Chapter 3.

Research Methodology
Current research is to critically analyze the controversies between the tax authorities and the tax payers arising in the determination of ALP for international transfer pricing between AE’s. India enacted the legislation on lines of the OECD guidelines in the year 2001 which was implemented in the AY 2002-03. Since then there has been wide spread disputes between the tax authorities and tax payers and they have been into dispute resolution mechanism at various levels. This demands a critical analysis of the reasons of disputes. It is imperative that there is some area because of which, in India about 70% cases relating to transfer pricing are in dispute (Revealed in preliminary interview with one of the tax officials). This makes a very strong case for study into reasons for disputes in India. At the onset there appear to be three most likely broad reasons for disputes:

1. The subjectivity in the legislation
2. Legislation not taken in intended spirit
3. Difference of opinion on the facts and subject matter in the cases for assessment with the tax authorities

The third reason above can arise in case, under any legislation, in any place of the world, and hence may be termed as, not very significant to study as compared to the first two reasons. Also it can be studied along with the critical analysis for the other two reasons. Hence the first two reasons were an area of focus in this study.

A study relating to the subjectivity of the legislature demands understanding the qualitative aspects of the legislature. Further intention is a qualititative term, in this case a qualitative variable. Thus qualitative aspects have to be understood about the intentions of the tax payer and that of the tax authorities. Studying and finding areas of disputes between the tax payer and the tax authorities with a view that both the parties are not taking the legislation in intended spirit and finding if the subjectivity in the legislation is causing the disputes, demands working on qualitative aspects of interpretation of the transfer pricing legislation and the leverage available to the parties to the dispute. Hence qualitative methods are being used for the current research.
3.1 Qualitative Research:

Qualitative study is defined by Creswell as: (Creswell, 1998)

“Qualitative research is an inquiry process of understanding based on distinct methodological traditions of inquiry that explore a social or human problem. The researcher builds a complex, holistic picture, analyzes words, report detailed views of informants, and conducts the study in a natural setting.”

(Ospina, 2004), While quantitative and qualitative inquiry, represent two legitimate ways to investigate leadership, researchers using one or the other tackle empirical research differently. Everet and Louis (1981) clarify the assumptions that ground each by distinguishing two research stances: “inquiry from the outside”, often implemented via quantitative studies and “inquiry from the inside” via qualitative studies.

It is further stated that these approaches differ in the degree of the researcher’s immersion in terms of experiential engagement, direct contact with the subjects, and physical involvement in the setting. In the “inside” or qualitative approach, the researcher aims for a holistic picture from historically unique situations, where idiosyncrasies are important for meaning. The researcher uses an inductive mode, letting the data speak. In contrast, traditional “outside” or quantitative researchers aim to isolate the phenomenon, to reduce the level of complexity in the analysis and to test hypotheses derived previously.

The research topic under consideration demands analysis of the understanding and interpretation of the legislation by two opposite parties. Also understanding of the intention behind the interpretation of the legislation is required in the study. The holistic approach towards the subject is also demanded in this study, thus making it a perfect case for a qualitative study.

In the current study there are no affirmative theories that are available in literature to explain the behavior of the tax payer and the tax authorities, though there are indications available for the same. The problem of disputes between the two parties
has to be analyzed, and précis areas which cause disputes and the reasons for such disputes have to be identified to present a solution to the problem of high disputes. Hence qualitative method of study is found to be most appropriate method for this research.

3.2 Types of Qualitative Study:

Traditionally there are five methods of conducting qualitative study:

1. Biography
2. Grounded Theory
3. Ethnography
4. Case Study
5. Phenomenology

3.2.1 Biography:

A biographical study is the study of an individual and his/her experiences as told to the researcher or found in documents and archival records. (Crerswell, 1998)

(Roberts, 2002), Biographical research seeks to understand the changing experiences and outlooks of individuals in their daily lives, what they see as important, and how to provide interpretations of the accounts they give of their past, present and future.

The current study does not aim to study anything about any individual to generalize. Hence this method of qualitative method is not used for this study.

