

# ADVANCE RULINGS



## LEARNING OUTCOMES

After studying this Chapter, you will be able to–

- ❑ **comprehend** the meaning and scope of the term “advance ruling” and the need for obtaining advance ruling;
- ❑ **understand** the constitution of Board for Advance Rulings;
- ❑ **appreciate** the procedure for making an application to the Board for Advance Rulings and the procedure to be followed by the Board on receipt of application;
- ❑ **know** the circumstances when an advance ruling can be declared void.



## 23.1 BOARDS FOR ADVANCE RULINGS – AN INTRODUCTION

Three Boards for Advance Rulings have been constituted for giving advance rulings on or after 1.9.2021. Every such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board. The ruling pronounced or order passed by the Board for Advance Rulings is appealable before the High Court. The Finance Act, 2021 has empowered the Central Government to make a scheme by notification in the Official Gazette for the purpose of giving advance ruling by Boards for Advance Rulings to impart greater efficiency, transparency and accountability by eliminating interface between the Boards for Advance Rulings and the applicants to the extent technologically feasible, by optimising utilisation of resources and introducing dynamic jurisdiction.



## 23.2 CONSTITUTION OF BOARD FOR ADVANCE RULINGS [SECTION 245-OB]

One or more Boards for Advance Rulings, as may be necessary, shall be constituted by the Central Government for giving advance rulings under Chapter XIX-B with effect from a date appointed by notification in the Official Gazette. Accordingly, the Central Government has, in exercise of such powers, vide Notification No.96/2021 dated 1.9.2021, constituted three Boards for Advance Rulings, for the purposes of giving advance rulings under Chapter XIX-B on or after 1.9.2021. Board for Advance Rulings – I and Board for Advance Rulings – II have their headquarters in Delhi and Board for Advance Rulings – III has its headquarters in Mumbai.

Every such Board for Advance Ruling shall consist of two members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board.



## 23.3 DEFINITIONS

(1) **Advance Ruling [Section 245N(a)]:** The meaning of Advance Ruling is detailed hereunder:

Section	Determination by the Board for Advance Rulings
245N(a)(i)	in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant.

245N(a)(ii)	in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident and such determination shall include the determination of any question of law or of fact specified in the application.
245N(a)(iia)	in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant and such determination shall include the determination of any question of law or of fact specified in the application.
245N(a)(iii)	in respect of an issue relating to computation of total income which is pending before any Income-tax Authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or fact in relation to such computation of total income specified in the application.
245N(a)(iv)	or decision whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not.

(2) **Applicant [Section 245N(b)(A)]:** 'Applicant' means any person who –

- (i) is a non-resident referred to in section 245N(a)(i) above; or
- (ii) is a resident referred to in section 245N(a)(ii) above; or
- (iii) is a resident referred to in section 245N(a)(iia) above falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify.

*[A resident in relation to his tax liability arising out of one or more transactions valuing ₹ 100 crore or more in total which has been undertaken or is proposed to be undertaken would be an applicant – Notification No.73/2014 dated 28.11.2014]; or*

- (iv) is a resident falling within such class or category of persons as the Central Government may, by notification in the Official Gazette, specify in this behalf

*[Public sector company as defined under section 2(36A) of the Income-tax Act, 1961 would be an applicant – Notification No. 725(E) dated 3.8.2000]; or*

- (v) is referred to in section 245N(a)(iv) above; and

who makes an application for advance ruling under section 245Q(1).

Who can be an applicant in relation to different clauses of section 245N(a) defining advance ruling?		
S. No.	Applicant u/s 245N(b)	Advance Ruling u/s 245N(a) means determination by the AAR in relation to
(i)	Non-resident (NR)	a transaction which has been undertaken or is proposed to be undertaken by him.
(ii)	Resident	the tax liability of a NR arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such NR and such determination shall include the determination of any question of law or of fact specified in the application.
(iii)	Resident of class or category of persons notified by Central Government	the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant and such determination shall include the determination of any question of law or of fact specified in the application.
	<b>Note:</b> The Central Government notified a resident, in relation to his tax liability arising out of one or more transactions valuing ₹ 100 crore or more in total.	
(iv)	Resident of class or category of persons notified by Central Government	n issue relating to computation of total income which is pending before any Income-tax Authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or fact in relation to such computation of total income specified in the application.
	<b>Note:</b> A public sector undertaking has been notified by the Central Government.	
(v)	Resident or NR	whether an arrangement, which is proposed to be undertaken by any person being a resident or a NR, is an impermissible avoidance arrangement as referred to in Chapter X-A or not.

**Restrictions on Appellate Authority:** Section 245RR provides that where a resident applicant has made an application to the Board for Advance Rulings in respect of an issue for decision of Board for Advance Rulings, then, no Income-tax Authority or Tribunal shall take any decision in respect of such issues. In other words, a resident assessee cannot pursue both the remedies, i.e., an appeal or revision before Income-tax Authority/Appellate Authority as well as an application for Advance Ruling to Board for Advance Rulings, in respect of an issue.

