



DIAN

Digital Taxation – Alternatives, Country Experiences and Global South Solidarity

Significant Economic Presence (SEP):
Colombia's experience



Behind the concept of SEP

- Outdated rules and the lack of global solutions lie behind the concept of SEP
- A nexus beyond physical presence has been requested to adapt taxation to new business models and recognizing taxing rights to market jurisdictions
- Colombia believes in multilateralism and has actively been working toward an international agreement
- However, after many years of negotiations without reaching a consensus, in 2022, the Colombian government decided to address the issue at stake by introducing the concept of SEP (known from G24 proposals and initiatives of other countries)
- Colombia remains committed to finding a fair and global solution

Caveats and highlights in the implementation of SEP



Recently issued regulation:

- SEP was introduced in December 2022
- Its regulatory framework is under construction



Compatibility with international commitments:

Sunrise clause – Deferred application until tax year 2024 (standstill agreement on DSTs until the end of 2023, based on the 2021 October Statement)

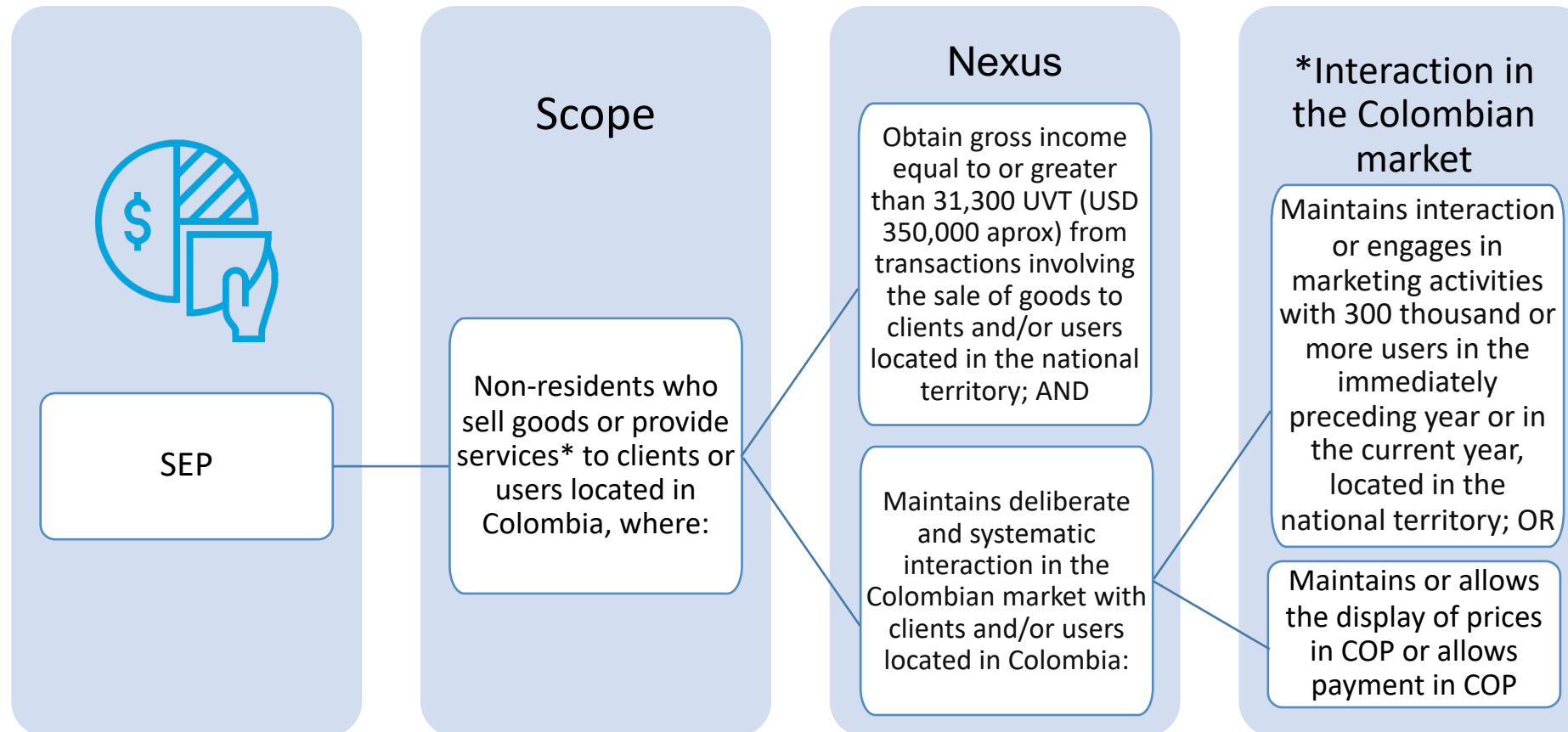
Sunset clause – Will no longer be applicable when an international agreement, contradicting this provision, comes into effect



