

AUTHORITY FOR ADVANCE RULINGS

Introduction

The scheme of advance rulings was introduced by the Finance Act, 1993, Chapter XIX-B of the Income-tax Act, which deals with advance rulings, came into force with effect from 1-6-1993. Under the scheme, the power of giving advance rulings has been entrusted to an independent adjudicatory body. Accordingly, a high level body headed by a retired judge of the Supreme Court has been set up. This is empowered to issue rulings, which are binding both on the Income-tax Department and the applicant. The procedure prescribed is simple, inexpensive, expeditious and authoritative.

Advance Ruling, means written opinion or authoritative decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto. It has been defined in section 245N(a) of the Income-tax Act, 1961 as amended from time to time. Under section 245N, a ruling can be obtained by an applicant (who may be either a non-resident or a resident having a transaction with a non-resident) in respect of any question of law or fact in relation to the tax liability of the non-resident arising out of a transaction undertaken or proposed to be undertaken.

Salient features:

a. Available only for Income-tax: —

The procedure of advance ruling is available only under the Income-tax Act, 1961.

b. Must relate to a transaction entered into or proposed to be entered into by the applicant: -

The advance ruling is to be given on questions specified in relation to such a transaction by the applicant.

c Questions on which ruling can be sought:—

i. Even though the word used in the definition is the word “question”, it is clear that the non-resident can raise more than one question in one application. This has been made amply clear by Column No. 8 of the form of application for obtaining an advance ruling (Form No. 34C)

ii. Though the word “question” is unqualified, it is only proper to read it as a reference to questions of law or fact, pertaining to the income tax liability of the non-resident qua the transaction undertaken or proposed to be undertaken.

iii. The question may be on points of law as well as on fact; therefore, mixed questions of law and fact can also be included in the application. The questions should be so drafted that each question is capable of a brief answer. This may need breaking-up of complex question into two or more simple questions.

iv. The questions should arise out of the statement of facts given with the application. No ruling will be given on a purely hypothetical question. No question not specified in the application can be urged. Normally a question is not allowed to be amended but in deserving cases the Authority may allow amendment of one or more questions.

v. Subject to the limitations to be presently referred to, the question may relate to any aspect of the non-resident's liability including international aspects and aspects governed by double tax agreements. The questions may even cover aspects of allied laws that may have a bearing on tax liability such as the law of contracts, the law of trusts and the like, but the question must have a direct bearing, on and nexus with the interpretation of the Indian Income-tax Act.

d. Time limit for ruling:

The Authority shall pronounce its advance ruling within 6 months of receipt of the application.

e. Binding nature of advance ruling:

The effect of the ruling is stated to be limited to the parties appearing before the authority and the transaction in relation to which the ruling was given. This is because the ruling was rendered on a set of facts before the Authority and can not be of general application.

Question precluded: Under section 245R, certain restrictions have been imposed on the admissibility of an application, if the question concerned is pending before other authorities. According to it, the authority shall not allow an application where the question raised by the non-resident applicant (or a resident applicant having transaction with a non-resident) is already pending before any income-tax authority or appellate Tribunal or any court of law. Further, the authority shall not allow the application where the question raised in it: —

- i. involves determination of fair market value of any property; or
- ii. it relates to a transaction or issue which

is designed prima facie for the avoidance of income-tax.

The Authority and Its Powers

The authority is constituted by the Central Government and is known as "Authority for Advance Ruling" (AAR) [Section 245-O (1)].

AAR consists of three members, viz :

1 Chairman (who is a retired judge of the Supreme Court) 1 An IRS officer (who is qualified to be a

member of CBDT); and 1 An ILS officer (who is qualified to be an

Additional secretary to the Government of India) [Section 245-O(2)]

The AAR enjoys all powers of a Civil Court under the code of Civil Procedure, 1908, as are referred to in Section 131 of the Income Tax Act, 1961 [Section 245U(1)]

The AAR also enjoys the status of a Civil Court for the purpose of section 195 of the Code of Criminal Procedure, 1973. [Section 245U(2)].

