

Inaugural meeting of CTC Bengaluru Study Group

Significant Economic Presence

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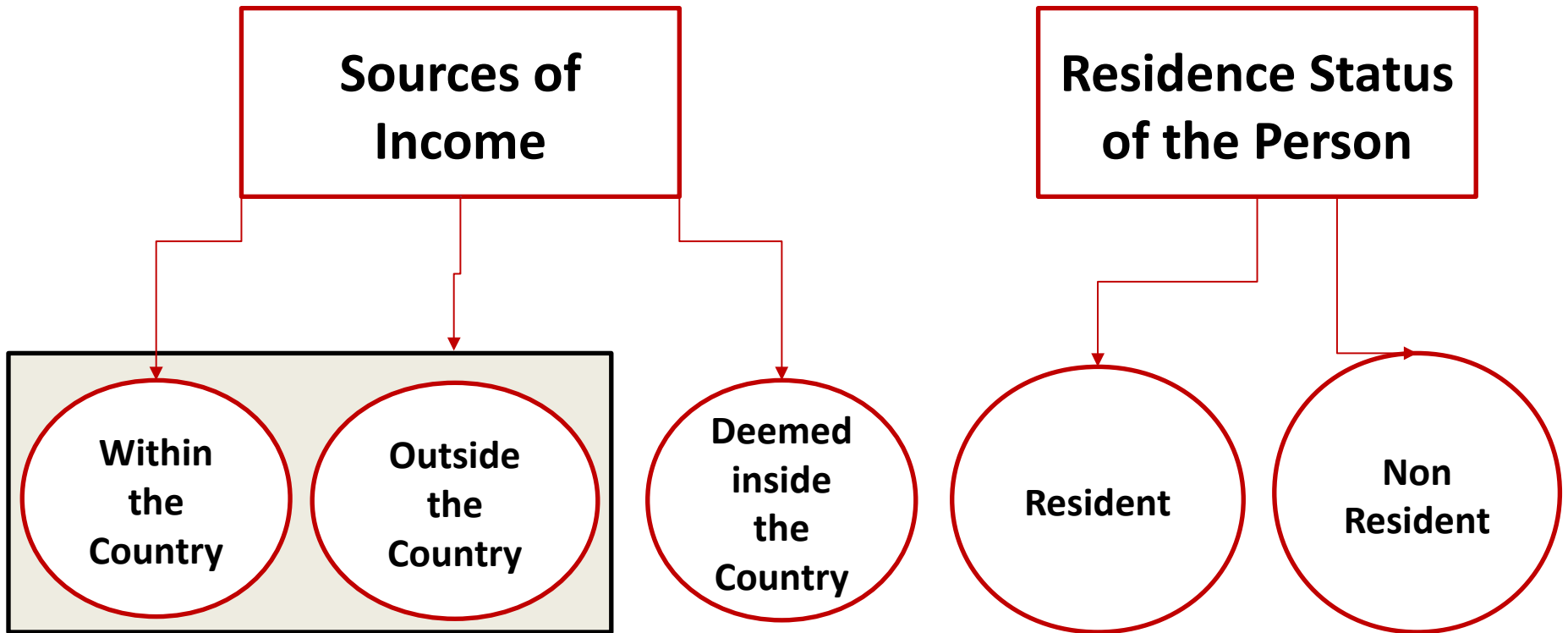
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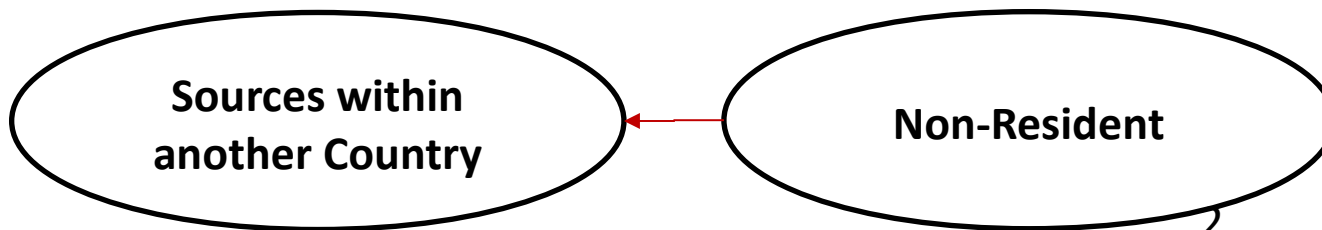
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September 21, 2018

