TABLE OF CONTENTS

DECLARATION i
CERTIFICARE ii
DEDICATION iii
ACKNOWLEDGEMENTS iv
LIST OF CHARTS AND TABLES vi
ABBREVIATIONS xi
LIST OF CASES xiii
ABSTRACT xvii

CONTENTS

CHAPTER-1: INTRODUCTION

1.01. Introduction 01
    1.01.1. Concept of Taxation under domestic law 03
    1.01.2. Concept of Taxation under International aspect of Tax Law 04
    1.01.3. Definition of International Taxation Law & its importance 07

1.02. Definition of Transfer price under International Taxation Law its Significance. 11

1.03. Statement of the Problem 15
1.04. Research Question of the Study 17
1.05. Review of Literature 18
1.06. The objective of the Research/study 24
1.07. Importance of the Research 25
1.08. Hypothesis of the Research 26
1.09. Research Methodology 28
1.10. Limitation of Study 29
1.11. Structure of the Study 31
1.12. Conclusion 36
CHAPTER-II
ORIGIN AND DEVELOPMENT OF TRANSFER PRICING

2.01. Introduction 37
2.01.1 Definition concept and nature of Transfer pricing 38
2.01.2 Growth of World Trade and Transfer pricing policy 40
2.01.3 Rationale of Regulation 44
2.01.4 Problems of Transfer pricing manipulation 44
2.01.5 The relevance of Tax Treaties 45

2.02. Role of Developing countries 46

2.03. Evolution of Global Transfer pricing Legislation 47
2.03.1 History of legislation and development of Transfer Pricing in USA 47
2.03.2 History of legislation and development of Transfer pricing in UK 50
2.03.3 History of legislation and development of Transfer pricing in Australia 53

2.04. Role of OECD in Development of Transfer Pricing 55
2.04.1 OECD Reports of 2008 and 2010 56
2.04.2 Comparison of OECD & UN Guidelines on issue of Non-discrimination in Transfer Pricing 57
2.04.3 Equal Treatment of foreign Tax payers 61
2.04.4 Restriction on Equal Treatment 61
2.04.5 Extent of Equal Treatment 62
2.04.6 The Situation of Companies 62
2.04.7 Treatment of Stateless persons 62
2.04.8 Permanent Establishment 62
2.04.9 Treatment of foreign owned Enterprises 63
2.04.10 India and OECD 63

2.05. Conclusion 65
CHAPTER- III
TRANSFER PRICING REGULATIONS AND INDIAN RULES ON TRANSFER PRICING

3.01. Introduction

POSITION PRIOR TO INTRODUCTION OF FINANCE ACT 2001
OLD LAW

3.01.1 Liability in special cases Section 42(2) of Income Tax Act 1922

3.01.2 Income from transactions with Non-Resident

3.01.3 Short comings of the provisions of Section 92

3.01.4 Avoidance of Income Tax by transactions resulting in transfer of Income to Non-Resident

3.02. An Over view of New legislation

3.02.1 Feature of New Legislation

3.02.2 Arm’s Length Principle

3.02.3 International Transaction

3.02.4 Associated Enterprises

3.02.5 Arithmetic Mean

3.02.6 Documentation

3.02.7 Adjustments

3.02.8 Accountant Report

3.02.9 Safe Harbour

3.02.10 Burden of Proof

3.02.11 Position under companies Act 1956

3.02.12 Position Under Central Excise and Customs Act 1988

3.02.13 Position under Customs Act 1988


3.03. Conclusions
CHAPTER-IV
THE CONCEPT OF ARMS LENGTH PRINCIPLE UNDER
INTERNATIONAL TRANSACTION AND TRANSFER PRICING

4.01. Introduction

4.01.1. Definition concept and meaning of Arm’s length principle

4.01.2. Arm’s Length Standard

4.01.3. Principles of comparability

4.01.4. Reasons for examining comparability

4.01.5. Position in India

4.01.6. Characteristics of property transferred or services provided

4.01.7. Definition of Arm’s length price

4.01.8. Determination of Arm’s length price

4.01.9. Article 9 of the OECD Model Tax Convention

4.01.10 OECD Guidelines

4.01.11 Difference between Arm’s length principle and Arm’s length price

4.01.12 Procedure for Computing Arms’s length price

4.01.13 Most Appropriate method for determination of Arm’s length price

4.01.14 Best method Rule of USA

4.01.15 Difference between Best method Rule and most appropriate Method

4.01.16 Short comings of Arms’ length principle

4.01.17 Arithmetic Mean

4.01.18 Arm’s length Range

4.01.19 Safe Harbour

4.01.20 Current Year Data

4.01.21 Multiple Year Data

4.02 Application of Arm’s length principle and its Valuation in USA

4.02.1 Arm’s length Range in USA

4.02.2 Criteria for Arm’s length Transactions in USA

4.03 Application of Arm’s length principle and its Valuation in UK

4.04 Application of Arm’s length principle and Its Valuation in Australia
CHAPTER –V
TRANSFER PRICING METHODOLOGIES ADOPTED BY THE VARIOUS COUNTRIES LIKE UK, US, AUSTRALIA AND ITS COMPARATIVE STUDY WITH REFERENCE TO INDIA
(A comparative study of the Arm’s length principle and other methods followed by the countries)

