



RESEARCH ARTICLE

INDUSTRY PERCEPTION OF INDIAN TRANSFER PRICING – EMPIRICAL ANALYSIS

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ABSTRACT

Steep growth in the international business transactions of enterprises under common control has led to adopt a disciplined approach towards Transfer Pricing regulations by the tax jurisdictions world over. UN Model Tax Convention and OECD efforts including the report on BEPS have given due significance to Transfer Pricing issues. India has been following the foot prints of the developed countries in this regard. Aggressiveness of India's approach in its Transfer Pricing policy and practice has made the researchers to study the corporates' views on this. The empirical study is based on the views of 150 corporates consisting of 86 manufacturing and 64 service undertakings. The study analyses India's Transfer Pricing structure and discusses the corporates' views. The study reveals that in general the corporate assesseees are in agreement with the Indian Transfer Pricing framework; however, they expect improvement in areas like documentation requirement, disposal of appeal, cooperation of Transfer Pricing authorities with assesseees, etc. The paper suggests that India should adopt international benchmarks like OECD Transfer Pricing regulations in its policy and practice.

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INTRODUCTION

There is a continuous increase in the international business transactions of companies under common control (MNCs). The principle of arm's length has to be applied to such transactions as laid down in article 9(1) of the OECD and UN Model Tax Convention. It briefly provides that profits arising from the transactions between the associated enterprises may be adjusted to a level which reflects that would have been achieved had open market prices been used¹. Therefore, Transfer Pricing plays pivotal role in international trade and commerce when a transaction is between two or more associated enterprises based in multiple tax jurisdictions. Transfer Pricing mechanism facilitates the tax jurisdictions to levy tax on the relevant amount of income to which they are rightfully entitled. Though Transfer Pricing is of recent origin it has been greatly influencing the international tax aspects of the day. When the tax authority of one country adjusts the profit of a member of the MNE group, this may have an effect on the tax base of another country. As a result Transfer Pricing has become a major tax issue for the companies. In other words, cross-border tax situations involve issues related to

jurisdiction, allocation of income and valuation². In the arena of international taxation several developments are taking place across the world. These developments primarily indicate efforts of each tax jurisdiction to contain revenue leakages in cross border transactions and to ensure legitimate tax collections. In this direction, OECD recently released their report on 'Base Erosion and Profit Shifting (BEPS)'. This has thrown great challenges to tax administrations in capturing taxable transactions at the right time at the right place. OECD in its BEPS report gave a very meticulous action plans for various administrations for achieving objectives³. India is a late starter in structuring the Transfer Pricing policy but it has been seriously following the foot prints of developed countries.

Review of literature

Before embarking upon the present research study the researchers reviewed the following recent research works in the area of Transfer Pricing:

Doctoral theses

A good number of research scholars have carried-out their doctoral work in the field of Transfer Pricing. Those reviewed by the researchers are as under:

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¹ Mittal D. P. (2009), 'Law of Transfer Pricing in India', Taxation Publications (P) Ltd. 3rd Edition, 2009. Pp - 18.

²Dr. M S Vasani & Vijay Iyer, (2014), Transfer Pricing Audit Practices in India, Ch.1, Introduction, Published by LexisNexis, Gurgaon Haryana. Pp – 2.

³ P. V. S. S Prasad & Sampath Raghunathan, (2014), International Taxation – A Basic Study, Ch.13, Recent International Tax Developments and Trends in India Tax Treaty Policy, Published K G Maheshwari, Kolkata, Pp – 391.

Researcher	Country	Year	Outcome of the study
Simeon Ogbulafor Okpechi ¹	USA	1976	Reviews the Transfer Pricing mechanism in relation to criteria such as divisional autonomy, objective performance evaluation and goal congruence.
Sabri Abdel-Hamid-El-Segini ¹	England	1992	Identifies factors influencing Transfer Pricing strategies which represent a motive to shift profits.
Jamie Elliott ¹	UK	1999	Longitudinal grounded theory case studies can provide some variable insights into our understanding about how MNEs manage International Transfer Pricing.
Ashok Kumar ¹	India	2002	Evaluates Transfer Pricing policy in India with special reference to pharmaceutical industry.
Rajab Abdulla Rajab Al-Esmail ¹	UK	2003	Shows the discretion provided under both OECD (TNMM) and US IRS (CPM) methods.
Lowaiyee Agnes ¹	China	2004	The more important the management perceives the interest of local partners and the maintenance of a good relationship with host government the more likely it is that the Foreign Investment Enterprises (FIE) will adopt a market-based Transfer Pricing method.
Jian Li ¹	New Zealand	2005	Provides an insight into International Transfer Pricing practices and audits across New Zealand, Australia and China, providing MNEs and other business, which already operate or intend to operate between these three markets, with guidance in complying with the Transfer Pricing regulations of the three Asia-Pacific national economic regimes involved.
Ren Linghui ¹	China	2010	The study analyses China's special interests in regulating Transfer Pricing and thus revealing and critiquing its unique features.
Yeni Mulyani ¹	Australia	2010	Along with adequate Transfer Pricing provisions, the overall tax regime plays an important role in improving Transfer Pricing compliance.
Gupta Pradeep ¹	India	2010	Explores the Transfer Pricing practices of MNCs in India.
Rasmus Steineses ¹	Denmark	2012	Focuses on the effectiveness of relationship between two related parties on the pricing of inter-company loans.