3.2.2 Grounded Theory:

The intent of grounded theory is to generate or discover a theory – an abstract analytical schema of a philosophy that relates to a particular situation. This situation could be one in which individuals interact, take actions, or engage in a process in response to a phenomenon (Crerswell, 1998)
(Borgatti), The phrase "grounded theory" refers to theory that is developed inductively from a corpus of data. If done well, this means that the resulting theory at least fits one dataset perfectly. This contrasts with theory derived deductively from grounded theory, without the help of data, and which could therefore turn out to fit no data at all. Grounded theory takes a case rather than variable perspective, although the distinction is nearly impossible to draw. This means in part that the researcher takes different cases to be whole, in which the variables interact as a unit to produce certain outcomes. A case-oriented perspective tends to assume that variables interact in complex ways, and is suspicious of simple additive models, such as ANOVA with main effects only.

The current study is trying to find the reasons for dispute. There are very few reasons, and the study is not aiming to contradict the same. Hence this method for study is found not suitable for this study.

3.2.3 Ethnography:

(Sanday, 1979), Ethnographers have historically used long stay and observations of participants for their study. The same methodology is still being used as most effective. More specialized data collection methods are now available to study the paradigm, which has been analyzed in this work.

(Creerswell, 1998) Ethnography is a description and interpretation of a cultural or social group or system. In ethnographic study, the researcher examines the group’s observable and learned patterns of behavior, customs, and ways of life.

Thus ethnography is a method in which one in which culture or social group is studied. It does not study the intentions behind any act.

3.2.4 Case Study:

(Tellis, 1997), A frequent criticism of case study methodology is that its dependence on a single case renders it incapable of providing a generalizing conclusion. The conclusions drawn are microscopic because they lack in sufficient numbers.
(Creswell, 1998), defines a case study as an exploration of a “bounded system” or a case (or multiple cases) over time through detailed, in-depth data collection involving multiple sources of information rich in context. Some consider “the case” as an object of study while others consider it a methodology. According to Creswell, the bounded system is bounded by time and place, and it is the case being studied – a program, an event, an activity, or individuals.

(Johansson, 2003), in his speech at an international conference has said that, generalizations in case study are analytical and not statistical. They are based on one of the three principles or a combination of the same, namely deductive, inductive and abductive.

Generalization based on deductive principle hypothesis is formulated and testable consequences are derived by deduction. By comparing the expected findings with the empirical findings it is possible to verify or falsify the theory.

Generalization through induction in case studies this is done through inductive theory-generation, or conceptualization, which is based on data from within a case. The result is a theory normally consisting of a set of related concepts.

Abduction is where we find some very curious circumstance, which would be explained by the supposition that it was a case of a certain general rule, and thereupon adopt that supposition. Or where we find that in certain respects two objects have strong resemblance, and that they resemble one another strongly in other respects. Under abduction one can generalize based on historical data and clues or making generalizations based from known cases and applied to actual problem situation by making appropriate comparison.

### 3.2.5 Phenomenology:

A phenomenological study describes that meaning of the lived experiences for several individuals about a concept or a phenomenon (Creswell, 1998). Phenomenological methods are particularly effective at bringing to the fore the experiences and
perceptions of individuals from their own perspectives, and therefore at challenging structural or normative assumptions. Adding an interpretive dimension to phenomenological research, enabling it to be used as the basis for practical theory, allows it to inform, support or challenge policy and action (Lester). 

(Finlay, 2009), says that the phenomenology stems from different philosophical values, theoretical preferences, and methodological preferences. There are various forms of phenomenological research, different forms and hence multiple methods are appropriate. The phenomenology having different variants in methods is a dynamic type of qualitative research and is hence ever evolving. The flexibility of phenomenological study is its greatest strength.

(Moustakas, 1994), has described various concepts in phenomenology. In the book it is stated that Intentionality, noema and noesis are concepts central to phenomenology. Noema is that which is experienced. Noesis is the way in which it is experienced. Both terms refer to meanings. Husserl’s “back to things themselves” is a way of emphasizing knowledge that is rooted in meanings, rather than in an analysis of physical objects. In reflecting on what one has “seen”, one will start to grasp meanings that have been concealed. The challenge is to look, look again and keep looking and reflecting to obtain complete descriptions. Shifts occur when one looks from a different angle, a different frame of reference, a different mood. No perception of a thing is conclusive and deeper layers of meaning may always unfold when you keep searching. To finally arrive at essences of a phenomenon one must unify the noema (external perception) and the noesis (internal perception).