Revenue collected:

- Revenue from SEP has not yet been collected
- Challenges in revenue estimations and anticipated collection via SEP

SEP provision in Colombia: key components



Digital services covered within the scope of SEP*

Online advertising

Digital content services, whether online or downloadable, including mobile applications, e-books, music, and movies

Free streaming services, including television programs, movies, streaming, music, multimedia streaming - podcasts, and any form of digital content

Any form of monetization of information and/or user data located in the national territory that has been generated by the activity of such users in digital markets

Online services of intermediary platforms

Digital subscriptions to audiovisual media, including, among others, news, magazines, newspapers, music, video, games of any kind

The management, administration, or handling of electronic data, including web storage, online data storage, file-sharing services, or cloud storage

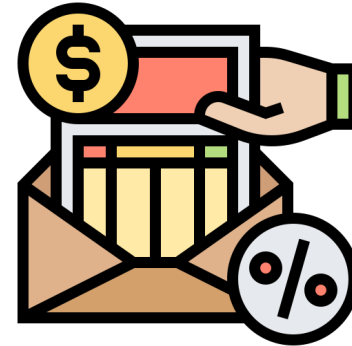
Services or licensing of online, standardized, or automated search engines, including custom software

The provision of the right to use or exploit intangibles

Other electronic or digital services destined for users located in the national territory

Any other service provided through a digital market destined for users located in the national territory

SEP provision in Colombia: tax rate and collection mechanism



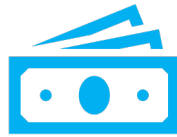
10% withholding tax
on total gross
payments

3% rate on income, if the
taxpayer choose to file
income tax return

SEP Provision in Colombia: other amendments and interaction with other domestic tax provisions



Definition of income
from Colombian
source



Switch-off of
withholding taxes,
when the taxpayer
files income tax
return



Provide effects to
income tax returns
filed by non-residents
subject to SEP,
without imposing
formal obligations as
invoicing



For reaching the
scope threshold,
related entities must
aggregate income
derived from the sell
of goods or provision
of services in-scope

Considerations on revenue collection

- Everyone wonders how much this type of measure allows us to collect.
- Regardless of the amount, the fact that these measures create a new taxing right for our countries without depending on physical presence represents revenue we didn't have before.
- There are complexities when it comes to obtaining data for modeling estimates and figures.
- Although Colombia has the "advantage" of collecting information from the application of VAT to digital services provided by non-residents since 2017, it remains a small and limited universe of information.
- The potential estimates currently available are only minimum figures. These results were considered as supporting evidence for the economic impact of SEP during the approval of the reform.

The treatment of SEP under the MLC

The Multilateral Convention to Implement Amount A of Pillar One

PART VI – TREATMENT OF SPECIFIC MEASURES ENACTED BY PARTIES

SECTION 1 – REMOVAL AND STANDSTILL OF DIGITAL SERVICES TAXES AND RELEVANT SIMILAR MEASURES

Article 40 – Treatment of Specific Measures in Scope of Tax Treaties

1. Subject to paragraph 2, a Party shall not apply a tax measure to a Group Entity of a Covered Group if:

- a) the measure is not a digital services tax or relevant similar measure solely because it does not meet the condition described in Article 39(2)(c); and
- b) the threshold for applying the measure is based on interaction by the Group Entity or Covered Group with the economy of the Party determined on the basis of criteria including local sales, number of users or targeting of a domestic audience, that do not require the physical presence in the Party of the Group Entity or the payor of a payment to the Group Entity. (...)

Explanatory Statements

957. Unlike measures covered by Part VI Section 1, the measures covered by Section 2 are not digital services taxes or relevant similar measures as defined in Article 39(2), and are therefore not subject to a withdrawal or standstill commitment. Instead, these measures, which are in scope of tax treaties, are intended to apply tax in the enacting Jurisdiction based on interaction by the Group Entity or Covered Group with the economy of that Jurisdiction, without requiring any physical presence. To address the overlap between the intent of these measures and the intent of Amount A, Article 40 generally prevents Parties from applying such measures to a Group Entity of a Covered Group. (...)

Concluding remarks

- A global solution to address challenges arising from digitalization is the optimal outcome. However, delays in reaching consensus prompt countries to consider domestic measures such as SEP in Colombia or a new DST in Canada.
- The longer it takes to reach a global agreement, the more interim measures we will witness.
- SEP aligns with G24 principles and provides a promising alternative.
- Tax policies in developing countries should ensure fair agreements to mobilize resources for their societies.

Thank you !

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