Research articles

Significant contributions to the body of knowledge have been made by the researchers in the subject of Transfer Pricing by way of research articles. Among the studies conducted, the following works have been reviewed:

Researcher	Year	Outcome of the study
Turner ⁴	1996	Summarizes the Transfer Pricing guidelines issued by OECD in 1995, provides an overview of the tax rules applying to related party transactions in various countries, and compared those approaches to the ones found in Canada.
Cravens and Shearon ⁵	1996	Shows that the experience of international Transfer Pricing while useful in building the blocks of Transfer Pricing understanding may not suffice as a platform for dealing with domestic issues.
Connie Rae Bateman and et al ⁶	1997	Stages in Transfer Pricing decision process along-with critical factors directly affect sales and Transfer Pricing audit.
Karen S. Cravens ⁷	1997	Executives of US based MNEs perceive that Transfer Pricing does influence measures of corporate performance.
K. Hung Chan and Lynne Chow ⁸	1997	Tax audits on Transfer Pricing are confined mainly to medium and small-sized foreign investments, lower-technology companies and transfer of tangible goods, and tend to focus on certain nationality and forms of foreign investment.
Thomas A. Gresik ⁹	2000	Needed is a policy that seeks to achieve arm's-length prices in consistent with broader welfare objectives when the multinational's home country adopts a commensurate-with-income standard (ruling out repatriated losses) and when the multi-national prefers pre-tax operating profit over post-tax Transfer Pricing profit.
Teresa L. Conover and Nancy B. Nichols ¹⁰	2000	Smaller and/or distressed firms are less likely to shift income through Transfer Pricing than larger firms.
Dawson and Miller ¹¹	2000	Profit-maximizing multinational corporations used transfer price to shift profit to the relatively lower-tax country in order to maximize their global after-tax or else equal.
Borkowski ¹²	2001	There is greater agreement among MNCs on their Transfer Pricing methods for intangible property compared to tangible goods. Also, there was no significant difference in the methods used to value intangible property for cross-border intangible transfers.
Swenson ¹³	2001	Reported prices increased when the combined effect of taxes and tariffs provided an incentive for firms to overstate their prices.

4 Turner (1996), 'Study on transfer pricing. Technical Committee on Business Taxation' Department of Finance, Ottawa, Working Paper 96-100 December. Available at <http://www.Docstoc.com/docs/2382907/Study-on-Transfer-Pricing>.

5 Cravens and Shearon (1996) 'An outcome-based assessment of international transfer pricing policy,' *The International Journal of Accounting* 31 (3), Pp- 419-443.

6 Coonie Rae Bateman and et al (1997), 'The Transfer Pricing decision process for multinational corporations,' *International Journal of Commerce and Management*, Vol.7. Iss. 3/4, Pp.18-38.

7 Karen S. Cravens, (1997), 'Examining the role of Transfer Pricing as a strategy for multinational firms,' *International Business Review*, Volume. 6, Issue 2, April 1997, Pp.127-145.

8 K. Hung Chan and Lynne Chow (1997), 'An empirical study of tax audits in China on international transfer pricing', *Journal of Accounting and Economics*, Volume. 23, Issue 1, May 1997, Pp-83-112.

9 Thomas A. Gresik (2000), 'Arm's – Length Transfer Pricing and national welfare, in (ed.) *Advances in Applied Microeconomics*' (Advances in Applied Microeconomics, Volume 8), Emerald Group Publishing Limited, Pp-187-208.

10 Teresa L. Conover and Nancy B. Nichols, (2000), 'A Further Examination of Income Shifting Through Transfer Pricing Considering Firm Size and /or Distress', *The International Journal of Accounting*, Volume 35, Issue 2, July 2000, Pp-189-211.

11 Dawson and Miller (2000). Transfer Pricing in the decentralized multinational corporation available at <http://econpapers.repec.org/paper/uctuconnp/2000-06.htm>.

12 Borkowski (2001), 'Transfer Pricing of intangible property harmony and discord across five countries', *The International Journal of Accounting* 36 (3), Pp-349-374.

13 Swenson (2001), 'Tax reforms and evidence of transfer pricing', *National Tax Journal*, 54(1), Pp-7-25.

Reeb and Hansen ¹⁴	2003	Tax minimization schemes were more aggressively pursued in small firms.
Eric J. Bartelsman ¹⁵	2003	Provides evidence of income shifting in response to differences in corporate tax rates for a large section of OECD countries.
Srivatsan ¹⁶	2004	By adopting tax/profit shifting from higher tax jurisdictions to lower tax jurisdictions, the firm could go on building the profits and multiplier concept would hold true for Transfer Pricing. Further, the multiplier would be limited and dependent on tax rates prevailing in each shift; and the quantum of corpus that is shifted each time.
Ki Ho and Lau ¹⁷	2005	Market price and full cost plus are the most commonly used ITP methods. The results of this study also reveal that there are no significant differences in the perceived frequency of use of various ITP methods by U.S. MNCs for transactions with their affiliates in the People's Republic of China (PRC) and the UK.
Chan Agnes and Lai Lan ¹⁸	2006	Tax audit adjustments for respondents that have autonomy in setting transfer prices or sourcing from outsiders are smaller than those that have their transfer transactions dictated by parent companies.
Bernard ¹⁹	2006	Export prices for intra-firm transactions were significantly lower than the prices for the same good sent to an arm's length customer. The price wedge between arm's length and intra-firm prices responds to differences in market structure, taxes, and tariffs.
Feinschreiber and et al ²⁰	2007	The well-accomplished tax auditors are making Transfer Pricing more difficult for both Korean-based and foreign-based taxpayers. As a result, Advance Pricing Agreements are becoming more important for cost contribution agreements.
Wagdy M. Abdallah and Ahmed S. Maghrabi ²¹	2009	Most effective Transfer Pricing should include; tax and non-tax strategies to manage global earnings of the company; objectives behind the system; potential global income tax consequences; selection of the best Transfer Pricing methods; and key issues to help in avoiding tax audits in the future.
Ching – Wen Lin and Hsiao – Chen Change ²²	2010	Tax minimisation is no longer the focus of Transfer Pricing manipulation strategies of Taiwanese MNEs and their real concerns are winning maximum economic profits, enhancing the competitiveness of the enterprise, and effectively repatriating profits to parent companies in order to facilitate greater economic profits.
Christian Plesner Rossing and Carsten Rohde ²³	2010	Implementation of a Transfer Pricing tax compliance strategy gives rise to a number of changes to the overhead cost allocation system design.
S P Singh and et al ²⁴	2011	A well-structured APA regime in India would signal the beginning of an era that is reformist in nature and forward looking in its implementation.
S P Singh and Abhay Kumar ²⁵	2012	Both taxpayers and tax authorities should be sanguine in considering berry ratio as a good Profit Level Indicator (PLI) under the TNMM if the requisite conditions for its application are found satisfied.
Amit Singhanian and Ankur Goel ²⁶	2012	Over a period of time, the Indian tax authorities have identified payment of management charges as one of the soft targets for making Transfer Pricing adjustment.
Gyaneshwanath (Gary) Gowrea ²⁷	2012	Multinational companies seek to conduct business where it is more cost effective and tax efficient.
Christian Plesner Rossing ²⁸	2013	Functional tax strategy impacts the management control system (MCS) in a multinational enterprise (MNE) facing Transfer Pricing tax risks. It is argued that the MCS in a multinational setting is contingent upon the MNE's response to its tax environment.
Anshu Khanna ²⁹	2013	The Transfer Pricing litigations are bound to increase many-fold over future years on account of domestic Transfer Pricing compliance.
K. Hung Chan and et al ³⁰	2015	Chinese tax authorities have significantly reduced their focus on auditing wholly foreign-owned enterprises, and placed more focus on western multinationals and larger companies in the late 2000s as compared with the audits in the early 1990s. The findings show that changes in the business environment, regulations and the audit expertise of tax officials can lead to a shift in the focus of tax audits of international transfer pricing.

