

# INDEX

	<i>Page</i>
<b>Vision Statement</b>	<i>I-3</i>
<b>About the Chamber of Tax Consultants</b>	<i>I-5</i>
<b>President Message</b>	<i>I-7</i>
<b>Foreword</b>	<i>I-9</i>
<b>About the Authors</b>	<i>I-11</i>
<b>Authors Note</b>	<i>I-17</i>
<b>Managing Council 2020-21</b>	<i>I-21</i>
<b>Research &amp; Publications (R&amp;P) Committee 2020-21</b>	<i>I-23</i>
<b>International Taxation (INT TAX) Committee 2020-21</b>	<i>I-25</i>
<b>I. Introduction</b>	<i>1</i>
<b>II. Territorial nexus becomes aerial</b>	<i>7</i>
<b>III. Adaptations of Indian Domestic Laws</b>	<i>14</i>
(A) Business connection concept	<i>15</i>
(B) Modification of business connection definition	<i>20</i>
(C) Significant economic presence	<i>36</i>
• Transaction based SEP	<i>46</i>
• Activity based SEP	<i>59</i>
• Inconsequential factors in a SEP	<i>64</i>
(D) Interplay of section 163 with Business connection	<i>66</i>
(E) Amendments by Finance Act, 2020	<i>67</i>

	<i>Page</i>
<b>IV. PE in digital economy</b>	<b>73</b>
(A) Relevant Indian Tax Provisions & Judicial Pronouncements	78
(B) Emerging Technologies	86
• Artificial Intelligence (AI)	87
• Case Study 1 – Robotics and AI	89
• 3D Printing	97
• Blockchain	98
(C) Business models in digital economy	99
• Case Study 2 – Online Shopping	103
• Case Study 3 – Online Streaming	110
<b>V. PE under Data Localisation Regime</b>	<b>117</b>
(A) Data Protection Framework	118
(B) Other regulations on data localisation	121
<b>VI. Server as PE</b>	<b>124</b>
(A) Fixed Place PE Rule	124
• The Place of Business Test	125
• Location Test	125
• Disposal Test	125
• Permanence Test	127
• Business Activity Test	127
• OECD Commentary, 2017 on Electronic Commerce	129
(B) Judicial precedents on Server/Website as PE	131
(C) Case Study 4 – Server in Source State	135
<b>VII. Modification in Agency PE definition</b>	<b>142</b>
(A) AP 7 – Areas of concern	142
(B) AP 7 and MLI provisions	144

	<i>Page</i>
• Commissionaire Arrangements	145
• Article 12 of MLI	147
• EAPE Rule	149
• Low Risk Distributor (LRD)	162
(C) India's Treaties	165
(D) Recent decisions on Agency PE	169
• Case Study 5 - Agency PE in multi-country	176
• Case Study 6 - DAPE	186
• Case Study 7 - Global Contract	202
<b>VIII. Modification in Independent agent definition</b>	<b>206</b>
(A) Article 12 and Article 15 of MLI	206
• Independent agent	208
• Concept of CRE	215
(B) India's tax treaties	221
<b>IX. Preparatory or auxiliary activities</b>	<b>228</b>
(A) Preliminary	228
(B) Paragraph 4 of Article 5 of OECD MTC	235
(C) India's Tax Treaties	238
(D) Judicial precedents - Preparatory or auxiliary character	245
• Case Study 8 - Specific Activity Exemption	248
<b>X. Construction PE - Journey, Abuse and Remedy</b>	<b>258</b>
(A) Journey	258
• Evolution	258
• 'Construction PE' concept in Model Conventions	258

	<i>Page</i>
<ul style="list-style-type: none"> <li>• 'Construction PE' in Indian Treaties</li> <li>• Some facets related to Construction PE</li> </ul>	260 262
(B) Abuse of existing measures	268
(C) Remedy	270
<ul style="list-style-type: none"> <li>• Case Study 9 – Splitting of contracts</li> </ul>	279
<b>XI. Conclusion</b>	292
<b>ANNEXURES</b>	297
<b>Part I : Relevant provisions of the Act</b>	297
<b>Part II : OECD Model Convention (Relevant extract)</b>	310
<b>Part III : PE Articles under various treaties</b>	313
<b>Part IV : Relevant Articles of Multilateral Convention (MLI)</b>	349
<b>Part V : MLI Impact on PE Article of treaties extracted in Part III</b>	355