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Specific Issues in Transfer Pricing and Avoiding Litigations - An Indian Perspective

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Abstract
Transfer pricing remains an inevitable tool for MNCs to carry out intra-company transactions. From the literature, misuse of transfer pricing has been observed with respect to advertisement, marketing and promotion (AMP). This research paper attempts to demonstrate the instances wherein abuse of transfer pricing was witnessed in transactions. Being difficult to measure and because of certain legality issues, transactions involve AMP have been exploited for tax-evasion purposes. Apart from the concept, this paper also stresses upon the mechanism through which the process of transfer pricing in MNCs can be smoothened and litigations can be avoided

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INTRODUCTION

Nowadays transfer pricing has become a hot topic for both multinational companies and tax authorities. The survey conducted by Ernst and Young (2016a) concluded that 75% of respondents from multinational corporations had cited their concerns over tax risk management. One of the components of tax risk management is transfer pricing. Transfer pricing becomes an obvious affair for the companies which have their subsidiaries either located in a domestic country or foreign countries. These organizations carry the enormous volume of transactions with their subsidiaries which has considerably high monetary value; hence taxation is attached to them. These transactions are based on the prices decided by companies under certain notions. In order to avoid the tax, several companies were found to be violating the regulation with the tactics of the accounting system. For instance, Income-Tax Appellate Tribunal (ITAT) suggested that Google India (the assessed) and Google Ireland were found to avoid payment of taxes. On the other hand, Google India claimed that the amount payable wasn't under the tag of royalty and that too under the law of India-Ireland double taxation avoidance agreement [7]. Many of such incidents have been reported earlier but the complexity in transfer pricing regulation is high which gives benefits of doubt to stakeholders. Hence, there's need for a standardized mechanism for transfer pricing regulations under which the ambiguity can be reduced and transparency can be brought. This research paper makes an attempt to bring the convincing mechanism of transfer pricing to the notice of researchers and industries so that the transactions of transfer pricing may be operated with less amount of ambiguity by the parties.

TRANSFER PRICING

Organization for Economic Co-operation and Development (OECD) defines transfer pricing as "A price, adopted for book-keeping purposes, which is used to value transactions between affiliated enterprises integrated under the same management at artificially high or low levels in order to effect an unspecified income payment or capital transfer between those enterprises [11]." Transfer pricing can be defined as, in simple terms, the monetary value attached to the transactions which take place among the divisions of the same organization. The transactions are conducted at the lower or higher than the market trading prices. With the help of transfer pricing, an organization can shift the taxable income for the purpose of tax avoidance [9]. Moreover, the calculations for transfer pricing included the „percentage of contingencies"; whereas the percentage of contingencies usually not fixed [6]. From the above arguments, it can be derived that the transfer pricing techniques are more beneficial to multinational companies than a domestic enterprise. Hence, deciding the objectives of transfer pricing strategies becomes the challenging issue and needs more deliberated effort considering the MNC's point of view into account. The modern transfer pricing follows the two categories: the negotiated and administered. In negotiated transfer pricing, as the word itself suggests, the departments are free to take the decisions regarding the intra-firm transactions and terms of transfer pricing. On the other hand, administered transfer pricing suggests that the central authority of an organization intervenes and prescribes the norms of transfer pricing [10].

Since "the greatest crisis in the last 80 years" the most powerful economies from the world are the first to seek solutions to avoid "base erosion and profit shifting". Through global exchange of information, new regulations and guidelines give the authorities freedom to "hunt down" intra-group transactions and by default the transfer prices.

Transfer pricing affects the amounts paid as corporate tax – the current economic conditions and the stringent need for resources at the state budget have determined the tax authorities to be more concerned about the topic of transfer pricing. This is also strengthened by the work of OECD regarding the base erosion and profit shifting (referred to as BEPS (Base Erosion and Profit Shifting). Transfer pricing is not an exact science, therefore it is much easier for tax authorities to impose transfer pricing adjustment and recalculation of taxes to be paid from the budget. This is why companies which are part of a group must have strong arguments (organized in the transfer prices file) that intra-group transaction prices are arm's length and not used for an "artificial" increase of spending or "artificial" cut of incomes.

