

NOTES AND COMMENTS**Tax Liability Issues of Transfer Pricing in International Transactions with specific reference to the Partial Intellectual Property**

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Abstract

The Government acts as the parent and protects its people like children. Initially, Government was entrusted with the duty of protector but now the government functions for the development of people and to increase the standard of living. Government is a welfare state and utilizes all money for the development of its people. The government may accumulate revenue through different methods such as fees collected for government, direct tax, indirect taxes, providing license for business or individual performance, fines collected for the violation of traffic rules, etc., and collected revenues spent for people. The tax is one of the major sources of revenue collected based on income and consumption. Intellectual property is the property created by human intellectual, skill and intellectual labour, etc., The present research plans to drive the study towards how partial intellectual property escapes from tax liability. Generally, these transactions are done between two custom frontiers of different territories. As per Income Tax Act-1961, these transactions are covered under the name of transfer pricing. But, it covered tangible property, services, and financial transactions. Income tax provisions and methods are not useful for levy tax on the transfer of partial intellectual property and other intellectual property. Multinational companies have appointed technical experts to exclude tax liability by invoking tax loopholes. There are various methods used to evade the tax liability of the above-

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mentioned transactions. The research will identify the research gaps and fill those gaps with appropriate suggestions.

Keywords: *Consumption, Financial, Government, Income, Intellectual property, Transfer pricing.*

I. Introduction

Tax is a mandatory payment collected from the people and utilized for the welfare of the people. Though the concept of tax collection cannot be a new idea for India but has confronted various changes even after the enactment of Indian Constitution. The system of tax collected developed from ancient days. In ancient days, King ruled undivided India. King protected their territory by their protector. The soldier's salary was collected in the name tax. Now, the timeline has changed with a new objective. The taxes are collected and utilized for the public. Every authority can get power under sovereign legislation. The Constitution of India distributes the power among the three organs of the Government. Every organ is designated to commit to a unique activity. First and foremost, an organ is the Parliament; it is confined to the power of enactment of the law. The second organ, the Executive, has the liability to execute the law enacted by the Parliament or State legislature. The taxpayer or executive finds difficulty in applying the law. In that situation, the taxpayer may approach the judiciary to remove the discrepancy in tax law. Parliament or State Legislature can enact the taxing statute and enforce it through the executive organ. The tax bill is enacted by the Parliament or Legislature and enforced by the executive organ. Tax discrepancies were applied and removed by the judiciary.

As per the Indian Constitution, "No tax shall be levied or collected except authority by law."³ The tax should be levied and collected by the authority of law. Directly, the tax provision shall be very clear and explicit in levy and collection of tax. This research topic is very well relevant to the income tax as well as the consumption based-tax.

³ The Constitution of India, 1950, Article 265, Act of Parliament, 1950 (India).

Over the past decades, transfer pricing has become an incredible problem in the world. 75% of the global economic are covered by multinational enterprises.⁴ Every enterprise owns many branches and subsidiaries throughout the world. The transactions that take place among them lead to affect the tax collection of the source country. These transactions are considered as the associated enterprise or related party transactions. Simply, the price is fixed or charged among the one goods or services of an enterprise from another part of the same enterprise. The prices are charged in the transaction of goods or services, and pricing the cross-border, intra-group transactions.⁵ It may relate to goods, intangibles, and services, including financial services.⁶ The research drove through issues and problems of transfer pricing transactions in India. How it contains the loopholes in levy and collection of tax on partial intellectual property.

II. Failure of Intellectual Property Taxation under Domestic Law

Generally, the taxing statute shall be the same at the domestic as well as international level. Otherwise, multinational companies could easily invoke the loopholes and evade paying the tax. India was prepared to regulate the transfer pricing regulation from 1939. It was executed and adopted from 1961. The concept of liberalization great impact on the Indian economy. Liberalization plays a vital role in the world economy too. A well-defined statute needs for maintaining the equilibrium among the companies and government with the ratio of profit to the multinational companies and tax given to the concerned country. On 01.04.2002, Income Tax Act⁷ included specific provisions from Sections 92 to 92-F and added some rules from rules 10 A to 10-E with effect on 21.08.2002.⁸

⁴ Justine Kyove and Katerina Streltsova, Globalization impact on Multinational Enterprises, Research gate, (June, 12, 2022, 11.05 A.M) https://www.researchgate.net/profile/Giuseppe-Cirella/publication/350878979_Globalization_Impact_on_Multinational_Enterprises/links/60781a4e8ea909241efe3b82/Globalization-Impact-on-Multinational-Enterprises.pdf?origin=publication_detail

⁵ 1 MUKESH BUTANI, TRANSFER PRICING- THE INDIAN LANDSCAPE, TWO DECADES ON 124 (Lexis Nexis 2021).

