

# Transfer Pricing, Advance Pricing Agreement And Safe Harbour Rules In India – Empirical Study

Mr. Jabiulla

Research Scholar, Department of Studies & Research in  
Commerce, Gulbarga University, Gulbarga, Karnataka

Dr. Basavaraj C. S.

Professor, Department of Studies & Research in Commerce,  
Gulbarga University, Gulbarga, Karnataka

**Abstract:** *The growth in number and size of MNCs has brought a number of opportunities, a part from faster economic development. At the same time, the MNCs have also brought a number of problems to face. The scope of MNCs has widened in recent years so much that now more than 60% of the international transactions of the globe belong to MNCs. This has constrained the governments to keep in place proper mechanism to plug the leakage of tax revenue as a result of manipulative pricing policies adopted by these related parties (MNCs).*

*Relevant provisions have been introduced under the Income Tax Act as early as 2001 itself and subsequently, the provisions were modified time to time. In 2012 Advance Pricing Agreements (APAs) and in 2014 Safe Harbour Rules (SHRs) were introduced to overcome the drawbacks of transfer pricing regulations. But still, the issue of transfer pricing is the most conflicted tax area. The government and the corporates want to be away from conflicts, but the transfer pricing audits have become a source of conflicts, In this background the paper discusses the transfer pricing mechanism adopted in India and based on the survey of 30 corporate houses, it comes out with the pulse-beat of the corporates about issues concerning Transfer Pricing, Advance Pricing Agreement and Safe Harbour Rules. The paper analyses the findings and highlights the issues to be attended by the government to make the transfer pricing regime assessee friendly.*

**Keywords:** *Multinational Corporations, Income Tax Act, Transfer Pricing, Advance Pricing Agreement, Safe Harbour Rules, Tax Revenue,*

## I. INTRODUCTION

Transfer Pricing has become one of the important tax issues, specially, under international taxation. No country is allowing its tax source to be left untaxed or diverted to another tax regime. On the other hand the taxpayers, more specifically, Multi-National Corporations (MNCs) are trying to use their network across the globe as a device to reduce the tax burden by channelising the income to their relative entities in such a way that the total tax of the group as a whole is reduced. For this struggle between the authorities to collect more and the assesseees to pay less, the transfer pricing (TP) has become a very important international tax aspect.

The dramatic growth of cross-border trade and investment has raised an increasing number of international taxation issues. As economic activity involves more and more countries, questions involving the interaction of national tax

systems have increased. Tax rules which were fashioned in a more closed economic environment can discourage international activity. They can create conflict between countries as to the appropriate tax treatment of an international business and between taxpayers and governments (Jeffrey Ownes, 2004). Globalisation is one reason for this interest, the rise of the multinational corporation is another. Once you take on board the fact that more than 60% of world trade takes place within multinational enterprises, the importance of transfer pricing becomes clear (John Neighbour, 2002).

## II. OBJECTIVES OF THE STUDY

The main objectives of the present study are:

- ✓ To review the Transfer Pricing mechanism in Indian Context.

- ✓ To ascertain the corporates' view on Transfer Pricing, Advance Pricing Agreement and Safe Harbour Rules in India.
- ✓ To obtain findings and suggest suitable measures for improvement of Transfer Pricing, Advance Pricing Agreement and Safe Harbour regime in India.

### III. METHODOLOGY

The data for the present study has been gathered from both the primary and the secondary sources. The study is mainly based on primary data however, the secondary data has also been used. The reports of various committees, publications of the Government, professional and academic journals, prominent websites dealing with tax matters, and other literature relating to the subject have been used as secondary sources. The primary data in the form of respondents' opinion has been collected from the corporate bodies. The objective of the study was kept in mind while framing the questionnaire using Likert Scale (using Highly Satisfied, Satisfied, Neither Satisfied nor Dissatisfied, Dissatisfied and Highly Dissatisfied as parameters). The sample size chosen for the study was 30. The profile of the respondents includes Directors, Executive Directors, Managers and Senior Managers (Taxation) of prominent corporate houses across the country.

The data gathered through the primary and secondary sources have been edited, tabulated and analysed using simple statistical tools.