## 23.4 VACANCIES, ETC., NOT TO INVALIDATE PROCEEDINGS [SECTION 245P]

A proceeding before, or pronouncement of advance ruling by, the Board for Advance Rulings would not be questioned or would not be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Board for Advance Rulings.

## 23.5 APPLICATION FOR ADVANCE RULING [SECTION 245Q]

Section 245Q(1) provides that an applicant desirous of obtaining an advance ruling may make an application stating the question on which the advance ruling is sought in the prescribed form and in the prescribed manner.

As per section 245Q(2), the application shall be made in quadruplicate<sup>1</sup> and be accompanied by a fee of ₹ 10,000 or such fee as may be prescribed, whichever is higher.

Rule 44E prescribes the fees mentioned in column (3) to be paid by the applicant mentioned in column (1) in the cases of column (2).

Category of applicant	Category of case	Fee
(1)	(2)	(3)
An applicant referred to in sub-clauses (i) or (ii) or (iia) of clause (b) of section 245N	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought does not exceed ₹ 100 crore.	₹ 2 lacs
	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds ₹ 100 crore but does not exceed ₹ 300 crore.	₹ 5 lacs
	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds ₹ 300 crore.	₹ 10 lacs
Any other applicant	In all cases	₹ 10,000

Rule 44E prescribes the form of application for obtaining an advance ruling. Every application under Rule 44E shall be accompanied by the proof of payment of fees.

Section 245Q(3) provides that an applicant may withdraw an application within 30 days from the date of the application.

<sup>1</sup> As per Rule 44E, the application of advance ruling needs to be made by the applicant through his/its registered e-mail address.



## 23.6 PROCEDURE ON RECEIPT OF APPLICATION [SECTION 245R]

The Board, on receipt of an application, will send a copy to the Principal Commissioner or Commissioner concerned and wherever considered necessary, also call upon the Principal Commissioner or Commissioner to furnish relevant records. Such records will be returned to the Principal Commissioner or Commissioner as soon as possible.

After examining the application and the records called for, the Board may either allow or reject an application. However, the Board **shall not allow** an application where the question raised in the application is:

<b>Pending with income-tax authorities/tribunal/court</b>	is already pending before any income-tax authority, or Appellate Tribunal or any court. However, a resident falling within any class or category of persons as notified by the Central Government can seek for advance ruling even if question raised is pending before any income-tax authority or Appellate Tribunal.
<b>Determination of Fair Market Value</b>	involves the determination of the fair market value of any property;
<b>Transaction designed for avoidance of income-tax</b>	relates to a transaction or issue which is designed <i>prima facie</i> for avoidance of income-tax (except in case of a resident applicant falling within any class or category of persons as notified by the Central Government or in the case of resident or a non-resident for determination of whether an arrangement, which is proposed to be undertaken, is an impermissible avoidance arrangement).

However, no application shall be rejected unless an opportunity has been given to the applicant of being heard. Further, where an application is rejected, the reason for rejection shall be given in the order. A copy of every order shall be sent to the applicant and to the PCIT/CIT.

Where an application is allowed, the Board would pronounce its advance ruling on that question specified in the application, after examining such further material as may be placed before it by the applicant or obtained by the Board. Where a request is received from an applicant, the Board has to provide an opportunity of being heard, either in person or through a duly authorised representative, before pronouncing its advance ruling.

**Time limit for pronouncement of advance Ruling** - The Board has to pronounce the advance ruling **within 6 months** from the receipt of application by the Board. A copy of advance ruling pronounced, duly signed by the Members and certified, has to be sent to the applicant and to the PCIT/CIT, as soon as may be, after pronouncement.

**Faceless Scheme for Advance Rulings** - The Central Government is empowered to make a scheme by notification in Official Gazette for the purpose of giving advance rulings so as to

impart greater efficiency, transparency and accountability by:

- (i) eliminating the interface between the Board for Advance Rulings and the applicant in the course of proceedings to the extent technologically feasible;
- (ii) optimising utilisation of the resources through economies of scale and functional specialisation;
- (iii) introducing a system with dynamic jurisdiction.

**Applicability or non-applicability of other provisions of the Act [Section 245R(10)]** - The Central Government may, for the purpose of giving effect to the above scheme, by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with such modification, exceptions and adaptations as specified.

Though no such direction can be issued by the Central Government after 31<sup>st</sup> March, 2023, the Central Government may amend any direction, issued on or before 31.3.2023, by notification.

**Notification issued above to be laid before each House of Parliament [Section 245R(11)]** - Every such notification issued by the Central Government either under sub section (9) or (10) of the section 245R has to be laid before each House of Parliament as soon as may be after issue of such notification.



## 23.7 ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 245T]

Where the Board for Advance Rulings finds, on a representation made to it by the PCIT/CIT or otherwise, that an advance ruling pronounced has been obtained by the applicant by fraud or misrepresentation of facts, the Board may, by order, declare such ruling to be *void ab initio*.

The provisions of the Income-tax Act, 1961 would apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this section) to the applicant as if such advance ruling had never been made.

A copy of this order has to be sent to the applicant and the Principal Commissioner or Commissioner.



