CHAPTER-I

Introduction
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1.01. Introduction

The consensus among the social scientists that a multi-disciplinary study of tax laws is essential for appreciating the role of fiscal policy in the economic development. The study of tax laws with reference to the changing socio-economic scenario, and their role in the light of the constitutional objectives is *sine-qua-non*.

Taxes finance the government expenditure. Fair distribution of the burdens of government expenditure is one of the main objectives of the tax system. Taxation is an instrument of social change. The Constitution of India provides that no tax shall be levied except by authority of law under Article 265\(^1\) of the Indian Constitution. Article 246(1)\(^2\) and Seventh Schedule List (Entries 82-92A, the Parliament (Central Legislature) has exclusive power to levy taxes mentioned in the list viz, taxes on income other than agricultural income, corporation taxes on capital except agricultural land etc. Article 109 to 112 and 117\(^3\) of the Indian Constitution govern the procedure for enactment of legislation including tax legislation. Each tax Act contains a general grant of power to make rules for the administration of tax. Article 280 of the Indian Constitution shares the Central tax Revenue with the State. Adam Smith, the father of Modern Economics has given four cannons of taxation they are\(^4\):

1. Cannons of Ability
2. Canon of Certainty
3. Canon of Convenience
4. Canon of Economy

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1. Article 265 of the Indian Constitution reads “No tax shall be levied or collected except by authority of law.”
2. DDBasu *ibid* Article 246(1) reads as “Notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule “(2) Notwithstanding anything in clause (3) Parliament, and, subject to clause (1) the Legislature of any State…..also have power to make laws with respect to any of the matters enumerated in List III in the 7th Schedule” “(3) Subject to clauses (1) and (2) the legislature of any State…. has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the 7th Schedule” “(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State not withstanding that such matter is a matter enumerated in the State list.”
3. Art 109 to 112 of Indian Constitution deals with the special procedure of Money Bill in the Parliament
The neo-classical or modern economists have added more canons of taxation they are:

1. Canon of productivity
2. Canon of Elasticity
3. Canon of Simplicity

The most important canon followed by the government s for socio-economic development are canons of equity and productivity. Economists agree that Income tax is the ideal tax to achieve these two cannons. The canons of equity means that people with similar income should pay similar taxes and with different incomes should pay different taxes. There are three types of taxes. They are:

1. The *regressive tax* means higher proportion of the poorer personsIncome that of the richer (eg. Taxes on match box, groceries, etc)

2. A *proportion tax* means a given proportion of one’s income as tax irrespective of whether the person is rich or poor (e.g., flat rate say 20 % of taxable income)

3. A *progressive tax* means takes a higher proportion of income as income increases (eg., graduated rates of tax on slab system)

The burden of taxation to a large extent depends on jurisdiction principles applicable to taxpayers in a country. Therefore a clear understanding of the jurisdictional nexus envisaged in the Direct Tax laws in India is absolutely necessary to understand how the system works. Broadly there are two types of jurisdiction nexus in the tax laws they are:

1. **Source Jurisdiction:** here the source on income within the taxable territories is the sole criterion for levying tax known as Income tax. This is called the continental system followed in European and Latin American countries.

2. **Status Jurisdiction:** Here the jurisdiction nexus depends not on the source of income but on the status of the taxpayers. This is popularly called the Anglo-Saxon method. The status of person taxpayer can be classified under three heads.
   a. Nationality-citizenship
   b. Residence in the country; and
   c. Domicile of the person
In USA citizenship is the sole criterion for taxing world income (all income from whatever source derived in the world)\(^5\).

In India under the Income Tax Act 1961, the jurisdictional nexus is the Residence of the Taxpayer. The Income Tax Act classifies residence of the taxpayer into resident, non-resident. Under the head resident again it is classified into resident and ordinarily resident, and resident and not ordinarily resident.

The determination of residential status of a taxpayer under the Act affects his tax incidence. The overall incidence of income tax ultimately depends on

1. Tax base
2. Rate structure

One can say that Tax is an inevitable and perhaps unwelcome aspect of everyone’s life, whether one pays taxes or not. Taxation is part of State (sovereign) power recognized and circumscribed by the Constitution. It has been there since the time immemorial.

1.01.1 Concept of Taxation under domestic law

**Income concept under domestic law**

In the terms of economist Haig’s the term *Income* is “the increase or accretion in one’s power to satisfy his wants in a given period in so far as that power consists of

\(^5\) Section 61 of Internal Revenue code of U.S
money and anything susceptible to valuation in terms of money”\textsuperscript{6}. Prof. Simons equates “personal income with algebraic sum of consumption and change in net worth”. However, Simon conceded that it is not feasible to take into account all accrued charges in the value of assets and liabilities and income tax should be limited to realized income as reflected in transactions or conventional accounting statements.\textsuperscript{7}

“Income….. is a word difficult and perhaps impossible in any precise general formula. It is a word of the broadest connotation… Income is not necessarily the recurrent return from a definite source though it is generally of that character. Income again may consist of a series of separate projects as it generally does in the case of professional earnings.\textsuperscript{8}

“It is not easy to capture the concept of income and confine it within a phrase “in a manner suited for tax purposes”. The type of sweeping and broad definition in the tax statute serves several important purposes like Income should be real and not fictional. Illegal income is taxable. The concept of real income is certainly applicable in judging whether there has been income or not but in every case it must be applied with care and within well-recognized limits, but must not be called in to defeat the fundamental principles of law and income Tax held by Supreme Court in State bank of Travancore Vs CIT\textsuperscript{9}.

1.0.1.2 Concept of Taxation under International aspect of Tax Law.

International aspect of Tax law is vital for the global economy. Free economic and technical interaction between various countries depends among other things on the tax liability of the people whose investments are in many countries. There is no concept of uniform Tax law in the world. Countries follow different types of tax systems which sometimes overlap, a foreign investor may have to bear double taxation. Since the cumulative taxation of the same income by the country of domicile and the country of source of income is likely to be prohibitive it acts as a deterrent to foreign investment.\textsuperscript{10} If the double taxation barrier has to be removed or lowered the theme of International taxation is that of the various ways or accommodations by

\textsuperscript{6} Ibid., p. 21
\textsuperscript{7} Goode Richard, “the individual Income Tax” The Brookings institution, Washington DC (1964) p .11
\textsuperscript{8} Gopalakrishnan K C op.cit. p.23
\textsuperscript{9} 157 ITR 102 (SC) (1986)
\textsuperscript{10} Gopalakrishnan K C, op.cit., p. 189
which that yielding may be accompanied. However, it is well settled law that no rules of international law exist to limit the extent of any country’s tax jurisdiction i.e., there is no case in which any national court has condemned double taxation as violation of International law\textsuperscript{11}. There is nothing immutable about the rules of tax jurisdiction, the extent of relief from international double taxation or the methods of providing such relief which a particular country may apply at any political and fiscal status at home and abroad\textsuperscript{12}.

The rules of Tax jurisdiction at home and abroad are matters of rapidly increasing importance to taxpayers and accountants. The freedom of choice available to nation in their choice of jurisdictional rules, the different economic conditions with which they must deal, the resulting diversity in tax structures, all combine to make more difficult the task of the tax adviser.\textsuperscript{13}

Broadly there are three types of tax systems prevailing across the world

**They are:**

- Global or Unitary system (Anglo-Saxon System)
- Scheduler (Continental system), and
- Mixed system i.e., Scheduler in character but global in principle (e.g., India)

1. **Global System:** Countries like USA, Japan and some industrial countries in Europe follow this system. The main feature of this types are:

   - Broad concept of income and within that concept every kind of income is taxed more or less the same.