### IV. THE STUDY

#### Transfer Pricing - Concept and Meaning

- ✓ In the words of Robert Feinschreiber, *Transfer Pricing*, for tax purposes, is the pricing of inter-company transactions that take place between affiliated businesses.
- ✓ Transfer Pricing refers to the price or value attached to transfer of goods and services in related party transactions of an organisation. Hence, *Transfer Pricing* is the price adopted in a related party transaction (Basavaraj CS & Jabiulla).

#### A. TRANSFER PRICING IN INDIA (TP)

Transfer Pricing in India is of late origin when compared to the advanced countries. However, we have already tread enough path in the implementation of Transfer Pricing regulations for international transactions under Income Tax.

The Finance Act, 2001, substituted Section 92 of the Income-tax Act, 1961 with Sections 92 and 92A to 92F. These provisions required commercial outcomes arising from international transactions between Associated Enterprises (AE) to be consistent with the arm's length principle, which is the standard for transfer pricing in India and in tax jurisdictions around the world. 'Arm's' refers to the conditions that exist between two entities dealing independently with each other. Rule 10D of the Income-Tax Rules, 1961 requires taxpayers having international transactions with Associated

Enterprises to prepare and maintain prescribed information and documentation to establish that their dealings with the Associated Enterprises are conducted on arm's length basis (Basavaraj CS & Jabiulla, 2013).

Table-1 gives the details of Sections and Rules that are structured under the Income Tax Act 1961 which relate to transfer pricing issues and the scheme.

Sections	Issues Covered
<b>92</b>	Computation of Income from International transaction having regard to arm's length price
<b>92A</b>	Meaning of Associated Enterprise
<b>92B</b>	Meaning of International transaction
<b>92C</b>	Computation of arm's length price
<b>92CA</b>	Reference to Transfer Pricing Officer
<b>92CB</b>	Power of Board to make Safe Harbour Rules
<b>92CC</b>	Advance Pricing Agreement
<b>92CD</b>	Effect of Advance Pricing Agreement
<b>92D</b>	Maintenance, keeping of information and documents by persons entering into an international transaction or specified domestic transaction
<b>92E</b>	Report from an accountant to be furnished by persons entering into international transaction or specified domestic transaction
<b>92F</b>	Definitions of certain terms relevant to computation of arm's length price. etc.
<b>94A</b>	Special measures in respect of transactions with persons located in notified jurisdictional area
<b>144C</b>	Reference to Dispute Resolution Panel
<b>271AA</b>	Penalty for failure to keep and maintain information and documentation in respect of certain transactions
<b>271BA</b>	Penalty for failure to furnish report under Section 92E
<b>271G</b>	Penalty for failure to furnish information or document under Section 92D.
Rules	Issues Covered
<b>10A</b>	Computation of income from international transactions involving transfer pricing having regard to arm's length price and meaning of Act
<b>10B</b>	Arm's length price - Determination
<b>10C</b>	Most appropriate method of transfer pricing
<b>10D</b>	Maintenance of documents and information
<b>10E</b>	Report from an accountant to be furnished under section 92E.

Source: Compiled from Income Tax Act 1961 and Income Tax Rules 1962.

Table 1: Transfer Pricing Provisions and Rules under Indian Income Tax Act and Rules

#### a. TRANSFER PRICING METHODS IN INDIAN CONTEXT

Transfer pricing mechanism is basically a methodology adopted to find out arm's length price to international transactions between related parties. In this regard the transfer pricing regimes have been following five popular methods, to achieve the objective. These methods are as shown in Table-2.

<b>Traditional Transaction Methods</b>	Comparable Uncontrolled Price Method (CUPM)
	Resale Price Method (RPM)
	Cost Plus Method (CPM)
<b>Transactional Profit Methods</b>	Transactional Profit Split Method (TPSM)
	Transactional Net Margin Method (TNMM)

Table 2: Methods for Computing Arm's Length Price

- ✓ **COMPARABLE UNCONTROLLED PRICE METHOD:** The Price charged for property or services transferred in a controlled transaction compared to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances.
- ✓ **RESALE PRICE METHOD:** The price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise.
- ✓ **COST PLUS METHOD:** The costs incurred by the supplier of property/goods or services in a controlled transaction for property transferred or services provided to an associated purchaser.
- ✓ **TRANSACTIONAL PROFIT SPLIT METHOD:** It identifies the profits to be split for the associated enterprises from the controlled transactions in which the associated enterprises are engaged and profit is split as per the agreement.
- ✓ **TRANSACTIONAL NET MARGIN METHOD:** It ascertains the net profit margin relative to an appropriate base realized from the controlled transactions by reference to the net profit margin relative to the same appropriate base realized from uncontrolled transactions.