Transfer pricing affects cash flow, investment decisions and performance indicators – from a multinational company point of view, transfer pricing can influence cash flow streams (e.g. additional corporate tax imposed by the tax authorities will reduce the resources at hand), investment decisions (e.g. a jurisdiction with frequent changes of the transfer pricing legislation will bring uncertainty for multinational companies that could favor the decision to exit a certain country) and key performance indicators (e.g. additional corporate tax imposed by the tax authorities reduces the profitability a company could offer to its shareholders).

Transfer pricing affects custom value – for example, the customs authorities may not accept the transfer prices declared by a company for goods in customs transit and therefore will impose different price levels for custom valuation purposes. This raises issues as for the same property / goods two different values are allocated for tax purposes.

Transfer pricing can involve revenue or expense adjustments which trigger double taxation – since transactions between two related parties are not subject to the same market forces as transactions between independents, over or under-pricing can affect the allocation of tax bases among the various jurisdictions in which the group operates. By shifting profits from one jurisdiction to another, distorted transfer pricing can expose multinational companies to double taxation if two jurisdictions involved in a cross-border transaction claim taxing rights on the same profit.

Transfer pricing can help an organization to identify opportunities for business optimization – transfer pricing analysis involve a deep understanding of how the group's business works, its key value drivers, and hence could indicate ways of improvement and / or optimization.

Transfer pricing is subject to legal requirements – more and more countries have included transfer pricing in their local legislation imposing fines, penalties, additional tax or other forms of constraint for not complying with the regulations.

ABUSE OF TRANSFER PRICING

The interesting phenomenon under the transfer pricing is that the funds remain within the organization, generated by the profit centers of organization. And these transactions are also recorded within a particulars company's book which doesn't have an impact on the whole enterprise. This indirectly indicates the mechanism of generating the transfer pricing „an artificial accounting system"; the primary stage for abusiveness of transfer pricing [16]. The recent developments in transfer pricing have resulted in the considerable amount of misuse instances. It was widely noted that the transfer pricing methods were used to avoid tax and accelerate the expenses of a firm. The detection of transfer pricing abuse is expensive affair for tax regulators to detect [15]. Moreover, there are many instances wherein the steps have been taken in order to reduce the irregularities in transfer pricing by imposing financial penalties and enforcement [18]. The main actors in global economy – governments, MNCs and non-government actors – share the different perspective regarding the ethics in transfer pricing. All of them share different perspectives on transfer pricing which alert the need for congruence on transfer pricing adjustments and understanding for all the stakeholders [5]. One of the most debatable and perplexed issues involves in transfer pricing is marketing intangible. The aspect of over-pricing was found the most noticeable technique in transfer pricing mechanism. Various industries have adopted different levels of over-pricing slabs. It has been observed that the percentage of over-pricing was ranged from ten percent to ten thousand percent [2]. Rubber industry operates with 40 percent, 26 percent is the usual rate for the chemical industry and 16-60 percent for the electronics equipment.

Background of Indian Transfer Pricing

Introduced in 2001, Indian Transfer Pricing regime has grown, evolved and matured in its life spanning close to two decades now. The transfer pricing disputes has evolved from litigative and controversial to more non-adversarial and business friendly. With systematic introduction of favourable tax regimes namely safe harbour rules and its revision, pruning down of controversial aspects in domestic transfer pricing, introduction of advance pricing agreements regime and subsequent insertion of rollback provisions in APA regime for 4 years, thereby providing certainty for almost 9 years etc. have contributed to the constant decline in Transfer pricing disputes. With the aim of following global best tax practices, several changes have been introduced in Indian Transfer Pricing Regulations in line with OECD BEPS Action Plans viz. interest deduction, secondary adjustment, country by country reporting etc. Below are few of the specific and lingering transfer pricing issues that need clarity at the Apex Court level and the perspective on India's stand on Action Plan 8-10.