14 Reeb and Hansen, (2001), 'Income shifting and taxes in multinational firms', Available at <http://www.cba.ua.edu/dreeb>.

15 Eric J. Bartelsman, (2003), 'Why pay more? Corporate tax avoidance through Transfer Pricing in OECD countries,' Journal of Public Economics, Volume. 87, Issue 9-10, September 2003, Pp-2225-2252.

16 Srivastan (2004), 'Rational and some issues on transfer pricing,' National Tax Journal, 54(1)', Pp-1067-1072.

17 Ki Ho and Lou, (2005), 'An Exploratory Study of Transfer Pricing Practices by Multinationals with International Affiliates'. International Tax Journal 31 (4), 37-54, Pp-6.

18 Chan Agnes and Lia Lan, (2006), 'Managerial Autonomy and Tax Compliance: An Empirical Study on International Transfer Pricing,' Journal of the American Taxation Association 28 (2), Pp-1-22.

19 Bernard, Andrew B., Jensen J. Bradford., and Schott, Peter K. (2006) Transfer Pricing by U.S-based multinational firms.

20 Feinschreiber and et al, (2007), Transfer Pricing Korea, Corporate business taxation monthly, Vol. 9, issue 3, Pp-21.

21 Wagdy M. Abdallah, Ahmed S. Maghrabi (2009), 'Do multinational companies have effective Transfer Pricing systems of intangible assets and e-commerce?,' International Journal of Commerce and Management, Vol. 19. Iss.2, Pp-115-126.

22 Ching-Wen Lin and Hsiao-Chen Chang, (2010), 'Motives of Transfer Pricing strategies – systematic analysis, Industrial Management and Data Systems', Vol. 110 Iss.8, Pp-1215-1233.

23 Christian Plesner Rossing and Carsten Rohde, (2010), 'Overhead cost allocation changes in a transfer pricing tax compliant multinational enterprise,' Management Accounting Research, Volume 21, Issue 3, September 2010. Pp-199-216.

24 S.P. Singh and et al (2011), 'APA in India – Suggestions for the rule,' A Monthly Journal on International Taxation, Vol.5, 2011, Pp.9.

25 S.P. Singh and Abhay Kumar, (2012), 'Berry ratio: Begs recognition by Indian authorities; A Monthly Journal on International Taxation, Vol.7, 2012. Pp.5

26 Amit Singhanian and Ankur Goel, (2012), 'Management charges: Transfer Pricing Implications,' A Monthly Journal on International Taxation, Vol.7, 2012, Pp-82.

27 Gyaneshwanath (Gary) Gowrea (2012), 'Transfer Pricing: The Mauritius Story', A Monthly Journal on International Taxation, Vol.7, 2012, Pp-82.

28 Christian Plesner Rossing, (2013), 'Tax strategy control: The case of Transfer Pricing tax risk management', Management Accounting Research, Volume 24, Issue 2, June 2013, Pp- 175-194.

29 Anshu Khanna, (2013), 'Domestic Transfer Pricing in India – Needs time to evolve; A Monthly Journal on International Taxation, Vol.8, 2013, Pp-13.

30 K.Hung Chan and et al, (2015), 'An empirical analysis of the changes in tax audit focus on international transfer pricing,' Journal of International Accounting, Auditing and Taxation, Volume 24, Pp– 94-108.

Objectives of the study

The main objectives of the present study are to :

1. Analyse the Indian Transfer Pricing mechanism,
2. Examine Corporates' view on Indian Transfer Pricing, and
3. Suggest measures for improvement of Transfer Pricing regime in India.

Scope of the study

One hundred fifty sample companies spreading across India and belonging to both manufacturing and service sectors have been covered. The study is restricted to Transfer Pricing issues only.

METHODOLOGY

I. Sources of Data:

The data for the present study has been gathered from primary as well as secondary sources. The primary data, in the form of respondents' opinion, has been collected from the corporate business houses. Questionnaire using Likert Scale (using Highly Satisfied, Satisfied, Neither Satisfied nor Dissatisfied, Dissatisfied, and Highly Dissatisfied as parameters) and multiple choice responses (with 'Yes/No' as parameters) has been used. Publications of the Government, Professional and Academic Journals, Prominent websites dealing with tax matters, and other literature pertaining to the subject have been used as secondary sources.

II. Sample Size for the Study:

The sample size adopted for the study consists of 150 corporate enterprises. The profile of the respondents include Directors, Executive Directors, and Senior Managers (Taxation) of the respondent companies.

Table 1. Sector – Wise Distribution of Sample Corporate Undertakings

S. No.	Sector	Frequency	In Percent
1.	Manufacturing Sector	86	57.34
2.	Service Sector	64	42.66
Total		150	100.00

Source: Field Study.

I. Hypothesis for Overall study of Corporate Respondents

Transfer Pricing Issues	Respondents	Statement (H _a – Alternative Hypothesis)
Documentation procedure	All Corporate Respondents	The corporate respondents have significant relationship for specific issues of Transfer pricing
Stages of Clearance		
Methods adopted in deciding arm's length price for Transfer Pricing		
Audit procedure		
Penalties under Transfer Pricing provisions		
Cooperation of Transfer Pricing authorities		
Transfer Pricing provisions and rules		
Overall system of Transfer Pricing		

Hypotheses of the study

The following hypotheses were formulated on the basis of overall and sector – wise corporate respondents.