Thus understanding perception is central to phenomenological study. This is very correct for the understanding the intention related to the phenomenon.

(Trochim, 2006), Phenomenology is sometimes considered a philosophical perspective as well as an approach to qualitative methodology. It has a long history in several social research disciplines including psychology, sociology and social work. Phenomenology is a school of thought that emphasizes a focus on people's subjective experiences and interpretations of the world. That is, the phenomenologist wants to understand how the world appears to others.
The current study is about the experiences of the tax payer and that of the tax authorities regarding international transfer price, to find out the intentions of the both regarding the legislation, the phenomena being enactment of the legislation. Since the study aims at finding the causes of dispute, study of the approach of the two and the intentions of the two becomes important. Also since the two are opposing parties to the disputes, it becomes all the more important to understand the intentions to understand the reasons for the dispute. Current study falls under this category of qualitative study because it is trying to find the reasons for disputes and study the intentions of the parties to disputes for the same.

Since phenomenology has high amount of flexibility, this is considered a more appropriate type to study the subject under consideration. Normally under phenomenological study, empirical data is used to arrive at conclusion. The objective is to get firsthand information about the respondents and draw conclusions from the same, the crux being getting the information to draw conclusions.

### 3.3 Procedure of study under phenomenology:

Under phenomenological study, data analysis involves horizontalization that is extracting significant statements. These statements are then transformed into clusters of meanings according to how each statement falls into specific psychological or phenomenological concepts. These clusters are then tied together to make general description of the experience, both textually and structurally. The researcher can incorporate his meaning here.

However procedure under phenomenology is very flexible as found by the literature on phenomenology. Adoption of a technique that maintains the basic ideology of phenomenology, to suite the requirement of the study is acceptable under phenomenology. This flexibility allows experimentation with the methodology under phenomenology. Any procedure can thus be used under phenomenology which studies some experiences about the phenomena and transforms it into a meaningful conclusion, relating to the phenomenological concepts.
3.4 Procedure used under current study:

Current study employs a combination of a case study method and the phenomenological study. The study is intended to find the reasons for the disputes between the tax payer and the tax authorities. Interviews for a large sample are practically not possible and hence orders passed by the TPO were considered over a period of time. Each order in itself is a case study since every year the TPO treats the audit as a new case. The orders have explanations by the tax authorities for their decisions and arguments of the tax payer upon the same. Hence it is a phenomenon that is studied through a limited purpose case study.

Each order of the TPO is critically examined and meaningful statements indicating disputes between the tax payer and the tax authorities are derived. These statements are then generalized into commonly occurring reasons of disputes. The TPO orders are expected to have more than one such reason, and hence technique or horizontalization is used to classify the statements into relevant reasons of dispute. Further such classification of each case into the reasons identified is being used to arrive at a logical conclusion. Details of the same are elaborated further in this chapter.

Since phenomenological study allows flexibility in the methodology of study, and the critical examination of the orders passed by the TPO is the most logical and reliable source of data to understand the intentions of the tax payer and the tax authorities, it is found apt to use the mix of case study and techniques of phenomenology to study the current problem. The flexibility given by phenomenology helps in mixing case study method with phenomenology. Since detailed interviews of the tax authorities and the tax payers are practically not possible, and that all the areas of dispute may not be reflected in a small sample, a larger sample is a requirement. Studying large sample through case study method is also not possible. The real intentions behind the tax payer’s claims and pricing, and the intentions of the tax authorities cannot be revealed through case study. Since TPO’s orders contain arguments of both the parties, it is possible to identify significant statement pointing towards intentions. To eliminate this limitation of the case study method as (Tellis, 1997) states larger sample size is
required. Generalize these and to study through a time frame, a larger sample size is required which also covers time period from which the legislation is implemented till the current possible. Such a sample spread over a period of time may also indicate changing intentions of the parties over a period of time.