Advertising, Marketing and Promotion Expenses (AMP)

AMP has been one of the most contentious issues in contemporary Transfer Pricing practices. There is no specific inclusion of Advertising, Marketing and Promotion expenses in the definition of international transaction. So the moot question arises as to whether AMP should at all qualify as an international transaction. The entire concept of AMP expenses revolves around the premise set up by the tax department wherein it is alleged that the AMP spend of Indian Company is applied towards enhancement of the brand value of Intellectual property of its overseas parent Company (AE of Indian Company). Accordingly, the parent Company should remunerate the Indian subsidiary for such AMP expenses with a profit top up. As per the tax authorities, this transaction should be treated as an international transaction and should be tested for Arm's Length Price.

With the Explanation to section 92B inserted in Finance Act 2012, intangible property has been defined as 'marketing related intangibles' such as trademarks, trade names, brand names, logos etc. In one of the cases, the tax department adopted 'Bright line' test as laid down in one of the US tax court cases. According to Bright Line Test, any excess AMP expense exceeding the average AMP expense incurred by comparable companies in India is considered as non-routine AMP expense and should be subject to benchmarking in accordance with the Arm's length principles. Such non-routine AMP expenses represent expenses incurred for enhancing the value of Foreign AEs branch in India, thereby referred to as "marketing intangibles'. However, Hon'ble Delhi High Court in case of LG Electronics India (P.) Ltd. held that Bright Line Test should not be applied as a binding method for deriving non-routine expenses. However, Hon'ble HC also held that AMP may be treated as an international transaction.

It is pertinent to note the distinction between sales expenses i.e. expenses incurred 'in connection with sales' and sales promotion expenses i.e. expenses incurred 'for promoting sales'. Hence, expenses incurred directly in connection with sales should be excluded from computing AMP expenses to be benchmarked. It is the sales promotion expenses that promote sales lead to brand building of the foreign AE in India and accordingly, the foreign AE should be compensated for such expenses on an arm's length price. Accordingly, from a Transfer Pricing perspective, at the time of computing TP Adjustment for marketing intangibles, commission expenses, cash discounts, volume rebate, trade discount etc. should be excluded. Further the AMP Subsidy received by the Indian subsidiary from its Parent Company should be excluded from the total AMP Expenses. It is also pertinent to note the treatment of Consumer Market Research Expenses and AMP Expenses that are incurred by the India Company on its other domestic brands that are self-owned. Such market research and AMP expenses should be excluded from AMP Expenses and no transfer pricing adjustment should be made for such expenses.

Further, it is imperative to understand the difference between expenses incurred by a distributor as compared with a licensed manufacturer while understanding the concept of AMP from a transfer pricing perceptive. Generally, where a distributor receives sufficient profits and rewards as part of percentage of price of the goods (higher gross margins) imported from its foreign AE, so no separate compensation in the form of reimbursement of excess AMP expenses is paid. This is because in such cases, the distributor is already earning premium profits in comparison with its independent comparables with similar functional background. Accordingly, no separate compensation is needed for excessive AMP expenditure in case of distributors, where such distributor receives sufficient profits/ rewards as part of the pricing of goods imported from its foreign principal.

Currently, the AMP issue is pending adjudication before Hon'ble Supreme Court with the main issue to be decided being whether AMP expenses are an 'international transaction'. Till the Apex Court of India resolves the issue, currently available opposite Tribunal judgments do not provide a clear guidance on the matter.

INTRA-GROUP TRANSACTIONS

The transfer pricing benchmarking analysis of intra-company services is one of the most complex areas of Transfer Pricing regulations in India. The lack of guidance in Indian TP regulations further ads up to the confusion. One of the tests recommended by OECD's Transfer Pricing guidelines for identifying intra-group transaction is the 'benefit test' that involves citing the commercial or non-general benefit obtained by related party on account of undertaking of intra-company functions. Generally the Transfer Pricing Officer ('TPO') tends to examine whether an independent entity would have paid for an intra-group service in order to apply the 'benefit test' while determining ALP of intra-group services. However, it has been decided in many Tribunal judgments in the past that the TPO shall be said to be exceeding his authority where he questions the commercial wisdom of providing a particular service and that the commercial expediency of a transaction should be left to the best judgment of those running the business.