II. Hypotheses for Sector-Wise Study of Corporate Respondents

Transfer Pricing Issues	Respondents	Statements (H _a – Alternative Hypotheses)
Documentation procedure	Sector-Wise Corporate Respondents	There is significant relationship between sector-wise response towards documentation procedure applicable to Transfer Pricing.
Stages of Clearance	Sector-Wise Corporate Respondents	There is significant relationship between sector-wise response towards stages of clearance applicable to Transfer Pricing.
Methods adopted in deciding arm's length price for Transfer Pricing	Sector-Wise Corporate Respondents	There is significant relationship between sector-wise response towards Transfer Pricing Methods adopted in deciding arm's length price for Transfer Pricing.
Audit procedure	Sector-Wise Corporate Respondents	There is significant relationship between sector-wise response towards audit procedure under Transfer Pricing.
Penalties under Transfer Pricing provisions	Sector-Wise Corporate Respondents	There is significant relationship between sector-wise response towards penalties under Transfer Pricing provisions.
Cooperation of Transfer Pricing authorities	Sector-Wise Corporate Respondents	There is significant relationship between sector-wise response towards cooperation of Transfer Pricing authorities in Transfer Pricing process.
Transfer Pricing provisions and rules	Sector-Wise Corporate Respondents	There is significant relationship between sector-wise response towards Transfer Pricing provisions and rules.
Overall system of Transfer Pricing	Sector-Wise Corporate Respondents	There is significant relationship between sector-wise response towards overall system of Transfer Pricing.

Tools and techniques used for data analysis

Hypotheses were tested using one sample t-test statistic at 5% level of significance. Percentage method and graphs have been used to analyse the data.

The study

Indian Transfer Pricing-Structure and Operations

The Transfer Pricing provisions under the Indian Income Tax Act, 1961, were introduced (Section 92 and 92A to 92F) in the year 2001. Then onwards the relevant provisions of Transfer Pricing have been under constant amendment and modification. As a consequence, the width and breadth of the concept has been restructured in recent years. Transfer Pricing mechanism has been tightened so much so that the escape of revenue from tax net is very difficult. During 2007 India was in VIth place at world level in her aggressiveness towards Transfer Pricing which increased IInd place in 2010 (Table–2). This indicates the acceleration with which the implementation of Transfer Pricing has been undertaken in India when compared to other Transfer Pricing aggressive countries. And, as a consequence many aggrieved assesseees filed suits to appellate authorities. However, the judgements delivered by the appellate authorities are mostly in favour of the assesseees (Figure–1).

Table 2. Ten Most Aggressive Transfer Pricing Countries (2010 Figures V/s 2007)

S.No.	Name of the Countries	Year	
		2007 Ranking	2010 Ranking
1.	Japan	I-Rank	I-Rank
2.	India	VI-Rank	II-Rank
3.	China	VIII-Rank	III-Rank
4.	Canada	IX-Rank	IV-Rank
5.	United States of America	III-Rank	V-Rank
6.	France	V-Rank	VI-Rank
7.	Germany	II-Rank	VII-Rank
8.	Australia	IV-Rank	VIII-Rank
9.	Korea	VII-Rank	IX-Rank
10.	United Kingdom	X-Rank	X-Rank

Source: Asian Countries top aggressive tax authorities' poll, TP week 16th June, 2010, and Top 10 toughest tax authorities for Transfer Pricing, TP week, 6th December, 2007.

The analysis of 781 judgements of the ITAT reveals that while 47 percent of the judgements are in favour of taxpayers only 14 percent of the judgements are in favour of authorities and 15 percent of the judgements are partly on either-side. This indicates that the decision of Transfer Pricing authorities in majority of the assessments was either biased or irrational. Table-3 presents the important Transfer Pricing aspects covered under different Sections and Rules of the Indian Income Tax Act 1961 and Indian Income Tax Rules 1962 respectively. Provision and maintenance of documents by assessee is a major hurdle in Transfer Pricing assessments worldwide. In India too the Transfer Pricing Rules make this point clear by specifically mentioning all the different documents to be maintained.

Table-4 gives an idea about Rule 10D which prescribes the documents to be maintained.

Rule 10D of the Income Tax Rules 1962 is dealt in various clauses (i.e., 10D(1)(a) to 10D(1)(l)) of the sub rules of Rule 10D. The documentation requirements (Table-4) cover ownership structure of the assessee's business, profit of the multinational group, broad description of assessee's business, industry and associated enterprises, list of individual international transactions, functional analysis, economic and market analysis, forecasts, budgets or any other financial estimates of the assessee's business, records of uncontrolled transactions, records of comparability analysis, methods considered for determining ALP and documents pertaining to adjustment to Transfer Pricing (to bring them to ALP) and consequent adjustments to total income. The documents cited above reveal that almost every detail of the business need to be maintained by virtue of rule 10D.

Transfer Pricing Adjustments

The Operational statistics of Indian Transfer Pricing (2005-06 to 2014-15) presented in table-5 reveals how during the last ten years the Transfer Pricing audits impacted the assessee. It shows more than four-fold increase in the number of audits done during the period. While in 2005-06 it was 1061 cases, which were chosen for audit, it was 4290 in 2014-15. Also, we witness that there is a continuous rise in the number of assessee chosen for audits, indicating the increased emphasis of Transfer Pricing Officers towards audit operations. Number of adjustment cases vis-à-vis number of Transfer Pricing audit cases have increased faster than the rate of increase in audit cases. There is ten-fold increase in the number of Transfer

Pricing adjustment cases over the period under consideration. As a percentage of number of audit cases number of adjustment cases have increased to 54.85% in 2014-15 against 22.53% in 2005-06. This shows that the Transfer Pricing audit results are more and more in favour of the Income Tax Department (Figure-2). The amount adjusted because of audits is also on the rise. This rise is very steep in the last few years viz. 2011-12 to 2014-15, (Figure-3). We also witness a rise in average amount involved in per case of audit from Rs.54.15 crore in 2005-06 to Rs.847.30 crore in 2014-15. (Infact it is Rs.1316.83 crore per case in 2012-13 and Rs.1122.87 crore per case in 2013-14) (Figure-4). This indicates the increased significance attached to Transfer Pricing audits and the rigorousness with which it is undertaken by the Income Tax Department (ITD).