**b. DOCUMENTATION FOR TRANSFER PRICING**

Documentary evidences are considered as base to move forward in applying Transfer Pricing methods for deciding arm's length price. This is a cumbersome job. Some of the advanced countries have lessened this burden and smoothened the system to the best of their ability by following international best practices like OECD guidelines and evolving their own rational mechanism. The documents required under the relevant Income Tax Rules are shown in the Table-3.

Rule	Requirement of Documents
10D(1)(a)	Description of <i>ownership structure</i> of the assessee with details of shares held in it by other enterprises.
10D(1)(b)	<i>Profile of the Multinational group</i> of which assessee is part <ul style="list-style-type: none"> <li>➤ Particulars of each enterprise of the group</li> <li>➤ Ownership linkages among group enterprises at</li> </ul>

10D(1)(c)	A broad description of : <ul style="list-style-type: none"> <li>➤ Assessee's <i>business</i>.</li> <li>➤ Assessee's <i>Industry</i>.</li> <li>➤ Associated Enterprises with whom assessee transacted business.</li> </ul>
10D(1)(d)	A register/ <i>list of individual international transactions</i> or SDTs as the case may be entered into by the assessee with each of its Associated Enterprises.
10D(1)(e)	Functional Analysis/ <i>Functions Assets Risks (FAR) Analysis</i>
10D(1)(f)	A <i>record of the economic and market analysis, forecasts, budgets</i> or any other financial estimates prepared by the assessee for the business as a whole and for each division or product separately, which may have a bearing on the international transactions or the SDTs entered into by the assessee.
10D(1)(g)	A record of <i>un controlled transactions</i> .
10D(1)(h)	A record of <i>comparability analysis</i> .
10D(1)(i)	A description of <i>methods considered for determining ALP</i> . The method selected as the most appropriate method along-with explanations as to why such method was selected and how such method was applied in each case.
10D(1)(j)	Record of actual workings for <i>determining ALP's</i> .
10D(1)(k)	The <i>assumptions, policies, negotiations</i> , if any, which have critically affected the <i>determination of the arm's length price</i> .
10D(1)(l)	Details of <i>adjustments to transfer prices</i> to align them to ALP's and consequent adjustments to total income

Source: CA. Srinivasan Anand G, 2012, *Transfer Pricing Audit – Taxamans Corporate Professionals Today*, Vol.25, P.339-340.

Table 3: Documentation Requirements under Transfer Pricing in India

**c. OPERATIONAL STATISTICS OF TRANSFER PRICING IN INDIA**

Financial Year	No. of Transfer Pricing audits completed	No. of adjustments cases	Percent age of cases adjusted	Amount adjusted (Rs. In Crores)
(1)	(2)	(3)	(4) 3/2*100	(5)
2002-03	1,081	238	22	1,373
2003-04	1,501	345	23	2,575
2004-05	1,061	239	23	1,220
2005-06	1,501	337	22	2,287

2006-07	1,768	471	27	3,432
2007-08	219	84	38	1,614
2008-09	1,726	670	39	6,140
2009-10	1,830	813	44	10,908
2010-11	2,301	1,138	49.46	23,237
2011-12	2,638	1,343	50.90	44,531
2012-13	3,171	1,686	53.17	70,016
2013-14	3,617	1,920	53.08	59,602

Source: Compiled from:

- ✓ White Paper on Black Money, May 2012. P.49 (The Government of India).
- ✓ Ministry of Finance (Budget Division), 2013-14 Annual Report of Government of India. Pp.250.