⁶ Taxmann, International Taxation, Taxmann, (June, 10, 2022, 10.06A.M), <https://www.taxmann.com/post/blog/781/specific-issues-in-transfer-pricing/>

⁷ The Income Tax Act, 1961, section 92 to 92F, No. 43, Acts of Parliament, 1961 (India).

⁸ The Income Tax Act, 1961, Rules 10 A to E, No. 43, Acts of Parliament, 1961 (India)

These provisions deal with the important definitions of transfer pricing, international transactions, and methods of computation of arm's length prices. The intellectual property had not been defined under Indian legislation. The World Intellectual Property Organization (WIPO), intellectual property refers to the "creation of mind, such as inventions; literary and artistic works; design; and symbols, names and images used in commerce."⁹ The above-mentioned definition fails to define the term partial intellectual property, non-completed research project, or failure of the invention. These loopholes accumulate the loopholes in international law too. According to the Income Tax Act, 1961, there is a definition for intellectual property only and not including the term of partial intellectual property. It is an actual loophole under Income taxes.¹⁰ Specifically, "any other similar item that derives its value from its intellectual content rather than its physical attributes."¹¹ Partial intellectual have less value than completed intellectual property, and they are sold in the name of failure in inventing the intangible, non-completed research and have not been covered under the category of physical value. The value is attached to every tangible and intangibles things in the world. A full-fledged intangible has more value than non-completed intellectual content. Even though, partial intellectual property was not protected under the intellectual property regime too. Due to that, multinational companies are fixing the lowest price and reducing their tax liability. There is no point to compare the price of partial intellectual property and traditional methods that fail under the tax chargeability. Arm's length price was used as a tool to fix the price or value of the transferred goods or services and cleared dealt under the Income Tax Rules, 1962. The property includes, "goods, article or intangible property."¹² This definition does not define the term partial intangible or non-completed research projects. There must be a specific definition needed for the partial intangible added into the tax legislation. It cannot apply the rules and regulations

⁹ World Intellectual Property Organization, <https://www.wipo.int/about-ip/en/> (Last visited June. 7, 2022).

¹⁰ Sandler and Daniel, Disputing Denied Downward Transfer pricing Adjustments, vol.67,CTJ, 281-208, 291, (2019), https://heinonline.org.egateway.chennai.vit.ac.in/HOL/Page?collection=journals&handle=hein.journals/cdntj67&id=324&men_tab=srchresults

¹¹ The Income Tax Act, 1961, section 92B (2) (ii)(l) No. 43, Acts of Parliament, 1961 (India)

¹² The Income Tax Rules, 1962, Rule 10A So. 969, dated 26-03-1962 (India).

of transfer pricing legislation. Generally, the arm's length methods are applied at international transactions or cross-border transactions.¹³ “Income tax authorities fix the arm’s length price with 6 common types of price fixation methods following:-

- (a) Comparable uncontrolled price method
- (b) Resale price method
- (c) Cost plus method
- (d) Profit split method
- (e) Transaction net margin method
- (f) Any other method prescribed by the Board”¹⁴

The above-mentioned methods are not useful for the fix the price of partial intellectual properties or intangible properties. Researchers tested arm’s length price methods with partial intellectual properties one by one.

a. Comparable Uncontrolled Price Method (CUP)

Income Tax authorities shall choose the best method to ascertain the price or profit of the cross-border transactions. The price or profit shall be compared between the controlled transactions and uncontrolled transactions. Controlled transactions means the transactions take place among associated enterprises. Uncontrolled transactions mean, the transactions take place between unconnected entities. The above-mentioned transactions applied with comply of conditions:-

- Compared transactions shall be same nature. Otherwise, it causes a negative effect in fixing the price.
- Reasonable differences or adjustments may be accepted unless such changes affect materially.