Income Taxation



International Taxation



Business Connection

1. Section 42 under 1922 Act / Section 9: Income deemed to accrue or arise in India.
2. Section 9(1)(i): All income accruing or arising, whether directly or indirectly, through or from any **BC in India**,
.....

Business Connection

1. BC means something more than “business”.
2. **A relation between a business** carried on by a non-resident which **yields profits or gains and some activity** in the taxable territories which **contributes directly or indirectly to the earning of those profits or gains;**
3. Predicates **an element of continuity** between the business of the non-resident and the activity in the taxable territories;
4. **A stray or isolated transaction, normally, not to be regarded as a BC.**
5. **BC may take several forms.**
6. **Forms of BC:**
 - a) carrying on a part of the main business or activity incidental to the main business of the non-resident **through an agent**, a relation between the business of the non-resident; or
 - b) the activity in the taxable territories which facilitates or assists the carrying on of that business.

Economic Nexus – Jurisprudence

Federal Court in Wallace Brothers & Co. Ltd. vs. CIT (1945) 13 ITR 39

Where the connection of the assessee with a particular country is not founded upon residence but arises out of business operations, it may be a question of degree **whether the connection is slender or intimate**, but **it can nonetheless be as factual a connection as a connection based on residence.**

Economic Nexus – Jurisprudence

Privy Council in Wallace Brothers & Co Ltd. vs. CIT (1948) 16 ITR 240

- When a company in any particular year **derives the major portion of its income from a country**, it is a **legitimate conclusion** that the **company has rooted itself there for that year**.
- The **connection** that results is at least **as solid as the connection** given by the **place of central control**; and in a search for a home for income-tax purposes as respects that year that connection might will be thought more pertinent than the connection, readily changeable and often changed given by the place of central control.
- In such a search the **place where commercial activities yield** the result is at least **as relevant as the place** where they are **conceived**.
- A company which **in substance lives on a country** may **rationally be treated as living in it**.

Economic Nexus – Jurisprudence

Supreme Court in 20th Century Finance Corpn. Ltd. and Anr. vs State of Maharashtra (2000) 119 STC 182

- The situs of taxable event of such a tax would be the transfer which legally transfers the right to use goods.
- In other words, **if the goods are available irrespective of the fact where the goods are located** and a **written contract** is entered into between the parties, the **taxable event** on such a deemed sale would be the **execution of the contract for the transfer of right to use goods**.

Business Connection

1. Activities which are **not well defined or are of a casual or isolated character would not ordinarily fall within the ambit;**
2. When there is a **continuity of business relationship** between the resident who **helps to make the profits** and the non-resident who **receives or realizes the profits**, such relationship does constitute a BC.
3. ***Ref –Anglo French Textile Company Ltd. vs. CIT: 23 ITR 101 (SC)***
 - Explanation 2 u/s 9(1)(i): For the removal of doubts, it is hereby declared that BC shall **include** any business activity carried out through a **Dependent Agent** acting on behalf of the non-resident.
 - Dependent Agency related activities covered in clauses (a), (b) and (c) read with two provisos.