   - Jurisdictional connection is the personal status of the taxpayer rather than the source of income. Under this system, a citizen of a country pays tax on global income (domestic and foreign income)

2. **Scheduler System:** France and its former colonies, European countries like Belgium, Italy and Latin American countries follow this system. The two feature of this system is:

   a. There are qualitative differences in different kinds of income

\textsuperscript{11} Ibid p. 189
\textsuperscript{12} Ibid p. 189
\textsuperscript{13} Tax law Review (1962)17 USA p. 431
b. Jurisdictional connection is the source of income and not the personal status of the taxpayer and only income from a source in the country is taxed and has no jurisdiction over income earned from foreign sources

3. **Mixed System:** UK and India follow both the systems i.e., a resident in India, for example, pays tax not only on income earned from domestic source but also on foreign income earned provided the tests laid down for Resident and Ordinarily Resident are satisfied.

Due to this result of divergent tax systems, International Double taxation may arise in either of the following way:

1. The jurisdictional connections used by different countries may overlap or
2. The taxpayer or his income may have connection with more than one country. In either case there may be double taxation.

Illustration: *Indian resident and ordinarily resident, under the Income tax act may have investments in India, UK, France and he has to pay ‘tax’ in UK and France for earning income in those countries and on the entire world incomes in India.*

In the light of the above, in order to remove the tax burden due to double taxation the international trade and investment and international relations between countries can develop freely, three broad types of relief from double taxation. They are followed by all countries. They are:

1. Unilateral relief from Double Taxation: under this, the Income earned from abroad is exempted from tax and only income from domestic sources is taxed.
2. Unilateral relief from tax credit: countries with global system prefer this method because tax credit method assures that one tax or the other, the foreign or domestic, must be paid. Foreign tax credit is given by two methods:
   a. Direct credit: Germany Spain and Turkey
   b. Indirect foreign credit: UK USA etc.,

The effective overall tax burden is determined by the higher of the domestic or foreign tax rate. The economic rationale of the foreign tax credit system is that it removes an impediment to the free flow of International trade and investment. In relation with worldwide jurisdictional rule it establishes neutral tax treatment as
between domestic and foreign source and between foreign incomes from different geographical sources.

1.01.3. Definition of International Taxation Law & its importance

The definition of International Taxation can be precipitated as under:

“For legislators writing national tax laws and business managers developing an international development strategy for their companies, it is vital to understand that double taxation, double taxation relief, tax incentives and tax sharing, as well as tax laws of home and host countries, all interact to form a matrix of international tax law. For every goal that may be achievable by tax legislation, there are always potentially adverse consequences depending on the mechanism chosen” By Ray August.

Trade and Taxation are as old as human civilization. Trade generates economic activity and the state (Sovereign Power) takes a share in that economic activity among the people in the country through taxation. The form of taxation takes different shape like when a person earns income from trade, income tax levied. If he imports goods from other countries, customs duty is levied. If he manufactures goods excise is levied. If he sells the goods, Sales tax is levied. If he transports the goods from one municipality to another, octroi is levied; if he renders the service, Service Tax is levied. In the case of International trade more than one country is involved and each country would like to tax on the economic activity in their respective countries.

Primarily International law is applicable to fiscal laws of each country. The involvement of developing countries in larger scale in the socio-economic development resulting increase in Governmental expenditure, vis-à-vis government needs more revenue for developmental activities. Countries which are accepting globalization will have access to raw materials, labour technology in any part of the world as result International investment and trade is increasing everyday and has resulted the concept of International Taxation which assumes the importance.

If all the countries follow uniform rules of jurisdiction to tax, the people, the problem will not arise, but this will not happen in reality, usually it is the practice of the countries differs in defining jurisdiction in taxing the people.

International Taxation is the study of international Tax treaties and international aspects of domestic tax laws. There is a nexus between the sovereign, (Taxing Authority) subject (Taxpayer) and the object (income generating economic activity). Some countries tax the subject (Taxpayer) on his economic activity in the world. While some countries confine themselves in taxing economic activity in their respective countries. This in the fiscal language is called Status jurisdiction and Source Jurisdiction or Home country and Host country jurisdiction respectively. In such circumstances free flow of International Trade and Investment in the world should depend on Business considerations only i.e., the availability of raw materials, labour, ingenious technology etc., and not on tax considerations, which resulted the birth of principles of Taxation in the arena of International trade and investment. According to Prof. R.L. Dorenberg “The study of international tax law is the study of coordinating the tax authority of sovereign countries”.

In today’s scenario where the corporations are going global, the need to understand international tax aspects cannot be over emphasized. More importantly understanding international taxation aspects enables corporations to analyze their international transactions and build global business empires on a strong base so as to ensure that these empires do not crumble under the burden of heavy taxes. The Vienna Convention on the Law of Treaties has noted in its preamble that the principle of “Pacta Sunt Servanda” a universally recognized principle which is reproduced as under;

“Every treaty in force is binding upon the parties to it and must be performed in good faith”

The word good faith connotes the meaning as per the words of Taslim Olawale Elias the then Chief Justice of Nigeria in his book “The Modern Law of Treaties” says “the requirement of good faith is a legal principle underlying the maxim. This must be so since customary international law, is generally agreed has a consensual


basis, and normal international intercourse would be impossible without mutual confidence that obligations undertaken in the course of it will be fulfilled. If this is true of customary international law, it is even more so of conventional international law, both ancient and modern”.

These words gives the meaning of binding nature of International tax treaties like any other international treaty are binding and the government which is a party to a treaty cannot, generally deny any benefits that are available to a taxpayer under the treaty.

“Thus when a Taxpayer entering into a cross border transaction may be liable to be taxed in his home country (country of residence) on his world income which is otherwise known as residence rule of taxation simultaneously he may also be taxed in the country from which he earns income even though he is not a resident of that country and this is referred as a Source Rule”. Here is the beginning of Double taxation avoidance agreement which otherwise doorstep of International Taxation.

Generally under Double Taxation Avoidance Agreement (DTAA) only one country can be taxed. But here what is not determined is the rate at which the country would tax. Despite the DTAA countries remain free to charge the rate of tax which they generally would be charging in other than international tax situations.

For example the Rate of taxation in India is higher than that imposed under UAE. Here the objective of the business is to reduce the costs (and tax being a cost to the business) the transactions sought to be done between the two would sought to be done in a manner which brings out the minimum possible tax implication thereon. It is in this context that Transfer pricing gains solid momentum.

Following the explosive growth in international trade, transfer pricing has been an increasingly important issue. The modern communication systems allow trade and investment to flow across national borders within seconds. International business has been integrated with trans-national alliances among firms that combine technology, production and marketing. The main reason for the developments has been the opening of borders to both inward and outward capital flows. The removal of capital barriers has made it significantly easier for multinationals to design their operations in a sophisticated manner.
Hence, the International Taxation is the study of international Tax treaties and international aspects of domestic tax laws. “The study of International Taxation is the study of coordinating the tax authority of sovereign countries”\(^1\) In International Trade and Taxation more than one country is involved in the process of economic activity of their respective jurisdiction territories.

A vast majority of countries levy tax on income earned by their residents from sources inside and outside their own territory, which means that they apply the so-called “worldwide income principle”. In addition, many countries levy tax on income derived by non-residents if such income flows from sources situated within the country (“source principle”). In other words, residents of the countries concerned are subject to unlimited (or full) tax liability in their home country, whereas limited tax liability is imposed upon non-residents. This co-existence of limited and unlimited tax liabilities is in many cases is the origin of double taxation.\(^2\) DTA’s (Double Taxation Agreements) are mainly based on what is commonly called “recognized principles of international taxation”\(^3\)

These principles have never been formally codified, nor does totally unambiguous understanding exist in respect of their scope and interpretations\(^4\) The International chamber of commerce, situated in Paris in its document\(^5\) has expressed
the opinion that, besides the general principles of mutual respect, the following basic principles should govern and control the taxation of international business activities

1. The Permanent establishment principle, generally limiting taxation to a situation where a permanent establishment exists and to only so much of the income as is attributable to that permanent establishment.