Every intellectual property is unique by its creation. The conditions of comparison will fail at the initial stage. The transaction price shall be the same in controlled and uncontrolled partial intellectual property transactions. Income

¹³ The Income Tax Act, 1961, Section 92C No. 43, Acts of Parliament, 1961 (India)

¹⁴ Ibid

tax authorities are unable to fulfil conditions of comparison. Finally, tax authorities did not maintain data or information about prior transactions¹⁵.

b. Resale Price Method

This method can be accessed at the first sale. The first transaction may be conducted between the associated enterprises in the preceding year, and the price may be lower than the current market price. How it applies in the course of a second sale. Income tax authorities find difficulties to get similar transactions of the second sale. Accurately, arm's length gross margin fixed with respect to the sales, general, any appropriate profit, and other administrative expenses. Partial intangibles are sold through the agent.¹⁶ The commission may increase the price of partial intangible. Comparable uncontrolled price methods conditions are applicable to the resale price method too. The cost-performing function plays a vital role in the Comparable uncontrolled price method and Resale price method. There is more number of the costs of a practical function declared, such as accounting or maintenance of practices, business structures or business experience. The reseller or agent may add the expenses incurred at research, development, and maintenance of the intangible property, such as intangible wants to keep in the freezer. Expenses are expensed by the reseller added with the price of products.¹⁷

The result did not get up to that level. Agent and Sub-agent indirectly increase the price of partial intangible. Agent act causes price increases in the partial intellectual property. The resale price margin will be affected by the act of the reseller. Intangible property shall be transferred with an exclusive right. The first question arises from the taxpayer side as the reseller holds the exclusive right during the transaction process. One of the most difficult tasks in the comparison data similar may not be available at the codified level. Benchmark comparison information is not available at every comparison. The transfer pricing officer or

¹⁵ Klynveld Peat Marwick Goerdeler (KMG), [http: https://assets.kpmg/content/dam/kpmg/ua/pdf/2016/12/UN_Manual_TransferPricing%20\(6\).pdf](https://assets.kpmg/content/dam/kpmg/ua/pdf/2016/12/UN_Manual_TransferPricing%20(6).pdf) (last visited jun. 7,2022).

¹⁶ DIVAKAR VIJAYASARATHY, LAW AND PRACTICE OF TRANSFER PRICING 42 (Bharat's 2020).

¹⁷ CA. Deepak Mantri, Benchmark under Transfer pricing, Taxguru, (June, 06,2022, 9.29 A.M), [http: https://taxguru.in/income-tax/benchmarking-transfer-pricing.html#google_vignett](http://taxguru.in/income-tax/benchmarking-transfer-pricing.html#google_vignett)

assessing officer may do a benchmark comparison to fix the price or profit over the transactions.¹⁸

c. Cost Plus Method

This method is applicable for companies that have the main function of manufacturing or service providers. This method did not acceptable in intangible property and is well used in tangible goods or services. Every expense made during the course of research and development is added as cost of making products or services. The following expenses are added under the cost plus methods:-

- The cost is directly incurred in manufacturing such as raw materials.
- Any expenses incurred on repairing charges or maintenance charges.

The above-mentioned methods lead to more negative effects in application. First and foremost, default is the level of the cost incurred and the market price of goods or services. The comparison may be defeated by the method accounting for inconsistencies and any other factors. Method of accounting can be different to the country to country. Comparison has focused on related party transactions alone. Therefore, this method is not useful for intangible property.¹⁹

d. Profit-split Method

In the general sense, the profit-split methods may be useful sometimes to ascertain the price or profit of the intangible property and methods suitable for tangible goods, trading activities, and financial transactions. This method applies to joint venture transactions.²⁰

Profit split methods identify the distribution of profit to the joint ventures. Such contributions may be calculated by the activities of enterprises, or risk taken by enterprises to complete the transaction or any other assets which are used in the course of transactions. ²¹The profits-split method shall evade the original value

¹⁸ The Income Tax Rules, 1962, Rule 10A So. 969, dated 26-03-1962 (India).