Considering the fact that each year has certain unique features, it is possible that there will be different arguments by the same tax payer if there is change in situation. However if there is no change then the arguments have to remain constant, else the strong pointer towards intentions of the parties will be highlighted. This situation will only be possible through horizontalization technique used for data analysis under phenomenology.

This study hence tries to combine the advantages of case study and the phenomenological methods so arrive at a mix method under phenomenology which uses basics of phenomenology with a combination of case study method. Detailed process used is elaborated further in this chapter.

3.5 Preliminary Work:

For conducting this study, preliminary unstructured interviews were conducted of tax authorities and persons practicing in the field of transfer pricing. Total four interviews were taken, out of which two were of tax authorities and two tax practitioners, to understand the issues involved and the nature of disputes between the tax payer and tax authorities.

The major outcome of the interviews was that all the respondents accepted the fact that there is subjectivity in the legislature but were not able to clearly say that the subjectivity was causing disputes. Further detailed study was required to arrive at such a conclusion. The second outcome of the interviews was that it gave understanding of what are the submissions made by the tax payer and the nature of orders passed by the TPO (TPO is the officer in charge for doing transfer pricing audit for cases referred to him by the AO). The TPO orders contained details of the
arguments of the tax authorities and the comments of the TPO in the arguments and his arguments for the decisions.

There are guidelines for the AO’s to refer cases to the TPO. All cases having international related party transactions, totaling more than Rs. 5 crores have to be referred to the TPO for transfer pricing audit by the AO (Departmental instruction No. 2/2003). Thus the TPO becomes the first point from where the dispute for transfer pricing in India starts, at least for all the major cases according to the Income Tax Department.

The preliminary interviews conformed that the TPO orders were the start point of disputes and that the critical analysis of the TPO orders will lead to a fruitful study in this area. For a further understanding of the nature of data available in the TPO orders it was decided to conduct a pilot study of TPO orders.

### 3.6 Pilot Study:

To verify the conclusions from the preliminary interviews and the nature of data available in TPO orders, a pilot study was conducted. Assessment orders made by TPO for three years for three companies were collected from the Income Tax Department and the same were critically analyzed. Upon analysis it was found that the cases contain explanations and reasons for the TPO’s stand and the augments of the tax payer upon it, if any, then the conclusion and the decision of the TPO.

The orders of the TPO were critically examined for the contents. Observations were made as to the analysis narrated by the TPO about the case and the explanations and arguments called for by the TPO. Further the arguments and the explanations of the tax payer as reproduced by the TPO were also studied for its contents and elaborations.

It was found that the explanations and reasoning of the TPO highlighted the Income Tax department’s thinking and interpretation on the issues relating to the case, and the arguments and explanations of the payer depicted his interpretation and intentions behind his stand. It was hence found that the reasons for the dispute can be reviled by
critical analysis of the TPO orders and that it can also give if the disputes are caused
due to subjectivity in the legislature, or incorrect intention behind interpretation of the
legislation or the difference of opinion about the subject matter and facts. Three
consecutive years of the same tax payer also gave insights if there was any change in
the stand of the tax payer or the department over the time period. It also revealed a
few areas of dispute amongst the two. It was hence inferred that the TPO orders are
correct source of data for the study.

The pilot study also confirmed the problems in the chosen area for study, and that the
study was viable. It also confirmed that the line of action decided for the study is
correct and a comprehensive study would lead towards fruitful results. Considering all
the above it was decided to go ahead with elaborative study.

3.7 Statement of Problems:

From the available literature, preliminary work and the pilot study there are a few
research problems that have been identified. OECD has given guidelines for tax
administrators and the tax payers for international transfer pricing legislation
implementation. The Indian legislation is on same lines as that of the OECD
guidelines. However the OECD guidelines and the Indian legislation, both state that
the most appropriate method amongst the prescribed methods be used to compute
ALP for transfer pricing. Also there are different ways of implementing the method
prescribed in the legislation and the legislation holds all this valid, in all
circumstances and situations. This makes the legislation highly subjective and free to
be interpreted flexibly by tax payer as well as the tax authorities.