2. The net income principle, requiring the taxation of income only after full allowance for related expenses wherever they may be incurred.

3. The limitation of withholding taxes on gross income to dividends, interest and royalties exclusively and to tax rates which should not be excessive and should reflect the fact that the tax is levied on gross income.

4. The principle of double taxation relief in country-of-residence tax system

5. The principle of non-discrimination between nationals and foreigners

6. Individual should normally be taxed only in the country where he or she performs work

7. The income from immovable property should only be taxable where the property is located, \( \text{lex loci reisitae} \) and

8. The associated enterprises should deal with each other as if they were not associated (principle of “dealing at arm’s length”)

1.02. Definition of Transfer Pricing under International Taxation Law and Its Significance

The subject of Taxation has remained ever-green subject for business groups and continues to remain so. Its interaction with the legal systems is also a curious one. The incorporation of tax principles and concepts (which are basically economics driven) and rules (which includes a lot of procedural safeguards) in the legal system is baffling for a number of exceptions and special provisions are carved taking into account the intricacies and needs of a tax system.

Another important concept in International taxation is Transfer Pricing. “When the cross border transactions happen between two or more parties who enjoy special relationship, it is likely to structure their affairs in such a manner that one of them

\[23\] Ibid., pp. 4-5
who resides in high tax jurisdiction earns less than normal profits than the one who resides in a more favorable tax jurisdictions.” Several developed and developing nations have adopted regulations in their domestic laws with a view to provide a deterrent against such tax avoidance practice. Transfer pricing is a term used in economics. In business economics a transfer price is considered to be the amount that is charged by a part or segment of an organization for a product, asset or service that it supplies to another part or segment of the same organization.

Transfer pricing is essentially an outcome of globalization. A distinctive part of International Taxation, it has come to mark the legal responses to business profit maximizing tendencies. “The basic cause of the transfer pricing is the result of global mobility of capital without effective coordination of the tax authorities it is very easy for multinationals to transfer profits” from one pocket to the other” but it is not as easy for tax authorities to coordinate in order to share tax income.

Transfer pricing is one of the specific branch of taxation which taxes the profits arising from Inbound Investment (i.e., taxation of income earned by foreign company in a host country) and Outbound Investment (i.e., taxation of income earned by a domestic country abroad) The purpose of International Taxation is to ensure that the earnings of a company from a foreign company neither go tax free nor are doubly taxed.

Transfer pricing means “price at which goods and services are supplied to enterprises that belong to the same business group. It concerns prices charged by an enterprises for transfer of goods and services to its related enterprise.”

Multinational Corporation (MNC’s) or Multinational Enterprises (MNEs) are of great importance in the global economy. A great amount of international trade is either between multinational corporations or within a multinational corporation, which is called intra-firm trade. Therefore, intra-firm trade is also of importance in the global economy. The price used in intra-firm trade is called transfer price. The process of deciding the transfer price refers to transfer pricing, which is an important strategy for multinational corporations to shift their global pre-tax profit from high tax jurisdictions to the low tax jurisdictions for the purpose of tax avoidance. As major participants of the global economy, multinational corporations and governments view transfer pricing differently. Corporations regard transfer pricing
strategy as an important tool for tax planning, which is consistent with their professional ethics, because the ultimate goal of the corporation is profit maximization. Therefore, corporations have strong motivations to manipulate transfer pricing for the tax purpose. However, tax avoidance behavior is a conflictual behavior. From the government’s perspective, it is harmful because such a behavior causes loss of tax revenue, which could be used to fulfill public spending obligations such as financing public infrastructure, national defense, education, health care, social security and other public services.

The Organization for Economic Cooperation and Development (OECD) defines Transfer pricing as “prices at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises”\(^{24}\). The efficient transfer pricing system is the one that provides a reasonable method for allocating revenue to the concerned taxation jurisdictions apart from providing a simple and consistent tax regime to taxpayers.\(^{25}\)

“Price of uncontrolled transaction in normal course is fixed by way of negotiation based on open market conditions. The price of such transactions generally depends upon demand and supply of goods, geographical conditions, markets, available alternatives etc., The negotiated price so fixed taking into account the market forces is price of uncontrolled transaction. When a similar transaction takes place between associated enterprises, price is set by the enterprise where group interest takes precedence over market conditions” the price for such transaction is called transfer price.

This Transfer pricing provisions usually apply to International transactions though similar transaction may takes place in domestic market. In some countries transfer pricing rules apply both to cross border and domestic transactions depending upon the objective of the legislation and abusive practices to be curbed. The Transfer pricing process determines the amount of income earned by each of the parties to the transaction. The subject of Transfer pricing involves both legal and economic principles being applied to a fluctuating marketplace, new approaches are constantly

\(^{24}\) Wahi V S “Transfer pricing law procedure & Documentation” Snow White publications, (2005), 2nd Ed p. 3
\(^{25}\) Ibid. p. 3
being developed, innovative approaches taken by companies, international agreements, US laws and laws of various treaty organizations.

Transfer pricing is a “method of reducing a corporation’s total tax liability through the manipulation of prices between countries with differing tax liability with differing tax rates and legislation so as to realize the largest proportion of the profit in the country with the most favorable tax regime” 26.

**Significance of Transfer price**

Many multinational corporations because of their vast resources and control over group entities are in a position to shift profits from one country to another by resorting to transfer pricing of controlled transactions which can adversely affect the tax revenue of a country. Many countries have therefore enacted or streamlined legislation relating to transfer pricing to ensure that their tax base is not eroded due to price manipulations by the group entities. These Multinational corporations and their associated enterprises play significant role in growth of international trade and commerce. Globally with the integration of domestic and world economy, there has been phenomenal change in the cross border transactions between entities that belong to the same business group.

Strictly speaking 2/3rd of the world trade is controlled by multinational groups and trade among them accounts for the bulk of international transactions. In India also with the opening of the economy and in the wake of globalization there has been rapid increase in numbers of cross border transactions within entities of group companies.

Large scale tax avoidance practices used by transnational corporations (TNC’s) came into public notice recently when the giant drug company by name *Glaxo SmithKline* agreed to pay the US government $3.4 billion to settle a long running dispute over its tax dealings between the UK parent company and its American Subsidiary. This was the largest settlement of tax dispute in USA 27.

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27. Vahi V S “Transfer Pricing & Documentation An Indian and Global Analysis” Snow white publication (2013) 5th Ed., p. 905…Glaxo Smith Kline Inc. v. The Queen 30th May 2008 this is a case in point in the developed world. The case was filed in 2004 at U.S. Court. Before the dispute started Glaxo attempted to conclude an APA(Advance price Agreement) with the service (as Glaxo’s main competitor had done) however the service rejected the Glaxo APA petition without providing any reasons. After the service decided to adjust the Transfer prices set by Glaxo’s U.K.
Transfer pricing, one of the most controversial and complex issues requires closer scrutiny not only by the critics of Transnational Corporations (TNCs) but also by the tax authorities in the poor and the developing World. Transfer pricing is a strategy frequently used by TNC’s to book huge profits through illegal means. The basic issue is the correct allocation of the overall profit derived by the associated enterprises jointly acting in a business transaction (intra-group transaction), which is to say that the profit earned by the individual companies should be roughly in accordance with the functions actually performed and risks actually borne by them. Stakeholders of multinational corporations are paying more and more attention to transfer pricing risk management.