## 23.8 POWERS OF THE BOARD FOR ADVANCE RULINGS [SECTION 245U]

The Board for Advance Rulings shall have all the powers of the Civil Court in respect of discovery and inspection, enforcing the attendance of any person, including any officer of a banking

company and examining on oath, issuing commissions and compelling the production of books of accounts and other documents. The Board shall be deemed to be a Civil Court for the purposes of section 195 of the Code of Criminal Procedure, 1973 which provides for prosecution for contempt of lawful authority of public servants, for offences against public justice. Every proceeding before the Board shall be deemed to be a judicial proceeding under the Indian Penal Code.

However, the Board shall not be deemed to a Civil Court for the purpose of Chapter XXVI of the Code of Criminal Procedure, 1973 containing the provisions as to offences affecting the administration of justice.



## 23.9 APPEAL [SECTION 245W]

**Appeal to High Court by applicant [Section 245W(1)]** - The applicant who is aggrieved by any ruling pronounced or order passed by the Board for Advance Rulings or the Assessing Officer, on the directions of the Principal Commissioner or Commissioner, may appeal to the High Court against such ruling or order of the Board of Advance Rulings. He has to do so within **sixty days from the date of the communication** of that ruling or order, in the prescribed form and manner.

However, where the High Court is satisfied, on an application made by the appellant in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the 60 day period as specified above, it may grant further period of 30 days for filing such appeal.

**Appeal to High Court by Assessing Officer [Section 245W(2)]** - For the purpose of appeal to the High Court by the Assessing Officer, the Central Government is empowered to make a scheme by notification in Official Gazette so as to impart greater efficiency, transparency and accountability by:

- (i) optimising utilisation of the resources through economies of scale and functional specialisation;
- (ii) introducing a team-based mechanism with dynamic jurisdiction.

**Applicability or non-applicability of other provisions of the Act [Section 245W(3)]** - The Central Government may, for the purpose of giving effect to the above scheme, by notification in the Official Gazette, direct that any provision of the Income-tax Act, 1961, would not apply or would apply with such modification, exceptions and adaptations as specified.

No such direction can, however, be issued by the Central Government after 31<sup>st</sup> March, 2023.

**Notification issued above to be laid before each House of Parliament [Section 245W(4)]** - Every such notification issued by the Central Government either under section 245W(2)/(3) has to be laid before each House of Parliament as soon as may be after issue of the said notification.



## TEST YOUR KNOWLEDGE

### Questions

1. Q, a non-resident, made an application to the Board for Advance Rulings on 3.4.2024 in relation to a transaction proposed to be undertaken by him. On 1.5.2024, he decides to withdraw the said application. Can he withdraw the application on 1.5.2024?
2. Examine when can an advance ruling pronounced by the Board for Advance Rulings be declared void. What is the consequence?
3. The Board for Advance Rulings has the powers of compelling the production of books of account – Examine the correctness or otherwise of this statement.
4. The term 'Advance Ruling' includes within its scope, a determination by the Board for Advance Rulings only in relation to a transaction undertaken by a non-resident applicant. Examine the correctness of this statement, with reference to the provisions of the Income-tax Act 1961.
5. What is the remedy available to an applicant who is aggrieved by the ruling of Board for Advance Rulings? Also, state the time limit within which he should exercise this remedy.

### Answers

1. Section 245Q(3) of the Income-tax Act, 1961 provides that an applicant, who has sought for an advance ruling, may withdraw the application within 30 days from the date of the application. Since the 30 day period from the date of application by Q to the Board for Advance Rulings has not lapsed, he can withdraw the application.
2. As per section 245T, an advance ruling can be declared to be *void ab initio* by the Board for Advance Rulings if, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, it finds that the ruling has been obtained by fraud or misrepresentation of facts. Thereafter, all the provisions of the Act will apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this section) as if no such advance ruling has been made. A copy of such order shall be sent to the applicant and the Principal Commissioner or Commissioner.
3. **The statement is correct.**  
  
Under section 245U, the Board for Advance Rulings shall have all the powers vested in the Civil Court under the Code of Civil Procedure, 1908 as are referred to in section 131.

Accordingly, the Board for Advance Rulings shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely -

- (1) discovery and inspection;
- (2) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
- (3) compelling the production of books of account and other documents; and
- (4) issuing commissions.

Therefore, the Board for Advance Ruling has the powers of compelling the production of books of account.

4. The statement is **not** correct. As per section 245N, advance ruling not only includes a determination by the BAR in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant, but also includes, *inter alia*, determination by the BAR –
  - (i) in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident and such determination shall include the determination of any question of law or of fact specified in the application
  - (ii) in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant and such determination shall include the determination of any question of law or of fact specified in the application.
5. An applicant who is aggrieved by any ruling pronounced by the Board for Advance Rulings may appeal to the High Court against such ruling of the Board of Advance Rulings. He has to do so within sixty days from the date of the communication of that ruling, in the prescribed form and manner.

However, where the High Court is satisfied, on an application made by the appellant in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the 60 day period as specified above, it may grant further period of 30 days for filing such appeal.