¹⁹ A. Arnab Basu, Transfer pricing in India, PWC, (June, 142, 2020, 10.05 A.M), <https://www.pwc.com/gx/en/international-transfer-pricing/assets/india.pdf>

²⁰ *Ibid.*

²¹ Clear Tax, Transfer pricing –Purpose & Methodologies, Clear Tax, (June, 16, 2020, 10.05 A.M) <https://cleartax.in/s/transfer-pricing>

of intangible and relative values only by taking them into account. This method calculates the gross profit first instance. Subsequently, mines the expenses incurred by each enterprise. Residual analysis may confirm with a two-step check-up and the following are considered as two steps-

- The profit split between the two enterprises and based on the basic contribution to purchase the product. The basic contribution may be verified by the comparable independent transaction with other associated enterprise transactions. This method is interlinked with Transactional Net Margin Method. The end result is called residual analysis.
- The allocation of residual profit is not applied to intangible property; apply with facts, and circumstances of the situation. Intangible property is assessed with help of relative value.

The profit split method was declared unsuccessful in the application. Accordingly, relative value inputs are not properly valued, and the interest in joint ventures is disputable. The foreign officials are not ready to give data to Indian tax officials and finally, the collection of data finds it difficult to ascertain the original comparison. Accounting practice is different from country to country. It causes confusion on ascertaining the original allocates costs and expenses incurred. Contribution analysis is not helpful to take similar transactions into the market. The second step always causes a problem to calculate the original valuation in intangibles.²²

e. Transaction Net Margin Method (TNMM)

This method is suitable for most products and services. But, it had not been chosen for the partial intangible property. It compares the operating activities or margins of companies to find out the arm's length price. The analysis uses FAR methods to catch the original comparison. FAR means, enterprise-performed function, assets used and risk assumed. TNMM methods are suitable for financial or other services.²³

²² Abhishek Sharma, Understanding Transfer Pricing Regulations in India, Taxguru, (June, 13,2022, 11.24.A.M), <https://taxguru.in/income-tax/understanding-transfer-pricing-regulations-india.html>

²³ BJORN HEIDECHE, INTANGIBLES IN THE WORLD OF TRANSFER PRICING 182 (Springer 2021) 446

FAR methods are the first method of TNMM and the second method least complex with related and unrelated transactions. The third step deals with the profit level indicator (PLI) and constraint on the operating profit ratio of the costs, sales, and assets. This step fails at the point of the intangible property. The last step is to analyze the benchmarking databases. Database information is not codified and is unconformity with all data. If any one conditions fail to fulfil, it will cause non-application of TNMM methods. It is not ready to consider the non-pricing factors and unreachable information about profits.²⁴ The following difficulties arise from the following information:-

- Sales income
- Operating expenditure
- Other activities of the controlled transactions.

For example, single enterprises purchase products from related and unrelated parties. It is difficult to ascertain the original value input in the purchase. Accordingly, results will face negative in applying to intangible property. Most countries are not interested in using this method. TNMM methods are not used on an individual basis and are used from the point of the combination of the Transactional net margin method and resale price methods. Otherwise, it leads to failure in fixing arm's length price.²⁵

The last method is the residuary method and is adopted for time being forced. Central Board of Direct Tax may have the right to declare any method to fix arm's length price. Income tax authorities or the Central Board of Direct Taxes shall frame a structure to levy and collect the tax on the partial intellectual property. The selection of appropriate methods causes many litigation issues among taxpayers and authorities. Tax authorities have the responsibility to give full liberty to present arguments concerning satisfactions of the arm's length principle. The taxpayer-controlled transactions history and its adjustments are

²⁴ Denis Syromyatinkov and Mariya Dologova, Transfer pricing in Emerging Markets, Vol.16,MJE,203,212,(2020),

<https://www.proquest.com/openview/7b373b1cb16b93cbdaf544766f9d3fd/1?pq-origsite=gscholar&cbl=1936346>

²⁵ Organization for Economic Co-operation and Development, http://read.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_0e655865-en#page168 (June, 14, 2022).

purely verified within the range of arm's length principle. Data shall be relatively equal and high in reliability.²⁶

III. Failure of Regulations and Guidelines of OECD

The law is like cement for society and maintains society without any break. The law has two different jurisdictions. Each law is applied within a particular sphere, like, as domestic and international law. Domestic law contains the provision for charging the tax on intra, and international transactions or cross-border transactions. Some international organizations deal with provision levy and collection tax among inter-country transactions. This inter-country transaction is fixed according to the international obligations, rules of international organizations, and multilateral treaties. Currently, we are following the Organization for Economic Co-operation and Development (OECD).²⁷ On 08.02.2021, OECD invited India to join hands with the Organization's Development Centre. Currently, India is the 27th member of the OECD and followed OECD guidelines.²⁸