Table 4: Transfer Pricing Audit and Amount Adjusted in India

Table-4 provides data of transfer pricing audit in India from 2002-03 to 2013-14. During the period under consideration twelve rounds of audits have been completed. There is a steady increase in the number of Transfer Pricing audits except the year 2004-05 and 2007-08, in which years there is a decline in number of audits. Number of adjustment cases have also been steadily increasing from 22% (2002-03) to 53% (2013-14). The amount adjusted, except in 2004-05 and 2007-08, has increased from Rs. 1,373 crore in 2002-03 to Rs. 59,602 crore in 2013-14.

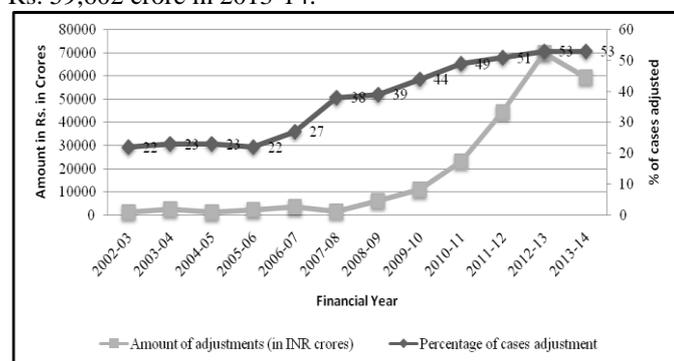


Chart 1: Transfer Pricing Audit and Amount Adjusted in India

The data reveals the fact that there is a steep rise in the number of total audits completed, number of adjusted cases, percentage of cases adjusted and amount adjusted. The amount adjusted in 2012-13 is as high as Rs 70,016 crore, which speaks the significance of Transfer Pricing regulation under Income Tax.

## B. ADVANCE PRICING AGREEMENT (APA)

Advance Pricing Agreement (APA) is an agreement between the taxpayer and the taxing authority/authorities of one/ multiple jurisdictions for determining the price of a future international transaction in advance by applying agreed method of transfer pricing as per the framework of negotiated agreement (Basavaraj CS & Jabiulla, 2013).

While introducing the Finance Bill. 2001, the then Finance Minister stated that transfer pricing regulations are needed to ensure that profits are not shifted out of India. The regulations, for the first time, introduced internationally accepted arm's length principle and methodologies for determining the arm's length price which were aimed at protecting India's tax base. Since the introduction of the

transfer pricing regulations, nine rounds of transfer pricing audits have been completed. During the initial years, the percentage of cases suffering transfer pricing adjustments was in line with global experience. However, in the last four years not only the percentage of cases suffering adjustments has gone up, but the volume of adjustments has been doubling every year. (Singh S.P, 2013).

Chart-2 highlights the volume of transfer pricing adjustments and percentage of audit cases in the last twelve years (2002-03 to 2013-14).

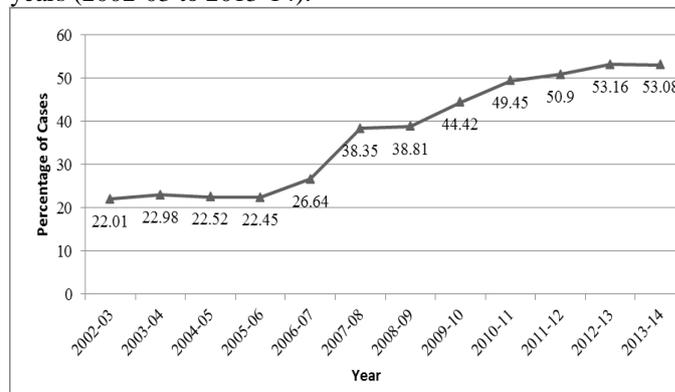


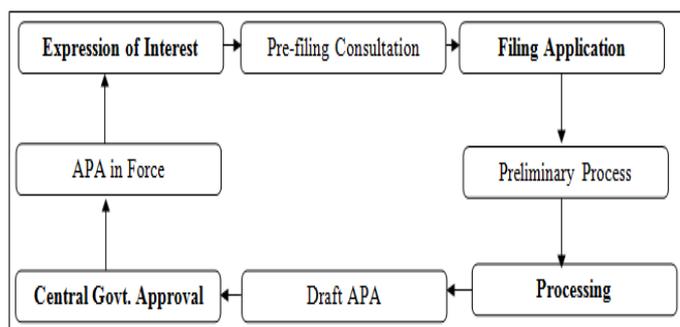
Chart 2: Percentage of Transfer Pricing Cases Adjusted