The choice of the transfer price will affect the allocation of the total profit among the parts of the company. This is a major concern for fiscal authorities who worry that multi-national entities may set transfer prices on cross-border transactions to reduce taxable profits in their jurisdiction. To quote British Prime Minister David Cameron thinks that multinationals aggressive tax avoidance is like illegal evasion.

1.03. Statement of the Problem

Not very much earlier the subject of transfer pricing was a subject for tax administrators. But recently the politicians, economists and business people, as well as NGOs, have been waking up to the importance of who pays tax on what in international business transaction between different arms of the same corporation. Globalization is one reason for this interest, the rise of the multinational corporation is another. The facts that more than 60% of the world trade takes place within multinational enterprises, the importance of transfer pricing becomes clear. The question why the Transfer price is so important? for this answer is the manipulation of prices between the companies concerned shifts the profit from one region to the other

parent corporation and its wholly owned U.S. subsidiary, the litigation started 3 major issues argued one is with allocation of income derived from the intangibles 2 is core content of the APA granted to SmithKline would have been made public three years after its issuance. Finally the bilateral APA concluded by their service and U.K. Inland Revenue would have provided a proper form for discussing what would have been SmithKline’s fair share of U. S. Taxes. Finally service announced that $3.4 billion settlement had been reached with Glaxo with respect to the transfer pricing dispute. The settlement amount is to date, the largest amount ever negotiated in tax dispute.


British prime Minister David Cameron in a meet at World Tax forum on February 18, 2013 “There are some forms of tax avoidance that have become so aggressive that I think there are moral questions we have to answer about whether we want to encourage or allow that sort of behavior”. reported in Bloomberg, February 18, 2013
region. The motivation behind the manipulation of prices is not only the shifting of profit but also to avoid payment of duties, protection against exchange fluctuation and capitalization. On verification of the various countries practices it was found that Transnational Companies (TNC) are to show low profits/losses in the high rate tax countries, which would be offset by higher profits in a low tax country. Transfer pricing between the companies is manipulated not only to achieve the tax benefit but also other non tax benefit like goods transfer, capitalizations, lower customs duty to enlarge market share supporting to start up a subsidiary etc. A survey report by the reputed firm of International public accountants in 1999 indicated that the transfer pricing remains a complex and critical issue and also businesses change to compete in a global economy and various governments target transfer pricing as source of revenue.\(^{30}\)

The main objective of official transfer policy on transfer pricing is to ensure that the host country gets a proper share of profits earned within it. The information collected has to provide a complete picture to the government on the operations of subsidiary, (sales, growth assets use of capacity labor relations and so on,) as well as its financial links with the parent company. Only when all this information is collected and evaluated the authorities can have a realistic estimate of how well the subsidiary is doing and how much it is paying its parent. The problem lies with the developing countries in collection of information not only on the operations of the subsidiary in the host country but also the operations of TNC worldwide.\(^{31}\) Transfer pricing per se is just about setting price for the transactions within an organization. It does not say anything about whether the price is over-priced, under-priced or set according to arm’s length principle. Multinational corporations have an incentive to misprice transfer price for the purpose of minimizing tax in view of their primary goal of profit maximization. Therefore, transfer pricing, form the perspective of organization’s top management, is a significant strategic decision due to its importance in creating shareholder wealth.


1.04. RESEARCH QUESTION OF THE STUDY

- Why transferpricing is so important to a developing country like India?
- What are Transfer pricing Regulations framed by the Indian legislation?
- Are these Transfer pricing regulations protecting the loss of revenue to jurisdictional country?
- Whether the comparative study of the Developed countries like USA, UK, and Australia with Indian regulations will help for solving the issues and complexities of Transfer pricing which are occupying increasing space in management minds?
- How far the issues of Transfer pricing will contribute to the officers, Tax payers and tax professionals who are facing stiff challenge to solve the problems on Transfer pricing?
- What are the motives for multinational corporations to engage in transfer pricing manipulation?
- What is the role of Indian courts in accepting the norms of Transfer pricing methodologies framed by OECD, UN Model Tax Convention?
- Whether the methods and principle issues framed in the Arm’s length principle will efficiently handle the issues of transfer pricing and provide a reasonable solution for allocating revenue to the concerned taxation jurisdictions and lucid environment to the Tax payer?
- Whether Global Formulary Apportionment: a valid alternative to the Arm’s length Principle? If so what is the position of India in implementing the concept of Global Formulary apportionment?
- Whether the Tax avoidance behavior of the Multinational corporations be justified as a legitimate problem?
- Whether the proposed Transfer pricing guidelines control the manipulation by the MNE group resulting abusive tax avoidance?
1.05. REVIEW OF LITERATURE:

Review of literature is very important to study the different aspects of Transfer pricing under International Taxation Law. The subject of Transfer pricing is a brain child of emerging economic order, intercompany transactions across borders with overlapping jurisdictions is a complex issue. The increasing participation of multi-national enterprises in economic activities has given rise to new issues emerging from transactions entered into between two or more enterprises belonging to the same multi-national enterprise. The concept of Transfer pricing was globally focused when the organization for Economic Co-operation and Development (OECD) committee on Fiscal affairs released a report called “Transfer Pricing and Multinational Enterprises”. Thereafter Revenue authorities all over the world have a lurking doubt that by manipulating transfer prices, MNEs reduce the incidence of Tax by means of transferring higher income to countries with low tax jurisdictions or by making comparatively greater expenditure in those countries where tax rate is high.

The Taxation law internationally is worked by practical operational guidelines. Many scholars who devoted their life time to understand and to digest the concept like Transfer price which is very important in building the Nation’s wealth by protecting the Revenue. The pioneers who worked for this Transfer pricing are as under:

Butani, Mukesh(2007) carried out a study entitled "Transfer Pricing An Indian Perspective (Includes ‘Transfer pricing Guidelines for Multinational Enterprises and Tax Administrations’)". This book investigated the complex subject and analyzed the existing laws and Transfer Pricing Methods. This book has very comprehensively discussed the International perspectives as well as global transfer pricing practices. The case laws refereed by the author will enlighten the readers in interpreting the concept of Transfer Pricing legislation globally. The author explains the subject in a simple sober way, and proposes the requirement and need for uniformity approach to transfer pricing cases. The author suggested that Indian Revenue authorities should relook at criteria for selection of cases for reference and rely equally on qualitative factors like quality of documentation, industry practices, etc., 32.

Dr C S Mathur, Dr Maximilian Gorl and Karl Sonntag carried out a historical investigation and carried out task which will be helpful all professions who are practicing as Taxation specialists. The authors are a combination of India and Germans who are dedicated for solving specific problems of International large project industry that are dealt with international taxation. They have presented in three volumes “Principles of Model Tax Conventions and International Taxation” which examines and deliberates on the doctrine of international taxation by reference to OECD and UN commentary. Volume I provide useful analysis of the various articles of model tax conventions, OECD and UN and draws comparison between the two commentaries. The special feature of the book is that it tries to transmit, extended knowledge with regard to typical taxation issues and problems that arise in international large project business. Volume 2 provides broad analysis and typology of India’s treaties a ready reference for enterprises and their advisors doing business with Indian customers and Indian business people venturing into cross border transactions. Volume 3 complements with full text of India’s tax treaties.