The tax department insists on producing evidence with regard to receipt of services and that those services were general in nature. As per the tax authorities, the evidence of receipt of services does not lie in mere documents viz. emails exchanged, agreement entered into between related parties. The biggest of all evidence is the benefit derived from receipt of services. Generally TPO applies CUP as the most appropriate method for benchmarking intra-group services and determines the Arm's Length Price at NIL value, thereby resulting in a transfer pricing addition. In the absence of clear guidelines on the most appropriate method for determining ALP for intra-group services, there have been several Tribunal judgments wherein it has been upheld that CUP method cannot be applied in the absence of data pertaining to the price of the same product and service in uncontrolled circumstances. The Tribunals have emphasized that the process of evaluating the worth of services cannot be directly correlated with the benefit of such services. Accordingly, the taxpayer should maintain robust documentation to demonstrate reasonably sufficient evidence on rendition of services.

Intra group services can broadly be divided into two categories namely administrative/ management services and commercial services. Whilst administrative/ management services are more focused on management and staff related activities of an organization viz. accounting, information technology, human resource management etc., the commercial services category refers to the popular line functions. Generally MNE operate through designing global policies made at the head-office level or in a centralized manner for undertaking management and administrative activities at group level in order to avoid work repetitions and procedural hick-ups and delays.

On the other hand, income producing services are services that are core to the business undertaken by an entity within a group namely R&D, product development, sharing of know-how etc. The aforesaid income producing activities are income generating and have associated operational and commercial risks involved. Accordingly, such functions may command a higher mark-up or charge. It is also pertinent to note that the diagnosis and characterization of a particular service into administrative or business in nature shall depend upon facts and circumstances of each case. A particular transaction may constitute management or administrative service for one corporation and at the same time it may be characterized as a commercial or income-producing service for another.

CENTRALIZED PROCUREMENT – SOGO SHOSHA COMPANIES

'Sogo' means general and 'Shosha' means trading Company. Sogo Shosha Companies are large Japanese trading Companies that trade in a wide range of products from pin to plane having huge volumes. Sogo Shosha companies engage in both import and export globally and generally tend to have large volumes with thin margins. Generally, the Indian group subsidiary of a Japanese Sogo Shosha Company assists its Parent Group in procurement and sales related activities in India. Such Indian procurement company obtains the title of goods to be sold to its overseas AE for a very short period of time, popularly called as "flash title" and since it enters into back to back trading cycle, the risk of inventory is almost negligible. No value adds function is undertaken by the Indian Company post acquiring the product for further sale to the foreign AE.

The agreement of supply of goods between Indian Procurement Company and its overseas AE is usually on a principal to principal basis. Accordingly, such Indian Company does not typically fall within the definition of a Commission agent though the profit margins as low as that of a commission agent. This is primarily due to absence of any unique intangibles and low risk profile of the business due to confirmed orders from foreign AEs, back to back bookings of goods etc. However, both sales and purchase entries are typically found in the books of such Indian procurement Company which is in complete contrast to a Commission agent who does not maintain inventory and never has title of goods in his name, even for a short period of time. With the above contrasts in the FAR analysis of an Indian procurement Company with that of a Commission agent, there are multiple benchmarking related issues that emerge from a transfer pricing perspective.

One of the key issues while benchmarking such a transaction between Indian procurement Company and its Japanese Sogo Shosha counterpart is the lack of availability of comparables in public domain with this type of unique FAR profile. Further, it becomes difficult to characterize such Indian procurement company in one typical way as a trader simpliciter or a plain service provider. Another benchmarking challenge with such Indian procurement companies is that of selection of appropriate method and profit level indicator (PLI) for computing Arm's length margins. Comparable Uncontrolled Method (CUP) and Cost Plus Method (CPM) is generally impractical to apply due to non-availability of suitable comparable independent India companies. Since the Indian Company is engaged in procuring/ sourcing and not resale trading, Resale Price Method (RPM) also does not apply. Profit Split Method (PSM) may also be inapplicable due to absence of unique intangibles deployed by Indian Company. On the contrary, the Indian Company employs routine intangibles for undertaking its limited risk functions.

