways

Summing up



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