Nexus	Ref
Shed rented for 13 years for storing and preparing hides	<i>Transvaal Associated Hide & Skin Merchants (Pty) Ltd.: (1967) 29 S.A.T.C. 97 (Court of Appeal, Botswana)</i>
A writer's study	<i>Georges Simenon (1965) 44 T.C. (US) 820 (US Tax Court)</i>
A salesman's house	<i>Universal Furniture Ind. AB vs. Government of Norway [(Stavanger Court, Case No. 99-00421, dated 19-12-1999</i>
A stand at a trade fair, occupied regularly for 3 weeks a year, through which the enterprise obtained contracts for a significant part of its annual sales	<i>Joseph Fowler v. M.N.R. (1990) 90 D.T.C. 1834; (1990) 2 C.T.C. 2351 (Tax Court of Canada)]</i>
A temporary restaurant operated in a mirror tent at a Dutch flower show for a period of seven months	<i>Antwerp Court of Appeal, decision of February 6, 2001, noted in 2001 WTD 106-11]</i>

Inadequate Nexus

1. Possession of a mailing address in a state – without an office, telephone listing or bank account.`
2. A drilling rig which, although anchored while in operation, was moved to a new site every few months.
3. A remotely operated vessel which was used to inspect and repair submarine pipelines (because a moving vessel is not a fixed place of business).

Ref – Formula One World Championship Ltd. vs. CIT: 394 ITR 80 (SC)

BC - PE

1. PE must have 3 characteristics - **stability, productivity and dependence.**
2. **If a non-resident has a PE in India, then business connection in India stands established.**
 - **Ishikawajma Harima Heavy Industries Ltd Vs DIT : [2007] 288 ITR 408 – there exists a distinction between a BC and a PE.**
3. The principal test, in order to ascertain as to whether an establishment has a fixed place of business or not, is that such **physically located premises have to be ‘at the disposal’ of the enterprise.**
4. It is **not necessary** that the **premises** are **owned or even rented** by the enterprise. It will be **sufficient if the premises are put at the disposal of the enterprise.**

6. The fact that RPC-2011's **tenure is of five years**, meant that there was a **repetition**;
7. FOWC was **entitled even in the event of a termination, to two years' payment** of the assured consideration of US\$ 40 million (Clause 24 of the RPC).
8. Having regard to the OECD commentary and Klaus Vogel's commentary on the general principles applicable that **as long as the presence is in a physically defined geographical area, permanence in such fixed place could be relative having regard to the nature of the business**, it is hereby held that the circuit itself constituted a fixed place of business.

Ref – Formula One World Championship Ltd. vs. CIT: 394 ITR 80 (SC)

Addressing the Challenges of Digital Economy – BEPS Action Plan 1

1. **Digital economy** raises three main tax challenges:
 - (a) **Nexus; (b) Data; (c) Characterization.**
2. **Nexus : Rule to determine jurisdiction to tax a non-resident enterprise. The profit allocation rules, based on ALP.**
3. Three options were examined but not recommended:
 - (a) a new nexus in the form of **significant economic presence**;
 - (b) **withholding tax** on certain type of digital transactions;
 - (c) **equalization levy** as all round measures on various counts would tackle the challenges of digital economy .
7. **Modification of PE exceptions:**
 4. **New anti-fragmentation rules:** Conclusion of contracts, Installation, Assembly Contracts, Connected Persons.
 5. Narrow down exceptions to PE - preparatory or auxiliary e.g. maintenance for warehouse for delivery;

Addressing the Challenges of Digital Economy – BEPS

Action Plan 1

5. Apply the principles of the OECD's International Value-added Tax/ Goods and Services Tax (VAT/GST) Guidelines. Consider introduction of the collection mechanisms included therein – consumption taxes in market country can be effectively imposed.
6. Countries can use one of these in the domestic laws provided they are consistent with their treaty obligations.