Another issue typical to such Indian procurement companies is since they acquire flash title to the goods sourced from India and sold to its overseas AEs, there is inventory reflecting in their profit and loss account, even though they have such inventory for a very short duration and does not bear the inventory risk at all. In such circumstances, adopting a PLI having operating revenue computed as a return on value of goods (Cost of Goods Sold) may provide misleading results and an exorbitantly high return. Accordingly, ideally a PLI that excludes COGS should be taken into account. On the other hand, a PLI based on value added operating expenses should be adopted. This is because in case of Indian Procurement Company, it does not undertake COGS expenses but its overseas AE bears the risk of inventory. Further, COGS is a measure of return on value of goods traded, sourced or handled. It is not a measure of return on value add functions. Accordingly, COGS is not relevant from a benchmarking perspective in case of such Companies.

On the basis of above analysis, it can be concluded that Berry ratio can be adopted a fair measure of benchmarking the value of functions performed by a low risk distributor and/ or service provider. Berry ratio can be used as a PLI depicting operating expenses where no unique intangibles are employed and no expenses pertaining to manufacturing or warehousing are incurred. In such situations, COGS depicting the value of goods handled becomes irrelevant and the operating cost (excluding COGS) represents the value added services undertaken by the Indian procurement entity. Accordingly, Berry Ratio is used for arm's length benchmarking in cases of limited risk distributors, service providers and procurement entities.

Though there are limited legal precedents available on application of Berry ratio and exclusion of COGS from operating expenses while undertaking benchmarking analysis of Indian procurement Companies, there is room for ambiguity and interpretational differences between revenue and taxpayers. On the other hand, CBDT has signed a total of five bilateral APAs with Japan with roll back provisions being actively exercised in all of them. Tax certainty for up to 9 years has also been obtained through signing bilateral APA with roll back provisions with a Japanese Trading Company representing Sogo Shosha business model.

LOCATION SAVINGS

Location savings are net savings in cost obtained by a multinational enterprise (MNE) usually through relocating its core operations from a high cost jurisdiction to a low cost jurisdiction with the motive. Generally, the types of benefits obtained include labour and material cost savings, cheaper or subsidized availability of capital, production, distribution, technology and logistics support, larger customer base with increased spending capacity, advanced infrastructure etc. that may support the MNE to in gaining competitive advantage. On the other hand, there are certain flip costs also namely enhanced quality control costs, logistic planning and capital investment costs. Location rent is the incremental profits obtained by a MNE from existence and exploitation of Location savings. However, all location saving advantages do not result in location rent. As an example, in locations that are growth stagnant due to competition, though there could be presence of locational advantages but those would get transferred to local customers through availability of goods/ services at competitively lower prices. Accordingly, Location savings may dissolve over time due to competitive pressures. Besides this, the location saving also depends upon the bargaining power of related parties.

Indian revenue has been making upwards transfer pricing adjustments on account of location savings and even came up with a substantive circular on it wherein Captive R&D centers shall bear the wrath of the concept. However, the circular was later withdrawn. With passage of time, more and more court decisions have appeared wherein the claim for transfer pricing adjustment due to locational saving has been dropped. Indian courts have been adopting generous and pro-taxpayer views by holding that where the benefit of locational savings is passed on to the end consumer due to competitive ecosystem and pricing or where Arm's Length Price is computed through comparing with appropriate comparables, there is no need for separate adjustment on account of location savings.

SAFE HARBOUR

Safe Harbour is one of the ways in which the avoidance of litigations and the afterward procedures can be fore fended and the safe environment for a foreign player and associate enterprise can be established. Even though this procedure has not been accepted by many of the countries, but at the same point in time, it also attracts the policy-makers of national tax-authority to incentivize the transactions between the domestics and foreign organization. As OECD"s norms prescribe safe harbour is "A safe harbour in a transfer pricing regime is a provision that applies to a defined category of taxpayers or transactions and that relieves eligible taxpayers from certain obligations otherwise imposed by a country's general transfer pricing rules" [8]. One of the chief intentions of applying safe harbour rules is to reduce the administrative burden of government and supplying the reliability to organization that their transactions will be accepted by tax authority with limited audit or in some of the cases without audits [13]. In 2013, Central Board of Direct Taxes (CBDT) issued the rules of safe harbours for the period of five years commencing from financial year 2012-13 to 2016-17. CBDT was backed by Financial Act 2009 which had some provisions for introducing the safe harbour rules under Indian Tax Law (ILT). Moreover, on April 1, 2017 CBDT issued several amendments in safe harbour rules. And in addition to that, taxpayers were given options to choose the rules which are more beneficial to them, in case of rules overlapping with the previous prior law. Moreover, the applicability of amended rules is for three years: from 2016-17 to 2018-19. It should be noted that, SHRs introduced in 2013 did not receive much attraction from Indian taxpayers since the rates were perceived high [4]. Moreover, for all the taxpayers whose transactions are more than INR 200 crores have no option to go through SHRs route. Moreover, they can adopt the APAs and the normal route w which may attract the litigation in long run. This also suggests the intentions of CBDT to restrict the applicability of SHRs to small and medium size services providers like IT, ITeS, KPO, R&D, for IT and generic pharmaceutical drugs.