Analysis and interpretation of corporates' view about Indian transfer pricing

The primary data gathered through questionnaire from the said 150 companies, between Jan-2014 and June-2015, have been tabulated and analysed by classifying the information as 'General Issues' of Transfer Pricing and 'Specific Issues' of Transfer Pricing. The hypotheses have been tested by using one sample t-test.

(A) General Issues

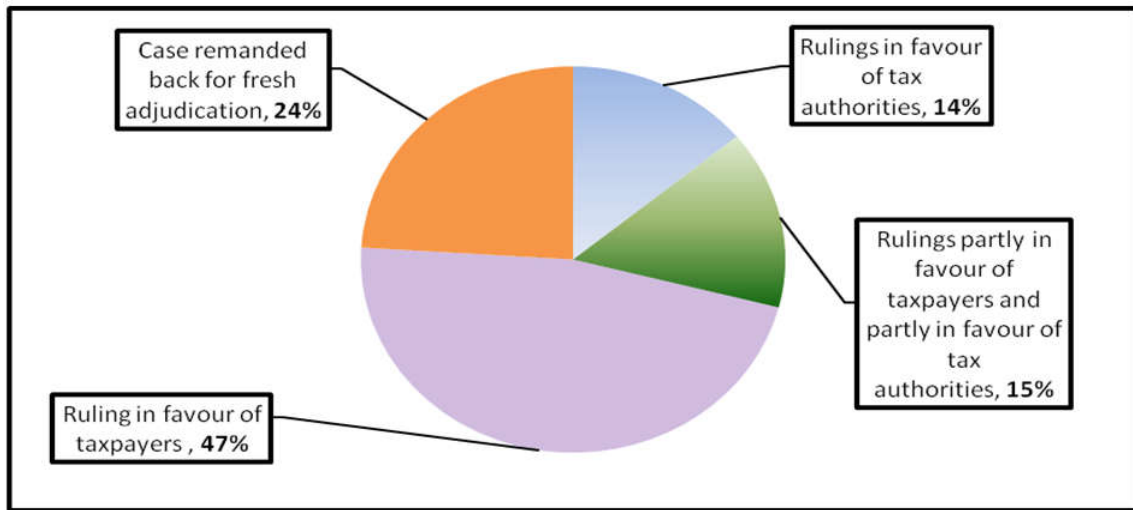
The researchers sought answer for questions pertaining to ten general issues in connection with Transfer Pricing. Their views have been summarised (Table-6) as under:

Table-6 deals with the sector-wise responses of the respondents pertaining to ten general issues pertaining to Transfer Pricing in India. All the (100 percent) respondents belonging to both manufacturing and service sectors, have agreed that Transfer Pricing is the most discussed tax topic today. An overwhelming 96.66% of respondents agreed that transfer Pricing is the most complex tax issue faced by the business and industry and 80% of the respondents felt that coping with frequently changing Transfer Pricing provisions is a difficult task. More than 95 percent of the respondents belonging to both the sectors agreed that cost of appeal and time taken in resolving an appeal discourages to file appeal against order of Transfer Pricing Officer. The time span of 8 year, stipulated to keep and maintain the necessary information after the end of the assessment year, is disagreed to by majority of the respondents of both the sectors. More than 80 percent of the respondents of both the sectors have expressed their discomfort towards the Transfer Pricing decisions of ITD in general.

The sector-wise study results indicate that the sector-based opinion of the respondents are not different to the opinion of the total respondents; only a minor variation which does not affect the direction of findings exists.

(B) Specific Issues

The researchers studied eight specific issues concerning the Transfer Pricing practices in India. The response of the corporate sector towards these issues have been summarised in Table-7.



Source: S. P. Singh, 2013, 'Safe Harbour, Advance Pricing Agreement and Normal Audit Process in India: Analysis of the Emerging Scenario', A Monthly Journal on International Taxation, Vol. 9, October

Figure 1. Analysis of the recent 781 judgements of the Income Tax Appellate Tribunals (ITAT)

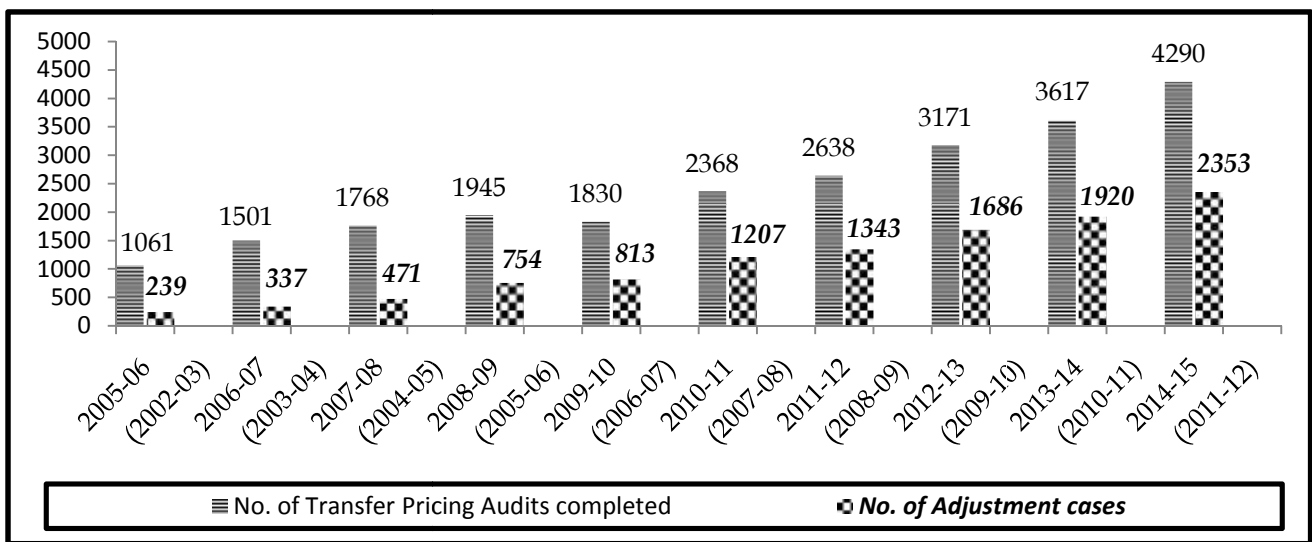


Figure 2. Chronological Number of Transfer Pricing Audits and Number of Adjusted Cases