India Tax Scenario – Equalisation Levy

Memorandum explaining Finance Bill, 2016:

The OECD has recommended, in BEPS Project under Action Plan 1, several options to tackle the direct tax challenges which include –

- (i) modifying the existing PE rule to include where an enterprise engaged fully in de-materialized digital activities would constitute a PE if it maintained a significant digital presence in another country's economy.
- (ii) a virtual fixed place of business PE i.e., creation of a PE when the enterprise maintains a website on a server of another enterprise located in a jurisdiction and carries on business through that website.
- (iii) a final withholding tax on certain payments of digital goods or services provided by a foreign ecommerce provider;
- (iv) or imposition of EL on consideration for certain digital transactions received by non-resident from a resident or from a non-resident having PE in other contracting State

Significant Economic Presence (SEP)

- Explanation 2A to Section 9(1)(i) inserted vide Finance Act, 2018, w.e.f. 1-4-2019
- **For the removal of doubts, it is hereby clarified that SEP** of a non-resident in India shall constitute **BC** in India.
- SEP to exist **irrespective of** –
 - (i) **Agreement** for such transactions or activities **entered in India**; or
 - (ii) Non-resident having a **residence or place of business in India**; or
 - (iii) Non-resident **renders services in India**:

SEP means—

a) - **transaction in respect of**

(i) any **goods, services or property carried out** by a non-resident in India [including **provision of download of data or software** in India],

if the aggregate of payments arising from such transaction(s) **exceeds the prescribed amount**

b) - **systematic and continuous**

(i) **soliciting of business activities or**

(ii) **engaging in interaction**

with **prescribed number of users** in India **through digital means**:

*Only so much of income as is **attributable to the transactions or activities** referred to above shall be **deemed to accrue or arise in India***

India - Explanatory Memorandum to Finance Bill 2018

BC to include “Significant Economic presence”

*“The oranges upon the trees in California are not acquired wealth until they are **picked**, not even at that stage until they are **packed**, and not even at that stage until they are **transported** to the place where demand exists and until they are put where the **consumer** can use them. These stages, upto the point where wealth reached fruition, may be shared in by different territorial authorities.”*

(excerpts from a report on double taxation submitted to League of Nations in early 1920s)”

Both COR and COS claim the right to taxation.

Taxation of business profits on the basis of economic allegiance has always been the underlying basis of existing international taxation rules.

Geographical Source of Income Rules

1. **Geographical source rules combine:**
 - a. **Economic factors:**
 - i. Right of “COS” to tax income from that country takes precedence over the “COR” right to tax income on the basis of residence.
 - b. **Ease of applying the established rules.**
 - c. **Income apportionment to one country:**
 - i. As far as possible, income is attributed to one country rather than apportioning it among two or more countries.
 - d. **Deemed source rules:**
 - i. There could be deemed sourcing rules in a country / treaty.

Geographical Source of Income Rules

2. **Source rules to ensure that:**
 - a. Non-residents are taxed only on the income that is derived by them from the country.
 - b. Residents are given tax credit only with respect to the foreign source income or exemption is limited to the foreign source income.
3. Any source rule will benefit one country unless the flow of income producing activities is equal between countries.

Explanatory Memorandum to Finance Bill 2018

1. ***Scope of existing provisions of clause (i) of sub-section (1) of section 9 is restrictive as it essentially provides for physical presence based nexus rule for taxation of business income of the non-resident in India.***
 - *Economic allegiance Vs Physical presence*
2. ***Explanation 2 to the said section which defines 'BC' is also narrow in its scope since it limits the taxability of certain activities or transactions of non-resident to those carried out through a dependent agent.***
 - *Even without Explanation 2, Agency relationship was construed as a BC.*
3. ***Therefore, emerging business models such as digitized businesses, which do not require physical presence of itself or any agent in India, is not covered within the scope of clause (i) of sub-section (1) of section 9 of the Act.***
 - *Unclear on this inference. BC is very wide.*
 - *ABB FZ-LLC vs DCIT (Bangalore ITAT): Rendering of services in a remote manner by use of technology such as e-mail, internet, video conference, remote monitoring, remote access to desktop, etc. can give rise to Service PE under Article 5(2).*

Summary out of SEP definition

1. BC was wider, now narrowed down with regard to SEP.
2. Dependent agent is included as BC.
3. PE without SEP would not result in “taxable nexus”.
4. Revenue and users above a threshold would determine SEP – year to year determination.
5. Clause (a) and Clause (b) are mutually exclusively – use of expression “or”.