The OECD gave guidelines for transfer pricing transactions. India is not ready to follow the Hard-to-value Intangible approach and other methods. It causes great imbalances in the economy and tax collection.²⁹ The OECD has already framed methods to levy and collect taxes on intellectual property. Hard-to-value intangible approaches are not useful intangibles. Further, it can be performed

²⁶ OECD, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT RELEASE 14 ADDITIONAL COUNTRY PROFILES, (June 14, 2022, 05.25 A.M) <https://www.oecd.org/tax/transfer-pricing/oecd-releases-14-additional-country-profiles-containing-key-aspects-of-transfer-pricing-legislation.htm> (June, 14, 2022, 05.32 A.M)

²⁷ OECD, ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT GUIDELINES, (June, 14, 2022, 05.32 A.M): <https://www.oecd.org/tax/beps/oecd-releases-latest-edition-of-the-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations.htm>.

²⁸ OECD, OECD TRANSFER PRICING GUIDELINES FOR MULTINATIONAL ENTERPRISES AND TAX ADMINSTRATIONS(June, 14, 2022, 05.47 A.M) <https://www.oecd.org/newsroom/indiajoinsoecddevelopmentcentre.htm>

²⁹ OECD, INDIA JOINTS OECD DEVELOPMENT CENTRE (June, 14, 2022, 06.24 A.M) <https://www.oecd.org/newsroom/indiajoinsoecddevelopmentcentre.htm#:~:text=08%2F02%2F2001%20%2D%20The,countries%20and%20the%20developing%20world.>

with some necessary changes in rules, and regulations. The OECD denotes that, traditional methods do not suitable for levying and collecting taxes on intellectual property transactions in cross-border transactions. The Indian legislation is explicitly rejected by the OECD guidelines. Some countries are following some methods to levy and collect taxes on intangibles with their methods. Either, India shall adopt the hard-to-value-intangible or best methods performed by other countries. Due to failure of choice, the Indian Government may lose their tax base on intangible transactions. Especially, Partial intellectual property does not have provisions under The Income Tax Act, 1961 as well as OECD guidelines. This default gave the gap to the taxpayer. The taxpayer may easily use this hole to escape from the purview of the payment of taxes. According to the tax, the taxing statute shall be certain with respect to the canon of taxation. Indian domestic law does not have sufficient provisions to deal with partial intellectual property. This non-added clause causes income escapement.³⁰

The Canon of taxation explicitly mentions that every taxing statute shall follow the canon of taxation. This loophole causes the canon of certainty. There are some methods used by the United States of America and the United Kingdom, advance pricing agreements with multinational companies, codification of comparison data, and other methods to levy tax on intangibles, etc. The advance pricing agreement shall be held between the multinational companies and concerned tax authorities. The agreement shall hold the liability for fixing the price of intangibles with mutual consent. Codification is the biggest issue in the world. OECD or any international authorities shall take responsibility for the codification of comparison data relevant intangible. Currently, this comparison data is available at the hand of private individuals. They can easily manipulate the data which is held by them. The manipulation may be reflected in the lowest price fixed by concerned multinational companies. At present, partial intangibles data is not available anywhere. It is very new to the income tax authorities and comparison of data also causes more problems in the fixation of the price of the product. The Good and Service Tax legislation does not have provisions to decide the value of intangible as well as partial intangibles. The real problem is not focused on price fixation. The actual problem is tuned with the identification of

³⁰ ADNAN ISLAM, INTERNATIONAL TAXATION (AICPCA) 286 (Wiley, 2020)

the best methods to fix the price of intangibles or partial intangibles. These problems may be solved by adopting appropriate suggestions by the researcher.³¹

A. Burden of Proof and Its Issues

The person who claims a legal stand is valid and has proved that stand with evidence. The burden of proof cannot be the same in all countries. In some countries, the burden of proof is vested with the taxpayers or tax authorities. OECD countries do not have similarities in applying the concept of burden of proof. For example; as per domestic law, the taxpayer does not have a legal obligation to prove the fair price of transfer pricing. Unless the tax administration proves the prima facie as there is contravention between the price ascertained by the tax authorities as well as Arm's length price. Due to that, the taxpayer shall submit all documents to conclude the reason for his statement. Taxpayer document authenticity will speak about the originality in price fixation. In some countries, the taxpayer has a duty to follow and submit the documents relevant to the transfer pricing. The taxpayer default causes negative effects on tax liability. Further, tax authorities assume the actual income of taxpayers and charge for the income.³² The taxing statute shall ensure good co-operation among both parties. Otherwise, it causes difficulty for both parties, and plenty of litigation will arise.