5.01 Introduction

5.02 Transfer pricing Methodologies

5.03 Arm’s length Standard: Current Transfer pricing methods

  5.03.1 Comparable uncontrolled price method (CUP)

  5.03.2 CUP Data

  5.03.3 Data Source

  5.03.4 Internal CUP

  5.03.5 Arm’s length price under CUP method

  5.03.6 Applicability of CUP Methods

  5.03.7 Comparability Factors

  5.03.8 Adjustment for differences

  5.03.9 Merits and Limitation of CUP Methods

  5.03.10 CUP in comparison with other methods of Evaluation by comparability

  5.03.11 Preference of CUP over TNMM method

5.04 Resale Price Method

  5.04.1 Methods adopted in RPM

  5.04.2 Adjustment for Difference

  5.04.3 Functional and Economic analysis under Resale price method

5.05 Cost plus Method

  5.05.1 Determining the Cost Mark-Up

  5.05.2 Functional & Economic Analysis

5.06 Other Methods or Transactional Profit Method

  5.06.1 Profit Split Method

  5.06.2 Contribution Analysis Approach

  5.06.3 Residual Profit Split Analysis

  5.06.4 Determination of Arm’s length price
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.07</td>
<td><strong>Transactional Net Margin Method</strong></td>
<td>170</td>
</tr>
<tr>
<td>5.07.1</td>
<td>Comparability of Transaction</td>
<td>171</td>
</tr>
<tr>
<td>5.07.2</td>
<td>Functional Analysis</td>
<td>172</td>
</tr>
<tr>
<td>5.07.3</td>
<td>Limitation</td>
<td>173</td>
</tr>
<tr>
<td>5.07.4</td>
<td>Arm’s length price Determination</td>
<td>173</td>
</tr>
<tr>
<td>5.07.5</td>
<td>Comparability Standard under TNMM</td>
<td>176</td>
</tr>
<tr>
<td>5.07.6</td>
<td>Entity level comparison Under TNMM</td>
<td>178</td>
</tr>
<tr>
<td>5.07.7</td>
<td>Whether TNMM is method of last resort</td>
<td>183</td>
</tr>
<tr>
<td>5.07.8</td>
<td>Choice of other methods</td>
<td>183</td>
</tr>
<tr>
<td>5.08</td>
<td><strong>Transfer Pricing of Intangibles</strong></td>
<td>184</td>
</tr>
<tr>
<td>5.08.1</td>
<td>Special Consideration for Intangible property</td>
<td>185</td>
</tr>
<tr>
<td>5.08.2</td>
<td>Comparability analysis of Arm’s length Applications for intangibles</td>
<td>186</td>
</tr>
<tr>
<td>5.08.3</td>
<td>Special consideration for intra- groups services</td>
<td>187</td>
</tr>
<tr>
<td>5.08.4</td>
<td>Comparability of analysis of Arm’s length principles in connection</td>
<td>188</td>
</tr>
<tr>
<td></td>
<td>India, USA, UK, Australia</td>
<td></td>
</tr>
<tr>
<td>5.08.5</td>
<td>Comparison with other jurisdiction / Countries –Inter country Comparison method</td>
<td>189</td>
</tr>
<tr>
<td>5.09</td>
<td><strong>Formulary system v/s Arm’s Principle-A comparative analysis</strong></td>
<td>189</td>
</tr>
<tr>
<td>5.10</td>
<td><strong>The Potential for double taxation if conflicting approaches are adopted</strong></td>
<td>191</td>
</tr>
<tr>
<td>5.11</td>
<td><strong>Solution to Transfer pricing</strong></td>
<td>194</td>
</tr>
<tr>
<td>5.11.1</td>
<td>New CCCTB Proposed scheme</td>
<td>196</td>
</tr>
<tr>
<td>5.12</td>
<td><strong>Comparative analysis Arm’s length principle Formulary apportionment and CCCTB Approaches</strong></td>
<td>197</td>
</tr>
<tr>
<td>5.13</td>
<td><strong>Weather Arm’s length Principle suitable for developing Country like India-A critique</strong></td>
<td>200</td>
</tr>
<tr>
<td>5.14</td>
<td><strong>Conclusion</strong></td>
<td>203</td>
</tr>
</tbody>
</table>
CHAPTER VI

Transfer pricing Guidelines framed by the OECD Model Tax Convention/UN Model Convention for Multinational Enterprises and Tax Administrations and its implication on developed and developing countries - An analytical view on the method/practices followed by the selected countries under reference to India.