Every proceedings before the AAR is deemed to be a judicial proceedings within the meaning of Sections 193 & 228 and for the purpose of Section 196 of the Indian Penal Code, 1860.

Meaning of "Advance Ruling"

The term "Advance ruling" is defined in Section 245N(a) of the Act. Following are the main features of the definition:

1 Advance ruling means the determination of a question specified in the application by the applicant; 1 Such question may be a question of law or a question of fact. Such question must be in relation to a transaction and cannot be a hypothetical or academic question;

| The transaction may be the one which is already undertaken or the one which is proposed to be undertaken by the applicant;

| The determination of such question on such a transaction is to be done by the AAR.

This term also indicates the determination or decision in respect of an issue pending before:

- (i) An Income-tax Authority; or
- (ii) The Appellate Tribunal.

Such determination could be determination on a question of law or on a question of fact.

Who can Apply

An application for advance ruling can be made by a NON-RESIDENT as also by a resident in respect of a transaction with a non-resident.

Besides, a resident falling within a notified class or category may also make an application. The class or category so notified by the Government till date are:

| Public Sector Company; and | A resident seeking advance ruling in relation to the tax liability of a nonresident arising out of a transaction with a non-resident.

In case of resident applicants, no Income-tax Authority or the Appellate Tribunal shall proceed to decide any issue in respect of which an application has been made.

Procedure for Making an Application

The application has to be made in following forms:

| By Non-Residents : Form 34C | By resident in relation to transaction with Non-Residents : Form 34D

| By residents notified by the Government : Form 34E | Application must be made in quadruplicate. | It should be presented by the applicant in

person or by an authorized representative or may be sent by post; | The AAR, at present, holds its sittings at

its headquarters at Delhi. | The application must be accompanied

by draft of Rs. 2500 drawn in favor of "Authority of Advance Ruling" payable at New Delhi. | The secretary may send the application

back to the applicant if it is defective in any manner for removing the defect.

The application must be signed as per the provisions of Rule 44E (2) of the Income Tax Rule, 1962.

Enclosures to the Application

| A statement listing question(s) in relation to the transaction on which the advance ruling is required. This is optional. The question(s) may be stated in the application form itself.

If, however, space provided is insufficient, separate enclosure may be used for this purpose.

It may be noted that the question(s) raised in the application should be exhaustively drafted covering all aspects of the issue involved and all alternative claims that the applicant may wish to make without prejudice to each other.

This is because if at a later stage the applicant desires to raise any additional question which is not set-forth in the application, he may have to obtain permission of the AAR. Granting of such permission is at the discretion of the AAR.

| A statement of relevant facts having a bearing on the question(s) on which the advance ruling is required.

| A statement containing the applicant's interpretation of law or facts, as the case may be, in respect of the question(s) on which the advance ruling is required.

| Where the application is signed by an authorized representative, the power of attorney authorizing him to sign.

| Where the application is signed by an authorized representative, an affidavit setting out the unavoidable reasons which entitles him to sign.

| Separate enclosures may be used where the space provided for any of the items in the relevant forms is insufficient.

| In the covering letter, the applicant may make a request for being heard before pronouncing the ruling.

Procedure After Making of the Application

| On receipt of the application, the AAR will forward a copy to the Commissioner. | Commissioner may be called upon to furnish the relevant records. | AAR shall examine the application and such records. | After examination, an order shall be passed u/s 245R(2) to either allow or reject the application | A copy of order u/s 245R(2) is sent to the applicant and to the commissioner. | If the application is allowed vide order u/s 245R(2), the AAR shall : (i) Examine such further material as may be placed before it by the applicant; (ii) Examine such further material as may be obtained by the Authority suo moto; and (iii) Pronounce its advance ruling on the question specified in the application within six months of the receipt of the application either with or without giving the assessee a hearing.