### a. KINDS AND PROCESS OF ADVANCE PRICING AGREEMENT

There are three types of Advance Pricing Agreements – Unilateral, Bilateral and Multilateral. While unilateral Advance Pricing Agreement is an agreement between the tax payer and tax authority of one tax jurisdiction, bilateral Advance Pricing Agreement is an agreement between the tax payer and tax authorities of two tax jurisdictions and multilateral Advance Pricing Agreement is the agreement between the tax payer and tax authorities of more than two tax jurisdictions. Unilateral Advance Pricing Agreements are more popular in practice. While unilateral Advance Pricing Agreement ensures certainty to the assessee, it does not ensure avoidance of double taxation. However, the bilateral and multilateral Advance Pricing Agreements ensure certainty and help to avoid double taxation. At the same time signing multilateral and bilateral Advance Pricing Agreement is time taking and difficult when compared to unilateral Advance Pricing Agreement (UGC MRP of Dr. Basavaraj C.S, 2014).

An Advance Pricing Agreement is the alternative counterpart (in transfer pricing assessment) to an advance ruling, since under the current law; an advance ruling cannot be used to determine the price of any transaction (Freddy R Daruwala, 2012), from 1<sup>st</sup> July, 2012 Advance Pricing Agreement scheme has been introduced in India.

Advance Pricing Agreement process is a voluntary process initiated by a taxpayer who has entered into or proposes to enter into an international transaction. The various stages involved in finalising an Advance Pricing Agreement are shown in the following flow-chart: (Chart-3)



Source: DGIT – Competent Authority of India.

Chart 3: Process Of Advance Pricing Agreement

### b. FEATURES OF INDIA'S ADVANCE PRICING AGREEMENT SCHEME

The salient features of India's Advance Pricing Agreement Scheme, as introduced in the Finance Bill, 2012, are as under (Shantoghosh, 2012):

- ✓ The Central Board of Direct Taxes is empowered to enter into an Advance Pricing Agreement with any person undertaking an international transaction;
- ✓ The arm's length price may be determined under any method, whether prescribed or not;
- ✓ The term of the Advance Pricing Agreement would not exceed five consecutive years;
- ✓ The Advance Pricing Agreement would be legally binding on the taxpayer and the income tax authority for the international transactions to which the Advance Pricing Agreement applies, unless there is a change in law or facts;
- ✓ The Advance Pricing Agreement would be void in case of fraud or misrepresentation;
- ✓ The taxpayer would file a modified return within three months from the end of the month in which the Advance Pricing Agreement was entered into for applicable fiscal years when income tax return has already been filed;
- ✓ Assessments/reassessments that are pending or completed for the years to which the Advance Pricing Agreement applies would have to be completed or reassessed by the tax authorities in accordance with the Advance Pricing Agreement; and
- ✓ The process and procedures of the Advance Pricing Agreement program would be prescribed by the Board.

The applicant is also required to pay fee which is to be computed on the basis of size of the international transaction, as under:

Amount of International Transaction	Fee (in Rs.)
Amount not exceeding Rs. 100 crores	Rs.10 Lakh
Amount not exceeding Rs. 200 crores	Rs.15 Lakh
Amount exceeding Rs. 200 crores	Rs.20 Lakh

### C. SAFE HARBOUR RULES (SHRs)

The Post-Transfer Pricing regulations era, in India, has witnessed a continuous rise in litigations (vis-à-vis transfer pricing) and the uncertainties involved in the transfer pricing

audit. To tackle this situation the Government of India had constituted a Committee under the Chairmanship of Sri N. Rangachary (former Chairman CBDT and Insurance Regulatory and Development Authority) on 30<sup>th</sup> July 2012 to make recommendations on safe harbour rules for the following areas/activity:

- ✓ Information Technology (IT) Sector.
- ✓ Information Technology Enabled Services (ITES) Sector.
- ✓ Contract Research and Development (R&D) in the IT and Pharmaceutical Sector.
- ✓ Financial Transactions – Outbound Loans.
- ✓ Financial Transactions – Corporate Guarantee.
- ✓ Auto Ancillaries – Original Equipment Manufacturer.