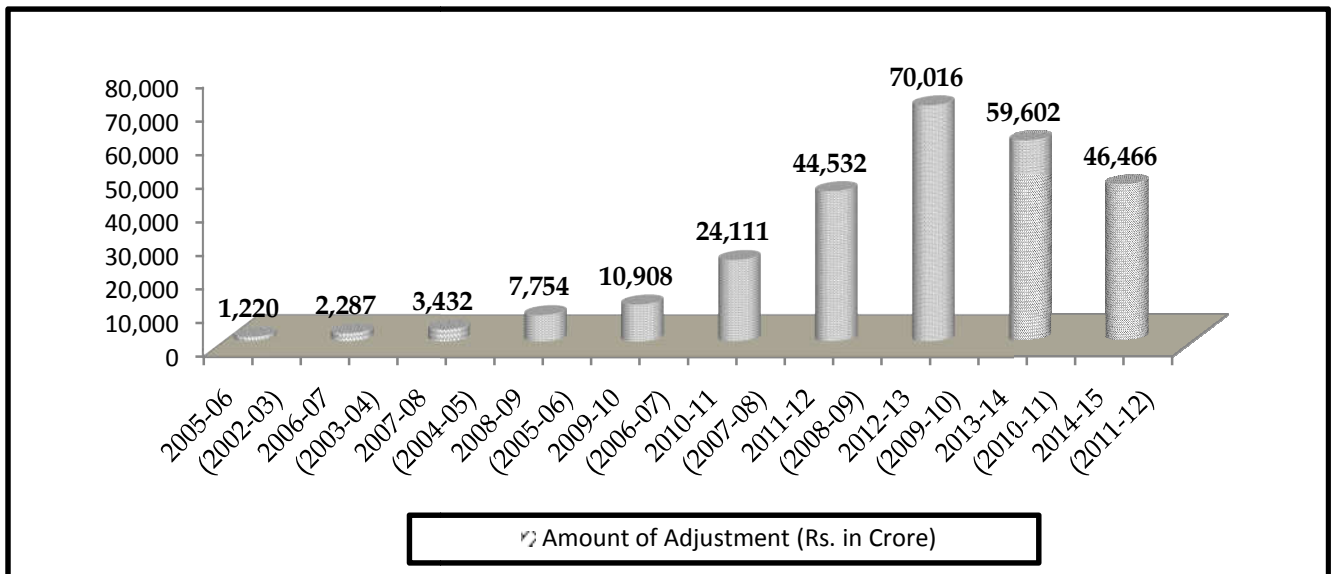


Figure 3. Transfer Pricing Amount Adjusted (Rs. in Crore)

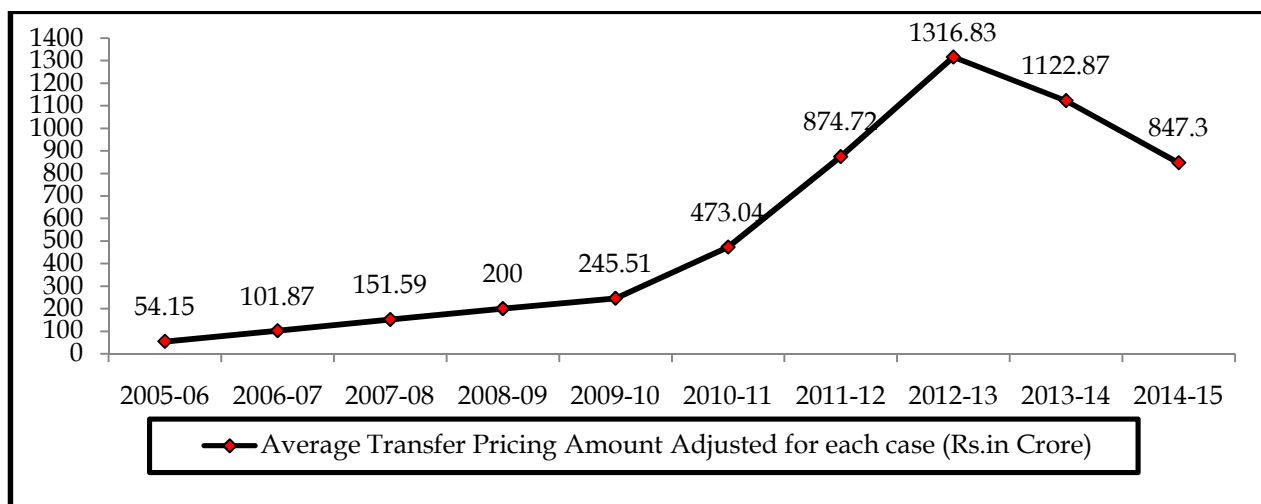


Figure 4. Average Transfer Pricing Amount Adjusted for each case (Rs.in Crore)

Table 3. Transfer Pricing Provisions and Rules under Indian Income Tax Act and Rules

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

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

Table 4. Documentation Requirements under Transfer Pricing in India

Rule	Requirement of Documents
10D(1)(a)	Description of ownership structure of the assessee with details of shares held in it by other enterprises.
10D(1)(b)	Profile of the Multinational group of which assessee is part <ul style="list-style-type: none"> ▪Particulars of each enterprise of the group ▪Ownership linkages among group enterprises at
10D(1)(c)	A broad description of: <ul style="list-style-type: none"> ▪Assessee's business. ▪Assessee's Industry. ▪Associated Enterprises with whom assessee transacted business.
10D(1)(d)	A registrar/list of individual international transactions or SDTs as the case may be entered into by the assessee with each of its Associated Enterprises.
10D(1)(e)	Functional Analysis/Functions Assets Risks (FAR) Analysis.
10D(1)(f)	A record of the economic and market analysis, forecasts, budgets 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 un controlled transactions.
10D(1)(h)	A record of comparability analysis.
10D(1)(i)	A description of methods considered for determining ALP. 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 determining ALP's.
10D(1)(k)	The assumptions, policies, negotiations, if any, which have critically affected the determination of the arm's length price.
10D(1)(l)	Details of adjustments to Transfer Pricing to align them to ALP's and consequent adjustments to total income.

Source: C.A. Srinivasan Anand G, 2012, 'Transfer Pricing Audit', A Monthly Journal on Corporate Professionals Today, Taxmann's Publication, Vol.25, Pp.339-340.

