

## Significant Economic Presence Explained:

### **Introduction:**

Modern technology has made it possible for many companies to do business in several countries without a physical presence in India. So the question arises as to how to tax these transactions carried out in India without a physical presence in India. OECD and G20 are working on a solution to tax such transactions. One of the methods spoken about is Significant Economic Presence (SEP).

### **Business Connection redefined:**

The Finance Act, 2018 expanded the concept of Business Connection (as provided under section 9 of the Income-Tax Act, 1961) through introduction of the concept of SEP. The definition of business connection has been expanded such that a nonresident would be deemed to have a Business Connection in India if it has SEP in India.

Under explanation 2A to section 9 of the Income Tax Act, SEP is defined to mean:

A) 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

B) Systematic and continuous soliciting of business activities or engaging in interaction with such a number of users as may be prescribed.

Importantly the above-mentioned transactions or activities will constitute SEP in India irrespective of whether or not—

- 1) The agreement for such transactions or activities is entered in India; or
- 2) The non-resident has a residence or place of business in India; or
- 3) The non-resident renders services in India:

Other important aspects:

- 1) Levy of taxes under the provisions of SEP and Equalisation Levy has been made mutually exclusive and cannot apply simultaneously due to Section 10(50).
- 2) The taxpayer has the right to opt for either the Income Tax provisions or Double Taxation Avoidance Agreement (DTAA) whichever is more beneficial.
- 3) CBDT has inserted Rule 11UD, wherein the threshold of SEP for aggregate of value of transactions has been prescribed at Rs 2 Crores and number of users has been prescribed at 3 Lakhs.