Wahi V S (2013) carried out an authentic work on the subject of Transfer pricing called “Transfer pricing Law, Procedure & Documentation” An Indian and Global analysis”. The learned author made an earnest effort to critically analyze the complex issues relating to transfer pricing in a simple and lucid manner both from the Indian and global perspective. This book covers the entire gamut of Transfer pricing like arm’s length principle, Transfer pricing methods concept of associated enterprise, documentation requirements, OECD guidelines and international practices as well. Part 2 of the book with appendices examines global perspectives of transfer pricing regulations in different countries. Landmark foreign decisions have also been discussed in length. The Indian and foreign case law have richly contributed to corpus of jurisprudence by providing desired clarity on several controversial issues and interpretations of the provisions. The book covers the important amendments that are brought on the statute by the Finance Act 2012 which covers the scope of legislation to certain domestic transactions; determinations of arm’s length price, examination of international transactions etc.

Sekar K R, carried out an extensive work on the subject of Transfer price under the title “Transfer Pricing Law and Practice (including practical issues, International case laws and Global matrix table on Transfer pricing). The books start with the survey of the methods in vogue in the US, UK, AUSTRALIA and CHINA. It deals the principles in detail and valuation of the methods in Indian context. This book is an analytical approach gives the maximum number of tables illustrations on the subject and analysis the practical issues under each headings like PATA Arms Length Price vis-à-vis Income tax Act Choice of method and practical issues that was faced by the professionals in implementing the Transfer pricing.

The Chamber of Tax Consultants MUMBAI, has carried out a compendium in a set of four volumes which is solely for educational purposes. To disseminate knowledge in the field of taxation corporate and Allied laws, and Accounting & Finance. The chamber caters to the needs of professionals both in practice as well as in industry. This contains bump of articles on all taxation issues its practical implications from the authors who are in field. These books provide a glimpse of the subject and its statistics for the educational purposes.

Elizabeth King, Harvard University has carried out an extensive book on “Transfer pricing and Valuation in Corporate taxation: Federal legislation vs Administrative Practice”. This issue has carried out a wonderful comparativework. The issues of Transfer pricing have been focused at International examiners largely. An analytical approach has been made in respect of transfer pricing issues in connected with economic glimpse of the subject has been stressed. The methodologies of the Transfer price have been discussed in length with summative assessments. This book analysis the disparities between law regulations, and administrative practice are concerning on a number of grounds. The author has developed specific policy proposal to reduce lacunae between tax law and administrative practice. This book is the master key to understand the US

Internal Revenue service. The author mainly addresses the issues in connected with
tax legislation and implementation in the economic sense and in terms of tax equity. \(^{37}\)

P V S S Prasad & Sampath Raghunathan has published a book titled
"International Taxation- A basic study". The author is an eminent chartered
accountants and a distinguished lawyer from India contributed to the issues of
Taxation. This book contains detailed fiscal tools as controllers of economic and
social policy in a polity which seeks blend principles of political democracy with
economic control. This books deals with the issues of latest jurisprudence on the
subject of International Taxation. It also analysis the juridical double taxation, source-
source conflicts residence –residence conflicts, source-residence conflicts and
importance of DTAA has also been highlighted \(^{38}\).

Hugh Dalton’ book on “Principles of Public Finance” is a scholarly work in
the field of Economics and Taxation delivered at the London School of Economics.
This book aims at the chief general principles which are applicable to the public
finance of a modern community which discuss the practical problems brings ideas and
facts on the forum. The author has expanded the field of Taxation with profound
knowledge of public expenditure and stresses how many taxes the public can afford to
pay during the course of tax distribution. The author explained the theory of “taxable
capacity of a nation” effects of taxation on distribution, relative and absolute taxable
capacity was explained with analytical way. The author disputes with the equitable
doctrine such as equal or proportional sacrifice to the economy of the nations. \(^{39}\)

TAXMANN’S MASTER, GUIDE to Income Tax Act with commentary
amendments made by the Finance Act 2014 which contains the detailed updates on
the various issues including the Tax Rates Assessments with latest circulars and
notifications, by the Board is a exhaustive book in the field of Taxation. \(^{40}\)

\(^{37}\) Elizabeth King “Transfer pricing and valuation in Corporate Taxation Federal legislation vs
Reference http://kluweronline.com

\(^{38}\) P V S S Prasad & Sampath Raghunathan “International Taxation a Basic Study” published by
Book corporation Kolkata (2014) (WWW.bookcorportion.com)

\(^{39}\) DALTON HUGH “Principles of Public Finance” Allied publisher private Ltd Indian reprint
(2004).

\(^{40}\) TAXMANN’s “Master Guide to Income Tax Act (with commentary on Finance (No 2))” Act
Nobes C W and Parker R H carried out a book on "Issues in Multinational Accounting". It contains the growth and development of MNEs, basic accounting problems, benefits gained by comparing financial reporting systems across countries. The book discusses the concepts, techniques, of consolidation accounting which are required for transfer pricing for comparative price determination. The author opines through evidences that the nationality of the parent company affects the transfer pricing system utilized by multinationals and relative importance given to the various factors to be considered in establishing transfer prices with case study.41

Feinschreiber Robert has authored a book titled "Transfer pricing Methods an applications Guide". A master piece work that designed to assist midsized businessmen who are facing Transfer pricing issues. The scholarly work of the author reminds that the Government designed Transfer pricing regulations with large multinational corporations in mind but they failed to exempt midsized business from their scope. The author lucidly examines the issues of various methodologies adopted in deciding the Transfer pricing like Uncontrolled cost method, the resale method, and cost plus method, how the OECD landed in the field. The author pays attention to the Transaction net margin method which is not acceptable transfer pricing method in the United states of America but generally applies elsewhere particularly in India this method is fully followed. The author also discusses various issues like penalty provisions in Transfer pricing42.

Mittal D P "Taxman’s Indian Double Taxation Agreements & Tax Laws with law relating to Transfer pricing and Taxation of E-commerce as amended by Finance (No 2) Act 2004". This work has been published in Volume I &II. The author has made an exhaustive study with reference to double taxation in consonance with international tax agreements. Tax agreements are to be viewed from economic angle and relief from double taxation where the co-existence of national tax systems would render the taxation of income, doubly mutuality of relief equal and equitable

41 Nobes C W and Parker R H “issues in Multinational Accounting” Heritage publishers oxford (U K) (1989)
treatment of taxpayers, accommodation of differing tax systems, resolving conflicts and exchange of information. These are highlighted in the present book.\textsuperscript{43}

Pithisaria M K & Mukesh Pithisaria—Chaturvedi & Pithisaria’s “Landmark Judgments on Income Tax. A scholarly book for always used by the Revenue authorities Tax professionals is a compendium of Supreme Court and High court rulings on income-tax law; This book has made an attempt to compile the rulings which can be considered as turning points or milestones in the history of income-tax law. The book defines and collects the Supreme Court and High court rulings on the question of law.\textsuperscript{44}

Nilesh Modi—“The Law and Practice of Tax Treaties An Indian perspective” bymessrs. Rajesh Kadakia and Nilesh Modi is a very a guiding literature on international tax issues and matters. This book keenly concentrates the great emphasis on increases in international trade, multinational companies set up in Indian offices and handy reference on various issues like concentrated Indian decisions of Income Tax Appellate Tribunal, High courts and Supreme Court and view on Advance Rulings. The author has made an easy reference and quick spotting of the Indian point of view on a particular issue troubling the busy practitioner. In this book the commentary and the cases have been grouped under meticulously chosen extremely under appropriate heads. This book covers the relevance of the OECD and UN commentaries. In this book the authors analysed the ingredients and commended on each one of them by reference to Indian case law in relation to UN, OECD and US Commentaries.\textsuperscript{45}


\textsuperscript{43} Mittal D P “Taxmann’s Indian double Taxation Agreements & Tax Laws with law relating to Transfer pricing and Taxation of E-commerce amended by finance (No2) Act 2004” Taxmann’s publication vols 1 & 2 (2004)