If intended, the tax payer can use the text of the legislation to his benefit and interpret
the same citing its validity in the legislation to reduce his tax liability, and the same
can be done by the tax authorities for increasing the taxes they collect. This flexibility
in interpretation throws open a window giving many areas for causing disputes
between the two.

There is a very thin line between the legislation being interpreted in the correct text
and intended spirit, and correct text but incorrect spirit. This hence causes disputes
and the root cause of these disputes can be traced in the subjectivity prevailing in the legislation. The legislation taken in correct text and correct spirit can cause disputes on the subject matter and the facts of the case, however if the intent is to avoid tax by the tax payer or to collect extra tax by the tax authorities, the interpretation can be in correct text of the legislation but the spirit in the legislation is lost. Finding the intent behind the interpretation of the text of the legislation thus becomes very important part of understanding the reasons for disputes between the tax payer and tax authorities.

Tax avoidance is legal but tax evasion is not. Therefore there is a need to study if the subjectivity in the legislation is causing tax avoidance, which is valid way of tax management for the tax payer, or it is causing tax evasion, which in any situation is illegal and should attract punitive action against the tax payer. For understanding this aspect the understanding of the intent of the tax payer is very important. Similarly intent of the tax authorities is also very important. The tax authority’s intent to collect maximum possible tax from tax payer by textual interpretation of the legislation is also incorrect on their part to do so. Hence the understanding of the intent of the both is very important to understand the reasons for the dispute.

3.8 Objectives of the Study:

Upon the developed understanding of the problems in the field of international transfer pricing at ALP in India, preliminary interviews and the pilot study, following objectives were framed for study:

1. Critically examine the approach of income tax department and the assesses towards transfer pricing
2. Critically examine if the OECD guidelines and Indian legislation are taken in correct spirit or correct text
3. To develop a tentative method for reduction or elimination of chaos and confusion for transfer pricing

With the above objectives the study was further persuaded to form hypotheses for the study.
3.9 Hypotheses

(Bryman & Bell, 2007), Hypothesis is a specific type of research question. It is an informed speculation, which is set up to be tested, about the possible relationship between two variables. It is also defined as, an initial hunches about relationship between concepts.

(Cooper & Schindler, 2006), Define hypothesis as relational statement, since it describes relationship between two or more variables. It is also said to be a tentative statement – a speculation about the outcome of the study.

After understanding the problem area and framing objectives based on the same and considering the outcome of the preliminary interviews and the pilot study the following hypotheses were framed for the study:

1. The approach of Income Tax department and that of the assessee towards transfer pricing is contradicting each other
2. The OECD guidelines and the Indian legislation are not taken in the intended spirit
3. Subjectivity in the legislation is causing controversies among Income tax department and the assessee.

To verify the above hypotheses, assessment orders of the TPO’s were collected from Income Tax department. The Directorate of International taxation is the authority, under whom the TPO’s function.

3.10 Nature of Data:

There are in all 10 Directorates of Income Tax for Transfer Pricing in India spread across 8 cities (Income Tax Department). Out of these directorate in Mumbai, Bangalore, Delhi account for almost 70% of total transfer pricing audits done by the TPO’s (as found in the preliminary work). The TPO orders are not public information and hence a lot of private information prevails. Hence confidentiality of the
information is a major concern for the tax authorities when it comes to making available the same. Also the names and positions of the officers involved in the passing of the respective orders is also a confidential data. However there is a provision in the Income tax Act 1961, under section 138 (1)(b) that the Chief Commissioner or equivalent can give information in public interest.

To ensure confidentiality of the information the data made available was given without the names of the tax payers and the officers passing the orders. From the selected directorates, request was made for TPO orders of the population. The orders received are the best possible the authorities could do to make the data available. However, all the TPO orders from the selected directorates were not available for the study, although attempt was made to get maximum possible data.