Table 5. Transfer Pricing Adjustments in India (2005-06 to 2014-15)

S.No.	Transfer Pricing Audit Year	No. of Transfer Pricing Audits completed	No. of Adjustment cases	Adjustment cases as a % of number of Audits.	Amount Adjusted (Rs. in Crore)	Average Amount Adjusted for each adjusted case (Rs.in Crore)
1.	2005-06 (2002-03)	1061	239	22.53	1,220	54.15
2.	2006-07 (2003-04)	1501	337	22.45	2,287	101.87
3.	2007-08 (2004-05)	1768	471	26.64	3,432	151.59
4.	2008-09 (2005-06)	1945	754	38.77	7,754	200.00
5.	2009-10 (2006-07)	1830	813	44.43	10,908	245.51
6.	2010-11 (2007-08)	2368	1207	50.97	24,111	473.04
7.	2011-12 (2008-09)	2638	1343	50.91	44,532	874.72
8.	2012-13 (2009-10)	3171	1686	53.17	70,016	1316.83
9.	2013-14 (2010-11)	3617	1920	53.08	59,602	1122.87
10.	2014-15 (2011-12)	4290	2353	54.85	46,466	847.30

Source: 1. Compiled from Annual Reports, Ministry of Finance (Budget Division), Government of India.

2. Figures in the bracket indicate relevant assessment year.

Table 6. Respondents' Opinion about General Issues of Transfer Pricing in India

S. No.	Statements on General Issues of Transfer Pricing	Opinions					
		Yes			No		
		M	S	Total	M	S	Total
1.	Transfer Pricing has become the most discussed tax topic today in corporates.	86	64	150	00	00	00
		(100)	(100)	(100)	(00)	(00)	(00)
2.	Transfer Pricing is one of the most complex tax issues faced by the business.	84	61	145	02	03	05
		(97.67)	(95.32)	(96.66)	(2.33)	(4.68)	(3.34)
3.	Coping with frequently changing Transfer Pricing provisions is a difficult task.	73	47	120	13	17	30
		(84.88)	(73.43)	(80)	(15.12)	(26.57)	(20)
4.	Corporates are comfortable with the Transfer Pricing decisions of the Assessing Officer (AO)/Transfer Pricing Officer (TPO).	11	14	25	75	50	125
		(12.79)	(21.87)	(16.66)	(87.21)	(78.13)	(83.34)
5.	AO/TPO excludes low margin comparables while deciding about the comparables.	68	47	115	18	17	35
		(79.06)	(73.43)	(76.66)	(20.94)	(26.57)	(23.34)
6.	Finding expert human resource for preparation of documentary evidences pertaining to the Income Tax returns involving Transfer Pricing transactions is difficult.	74	47	121	12	17	29
		(86.05)	(73.44)	(80.67)	(13.95)	(26.56)	(19.33)
7.	Indian Government has not put enough effort to solve the problem of increasing Transfer Pricing litigations.	69	43	112	17	21	38
		(80.23)	(67.18)	(74.66)	(19.77)	(32.82)	(25.34)
8.	Time period of 8 years to keep and maintain the necessary information after the assessment year is acceptable.	28	30	58	58	34	92
		(32.55)	(46.87)	(38.66)	(67.45)	(53.13)	(61.34)
9.	Cost of appeal discourages corporates in going for appeal.	83	59	142	03	05	08
		(96.52)	(92.19)	(94.67)	(3.48)	(7.81)	(5.33)
10.	Time taken in resolving the appeal discourages going for appeal.	72	43	115	14	21	35
		(83.73)	(67.18)	(76.66)	(16.27)	(32.82)	(23.34)

Source: Field Survey.

Note: 1. Figure in parenthesis are percentage to the total.

2. M – Manufacturing Sector and S – Service Sector.

Table 7. Respondents' Opinion about Specific Issues of Transfer Pricing in India

S.No.	Specific Issues of Transfer Pricing	Sector	Opinion					Total
			HS	S	NSNDS	DS	HDS	
			In %	In %	In %	In %	In %	
1.	Documentation procedure	M	35	41	05	02	03	86
		S	13	43	03	05	00	64
		Total	48	84	08	07	03	150
		In %	(32)	(56)	(5.34)	(4.66)	(02)	(100)
2.	Stages of clearances	M	06	68	08	04	00	86
		S	05	50	07	01	01	64
		Total	11	118	15	05	01	150
		In %	(7.34)	(78.66)	(10)	(3.34)	(0.66)	(100)
3.	Methods applied in deciding Arm's Length Price	M	01	55	14	12	04	86
		S	01	37	13	11	02	64
		Total	02	92	27	23	06	150
		In %	(1.33)	(61.33)	(18)	(15.34)	(04)	(100)
4.	Audit procedure	M	00	20	24	35	07	86
		S	01	21	09	27	06	64
		Total	01	41	33	62	13	150
		In %	(0.66)	(27.33)	(22)	(41.35)	(8.66)	(100)
5.	Penalties for non-compliance of Transfer Pricing provisions	M	01	66	07	10	02	86
		S	00	47	07	10	00	64
		Total	01	113	14	20	02	150
		In %	(0.66)	(75.33)	(9.34)	(13.34)	(1.33)	(100)
6.	Cooperation of Transfer Pricing authorities in Transfer Pricing decision process	M	02	06	20	41	17	86
		S	02	18	09	23	12	64
		Total	04	24	29	64	29	150
		In %	(2.66)	(16)	(19.33)	(42.67)	(19.34)	(100)
7.	Transfer Pricing Provisions and Rules	M	02	72	07	02	03	86
		S	02	51	07	02	02	64
		Total	04	123	14	04	05	150
		In %	(2.67)	(82)	(9.34)	(2.66)	(3.33)	(100)
8.	Overall system of Transfer Pricing	M	01	75	05	02	03	86
		S	03	47	09	05	00	64
		Total	04	122	14	07	03	150
		In %	(2.66)	(81.34)	(9.34)	(4.66)	(02)	(100)

Source: Field Survey. Note: 1. Figure in parenthesis are percentage to the total. 2. HS – Highly Satisfied, S – Satisfied, NSNDS – Neither Satisfied nor Dissatisfied, DS – Dissatisfied, HDS – Highly Dissatisfied. * M – Manufacturing Sector and S – Service Sector.