\textsuperscript{44} Pithisaria M K & Mukesh Pithisaria’s “Chaturvedi & Pithisaria’s Landmark judgement on Income tax” Lexis Nexis, vols 1 & 2 (2014)

\textsuperscript{45} Nilesh Mode “The Law and Practical of Tax Treaties An Indian Perspective” CCH Wolters Kluwer business, (2014)

\textsuperscript{46} Directorate of Income Tax (PR PP & OL) Mayur Bawan, New Delhi published by Taxmann website: http://WWW.taxmann.com

The books above referred are not conclusive for the purpose of study of literature relating to Transfer pricing. These books in a nutshell contributed in their own way of analytical and exponential form. The study of literature warrants still there is much gap to be filled in the concept of Transfer pricing as the subject is neither science nor pure social aspects. The practice and position of Indian scenario is entirely different. A developing country like India require much development in the property matters of Intangibles in respect of determination of Transfer pricing due to lack of availability of comparative Data. Hence, the subject itself is acquiring its status day by day through various decisions and practices of the Revenue authorities and courts interpretations. Apart from this the subject requires continuous attention of latest research papers presented day to day basis as the subject is of highly crucial.

1.06. The Objective of the Research/Study

- The objective behind the study is to understand how far the concept of Transfer pricing regulations framed by the various countries helps in preventing loss of revenue to the country from shifting of profits from high rate of tax jurisdiction to low tax jurisdictions and protect tax base from erosion.

- Stakeholders of multinational corporations are paying more and more attention to transfer pricing risk management. “the 2011-2012 Tax Risk and Controversy Survey found 57% of tax administrators identified transfer pricing as their top risk focus” and almost 40 percent of companies”identified transfer pricing as their leading risk”

- There has been sharp increase in tax controversy worldwide, especially regarding transfer pricing. Transfer pricing and tax “fairness” nowadays have become hot topics in the news around world.

- The complex nature of Transfer pricing arise due to intra group and intergroup and difference between the transfer prices and market –determined prices. This also gives rise to the differences in the values determined by taxpayers and tax authorities and finally leads to litigations. How far the system framed by the

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OECD and United Nation Model Tax convention helps to the developed and developing countries to protect the revenue.

- Also to find out whether these regulations framed by various countries ensure certainty and simplicity in applying the provisions apart from preventing fiscal evasion of taxes and curbing abusive Transfer pricing practices.

1.07. Importance of the Research /Study

Equity as well as efficiency in taxation demand that all tax-payers pay their due taxes to the exchequer, as required under the law, and should not take advantage of their location in more than one tax jurisdiction to bypass taxation in any particular country. The task of Tax Administration is not just to raise the revenues somehow but also to ensure that the Cannons of taxation are respected. The tax policy should satisfy the principle of equity, certainty and efficiency. It should also take into account the cost of compliance and their effect on taxes. Accordingly the role of Transfer pricing assumes the significant importance in the present day world.

Transfer pricing is an offshoot of the tendency of business to install a base in both the countries and try to carry out its operations in a manner which would render most profitable activities in the country with low tax rate. It has significant effect on the revenue collection of the various countries. Because of the manipulations under the transfer pricing policies, countries lose out their genuine share of the tax they are entitled to collect on the transactions which take place in the country. Each country would expect a fair share of taxes to be paid by companies operating in their territory as they exploit the resources made available to them by the country and thus they are entitled to collect taxes to reflect the cost of the resources being made available.

Transfer pricing manipulation results in resource misallocation. In a global context, besides loss of income tax and custom duties, transfer pricing manipulations can have other potential negative impacts for the host country, such as “depletion of natural resources, environmental damage health hazards, increased national debt and poverty psychological feelings of betrayal and loss of trust in MNEs and economic colonialism”\(^\text{48}\)

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Transfer pricing is “not just an accounting technique but also a method of resource allocation and avoidance of taxes that affects distribution of income, wealth, risks and quality of life”.49

The subject of Transfer pricing is an important tools for internal management control, Transfer pricing is considered to be a strategic decision. Numerous research on transfer prices have been done and multitudinous studies have focused on business ethics and business sustainability. However, there are not many studies focusing on the methods adopted by the various countries preferences of methods in providing solution to both government and the taxpayer’s justice. In view of the reason this topic deserves its importance.

1.08. Hypotheses of the Research

In the process of designing this work, the researcher has attempted to find the practical problem faced by the Multinational enterprises,i.e., Taxpayers, Tax professionals and the Government bodies. The Multinational enterprises are always concerned of impact of Transfer pricing regulations in the countries they have business operations as they derive substantial income from cross border transactions. In general the decisions of the Multinational enterprises are mainly guided by objectives of profit maximization of the group and minimization of tax liability. On the contrary revenue authorities always aim to maximize tax collections of concerned country by aggressively enforcing transfer pricing regulations. Based on this, the researcher has framed the Hypotheses as under:

- Transfer pricing regulations are important as they address issues of preserving the rights of a country to tax profits that can reasonably be considered to arise within its territory and contain rules that provide a fair basis of computing arm’s length prices. The Transfer pricing regulations provide a statutory framework for computation of reasonable, fair and equitable profits and tax. The Government should therefore try to ensure that regulations adopted are internationally acceptable and create a balance in efforts of raising revenues and potential Taxation.

• The rules framed by the Transfer pricing regulations protect the tax base of a country and provide a mechanism to collect its due share of tax. Provisions of the Transfer pricing regulations ensure income of group enterprises are apportioned fairly between the countries concerned and at the same time tax base of the country are protected. But the government in their desire to collect the due share should not ignore the difficulties experienced by the enterprises in satisfying the regulations of the countries concerned.

• In the course of International Transactions sometimes it is not easy to find comparable transactions and there may be no arm’s length price with which the price charged or received can be compared. Also there is gap between the developed and developing Nations with respect to Data availability in that situation the choice of other methods or residuary method may be used and ambiguity in law should be avoided by maintaining certainty and simplicity in the application of the provisions.

• The use of Other Methods\(^{50}\) is impossible if it takes into account the price of same or similar uncontrolled transactions. The practical difficulty here is non availability of comparables. In such case Transfer pricing requires the exercise of judgments on the part of the tax administration and taxpayer. But in the scenario of Indian position much rely is made on Transfer price methods resulting both the taxpayer and revenue authorities busy in deliberating the mystical number of Arm’s length price. Thereby the accuracy will become grey In such situation the Revenue must show the analysis is carried with “Judicial” after taking into account all the relevant factors into considerations, also if there is any other method prevailing for the purpose of determination of Transfer price like Formulary apportionment method practiced in US, Switzerland and CCCTB formula practiced in Europe. By making comparative study with these methods the moving towards accuracy can be achieved. Also the domestic laws of the

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\(^{50}\) The Income Tax Act, 1961 (Sixth Amendment ) Rules 2012 with retrospective effect from 01.04.2012 (for the Assessment year 2012-2013 onwards) for the purpose of clause (f) of sub-section (1) of Section 92C the other method for determination of the arm’s length price in relations to international transaction shall be any method which takes into account the prices which has been charged or paid or would have been charged or paid for the same or similar uncontrolled transaction with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.
country will play major role in acceptance of the Arm’s length principle practices throughout the world

- In the process of formulating new methods it is very important to counter harmful tax practices more effectively meaning many countries compete to provide certain tax breaks in their tax policies. This indirectly motivates or provokes the Multinationals to choose the country that offers most benefit for them to lower their global effective tax rate. Aggressive tax planning and race to the bottom competition will result in unfair practices. In such circumstances the commitment is required from the nation/countries to follow the golden rule of harmonization and practice of transparency and mutual understanding.