The Committee submitted a total of six reports in a span of nine months from September 2012 to April 2013. The Government after considering the stakeholders' comments and suggestions notified the safe harbour rules on 18<sup>th</sup> September 2013 by amending the Income Tax Rules 1962 to insert Rule 10TA to 10TG (UGC MRP of Dr. Basavaraj C.S, 2014).

## V. ANALYSIS OF FIELD DATA

The researchers collected information pertaining to Transfer Pricing, Advance Pricing Agreement and Safe Harbour Rules from 30 companies in India by circulating questionnaire (between June-2014 to September-2014) spreading across manufacturing and service, sectors. Sector-wise number of companies considered for the study is as under (Table-5).

### A. SECTOR-WISE CLASSIFICATION OF RESPONDENTS

The filled in questionnaires received from the respondents were studied, analysed, information was tabulated and classified four tables, which are presented below with the interpretation. At the end of the paper suggestions are made for further improvement in Transfer Pricing, Advance Pricing Agreement and Safe Harbour rules regime in India based on the ideas expressed by the respondents.

Parameters	No. of Respondents
Manufacturing	12 (40)
Service	18 (60)
<b>Total</b>	<b>30</b> <b>(100)</b>

Note: Figures in parenthesis are percentage to the total  
Source: Field Survey.

Table 5: Sectors-wise Classification of Respondent Companies

### B. TRANSFER PRICING IN INDIA

The Transfer Pricing litigations in India in the last 14 years indicate that all is not well with the Transfer Pricing regulation in India. To ascertain the reasons for this, from respondents' point of view, responses were sought. The level of satisfaction indicated by the respondent-companies about

the various aspects concerning the Transfer Pricing like, documentation, stages of clearance, method of Arm's length price computation, audit procedure, Transfer Pricing provisions and rules, cooperation of Transfer Pricing authorities to assessees, overall system of Transfer Pricing, etc., have been used to analyse the respondents' perception towards the Transfer Pricing mechanism in India.

Aspects	HS	S	NSNDS	DS	HDS	Total
Documentation procedure	00 --	22 (73.33)	06 (20)	00 --	02 (6.67)	30 (100)
Stages of clearances	00 --	14 (46.66)	14 (46.66)	02 (6.67)	00 --	30 (100)
Methods applied in deciding Arm's Length Price	02 (6.67)	18 (60)	06 (20)	02 (6.67)	02 (6.67)	30 (100)
Audit procedure	00 --	14 (46.66)	08 (26.66)	06 (20)	02 (6.67)	30 (100)
Penalties for non-compliance of TP provisions	00 --	16 (53.33)	04 (13.33)	08 (26.66)	02 (6.67)	30 (100)
Cooperation of TP authorities in TP decision process	02 (6.67)	06 (20)	06 (20)	10 (33.33)	06 (20)	30 (100)
Transfer Pricing Provisions and Rules	02 (6.67)	16 (53.33)	10 (33.33)	02 (6.67)	00 --	30 (100)
Overall System of Transfer Pricing	02 (6.67)	14 (46.66)	08 (26.66)	04 (13.33)	02 (6.67)	30 (100)

Note: Figures in parenthesis are percentage to the total  
Source: Field Survey.

Table 6: Respondents' Opinion about Aspects Pertaining to Transfer Pricing in India

The analysis (Table-6) of the respondent companies' opinion about the Transfer Pricing aspects in India reveals (Table-6) that the tax payers are comfortable about documentation procedure of Transfer Pricing (73.33%), Provisions and rules of Transfer Pricing (53.33%), Methods applied in deciding Arm's length price (60%), Penalties for non-compliance of Transfer Pricing provisions (53.33%), and Overall system of Transfer Pricing (46.66%), as the majority of the sample companies are satisfied about these aspects.