Table 8. Testing the difference in overall Respondents' Opinion towards Specific Issues of Transfer Pricing

Statistical Tool	Hypothesis on Specific Issues of Transfer Pricing based on overall corporate respondents' opinion		one sample t-test			Decision
			Test Value = 0			
			t	df	p-value	
one sample t-test	H ₀	The Corporate respondents have no significant relationship for 'Specific Issues' of Transfer Pricing.	35.21	149	0.070	Null rejected
	H _a	The Corporate respondents have significant relationship for 'Specific Issues' of Transfer Pricing.				

Source: Primary Data using SPSS v.20.

Table 9. Testing the difference in sector-wise respondents' opinion towards Specific Issues of Transfer Pricing

Statistical Tool	Hypotheses on Specific Issues of Transfer Pricing based on Sector-wise corporate respondents' opinion		one sample t-test				Decision
			t	df	p-value	Mean Difference	
one sample t-test	H ₀	There is no significant relationship between sector-wise response towards documentation procedure applicable to Transfer Pricing.	27.00	149	.000	1.987	Null rejected
	H _a	Documentation procedure applicable to Transfer Pricing.					
	H ₀	There is no significant relationship between sector-wise response towards stages of clearance applicable to Transfer Pricing.	43.36	149	.000	2.113	Null rejected
	H _a	Stages of clearance applicable to Transfer Pricing					
	H ₀	There is no significant relationship between sector-wise response towards methods adopted in deciding arm's length price for Transfer Pricing.	35.07	149	.000	2.593	Null rejected
	H _a	Methods adopted in deciding arm's length price for Transfer Pricing.					
	H ₀	There is no significant relationship between sector-wise response towards audit procedure under Transfer Pricing.	40.90	149	.000	3.300	Null rejected
	H _a	Audit procedure under Transfer Pricing.					
	H ₀	There is no significant relationship between sector-wise response towards penalties under Transfer Pricing provisions.	37.82	149	.000	2.400	Null rejected
	H _a	Penalties under Transfer Pricing provisions.					
	H ₀	There is no significant relationship between sector-wise response towards cooperation of Transfer Pricing authorities in Transfer Pricing process.	41.77	149	.000	3.600	Null rejected
	H _a	Cooperation of Transfer Pricing authorities in Transfer Pricing process.					
	H ₀	There is no significant relationship between sector-wise response towards Transfer Pricing Provisions and Rules.	39.18	149	.000	2.220	Null rejected
	H _a	Transfer Pricing Provisions and Rules.					
	H ₀	There is no significant relationship between sector-wise response towards overall system of Transfer Pricing.	40.93	149	.000	2.210	Null rejected
	H _a	Overall system of Transfer Pricing.					

Source: Primary Data using SPSS v.20.

Note: df – Degree of Freedom, H₀ – Null Hypothesis, H₁ – Alternative Hypothesis.

Table-7 reveals that the documentation procedure prescribed under Indian Transfer Pricing provisions has been accepted by more than 88 percent of the respondents, so also the stages of clearance involved in deciding the arm's length price, which is accepted by more than 86 percent of the respondents. Majority of the corporates have expressed their satisfaction regarding Transfer Pricing provisions and Transfer Pricing system as a whole. However, as regards to audit procedure and the cooperation of Transfer Pricing authorities in Transfer Pricing decision process the corporate participants expressed their reservations. The outcome of the results is that majority of the respondent-corporate houses are satisfied about six issues considered for the study and the other two issues have not been accepted, (since majority of the respondent-corporates are dissatisfied about them).

RESULTS AND DISCUSSION

The research data has been analysed by using one sample t-test as a tool to test the hypotheses. The results of the test are as under:

I. Specific Issues of Transfer Pricing

For the purpose of testing the relationship between all the corporate respondents vis-a-vis specific issues of Transfer Pricing in India the researchers applied one sample t-test to test the following alternative hypothesis.

It can be observed from table-8 that t-value 35.21, with 149 degree of freedom (df), has a p-value of 0.070, which is greater than 0.05. The null hypothesis is thus rejected and the alternative is accepted. Thus, it is inferred that the corporate respondents have significant relationship for specific issues of Transfer Pricing.

II. Sector-Wise Specific Issues

The following hypotheses have been drawn to test the difference in opinion of sector-wise (Manufacture and Service) respondents' opinion towards specific issues of Transfer Pricing.

From the analysis of the hypotheses stated in Table–9 it can be observed that the one sample t-test value lies in the rejected region for all the null hypotheses pertaining to specific Transfer Pricing issues viz., documentation procedure, stages of clearance, methods adopted in deciding arm's length price, audit procedure, penalties for non-compliance, cooperation of Transfer Pricing authorities in Transfer Pricing process, Transfer Pricing provisions and rules, and overall system of Transfer Pricing. The t- value for the above said issues are 27.00, 43.36, 35.07, 40.90, 37.82, 41.77, 39.18, and 40.93 respectively, with degree of freedom (for all specific issues of Transfer Pricing) being 149, p-value being .000 and mean difference being greater than 0.05 (+1.96) level of significance the null hypotheses are rejected. Consequently, it is concluded that there is significant relationship between sector-wise responses of the respondents towards specific issues of Transfer Pricing. A critical evaluation of test results makes the point also clear that the corporates are comfortable and happy in dealing with the 'Specific Issues', of Indian Transfer Pricing covered under the study.

Conclusion

Transfer Pricing is order of the day and its increasing relevance needs no exaggeration thanks to globalisation policies of the

countries around the globe. However, it is necessary that the Transfer Pricing policies and system of any tax jurisdiction should not be a hindrance in the efficient play of global economic partners. The study has revealed that Indian Transfer Pricing policies and system are not wholly rejected by the corporates. In fact most of the Indian Transfer Pricing regulatory provisions have been approved by the corporates. Never the less as a sequel to the analysis of corporates' it is desired that the Indian Government should initiate proper measures to ensure that the frequency in amendments to Transfer Pricing provisions is reduced, undue aggressiveness of the Transfer Pricing authorities is tapered, documentary compliance requirements are eased, appeals are disposed timely and cooperation of authorities is enhanced. It is necessary that Indian Transfer Pricing system is leveled-up to international benchmarks like OECD regulations. These measures will go a long way in improving the Transfer Pricing regulation for the benefit of both the corporates as well as the Government.
