



## **Taxation of non-residents through a Significant Economic Presence**

Widened scope under the Indian  
Income tax law

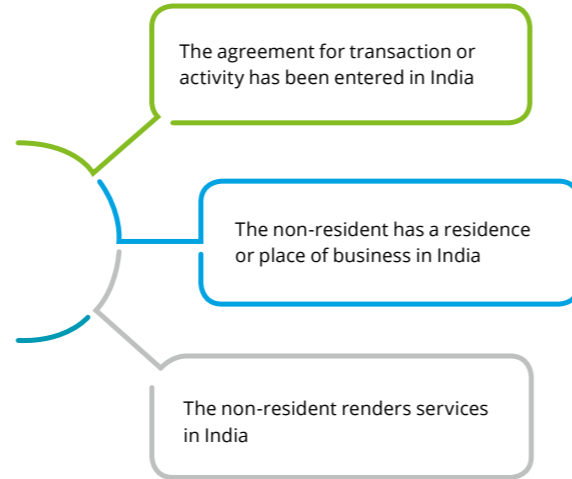
## Significant Economic Presence (SEP)

### 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.

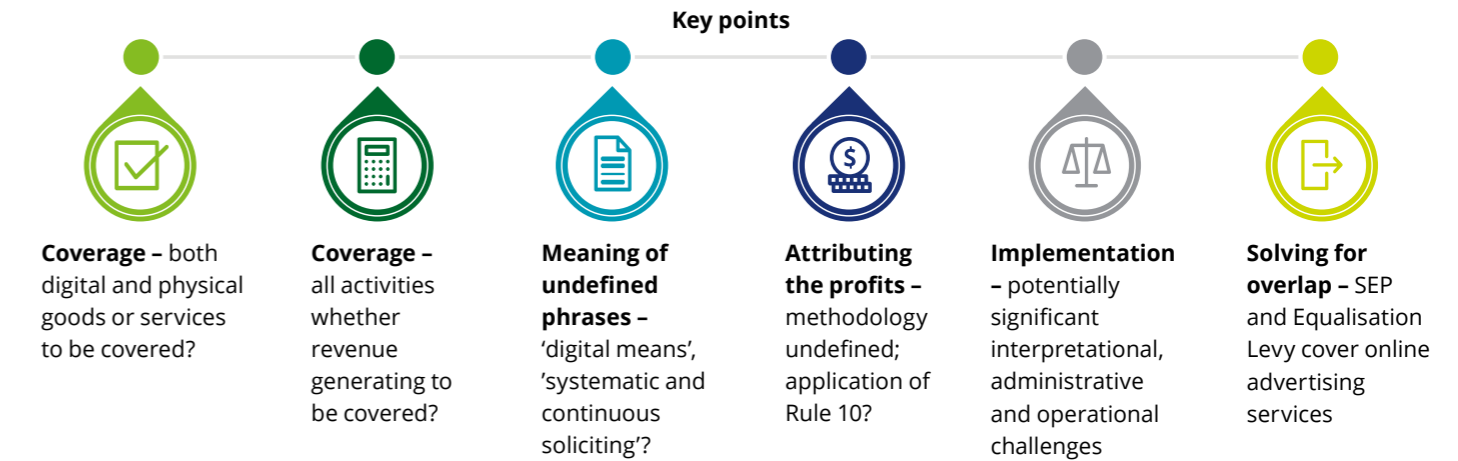


#### European Union (EU)'s proposal for taxation of Significant Digital Presence (SDP)

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

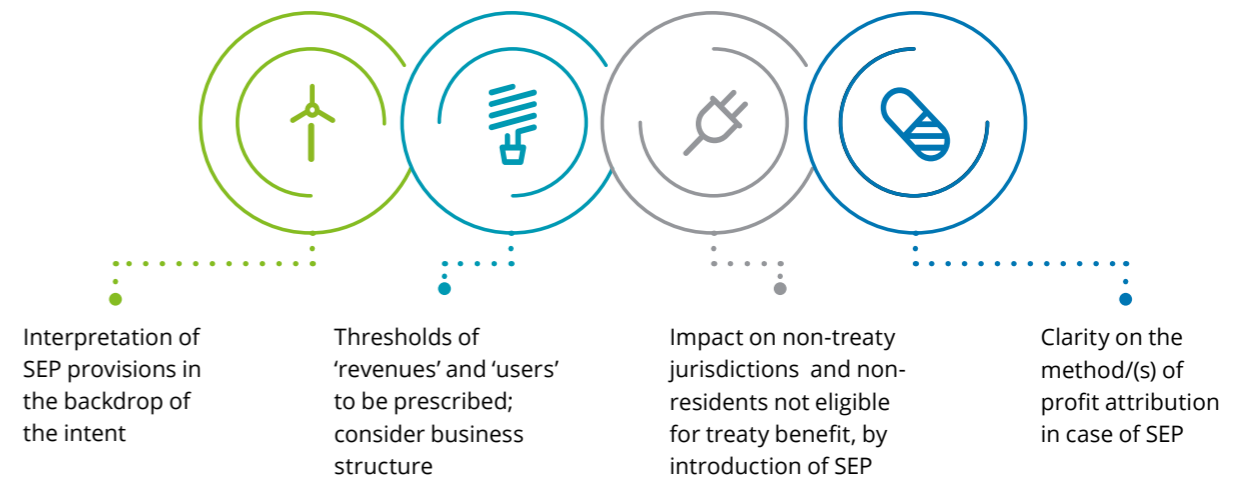
## Key considerations

### Points to ponder



## Way forward

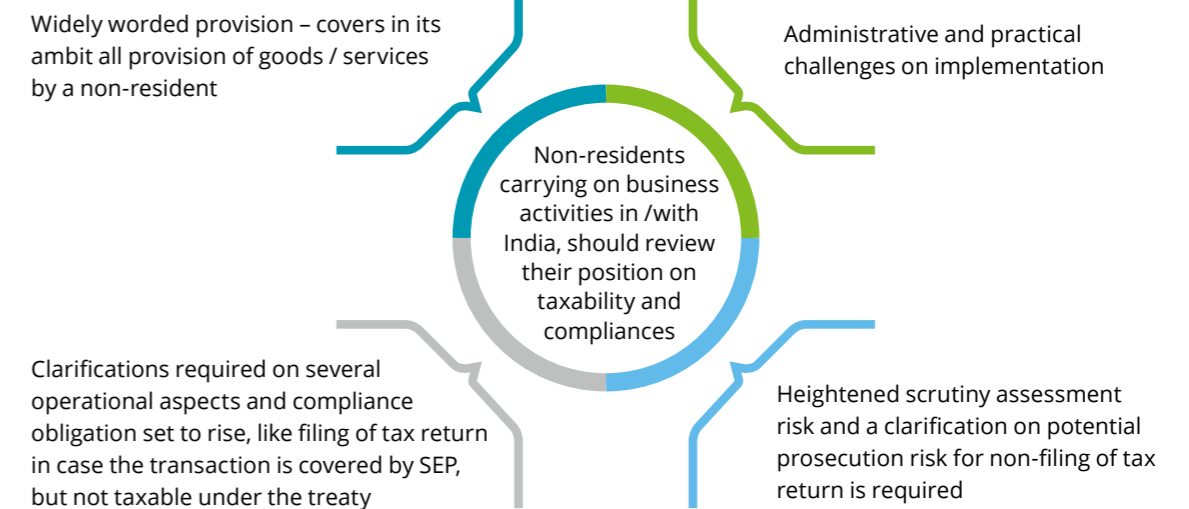
### Areas to look out for



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

## Key takeaways

### Summing up



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