The data regarding total number of cases per assessment year was not available, nor the data regarding additions to the number of cases in assessment year. However during an interview of Director Transfer Pricing in Mumbai, estimation was made available regarding number of tax payers assessed by TPO during assessment year 2009-10 was 1200. AY wise bifurcation of the number of tax payers audited by TPO all over India was not available.

3.11 Sample and Sample Selection:

Of the 10 Directorates, directorates from Bangalore, Mumbai, Ahmedabad, Pune, Hyderabad and Delhi were selected for data collection. The selection of the directorates was based on convenience and approachability to them, reason being of the concerns of confidentiality of the data. From these selected six directorates very limited data was made available from Delhi and Hyderabad. However convenience in collection of data was restricted to selection of Directorates and not further to the selection of cases with them. All possible data regarding the cases was made available by these Directorates.

In total TPO orders of 887 companies were collected spanning assessment years 2002-03 to 2008-09, totaling 1606 orders. Thus based on the estimation made
available of the total number of the assessments in assessment year 2009-10 of 1200 and the number of companies’ data collected, it is inferred that the sample of 887 companies, which is almost 74% of the total tax payers, which is considered as sufficient sample for this study.

Objective being to study the reasons of disputes, orders in which no disputes were there, meaning the orders wherein no adjustments to the ALP were made by the TPO were rejected from analysis. Thus of the 887 companies, only 682 companies were selected for the study. Hence a total of 1078 orders were critically studied, and finally 1070 orders were considered for study. Eight orders were further rejected for analysis in the study because they were lacking in the arguments of the tax payer.

**Table 1**: Assessment year wise breakup of the 1070 orders is as follows:

<table>
<thead>
<tr>
<th>Assessment Years</th>
<th>Number of Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002-2003</td>
<td>167</td>
</tr>
<tr>
<td>2003-2004</td>
<td>159</td>
</tr>
<tr>
<td>2004-2005</td>
<td>186</td>
</tr>
<tr>
<td>2005-2006</td>
<td>175</td>
</tr>
<tr>
<td>2006-2007</td>
<td>148</td>
</tr>
<tr>
<td>2007-2008</td>
<td>169</td>
</tr>
<tr>
<td>2008-2009</td>
<td>65</td>
</tr>
<tr>
<td>2009-2010</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1070</strong></td>
</tr>
</tbody>
</table>

For analysis, TPO orders which had adjustments made to the ALP or income were taken. Thus out of the total orders of 1660, 1078 were taken and further filtered to 1070. The sample for the current study is thus 1070 orders of TPO.

Interviews were conducted of the tax authorities – 18, tax practitioners - 6 and tax payers - 4. The sample for the same was collected purely on convenience basis, since the information sought is very strategic in nature and hence very confidential.
3.12 Data Analysis:

The final sample of 1070 cases was put through for qualitative analysis based on case study method. These TPO orders were critically examined for intentions of the tax payer and that of the tax authorities behind use of transfer price. Qualitative analysis was done to find out if subjectivity has a role to play in the disputes. Also the spirit of interpretation of legislature was analyzed through qualitative method stated above.

22 areas of disputes were identified, and further consolidated into 19 areas. Three areas were found to be very closely related and hence consolidated at later stage. Reason number 3 with 7, 14 with 17, and 13 with 20 were combined to get final 19 reasons. List of 22 reasons and finalized 19 reasons is annexed in annexure 2, along with its frequencies.

The sample of 1070 orders was critically analyzed and the areas of dispute amongst the tax payer and tax authorities identified. These disputes were then classified into the 19 areas identified. In one order there were more than one area found and classified accordingly. Along with classification of the disputes found into the 19 pre-identified areas, other observations relating to the hypotheses, and not relating to the hypothesis were noted case wise, to come to logical conclusions at the end of the analysis.

Details of how classification is made in 19 reasons:

1. Product and business differentiation adjustments:
   The classification is done where in claim for the same is found in the TPO report and the TPO has expressed any disagreement on the same.

2. Agreement on comparable:
   Classification under this head is done where it is expressly found in the TPO report that the TPO and the tax payer have differences on the comparable selected and TPO has and tax payer have not come to a consciences on the
same. However the TPO has passed his report with giving his reasons for selecting comparable.