Significant Economic Presence

Revenue and User Threshold – Explanation 2A to Section 9(1)(i)

CBDT, vide communication dated 13th July 2018, invited stakeholders' comments and suggestions on the **“revenue threshold”** and the **“number of users' threshold”** for SEP.

The last date for furnishing of comments and suggestions has been **extended up till 30th September 2018, vide Press Release dated 30th August 2018.**

Tax Policy Developments – Pursuant to OECD BEPS Action 1

Alternative PE thresholds	Turnover Taxes	Specific Regimes for Large MNEs
Significant Economic Presence Test (e.g., India, Israel)	Sectoral Taxes viz., advertisement (e.g., Hungary)	Diverted Profits Tax (e.g., UK and Australia)
Virtual Service PE (e.g., Saudi Arabia)	Levy on digital transactions (e.g., Italy)	BEAT (US)
	Equalisation Levy (e.g., India)	

Significant Economic Presence (SEP) – OECD BEPS Action

1

1. New concept of **nexus**
2. To reflect situations where an enterprise **leverages digital technology** to **participate** in the economic life of a country
3. Participation to be in a **regular and sustained manner without having a physical presence** in that country.
4. Determination on the **basis of factors combined with a factor based on the revenue** derived from remote transactions into the country.

*Equalisation levy **an alternative** to overcome the difficulties raised by the attribution of income to the new nexus.*

Indicative Factors – *OECD BEPS Action 1*

Revenue Based Factors – Ability of a country to **identify and measure remote sales activities** of the non-resident enterprise:

- a) Digital transactions concluded with in-country customers **through digital platform;**
- b) **Contract conclusion effectuated through a digital platform primarily relying on automated systems;**
- c) Gross revenues in **absolute terms** and in **local currency**

Indicative Factors – *OECD BEPS Action 1*

Digital Factors –

1. **Local domain name**
2. **Local websites or digital platforms** which include language, local marketing viz., targeted discounts and promotions, and local terms of service reflecting the commercial and legal context of the local environment
3. **Local payment options** for local customers with prices reflected in **local currency**, taxes, duties and fees pre-calculated, with the option of using a **local form of payment** to complete the purchase

Indicative Factors – OECD BEPS Action 1

User Based Factors –

- a) **Number of “monthly active users” (MAU1)** on the digital platform that are habitually resident in a given country in a taxable year.
- b) **Regular conclusion of contracts** as in the existing DAPE test
- c) **Volume of digital content collected** through a digital platform from **resident users** and customers. Focus would be on the origin of the data collected, irrespective of storage and processing of data
- d) Range of data captured to cover **personal data, user created content, product reviews, and search histories.**

1‘MAU’ - registered user logging-in & visiting a company’s digital platform in the 30-day period ending on the date of measurement

Illustrative SEP Triggers – Revenue Based Factors

- A global computerised reservation system (CRS) developed by a US company; the master computer maintained in the US.
- A **part of the CRS existed in India** in the **form of configuration and connectivity** of such system **through activities (being the source of revenue) in India.**



Illustrative SEP Triggers – *Revenue Based Factors*

1. **Systematic and continuous engagement of Illinois consumers via telephone, email and direct mail solicitation** to apply for credit;
2. **Illinois Courts approached** for recovery of debts on delinquent accounts;
3. **Filing and enforcement of judgment liens in Illinois;**
4. Collection of **millions of dollars in fees and interest** from Illinois residents.