Generally, the burden of proof cannot be vested with the same parties. It may be shifted in the course of a dispute or litigation. Initially, the taxpayer has the burden of proof and proves the transfer pricing comply requirements under the taxing statute. Thereafter, tax authorities will get responsibilities to disprove the statement of taxpayers. In other ways, the judiciaries decide the dispute in favor of the taxpayers.³³ The controlled transactions are done among the associated enterprises. Such transactions may be held between the two different country jurisdictions. The first country has burden proof vested in taxpayers. A second tax jurisdiction country declared the burden of proof with tax authorities. This inconsistently directly affects the single decision, and never comes under the

³¹ *Ibid.*

³² *Ibid.*

³³ DELOITTE, TRANSFER PRICING LAW AND PRACTICE IN INDIA INCLUDING BEPS 213 (Wolters Kluwer 2019).

single umbrella. This issue will create a source for double taxation and litigation. The taxing legislation shall take a necessary technique to fix common the platform on the burden of proof, and shifting of the burden of proof. The concept of burden proof is misled by the taxpayers or tax authorities. Both parties shall have a duty to continue the good faith in the preparation and submission of transfer pricing. According to current issues, both parties do not hold the proper evidence to prove the fair price. Taxing statutes are already available with loopholes in the price-fixing mechanisms. Unless sufficient provisions are framed by the concerned authorizes, issues will not get a conclusion.

i. Double Taxation and Transfer Pricing Issues

The government cannot levy taxes twice for single transactions. Usually, the tax is levied based on the source-based or residence-based. Source-based taxation means, the tax levied based on the income accumulated from sources or places where income is accrued. Residence-based taxation means the taxpayer's liability is fixed based on the residential status. Residential status is divided into different types; resident, non-resident, ordinary resident and non-ordinary resident. The tax liability may be lower or higher based on the number of days resided in the particular country. Intangible property transactions are held between the associated enterprises or controlled transactions. In that circumstances, associated enterprises may be situated in different countries and responsible for their own country.³⁴ A single transaction shall not be taxed twice by two countries. These two countries have their double taxation avoidance agreement and ensure the single levy and collection of taxes. The associated enterprises' transactions are tagged as controlled transactions. Such controlled transactions tax liability may be different from uncontrolled transactions. The act comparison will fail at this time. The tax authorities or taxpayers shall test the reliability of comparison data. The double taxation issues are raised by the concept of permanent establishment. The permanent establishment shall fulfil the following two conditions, such as, there must be a fixed place of business or foreign enterprises business shall be wholly or partly carried on.³⁵ From one point in

³⁴ *Ibid.*

³⁵ R.Kumar, Analysis of the word 'Permanent Establishment', TAXGURU (June, 15, 2022, 10:22 A.M), <https://taxguru.in/income-tax/permanent-establishment-parti.html>

time, the taxpayer fixed the lowest price and escape from the tax liability. Other side, taxpayers are double-taxed in two different countries. The double taxation created more problems including, foreign direct investment, cash flows among the countries, and blocking international trade. There are plenty of issues accumulated in the course of intangibles transactions.³⁶

IV. Failure of Price Comparison under Transfer Pricing

Income tax legislation clearly states that; select the appropriate method to calculate the arm's length price. Uncontrolled comparisons are always a lesser degree of originality in actual practice. This comparison should be used fruitfully by taxpayers, authorities, and third parties. The taxpayer shall support the transaction with perfect comparison details. Authorities hold the compared transaction to increase the strength of comparison. The comparison information shall be available to the third party and ensure the originality of the information. Information or data must be authenticated and the selection of data based on the facts and circumstances of the cases.³⁷ The study establishes five issues in time comparability and listed the followings:-

- **Origin of Timing:** Transactions choose from contemporaneous in nature. The transaction price shall fulfil the criteria of the independent parties or contemporaneous uncontrolled transactions. Comparison factors should fulfil a similar economic scenario in controlled and uncontrolled transactions.
- **Collection of Timing:** data or information collected is eligible to compare the controlled and uncontrolled transactions. Tax authorities take into account economic and market changes of uncontrolled transactions over years.
- **Valuation of highly uncertain or unpredictable event:** The intangible is unique and valuation is always an uncertain or unpredictable event. It

³⁶ SANDRA MARTINHO FERNANDES, INTERNATIONAL DOUBLE TAXATION OF INTEREST; ASSESSING RECENT DEVELOPMENTS IN THIN CAPITALIZATION REGIMES 79 (IBFD Doctoral Series).