6.01 Introduction to Historical background of OECD and its developments

6.01.1 1935 Model Convention

6.01.2 Mexico & London Model

6.02 Role concerning Transfer pricing issues

6.02.1 The OECD Report 1979

6.02.2 The OECD Report 1984

6.02.3 The OECD Report 1987

6.02.4 The OECD Report 1995

6.02.5 later developments/OECD

6.02.6 OECD Report updated 2008

6.02.7 Attribution of Profits to Permanent Establishments

6.02.8 OECD updated 2010

6.02.9 Dispute Resolution

6.02.10 Draft note on comparability

6.03 OECD Transfer pricing Guidelines, Transfer pricing developments in selected countries with established transfer pricing regimes and Indian Developments.

6.03.1 Australian Transfer pricing Regime

6.03.2 United Kingdom Transfer pricing Regime

6.03.3 USA Transfer pricing Regime

6.04 Tax Planning and Tax Haven

6.05 OECD and Arm’s Length Principle

6.06 Summary of OECD methods

6.07 Advance Pricing Agreements /Arrangement

6.07.1 Advance pricing Agreement Mechanism in India

6.08 OECD Model Tax Convention/Treaty-An analysis

6.09 UN MODEL TAX TREATY- an analysis

6.10 Conclusion
CHAPTER VII
PROBLEMS OF TRANSFER PRICING IN PRACTICAL APPLICATION AS ENSHRINED IN THE INDIAN AND INTERNATIONAL CASE LAWS, PROCEDURAL REQUIREMENTS, TAX AVOIDANCE BEHAVIOUR OF MULTINATIONAL ENTERPRISES, COMPARABILITY DATA vs. DEVELOPING COUNTRIES, AND ARM’S LENGTH PRINCIPLE vs. FORMULARY APPORTIONMENT METHOD, AND THE CONCEPT OF CCCTB – A CRITICAL STUDY

7.01 Introduction 249
7.02 Documentation of Transfer pricing 250
   7.02.1 Burden of proof 251
   7.02.2 PATA Documentation 252
7.03 Indian Regulation of Transfer pricing (Documentation) 253
   7.03.1 Accountant Report 254
   7.03.2 Documentation requirement in other countries 255
7.04 Transfer pricing Audit Procedure 256
   7.04.1 Selection of cases for scrutiny in Transfer pricing 256
   7.04.2 Reference to Transfer pricing Officer 256
   7.04.3 Specific Domestic Transaction 257
   7.04.4 Jurisdictional Issues 257
7.05 Tax Avoidance behavior of MNC’s-can it be treated as legitimate problem- or not – A critical view 259
   7.05.1 Tax avoidance through Transfer pricing manipulation - A Illustrative Study of facts and circumstances of the following instances reported by NGO/private agencies - Analysis 261
7.06 Transfer pricing comparability Data & Developing countries- a analysis 267
   7.06.1 Expanding access to data sources for comparables 269
   7.06.2 More effective use of data sources for comparables 269
   7.06.3 Approaches to reduce reliance on direct comparables 270
   7.06.4 Concept of Sixth Method & similar methods used in Latin America & Africa 271
   7.06.5 Advance price agreements & Mutual agreements proceedings 271
7.07 Arm’s Length Principle vs. Formulary apportionment Method- Main difference 272

xxvi
7.07.1 Formulary apportionment Conceptual Shift 275
7.07.2 Formulary Apportionment as alternative to Arm’s length principle-critical Analysis 276
7.07.3 The New CCCTB proposal scheme –is it boon–analysis 279
7.07.4 Demerits of the principle of proportionality and subsidiary 281
7.07.5 Position of India if it adopts the Formulary apportionment method 282

7.08 Analysis of Case laws 285
7.08.1 Indian Cases 285
7.08.2 International Cases 302

7.09 Conclusions 318

Chapter VIII
Conclusion and suggestion

8.01 General Conclusion 322
8.01.1 Testing of Hypothesis 330
8.01.2 Answer to Research question 338
8.02 Finding and suggestion of the Research 351
8.03 Future extinction of this Research 355
8.04 Specific Recommendations 356

GLOSSERY 359

BIBLIOGRAPHY 368

APPENDICES 372