[Ref - Illinois Circuit Court in Capital One Financial Corporation v. Brian Hamer, Director of the Illinois Department of Revenue, Docket No. 2012-TX-0001/02 dated 28.09.2015;

Illinois Circuit Court followed the judgement of the Supreme Court of Appeals of West Virginia in Tax Commissioner of the State of West Virginia vs. MBNA America Bank NA in Civil Action No. 04-AA-157 dated November 21, 2006]

Illustrative SEP Triggers – *Revenue Based Factors*

- **Consumer goods sold through orders received via the internet and telephone orders.**
- The in-state business consists solely of shipping goods from outside the state to Ohio consumers using the United States Postal Service or common-carrier delivery services.
- Revenue earned from sales of electronic **products that is shipped in-state when the seller is based outside Ohio**, employs no personnel in Ohio, and maintains no facilities in Ohio.



Re *testa in Tax*, 2012-926,
2012-3068, and 2013-2021 dated November 17, 2016

Illustrative SEP Triggers – *Revenue Based Factors*

Crutchfield Corporation vs. Testa in Tax Appeals Nos. 2012-926, 2012-3068, and 2013-2021 dated November 17, 2016 (Contd.)

The Supreme Court of Ohio upheld the levy of Commercial Activity Tax ('CAT') since CAT's \$500,000 sales-receipts threshold is adequate quantitative standard that ensures that taxpayer's nexus with Ohio is substantial.

Substantial nexus was concluded based on the location of customer base in Ohio to which the consumer goods were sold through orders received via the Internet and telephone orders.

Illustrative SEP Triggers – *Digital Factors*

Accessible Internet Website

A company with **a website accessible** in South Dakota may be said to have a **physical presence in the State via the customers' computers**



[Ref – United States Supreme Court in South Dakota vs. Wayfair Inc. in Certiorari No. 17-494 dated June 21, 2018]

Supreme Court in Formula One World Championship Ltd. vs. CIT: 394 ITR 80 – An internet website (being a combination of software and other electronic data) does not constitute tangible property and, therefore, does not constitute a PE.

India's Reservation - 2017 Update to the OECD Model Tax Convention

A website may constitute a PE in certain circumstances where it leads to significant economic presence of an enterprise.

Illustrative SEP Triggers – *Digital Factors*

A website may leave **cookies saved to the customers' hard drives**, or customers may **download the company's app onto their phones**.

[Ref – United States Supreme Court in South Dakota vs. Wayfair Inc. in Certiorari No. 17-494 dated June 21, 2018]

An HTTP cookie (also called web cookie, Internet cookie, browser cookie, or simply cookie) is a small piece of data sent from a website and stored on the user's computer by the user's web browser while the user is browsing.

Cookies were designed to be a reliable mechanism for websites to remember stateful information (such as items added in the shopping cart in an online store) or to record the user's browsing activity (including clicking particular buttons, logging in, or recording which pages were visited in the past). They can also be used to remember arbitrary pieces of information that the user previously entered into form fields such as names, addresses, passwords, and credit card numbers. *[Source – Wikipedia]*

Illustrative SEP Triggers – *Digital Factors*

A company may **lease data storage** that is **permanently**, or even **occasionally, located in South Dakota**

[Ref – United States Supreme Court in South Dakota vs. Wayfair Inc. in Certiorari No. 17-494 dated June 21, 2018

Storage of data on a server – constitutes “Software PE”

[Ref - Supreme Court in DIT vs Morgan Stanley and Co. Inc. in 292 ITR 416]

Illustrative SEP Triggers – *Digital Factors*

Property **interests in and/or the use of in-state software** (e.g., “**apps**”) and ancillary data (e.g., “**cookies**”) which are **distributed to or stored** on the computers or other physical communications **devices of a vendor’s in-state customers**; and may enable the vendor’s use of such physical devices, to constitute requisite in-state physical presence.