3. Reasons for adjustments to ALP:
Classification under this head is done where it is found that there are adjustments to the ALP in the case, and that the tax payer has raised objections which are on record in the TPO order about reasons given by the TPO as to why ALP computed by the tax payer is not acceptable to him and adjustment to the ALP is made.

4. Basis of determination of ALP:
Classification under this head is done where it is found that there are express objections on record about how the adjustments to the ALP are made by the TPO. This is different from the reason number 3 above (Reasons for adjustments to ALP) for, the reason number 3 above given for adjustment were looked at, and in this reason the method of computing new ALP is into dispute, and not the reasons for adjustments to ALP. The two are different in a sense that one looks at why adjustment to ALP is done and other looks at how adjustment is done to ALP.

5. Application of Method for ALP:
Under this reasons classification is made where it is found that the method used to compute ALP is in dispute, meaning that the tax payer has used one of the prescribed method and the TPO, disagreeing with the tax payer, has used some other prescribed method.

6. Deliberate mess up by tax payer on allocation:
Classifications under this reason is made on the basis where in the tax payer has used all possible reasons, irrespective of the claim being valid and sustainable or not; not giving any reasons for the claim, nor producing any documentation for the claim for adjustment. Classification under this reason is also made where in tax payer has blatantly rejected TPO’s reasoning and challenged the TPO without giving any substantial reasons.
7. Corporate guarantee, its cost & notional interest:
   Classification is made under this reason where in there is corporate guarantee is
given by the tax payer and there is no income against it that is offered, claiming
it to be not a transaction. The TPO has added the cost and notional interest for
the same, claiming it to be transaction since such guarantee would not have been
given to anybody else by the tax payer.

8. Share application money as loan:
   Classification under this head is made where the tax payer has applied for shares
in AE and given money for the same and the shares are not allotted to him for
more than one year.

9. Basis of adjustment to expenses/income:
   Classification under this head is made where it is found that there are
adjustments made to the ALP by the TPO, and the adjustment is agreed upon by
the tax payer but there is dispute expressed on record about the basis relied upon
which the adjustment is based.

10. Documentation, evidence:
   Classification under this reason is made where in the TPO has made adjustments
where in there is lack of evidence and documentation by the tax payer about the
transactions made by him with the AE, and hence the TPO has made adjustments.

11. Deemed Loan:
   Cases where in the TPO has considered the outstanding receivables from AE are
for too long a period and hence treated as deemed loans, and that the tax payer
has not agreed to it citing various reasons, is classified under this head.

12. Royalty Payment/Brand Fee:
   Classification under this head is made where in it is found that there is dispute
about rate of payment of royalty or brand fee, and/or whether royalty or brand
fee payment itself is disputed all together.
13. Interest free loan:
   Classification in this reason is made on the basis that there are interest free loans given by the tax payer to the AE, but the ALP for the loan is claimed to be nil giving some reasons, and the TPO has made additions to the income by adding interest to the income of the tax payer.

14. Comparable not available at time of filing taken by AO:
   Classification under this reason is made based on the basis where it is expressly mentioned by the TPO in his order about the objections raised by the tax payer about the comparable included by the TPO which were not available to the tax payer when he made his submissions to the department.

15. Exclusions / Inclusion from income & Expenses:
   Classification under this reason is made where it is found that there is express objection on record is made by the tax payer and the same is overruled by the TPO, relating to which of the expenses and or income, are to be included or excluded in the ALP determination. Even if the objections are on record about any part of income or expense it is classified under this category. However, where in there is dispute about how the computation of the income or expenses is made, is not considered under this head.

16. Markup Margins:
   Classification under this head is made where in there is express objections raised about the rate of markup to be done for the determination of ALP. Only dispute about the rate of markup is considered. It is not considered if the dispute is because of different comparable selected or any other reason. If there is markup rate dispute it is categorized in this reason.

17. Interest on loan:
   Classification under this category of reasons is made where in loans are given to the AE by the tax payer or received from the AE, but the rate of interest charged, is at dispute.

