

# **CBDT notifies thresholds for applicability of Significant Economic Presence provisions**

5 May 2021



## Summary

The Central Board of Direct Taxes (CBDT) has notified<sup>1</sup> the Income Tax (13th Amendment) Rules, 2021 with effect from 1 April 2022. A new rule<sup>2</sup> has been inserted to provide thresholds for determining the Significant Economic Presence (SEP) of a non-resident in India.

The SEP in case of a non-resident shall be triggered if (a) aggregate amount of payment for a specified transaction with a person in India exceeds INR 20 million (during a year) or (b) non-resident undertakes systematic and continuous soliciting of business activities or engages in interaction with 300,000 or more users in India.

## Background

The SEP provisions under the Income-tax Act, 1961 are applicable from **1 April 2022** (i.e. FY 2021-22). SEP of a non-resident constitutes 'business connection' in India and has been defined to mean:

(a) transaction in respect of any goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India, if the aggregate of payments arising from such transactions during the year exceeds the prescribed threshold; or

(b) systematic and continuous soliciting of business activities or engaging in interaction with prescribed number of users in India.

Income attributable to transactions mentioned above would be deemed to accrue or arise in India and would be taxable in India.

SEP provisions would get triggered irrespective of whether:

- agreement for such transactions or activities is entered in India; or
- non-resident has a residence or place of business in India; or
- non-resident renders services in India.

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<sup>1</sup> Notification no. 41 of 2021

<sup>2</sup> 11UD of the Income Tax Rules, 1962 (the Rules)

## Notified thresholds<sup>3</sup>

The CBDT has now notified thresholds for the purpose of applicability of SEP provisions:

- For the purpose of para (a) above, the prescribed threshold (i.e. aggregate amount of payment for specified transactions) would be INR 20 million.
- For the purpose of para (b) above, the prescribed threshold (i.e. number of users in India) would be 300,000.

### Our comments

Prescribing these thresholds has now operationalised the SEP provisions in the domestic tax law and significantly widened the scope of the term 'business connection'. However, the non-residents who are eligible to claim benefit under any tax treaty will not be impacted by this change.

Non-residents who do not have any treaty protection would need to evaluate the impact of the SEP provisions on their business operations. Here a conjoint evaluation, also considering the applicable equalisation levy provisions, would be required.

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<sup>3</sup> Rule 11UD of the Rules

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