ADVANCED PRICING AGREEMENTS

The Government of India amended the Income Tax act 1961 so that APA can be applied by organizations which were willing to participate in APA method for their transfer pricing process. APA is a contract which is usually for multiple years between a taxpayer and at least one tax authority in which clarity in terms of transfer pricing mechanism is mentioned regarding the future transactions is been carried out by the organization [1]. Indeed, Advance Pricing Agreements can be further divided into three categories: Unilateral APAs, Bilateral APAs, and Multilateral APAs. Unilateral APAs suggests an agreement between a taxpayer and tax authority of a country where it is subject to taxation. On the other hand, Bilateral and Multilateral agreement indicates the involvement of taxpayer, tax authority of a country where it is subject to taxation and one or more foreign tax authority of foreign country [3].

Though it is referred as „advance" but incidents are there which indicate that the transfer pricing cases pending from prior years are also resolved [12]. Moreover, advanced transfer pricing is considered the safest game to resolute the dispute or in simpler terms, to avoid the chances of litigations. To bring more clarity on this OECD mentioned:

"APAs, including unilateral ones, differ in some ways from more traditional private rulings that some tax administrations issue to taxpayers. An APA generally deals with factual issues, whereas more traditional private rulings tend to be limited to addressing questions of a legal nature based on facts presented by a taxpayer. The facts underlying a private ruling request may not be questioned by the tax administration, whereas in an APA the facts are likely to be thoroughly analyzed and investigated. In addition, an APA usually covers several transactions, several types of transactions on a continuing basis, or all of a taxpayer's international transactions for a given period of time. In contrast, a private ruling request usually is binding only for a particular transaction, according to OECD, 2001.

Ring (1999) argued that the successful APA programme could result in reduction of government administration, the cost of enforcement and at the large scale provides the generalized benefits [14]. For the same, this research argues that APA should be the methods to reduce the controversies held afterword. Since, APA takes the consensus of both, a taxpayer and at least one tax authority into the consideration, the chances of controversies remain very low by applying this mechanism.

There are several stages for companies, in context of India to be taken into consideration, while applying the APA mechanism. The controversies present here, with respect to the various clauses, suggest that there should be mutual understanding with tax authority and a taxpayer so that both of them can be on the same page. This is possible when the negotiations process takes place: this is possible with the help of the advance pricing agreement wherein both the parties arrive at decision regarding the transactions that are going to take place and their transfer pricing.

In India APA system was implemented on July 1, 2012 and at time of closing the financial year, the Govt. had received 14 APA applications, in fact, the largest response in any country for the first year of APA implementation. Next year, response was more encouraging with 146 applications. The number further grew and more than 240 companies had filed up their applications and had sought APAs for the year 2014-15 covering wide range of sectors such as IT and IT enabled services (ITeS), financial services, pharmaceuticals and chemicals and deals pertaining to issues such as royalties, corporate guarantees, out-sourcing and interest income. Moreover, in view of the further improvements in APA system - such as the inclusion of roll back provision, more applications have been filed by the MNCs and number has already crossed 700 [17].