[Ref - Proposed 830 CMR 64H.1.7: Vendors Making Internet Sales – Massachusetts 64H.00: Sales and Use Tax Regulation]

Illustrative SEP Triggers – *Digital Factors*

Use of in-state software to sell or lease taxable tangible personal property or services to consumers or entering into an agreement with another person to provide **a content distribution network in-state to accelerate or enhance the delivery of the seller's web site to consumers**

Threshold

If the seller has gross receipts > \$ 500,000 in the current or preceding calendar year from the sale of tangible personal property for storage, use, or consumption in this state or from providing services) the benefit of which is realized in-state.

[Ref - Ohio Rev. Code Ann. §5741.01(l)(2)(h) & (i)]

Illustrative SEP Triggers – *Digital Factors*

Click-through nexus –

Seller entering into an agreement with an in-state resident, under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, **whether by a link on an internet website or otherwise.**

[Ref – New York Tax Law Ann. §1101(b)(8)(vi)]

Illustrative SEP Triggers – *User Based Factors*

Significant economic interest exists to the extent of the bandwidth hired by the customer.

[Ref - Madras High Court in Verizon Communications Singapore Pte Ltd. vs ITO in (2014) 361 ITR 575]

A dedicated bandwidth is nothing but assuring an uninterrupted 24x7 provision of services at an agreed speed and efficiency to meet the conditions of the service order.

[Bandwidth is defined as the amount of traffic that is allowed to occur between the customer website and the rest of the internet. Bandwidth is measured in bits a single 0 to 1 and are grouped in bytes which form words texts and other information transferred between the computer and the internet. It is stated that a user having a particular IPLC service connection has a dedicated bandwidth between the computer and the internet provider though the provider itself may have 1000 such service connection to other location. Evidently, service provider has to have enough bandwidth to serve a person's computing needs as well as all of its other customers.]

Illustrative SEP Triggers – *User Based Factors*

Chicago - “Cloud tax” - 9% surcharge for the **privilege of streaming internet-based entertainment, including video, music and gaming services**

[Ref - Michael Labell, et al, v. The City of Chicago et al, No. 15 CH 13399, (Cir. Ct. Cook County).]

Australia - “**Netflix Tax**” from 1st July 2017 - Foreign businesses are liable to charge GST at a flat rate of 10% on imported services and digital products supplied to Australian consumers i.e., “B2C” sales.

Singapore to introduce “**Netflix Tax**” from 2020, following jurisdictions such as Australia, the EU, Japan and Korea

Illustrative SEP Triggers – *Combination of Factors*

European Union – [Ref – EC Press Release dated 21 March 2018] –
Proposal 1

Digital platform to have a taxable digital presence upon meeting **any** of the following criteria –

- (i) Exceeds a **threshold of €7 million in annual revenues** in a Member State
- (ii) **More than 100,000 users** in a Member State in a taxable year
- (iii) **Over 3000 business contracts** for digital services created between the company and business users in a taxable year.

Illustrative SEP Triggers – *Combination of Factors*

European Union – [Ref – EC Press Release dated 21 March 2018] – **Proposal 2**

Tax will apply to **revenues created from activities where users play a major role in value creation** and which are the **hardest to capture** with current tax rules, viz., created from -

- (i) **selling online advertising space**
- (ii) **digital intermediary activities** allowing users to **interact** with other users and **facilitate the sale of goods and services** between them
- (iii) **sale of data generated from user-provided information.**

Threshold

Tax revenues would be collected by the Member States on the **basis of users' location** & will only apply to companies with **total annual worldwide revenues of €750 million** and **EU revenues of €50 million**. Tax at the rate of 3% is proposed.

Illustrative SEP Triggers – *Global Developments*

Italy

Amendment to the definition of the term “PE” in Article 162 of the Italian Tax Code vide the Budget Law for 2018 (**Law n. 205 of December 27, 2017**)

Enactment of the economic nexus rule –

A PE of a foreign enterprise in Italy would exist whenever the foreign enterprise’s activities result in a **“regular, continuous and significant economic presence within the territory of the country”**.