1.09. Research Methodology

- As it is evident in the title of this research, it is doctrinal. The researcher has the starting points in the form of Hypotheses. Primary data is the first hand information of practices in the Income Tax department through various case laws and practical day to day problems. The information gathered in the Training institutions like Direct Taxes Regional Training Institute Bangalore and various conferences of the Chartered Accountants, Seminars symposium and OECD conferences. The Material has been collected from Libraries, Institutions Regional Training Centers and from Electronic sources along the print material. The present work is an impact analysis research aimed at assessing the impact of problems faced by the Taxpayers (Multinational Corporations) and statutes legal doctrines and other taxation provisions.

- Our study is based on both primary data and secondary data. However, most of the work is based on the research of secondary data, because the topic of the study-Transfer pricing policy under International Taxation law with special reference to Arm’s length principle( A comparative study of India, U.K, USA, and Australia)-a complex and sensitive topic. Thus it is, on one hand, hard for us to get access to the practices, the methodology followed by the developed countries like USA, UK, and Australia and the practices of India wherein the law is still in primary stage. On the other hand a large amount of related second hand data is collected from Periodicals, Textbooks, Journals, United Nations periodicals, Journals, economic magazines, CD publications, Central Legislative materials,
Official publications, Private publication, Legislative glossary, draft copies of International and agreement, Official reports, Institute of Chartered Accountants Publications, International Taxation and Law Journals, CD on various seminars by the Multinational corporations.

- The researcher choose predominantly employ the qualitative method with a little scope for quantitative method. Qualitative method does not use mathematical measures and statistics study as a tool for research, i.e., qualitative method uses word description instead of using numbers. There are many research materials suitable for our study, such as cases of tax avoidance via transfer pricing manipulation, laws and regulations related to transfer pricing as well. Judicial contributions, Law Journals Law Reports like Income Tax Reports, Taxman publications, Workshops, conferences, Seminar papers, & Newspaper especially business line and Economic times which are basis for day to day changes in the taxation issues. Also with special requests from the Direct Taxes Regional institutes and collected the various data’s issues and referred case laws in connection with this research work.

1.10. Limitation of the Study

The Study of Transfer pricing and related issues throws open a number of challenges, the complexity and magnitude of the subject. In brief, transfer pricing rules are essential for any country in order to protect their tax base, to eliminate double taxation and to enhance cross-border trade. For developing countries like India transfer pricing rules are paramount importance to provide a climate of certainty and stable environment taxpayers, Multinational enterprises, Government organizations. This study of the subject is limited to in its scope as it covers the application of transfer pricing methods which requires the application of information skill and judgment by both taxpayers and tax authorities. In view of the lack of skill, lack of comparables lack of knowledge and complexity of the subject this study is restricted to examinations of Transfer pricing methods prevailing in the countries like U.K USA, Australia in comparison with Indian Tax laws. The study of entire gamut of Transfer pricing is not possible. Hence, the study is limited to application of methods. Though the study is with respect to selected countries due to voluminous work the idea and theme of the research is to project the practices and principle of arm’s length principle in particular in consonance with OECD’s Transfer pricing
Guidelines with intention to project the outcome to the entire world. Also a comparative study is made with respect to the other methods of practice as an alternative to Arm’s length principle. This study is purely doctrinal as the information is majorly based on secondary data through various books academic papers conferences seminars and little extent the field practices in the Taxation department. Hence, the secondary data, and information available is made use of in this study. The other important decisive factor is Transfer pricing is considered to be a significant corporate strategy and it is often regard by the most corporations as an important secrecy. Transfer pricing strategy is a prominent source of tax controversy. Multinational corporations use tax haven to shift profits for the purpose of avoiding corporate income tax. Such a behavior has an elaborate disguise and the lack of transparency for the transactions through “Tax Heaven” often makes it difficult even for tax authorities to identify or find solid proofs for corporations’ actual process of operation. Hence in the research the use of secondary data from trustworthy sources as the ground for our study, since it can avoid the problem that analysis and conclusion are jeopardized because of unsound or even false data. Hence the information collected with the help of course literature, database of various universities like Lund university library, Google search engine on the internet. The thesis does not examine from the perspective of any one concrete Double taxation convention (DTC) entered into between two or more countries. This thesis does not examine arm’s length provisions governing other than income taxation. The approach is primarily characterized as a comparison of Arm’s length principle with other methods that are followed by the countries in deciding the issues of Transfer price problems. This thesis made an effort to find the merits and demerits of the methods prevailed in the developed economies and developing economies. Due to the reason of scope the thesis primarily examines domestic law and practices in applying the arm’s length principle from four countries i.e., U.S, U.K, Australia, and India (developing country). Although the thesis concentrates on four countries, domestic sources of law originating from other countries have not been ignored. On the contrary the thesis takes into account domestic sources of law capable of assisting its examinations regardless of national origin, including sources from countries. In the process of comparison an attempt has been made to birds eye view of the methods prevailing in the European Economic commission..
I.11. The Structure of the Study

The present research procedure includes various phases like choosing topic, formulating problem, study of literature, collecting data processing data analysis through various graphs and other procedures or methods followed by various countries based on facts and case laws, and lastly conclusion and suggestions. In choosing the topic the researcher keen interest on the present day problem of the world in the field of Taxation. In the area of formulating problem the researcher got lot of reading material in literatures and academic papers the current area of the problem was practices of various nations to curb the Tax erosion. This area of problem is of International importance from the countries revenue protection. Since it involves the jurisdiction of various countries it is a comparative study of developed economies and developing economies wherein the Multinational corporations usually establishes its bases. Also data on doctrinal work has been collected and analysis was made on multinational corporations how they are practicing the actual mechanism for shifting profits between high and low jurisdictions. The researcher compared the actual practices made by selected countries due to voluminous work vastness of the subject restricted the research work in identifying the useful tools to be followed by the countries Taxpayers, and research workers for further development in the field. With practical suggestions..

The present study is planned and classified into Eight Chapters, which are as under:

The first chapter deals with Introduction, Methodology Scope & Significance of the subject. In this chapter the researcher has defined basis of the Taxation in the country, concept of tax in the domestic law and International law was examined. Also the definition of International Taxation law and its importance and how the role of International Taxation law has domiciled in the State. A brief introduction of Transfer price has also been made with introductory note. The reason for selection of the Topic, the Research problem, Importance of the study is highlighted. The researcher has also made an overview of the literature to be made use of during the course of his Research. The researcher has also mentioned the objectives of the study. As a matter of steps in research the researcher has narrated the methodology for the study along with the Hypotheses framed. The researcher aimed to find the solution to complex topic which has gained attention due to its primary importance of the Country’s Revenue perspectives. The limitations of the
study are also explained in the vast filed of the study, lack of availability of resources, data structure and materials which are available in the developing country like India. With this new branch of Taxation Law. Thus, in this chapter the research work is introduced in its entirety.

The Second Chapter deals with Conceptual analysis of the term Transfer pricing under International Taxation law. The researcher in this chapter briefly analyzed the concept of Transfer pricing, What it its rationale in the economic theory, how far this concept of Transfer pricing took its shape in the Developed country (selected like U.K USA, Australia in comparison with India) and its importance in the International Transactions. This chapter deals with the growth of concept of Transfer pricing, its relevance to the Multinational Enterprises, and MNEs control over the vast resources and group entities to shift profit from one country to another by resorting to transfer pricing of controlled transactions which can adversely affect tax revenue of a country. Also discussion was made how the concept of Transfer pricing evolved globally and how the OECD contributed to the development of Transfer pricing issues.

