

# Business Standard

## Overseas tech and e-commerce firms Google, Amazon etc. under I-T radar

Comments have been invited on three aspects-- revenue threshold of transaction in respect of physical goods or services carried out by a non-resident in India

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Seeking to tax overseas online companies deriving economic value in India, the I-T department today sought industry views on the revenue and user thresholds to determine if they have 'significant economic presence' in the country.

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*Companies like Amazon, Google, Netflix, Facebook, Twitter, provide online services*

online services and have large user base in India.

Through the Finance Act, 2018, the government had introduced the concept of 'Significant Economic Presence' (SEP) in the Income Tax Act under Section 9(1)(i) for taxation of non-residents in India by increasing the scope of the definition of 'business connection'.

The definition clarified that a non-resident's SEP in India shall constitute 'business connection' of the non-resident in India.

For this purpose, SEP was defined to mean any transaction in respect of 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 or transactions during the previous year exceeds the amount as may be prescribed.

Also systematic and continuous soliciting of its business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means would constitute as SEP.

Although the provisions of SEP were introduced by the Finance Act 2018, the thresholds to determine the SEP of non-residents were awaited and the income tax department today sought stakeholder comments by August 10 on the same.

Comments have been invited on three aspects-- revenue threshold of transaction in respect of physical goods or services carried out by a non-resident in India.

Secondly, revenue threshold of transaction in respect of digital goods or services or property including provision of download of data or software carried out by a non-resident in India.

Third, threshold for number of users' with whom a non-resident engages in interaction or carries out systematic and continuous soliciting of business activities in India through digital means.

Nangia Advisors LLP Managing Partner Rakesh Nangia said seeking suggestions of the stakeholders before prescribing the thresholds shows the taxpayer friendly approach of the government.

"Typically the threshold of users' would be in proportion to the Indian customer base that the digital players are exploiting to earn revenue from India without any physical business presence.

"These provisions are targeted at the digital players who are earning revenues from the vast Indian consumer base over the digital platforms without opening a brick and mortar shop. With the taxing mechanism in place, the new and emerging business models operating remotely through digital medium will come within the ambit of Indian taxation, paying their fair share of taxes in India, Nangia said.

Ashok Maheshwary & Associates LLP Partner Amit Maheshwari said, "It seems that the Indian government has made it clear that supply of physical goods could also lead to a SEP. Determination of SEP by number of users could lead to several digital companies being caught in the net inspite of getting insignificant revenue from India".

The definition of business income as provided through Explanation 2A to Section 9(1)(i) also provided that the transactions or activities shall constitute SEP in India, whether or not the agreement for such transactions or activities is entered into in India or the non-resident has a residence or place of business in India or renders services in India.

# Significant Economic Presence: CBDT invites suggestions on 'revenue/user' cap for NRIs

## OUR BUREAU



## NEW DELHI, JULY 13

Taking the next step in the 'Significant Economic Presence' (SEP) concept, the Central Board of Direct Taxes (CBDT) has invited suggestions on the quantum of 'revenue' and 'user' thresholds that need to be prescribed for determining the SEP of a non-resident in India.

The suggested thresholds and comments should be electronically sent by August 10, the CBDT has said.

It may be recalled that the concept of SEP was introduced by the Finance Act 2018, for taxation of non-residents in India by amplifying the scope of the definition of "business connection". Business connection was clarified to provide that a non-resident's SEP in India would constitute "business connection" of the non-resident in India.

Suggestions have been invited on the revenue threshold of transaction in respect of physical goods or services carried out by a non-resident in India.

Also, now suggestions have been invited on the revenue threshold of transaction in respect of digital goods or services or property including provision of download of data or software carried out by a non-resident in India.

Lastly, suggestions have been invited on the threshold for number of 'users' with whom a non-resident engages in interaction or carries out systematic and continuous soliciting of business activities in India through digital means.

Rakesh Nangia, Managing Partner, Nangia Advisors LLP, said: "Though the provisions of SEP were introduced by the Finance Act 2018, the thresholds to determine the SEP of non-residents were awaited."

## Seeks views by Aug 10

The CBDT has followed a collaborative approach by asking the stakeholders to submit their suggestions on the following by August 10, he said.

"Obtaining suggestions of the stakeholders before prescribing the thresholds shows the taxpayer friendly approach of the government," Nangia added. Typically the threshold of 'users' would be in proportion to the Indian customer base that the digital players are exploiting to earn revenue from India without any physical business presence. These provisions are targeted at the digital players who are earning revenues from the vast Indian consumer base over the digital platforms without opening a brick and mortar shop, he said.

"With the taxing mechanism in place, the new and emerging business models operating remotely through digital medium will come within the ambit of Indian Taxation, paying their fair share of taxes in India," Nangia said.

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