As regards to stages of clearance and audit procedure, though majority of the respondents have not opined as satisfied, after ignoring the companies which gave neutral view majority of the remaining respondents are happy about these factors. However, as regards to cooperation of Transfer Pricing authorities in Transfer Pricing decision process majority (33.33%) of the respondents are unhappy.

#### C. ADVANCE PRICING AGREEMENT

Though the Advance Pricing Agreement regime has been fairly successful in India the researchers wanted to know the aspects of comfort and discomfort in Advance Pricing Agreement from the standpoint of the companies. Hence, the relevant queries were made to ascertain opinion of the respondents and based on that the data was classified with regard to documentation, steps in completion of Advance Pricing Agreement, procedures of unilateral and bilateral Advance Pricing Agreements, fee structure, time taken, renewal of Advance Pricing Agreement, duration of Advance Pricing Agreement and cooperation of authorities in dealing with Advance Pricing Agreement aspects by the assessees.

Aspects	HS	S	NSNDS	DS	HDS	Total
Documentation procedure	00 --	14 (46.66)	12 (40)	04 (13.33)	00 --	30 (100)
Stages of clearance	00 --	18 (60)	10 (33.33)	02 (6.66)	00 --	30 (100)
Procedure adopted in Unilateral APA	00 --	14 (46.66)	14 (46.66)	02 (6.66)	00 --	30 (100)
Procedure adopted in Bilateral & Multilateral APAs	00 --	12 (40)	14 (46.66)	02 (6.66)	02 (6.66)	30 (100)
Fee structure	02 (6.66)	12 (40)	10 (33.33)	02 (6.66)	04 (13.33)	30 (100)
Procedure adopted in renewal of APA	00 --	08 (26.66)	16 (53.33)	06 (20)	00 --	30 (100)
Time consumed in finalising the APA	00 --	08 (26.66)	12 (40)	06 (20)	04 (13.33)	30 (100)
Maximum Period/Life of APA	00 --	12 (40)	10 (33.33)	06 (20)	02 (6.66)	30 (100)
Cooperation of authorities in APA process	00 --	16 (53.33)	06 (20)	04 (13.33)	04 (13.33)	30 (100)

Note: Figures in parenthesis are percentage to the total  
Source: Field Survey.

Table 7: Respondents' Opinion about Advance Pricing Agreement in India

Table-7 deals with the respondents' opinion about the aspects pertaining to Advance Pricing Agreement in Indian context. As regards to stages of clearance in completing an Advance Pricing Agreement and about cooperation of authorities in completing Advance Pricing Agreement process majority of the respondents (60% and 53.33% respectively) have given positive opinion.

About documentation procedure, procedure adopted in unilateral Advance Pricing Agreement, procedure adopted in bilateral and multilateral Advance Pricing Agreements, Fee structure, procedure in renewal of Advance Pricing Agreement and duration of life of Advance Pricing Agreement though majority of the respondents are not satisfied, when neutral respondents are ignored from among the remaining respondents the majority have expressed positive opinion about these aspects. However, after ignoring neutral respondents majority are not happy about the time taken in finalising of Advance Pricing Agreement.

#### D. SAFE HARBOUR RULES

Safe harbour rules are a specific dimension of Transfer Pricing mechanism. Arm's length price is decided on ad-hoc basis for certain standard transactions on standard basis. Very recently these rules have been made operational in India. The experience based results are yet to come over a period of time, about the success of Safe Harbour Rules. However, the perception of assessee-respondents about procedure of Safe Harbour Rules, documentation requirement and life duration of Safe Harbour Rules have been analysed here.

Aspects	HS	S	NSNDS	DS	HDS	Total
Documentation procedure	00 --	14 (46.66)	08 (26.66)	08 (26.66)	00 --	30 (100)
Procedure of SHRs	00 --	12 (40)	12 (40)	04 (13.33)	02 (6.66)	30 (100)
Maximum Period/Life of SHRs	00 --	08 (26.66)	18 (60)	04 (13.33)	00 --	30 (100)

Note: Figures in parenthesis are percentage to the total

Source: Field Survey.