CONCLUSION

As per the discussion of this paper, it may be observed that even though a few options are available for MNCs which indulge in transfer pricing – but due to ignorance or because of the complexity of laws they still enter into time-consuming litigation. The transactions associated with the AMP remains in the radar of income tax authority of the respective country. Since, such transactions are difficult to be noticed by income tax authorities, many organizations were found to be avoiding payable tax and attract the litigations by authorities. APAs and Safe Harbor Rules (SHRs) are the relevant approaches through which the litigations may be avoided and the companies; domestic and foreign players (MNCs) may rest assured for their transactions. However, these approaches of new transfer pricing regime have also attracted many concerns not only by MNCs but also from income tax authorities in several countries. On the other hand, the timely discussion with Transfer Price Office of Income Tax Department, where the taxation is subject to incur, in line with the utilization of any of these approach, seems more fruitful approach to avoid the future problems in terms of litigations and objections by the tax authorities.

The application of SHRs, in India, however, is limited only to selected sectors such as IT, ITeS, BPOs, KPOs, core and non-core auto components, contract R&D services in pharmaceutical drugs, corporate guarantees to WOS, advancing of intra-group loans, etc. Therefore, in the present Indian scenario it may not be applied to the transfer pricing issues in the areas of AMP. The application of APAs, however, is not limited to the selected sectors and is open for all sectors. Hence, the MNCs before getting themselves involved in the transfer pricing related issues for AMP may explore the APA route to avoid any dispute and litigation with the taxation authorities.

REFERENCES

1. Pawan Chugan, Kumar, International Transfer Pricing, Taxation and Need for Advance Pricing Arrangement, Pravartak, the Journal of Insurance and Management, volume jou_vol[1].xmlText, p. 134 – 140, Posted: 2007-01
2. Pawan K Chugan, Sustaining Shareholders Value: Role Of Investors And Regulators, International Transfer Pricing in India: The New Era of Advance Pricing Arrangements to Benefit Both MNCs and Taxation Authority, Year of Publication: 2010-01 p. 505 – 521.
3. Pawan K Chugan, Nilam Panchal, Jayesh, Managing International Business Disputes in New Transfer Pricing Regime: The Effectiveness Rests with Skilled Human Resources; Fourteenth AIMS International Conference on Management, Dec. 26-28, 2016 -(AIMS-14), p. 150 – 157,
4. Pawan K Chugan, Nishant Agrwal, New Transfer Pricing Regime in Information Technology Sector, Nirma International Conference on Management, 2018-01-11
5. L Eden, L M Smith, The ethics of transfer pricing, Presentation at the AOS Workshop on "Fraud in Accounting, Organizations and Society" Sponsored by Accounting, 2,2011-04 p. 1
6. A Galway, Transfer Pricing-Choice, Management Decision, 1990; issue 3.
7. S Ghosh, Google loses 6 year battle, must pay tax on remittances made to Google Ireland. The Economic Times, Posted: 2017-11
8. Healy Hazel, Revised section E safe Harbours TP guidelines, 2013-01
9. C W Lin, H C Chang, Motives of transfer pricing strategies-systemic analysis, Industrial Management & Data Systems, 2010, volume 110, issue 8, p. 1215 – 1233.
10. G Liu, J Zhang, W Tang, Strategic transfer pricing in a marketing operations interface with quality level and advertising dependent goodwill Omega,2015, volume 56, p. 1–15.
11. Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, OECD; **2001**
12. Price waterhouse coopers, Transfer pricing: Advance pricing agreements, 2015-01
13. Pricing knowledge network alert tax controversy and dispute resolution alert OECD releases revised section on safe harbours in brief, PWC; 2013-01
14. D M Ring, On the frontier of procedural innovation: advance pricing agreements and the struggle to allocate income for cross border taxation, Mich. J. Int'l L, 1999; volume 21.

15. P Sikka, H Willmott, The dark side of transfer pricing: Its role in tax avoidance and wealth retentiveness, Critical Perspectives on Accounting, 2010; volume 21, issue 4, p. 342 – 356.
16. A Smallman, H Adrien, Inter-Divisional Transfer Pricing: An Artificial Accounting System or a Real Business Tool? Management Decision, 1981; volume 19, p. 36 – 42.
17. K R Srivats, CBDT Signs Five More Unilateral Advance Pricing Agreements, The Hindu Business Line, 2016, volume 29.
18. J V Williamson, S M Stewart, J T Hildy, M C Houchens, Litigating transfer pricing cases and tax-advantaged transactions 2001

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