Further the researcher made an attempt to discuss the concept of Tangible nature and Intangible nature of Transfer pricing, its implications in the business course how the transfer pricing provisions usually apply to international transactions need for legislation of Transfer pricing and rationale of regulations in a taxing statute along with challenges faced by the Transfer pricing regime were discussed. In continuation the researcher also discussed the conflicts of Transfer pricing, objectives of multinational enterprises and tax administration, legislative history of U.K. USA, Australia were discussed.

The third chapter deals with Transfer pricing Regulations and Indian Rules on Transfer Pricing. In this chapter the economy of the India before and after liberalization policies were discussed. The legislative History, the existence of old law called liability in special cases i.e., the section 42(2) of Income Tax Act 1922 wherein the special provision regarding business profits accruing from carrying on business between a resident and non-resident or not ordinarily resident and the subject of “close connection” were discussed in connection with Indian case laws. Also the researcher has made an attempt to evidence that the existence of Transfer pricing

In this pre-2001 scenario law prevailed in the erstwhile section 92 i.e., prior to introduction of detailed Transfer pricing regulations until the Finance Act 2001 and also the General principles of Apportionment which was applied by the Supreme court. Also the researcher discussed the various issues connected to the Transfer pricing like Doctrine of Substance over form, Burden of proof, Safe Harbor Rules, position under companies Act, 1956 position of law under Central Excise Act and Customs Act, limitation of Section 92, shortcoming of the law prior to introduction of comprehensive Transfer pricing legislation, were discussed in length.

An attempt was also made by the researcher to discuss the new legislation of Transfer pricing legislation, computation of income from International Transaction, deemed International transactions definition of various related terms like Enterprise, Associated Enterprises, Tangibility, Intangibility, Know-how, Patents also comparison of selected countries Transfer pricing modules like UK, USA, Australia, with India has discussed in length.

The fourth chapter deals with the Concept of Arm’s Length Principle under Transfer pricing, its applications and Principles followed in the selected countries like UK, USA, Australia and India. In this chapter the definition of Arm’s Length Principle, its classification, the scope, background and origin of Arm’s length Range, the ground realities for determining the Transfer price were discussed.

Also the definition of Arm’s Length Principle as defined and interpreted in the selective countries like UK, USA, Australia and India were elaborately discussed. Further, the guidance note suggested by the OECD, short coming of arm’s length principle Current Year Data, Multiple Year Data computation of Arm’s length Price, special provision of statute prevail over transfer pricing provisions legislation of the selected countries and amendment made by the Finance Act 2012 of Indian legislation were discussed in length. In this chapter the researcher identified the principles and practices enshrined in the selected countries like UK USA Australia in comparison with Indian legislations, the merits and demerits, overriding effects of transfer pricing provisions were discussed. Along with these the researcher identified the difficulties
in strict application of mathematical formula for a situation where in the full data is not applicable.

Further the case laws in interpreting the Arm’s length principle by various International and national courts in UK USA Australia and Indian counterparts were discussed.

The fifth chapter deals with 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). This is the important chapter concerning the Research is concerned. Here the methodologies/practices followed by the selected countries of the world, while determining the transfer prices by various methods and the details of methods were discussed. To find Arm’s length price there are many methods like traditional transaction methods like CUP, Resale price method, Cost Plus method and Transactional profits methods like profit split method, Transactional net Margin method and Global formulary apportionment method. The choice of methods given to the Taxpayer to follow most appropriate method if any of the method is not suitable. In India the application of the most appropriate method is followed depending on the situation. In this chapter the researcher attempted to overview the provisions and guidelines framed by the OECD, its role for member and non-member countries, and also discuss the growing popularity of profit method in certain countries like USA, Switzerland etc., the other issues of comparability tests, risk analysis case laws with illustrations were discussed in length. Indian transfer pricing Guidelines Guidance for applying Arm’s length principle, effect of Government polices Advance pricing arrangements, and comparativestudy of Arm’s length principle and Global Formulary apportionment method were discussed in length. The method adopted by the European Union called CCCTB(Common consolidated corporation Tax Base) wherein uniform apportionment formula was adopted by the European Union legislation was also discussed in brief as the same falls in line with Global Formulary apportionment and also comparative analysis of the Arm’s length principle, Formulary apportionment and CCCTB approach of Europe were made followed by conclusion.

The sixth chapter deals with 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. In this chapter the researcher attempted to examine the various Guidelines framed by the OECD Model Tax Convention UN Model Tax Convention, their role both in developed economies and developing economies were discussed. The main object of the study is to find out the background of the development of OECD and its efforts in guiding Transfer pricing issues. In the course of discussion an attempt has been made to discuss the Dispute Resolution mechanism, Tax planning and Tax haven, OECD and Arm’s length principle were discussed. Also the mechanism of Advance pricing Agreements, summary of OECD methods and draft note on comparability were discussed. Apart from the Transfer pricing developments were discussed in respect of India and other developed economies were discussed in length.

The researcher also discussed the issues regarding Transfer pricing Guidelines and its impact on developing countries like India and its application has been made.

The seventh chapter deals with Problems of Transfer pricing in practical application as enshrined in the Indian and International case laws, procedural requirements, comparability tests and comparative analysis of Arm’s length principle vs. Formulary apportionment method and the concept of new CCCTB proposed scheme-a critical Study-- In this final chapter the researcher has discussed the various issues relating to Transfer pricing like Jurisdictional issues, principles of natural justice, procedural methodologies like documentation, comparability tests, Audit procedure penalty procedure, technical aspects were discussed. The main heart of the research is the comparability analysis of Arm’s length principle with other modes of principles like Formulary apportionment existing in the present world, also the issue of multinational corporations manipulations in developed and developing economies were discussed. The critical analysis was made with reference to the abusive behavior of Multinational corporations in the terms of tax avoidance by various modes of Transfer mispricing. Apart from this the issues with respect to case laws of both Indian and International countries like UK, USA, Australia were discussed on the issue of transfer pricing also in brief the factors of new CCCTB proposal of Europe from the angle of comparative study for merits and demerits were made followed by conclusion.
The last chapter i.e., eighth chapter deals with CONCLUSION AND SUGGESTIONS. In this chapter the researcher has concluded the findings of his study on the basis of interpretation of materials and data collected in accordance with the hypothesis evolved by him. The concept of Research has the longevision and purpose towards society. Research enables the various ideas to solve the problem like taxation complexities which are not purely scientific matter. This study has attempted to give conclusions a concrete and complete manner. Generally research is useful to the society at large. In the present subject the research is much benefited to the public like Taxpayers, Tax professionals who are behind the procedural aspects, and the Governmental organizations. Here the Researcher selected the theme of comparing Developed Economies with the developing economies and able to find out the various modes/ methods the application of Arm’s length principle by both the developed and developing countries. Along with the critical analysis of the methods followed by the countries and their outcomes were depicted in the form of conclusion by measuring the pros and cons of the prevailing methods in the world. A birds eye view of the European commission was also made to digest the concept of Transfer pricing in the present world in comparison with India.

1.12. Conclusion

Transfer pricing has become one of the hottest international tax issues for both taxpayers and tax authorities in the latter part of 20\textsuperscript{th} century. These International tax issues, especially transfer pricing related issues, throws open a number of challenges, the complexity and magnitude of which are often especially daunting for smaller tax administrations. Basically these transfer pricing rules are essential for countries in order to protect their tax base, to eliminate double taxation and to enhance cross-border trade. For developing countries like India, these transfer pricing rules are essential to provide a climate of certainty and an environment for increased cross-border trade while at the same time ensuring that the country is not losing out on critical tax revenue. Transfer pricing is of paramount importance and hence detailed transfer pricing rules are essential. Hence a realistic attempt made.