Table 8: Respondents' Opinion about Safe Harbour Rules in India

Table-8 highlights the opinion of the respondents about Safe Harbour Rules. For the three aspects studied there is no majority opinion either for 'satisfied' or 'dissatisfied' groups. However, if neutral respondents are ignored majority of the remaining respondents are happy about the procedure of documentation in Safe Harbour Rules, procedure of Safe Harbour Rules and duration of life of Safe Harbour Rules.

## VI. FINDINGS OF THE STUDY

Based on the discussion held above the following main findings emerge:

- ✓ With the regard to Transfer Pricing, perception of the respondents is positive for most of the aspects studied which indicates that the framework of Transfer Pricing regulation in India has come out of nascent stage and has become seasoned. However, the concerning aspect is that the majority of the respondent companies have opined that the proper cooperation has not been extended by the Transfer Pricing authorities in Transfer Pricing decision process.
- ✓ With the regard to Advance Pricing Agreement the respondents' opinion reveals that majority of the aspects covered in the study stand to be favourable to the assessee and hence, respondents are satisfied about them. However, as far as time consumed in finalising the Advance Pricing Agreement the substantial number of respondents are dissatisfied.
- ✓ The Safe Harbour Rules from the standpoint of documentation procedure and duration of applicable life have not been accepted by majority of the respondents and also not been rejected by the majority. However, more number of respondents have expressed satisfaction about the Safe Harbour framework implemented by the Government.

## VII. SUGGESTIONS AND CONCLUSION

India has come out of its tooting troubles of regulatory framework vis-à-vis international taxation. The following suggestions are worth considerable in the light of the findings of the study for further improvement of the international taxation regime and to make it more assessee-friendly.

- ✓ The Transfer Pricing authorities have to take into confidence the assessee in deciding the Transfer Pricing

matters and their cooperation is highly desired to avoid litigations and make Transfer Pricing assessee-friendly.

- ✓ The time taken in completing the Advance Pricing Agreements needs to be reduced. In the sense, there should be faster completion of agreements so as to make the fruits of Advance Pricing Agreement reach the stakeholders.
- ✓ The Safe Harbour Rules need to be promoted by encouraging the assessee with welcome attitude and friendly atmosphere in the department. Any unexpected difficulty in implementation needs to be handled with caution and care, so that the Safe Harbour Rules become a solution for the problems they are supposed to tackle.

If the above said suggestions are implemented properly the Indian assessee with international taxation transactions would be relieved of a serious bottleneck they are encountering in the era of globalisation and would be able to compete with their counterparts from abroad.

## REFERENCES

- [1] Basavaraj C.S & Jabiulla, 2013, Indian Developments in Transfer Pricing, Prabhanveshana – Journal of Commerce and Economics. Vol. 3, Issue No. 01. Jan-June, 2013. ISSN.2249-0418.
- [2] Basavaraj C.S & Jabiulla, 2013, Advance Pricing Agreement in India and Abroad, a joint paper at 66<sup>th</sup> All India Commerce Conference, held in Bangalore (India) on 5 – 7 December, 2013.
- [3] Basavaraj C.S 2014, Demands of Globalization and Reforms in Direct and Indirect Taxes, Major Research Project supported by UGC, 2014.
- [4] Freddy R Darluwala, 2012, Advance Pricing Agreements, International Taxation – A Monthly Journal, Vol.6, April,2012,pp.514.
- [5] Jeffrey Owens, 2004, Resolving International Tax Disputes: The role of the OECD – The Director, OECD Centre for Tax Policy and Administration.
- [6] John Neighbour, 2002, Transfer Pricing – Keeping it at arm's length – OECD Centre for Tax Policy and Administration.
- [7] Robert Feinschreiber, 2004, Transfer pricing methods – An applications Guide, printed © 2004 by John Wiley and Sons, Inc., Hoboken, New Jersey.
- [8] S.P.Singh, 2013, Safe Harbour, Advance Pricing Agreement and Normal Audit Process in India: Analysis of the Emerging Scenario, International Taxation, Monthly Journal, Vol.9, pp.380.
- [9] Shanto Ghosh, 2012, APAs in India: The Last Frontier in Disputes Resolution, A Monthly International Taxation. Vol.6, pp.490.