³⁷ Virendra Chaturvedi, Transfer pricing study- A simplified view, Taxguru, (June, 14,2022, 04.35P.M) <https://taxguru.in/income-tax/transfer-pricing-study-simplified-overview.html>

contains adjustments and re-negotiation in uncontrolled transactions among the associated enterprises.

- Data used from the following year: taxpayers shall avoid the use of recollected information or manipulated information or data to ascertain the transfer pricing transactions. Every transaction shall ensure the conduct of parties on an equal scale and other factors too.
- Multiple years of data: This data is not possible at every moment. Transaction history of the relevant transaction shall be considered to check the economic status and losses in relevant years. It is very difficult to find the data or information. The advantages of multiple years of data strongly confirm the authenticity of information or data.

The above-mentioned issues may arise at the time of user comparison of data. Codification of data finds a vital role in the fixation of the real price of intangibles. Price fixation is not a new problem for India and other countries. As per the OECD new manual, the term partial intangibles had not been discussed anywhere.³⁸ The problems are not solved by the OECD. OECD's new manual may not be the solution for the levy of tax on intangibles. Direct charge methods mean, that authorities can directly charge the transaction price among the intra-group transactions. Multinational companies are voluntarily putting the lowest prices to evade tax payments. Cost contribution arrangements are done between multinational companies or joint ventures. These arrangements are identified with help of the contribution or risks of two group companies, and intra-group companies. The companies may share the low-cost arrangement to exclude the tax payment. OECD manual will not be useful to fix the price for intangibles or partial intangibles.

V. Conclusions and Suggestions

In light of the above discussion, the research concludes with a solution for the problem. The transfer pricing issues are not new for India. Especially, Partial

³⁸ Organization for Economic Co-operation and Development, OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, (June, 14,2022, 04.35P.M)https://read.oecd-ilibrary.org/taxation/oecd-transfer-pricing-guidelines-for-multinational-enterprises-and-tax-administrations-2022_0e655865-en#page151

intellectual property causes an unascertained or unpredictable fixation of price. The taxing legislation shall be very clear concerning the canon of taxation. Research had tested all the best methods to fix the arm's length price in the transactions. Tax authorities and Government should take necessary measures to fix the particular methods for pricing the partial intangibles and codification of data or information. Again, intangible properties become the untouchable area from taxation. The partial intangible provisions are missed at the domestic and international levels.

Finally, the OECD structured guidelines to remove barriers at levy and collection of tax on intellectual property. Nevertheless, they forget to add partial intellectual property. In the context of the High-value intangible approach shall be implemented with appropriate changes in the domestic law. The research suggested some valuation suggestions to phase the loopholes in the research problem

- Income tax authorities or the Central Board of Direct Taxes shall prepare a transfer pricing manual for the levy and collection of tax from the sale of partial intangible property in international or cross-border transactions. This manual must cover taxpayer perspective as well as income tax authorities.
- The income tax authorities shall contain the definition of intellectual property under the Income Tax Act, 1961 and other provisions for valuation and fixation of provision for the partial intangible properties.
- OECD member countries have introduced the hard-to-value-intangible in domestic law. Nevertheless, India is not ready to implement that approach which causes revenue to escape. It can be phased by property implementation and follow the OECD guidelines.
- Benchmark data or information of comparison shall be codified by the concerned authorities at the domestic as well as international level.
- Authorities should ensure a specialized dispute resolution mechanism to handle the disputes of price fixation and other issues in the transfer pricing transactions.
- The concept of advance pricing agreement shall hold between the Multinational companies and tax authorities. It evades unwanted issues by dealing with transfer pricing issues.

- Double Taxation Avoidance Agreement should have the clause of partial intellectual property and how it can be taxed at the hands of contracting states. The United Kingdom has followed the advanced pricing agreement with multinational companies and its decreased the future problems in transfer pricing issues.
- The United States of America has a specialized agency to verify the transfer pricing and codified the data or information of comparison.