Illustrative SEP Triggers – *Global Developments*

Israel - Circular of Israel Tax Authority dated 14 April 2016

PE Determination – Economic activity of the foreign company in a permanent place of business in Israel is **conducted mainly through the internet** and **additional conditions exist**, viz., **representatives of the foreign company are involved in identifying Israeli customers, in gathering information and managing customer relations of the foreign company, the internet service provided by the foreign company is adapted to Israeli customers (language, style, currency, etc.)**.

VAT Liability - A foreign corporation that **maintains significant business activity in Israel is obliged to register for VAT** as an authorized dealer and its transactions liable to VAT.

Illustrative SEP Triggers – *Global Developments*

Israel - Circular of Israel Tax Authority dated 14 April 2016

Illustrations

A foreign corporation operates a **website that provides advertising /brokerage services to Israeli clients for Israeli consumers** and is **assisted in its operations in Israel** by an **Israeli representative** conducting business actions on behalf of the foreign corporation

A foreign resident that provides **digital services or operates an online store** that provides digital services to Israeli residents that are not authorized dealers acting in a business capacity, non-profit organizations or financial institutions (acting in such capacity), **will be required to register in a specific registry and pay VAT on transactions.**

Illustrative SEP Triggers – *Global Developments*

Israel - Circular of Israel Tax Authority dated 14 April 2016

Impact¹

Amazon Web Services generated nearly 10% of Amazon.com Inc.'s worldwide net sales of \$177.9 billion in 2017. It provides cloud computing, storage, and data analytics for companies including thousands of Israeli customers from small tech start-ups to major corporations.

Israeli customers would be invoiced by AWS via the VAT-registered branch incorporated in Israel in June 2017. In compliance with Israeli regulations, invoices will be issued in shekels but customers will be able to pay either in shekels or the dollar equivalent.

1Bloomberg Tax's Premier – May 18, 2018

Overview of typical PEs

* *Vulnerable to avoidance through fragmentation*

Permanent Establishment

1. **No PE, no tax:** Existence of a PE is a threshold requirement to tax business profits.
2. Non-residents can be taxed only the profits attributable to the PE.
3. **Once a PE exists:**
 - a. **PE profits** : which it might be expected to make if it were a distinct and separate enterprise.
 - b. PE country to tax all profits attributable to the PE regardless of where the profits are sourced (Article 7).
 - c. PE country would be entitled to tax profits derived outside the PE country (a third country). There may be unrelieved double taxation.
 - i. Domestic laws usually do not tax business profits of non-residents derived from foreign sources.
 - d. **Attribution of Profits:** No rules in the tax treaty. It is the domestic law that applies for computational rules.

Business Connection – Attribution of income

1. Explanation 1:
 - a) In the case of a **business** of which all the **operations** are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only **so much part of the income** as is reasonably attributable to operations carried out in India.
 - Carborandum Co vs CIT in 1977 AIR 1259: If all the operations are not carried out in the taxable territories, the profits and gains of the business deemed to accrue or arise in the taxable territories shall be only such profits and gains as are reasonably attributable to that part of the operations carried out in the taxable territory.
 - b) In case of a non-resident, **no income** shall be deemed to accrue or arise in India to him through or from operations which are confined to purchase of goods in India for the purpose of export.
 - c) Explanation 3 : Where a business is carried on in India through a Dependent Agent referred to in clauses (a), (b) and (c) of Explanation 2, only so much of income as is attributable to the operations carried out

Income attribution to PE - Snapshot

Existence of PE in a State

Determination of profits / income attributable to the PE State

Possible Approaches

- Domestic tax law provisions – Computed, Best Judgement, Global formulary approach.
- Tax Treaty approach (hybrid)
- Authorised OECD Approach (AOA).

Questions and Answers



Thank you !