18. Multiple year data taken by tax payer, rejected by AO:
In this category, cases in which the tax payer has considered multiple year data of the comparable, to arrive at the ALP and the same is rejected by the TPO is considered.

19. Valuation of Equity Purchased & Sold:
   In this category, cases in which tax payer has bought or sold equity from AE or in AE is considered and that there is dispute about the valuation of that equity.

Table used for horizontalization technique for data analysis is attached in Annexure 1 for reference.

After the critical analysis was done, the 19 areas were further classified into areas of dispute due to legislation being taken in incorrect spirit by either of the two parties into consideration, and areas of dispute due to difference of opinion about the subject matter of the legislation and facts of situation. This was done to come to a logical conclusion about the hypotheses for the study. The same data was used for all the three hypotheses and hence no separate tables were made for the same.

Classification of reasons into disputes arising due to taking legislation into incorrect spirit and reasons for disputes arising due to having difference of opinion about the subject matter or facts of case are classified based upon the observations and critical evaluation of the reasoning given by the tax payer and the TPO as quoted in the TPO order. Based upon the overall reasoning given by the two, a conclusion as to the intentions behind the adjustment and claims to the same have been understood, and hence the respective classification. The classification is judgmental based upon the understanding and interpreting the intentions behind the claims, objections and decisions of the tax payer and the TPO, based upon the reasoning given in the TPO order for the same. The TPO order contains the arguments, objections and claims of the tax payer as reproduced by the TPO and the counter arguments and reasoning by the TPO along with his decision on the same. Considering all the above intentions of each aspect was noted and then the broad classification of the reasons made into these two categories being made.
Reported cases relating to the transfer pricing decided by the Income Tax Appellate Tribunal, High Courts in the country and the Supreme Court were analyzed to understand the legal and factual position as interpreted by the courts in India. The decisions of the courts were critically analyzed for understanding the courts decisions and the interpretations made by the courts of the legislation and the factual situation as argued by the parties to the dispute. Reasons for dispute as decided by the court are also classified into areas of dispute due to legislation being taken in incorrect spirit by either of the two parties into consideration, and areas of dispute due to difference of opinion about the subject matter of the legislation and facts of situation.

Frequency of the reasons for disputes in case of TPO orders is taken to comment upon significance of the same and further to comment upon the hypotheses. The court orders are taken as a supportive to the conclusion drawn from TPO orders. Since this is a qualitative study there is no quantitative technique used for commenting on the hypotheses.

Interviews of tax authorities, tax practitioners, and tax payers were conducted. The interviews were unstructured interviews, intention being understand the intentions and comments of the respondent on the ALP and international transfer pricing issue. Significant statements were identified from the interviews to arrive at a conclusion relating to the objectives, hypotheses and general conclusions.

3.13 Alternative Method:

There is no attempt being made to test the alternative method proposed at the end of the study. The method is only indicative and its validity and implementability has to be checked before it is accepted for trials. The method has not been drawn through any systematic data analysis and it is a theoretical alternative which is not tested. The method is drawn based on the understanding of the nature of controversies relating to international transfer pricing and maxims of taxation. Hence methodology for the same is not given in this chapter for the same.
3.14 Limitations of Study:

1. The study is restricted to the political boundaries of India. Hence features unique to India will be part of generalization. The reasons found in this study will have to be tested for validity in other countries.

2. Full submissions of the tax payer are not available. The tax payer’s arguments as reproduced by the TPO in the order are only available. Hence any relevant argument significant to indication of some different intention of the tax payer may have been missed in the study, if not reproduced by TPO.

3. Tax authorities and tax practitioners were prominent in the interviews that were conducted. There is a very high possibility that the tax practitioners are not made aware about the intentions behind the ALP determination by the MNC.

4. The interviews of the responsible persons in MNC’s were few and hence not fully representative of the population for the interview purpose. However, the issue being very sensitive, there is a high amount of secrecy that is maintained. It is observed that in some cases the responsible persons are also not fully aware about the real ALP determination process. The ALP is guided by overseas Head Office.

3.15 Works Cited:


   http://www.incometaxindia.gov.in/CCIT/CCIT_Aboutus_Display.asp


