

SYNOPSIS

245N. Definitions

245-O. Authority for Advance Rulings

245-OA. Qualifications, terms and conditions of service of Chairman and Member

245-OB. Board for Advance Rulings

245P. Vacancies, etc., not to invalidate proceedings

245Q. Application for advance ruling

245R. Procedure on receipt of application

245RR. Appellate authority not to proceed in certain cases

245S. Applicability of advance ruling

245T. Advance ruling to be void in certain circumstances

245U. Powers of the Authority

245V. Procedure of Authority

245N. Definitions

In this Chapter, unless the context otherwise requires, –

(a) “advance ruling” means—

(i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or

(ii) a determination by the Authority 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 a such non-resident, or

(iia) a determination by the Authority 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;

~~~~~

(iii) a determination or decision by the Authority 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 of fact relating to such computation of total income specified in the application;

(iv) a determination or decision by the Authority 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:

Provided that where an advance ruling has been pronounced, before the date<sup>5</sup> on which the Finance Bill, 2003 receives the assent of the President, by the Authority in respect of an application by a resident applicant referred to in sub-clause (ii) of this clause as it stood immediately before such date<sup>5</sup>, such ruling shall be binding on the persons specified in section 245S;

(b) "applicant" means--

(A) any person who--

(I) is a non-resident referred to in sub-clause (i) of clause (a); or

(II) is a resident referred to in sub-clause (ii) of clause (a); or

(III) is a resident referred to in sub-clause (iia) of clause (a) falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify; or

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

~~~~~

~~~~~

(V) is referred to in sub-clause (iv) of clause (a), and makes an application under sub-section (1) of section 245Q;

(B) an applicant as defined in clause (c) of section 28E of the Customs Act, 1962 (52 of 1962);

(c) “application” means an application made to the Authority or the Board for Advance Rulings under subsection (1) of section 245Q;

(ca) “Board for Advance Rulings” means the Board for Advance Rulings constituted by the Central Government under section 245-OB

(d) “Authority” means the Authority for Advance Rulings constituted under section 245-O;

(e) “Chairman” means the Chairman of the Authority;

(f) "Member" means a Member of the Authority and includes the Chairman and Vice-chairman or a Member of the Board for Advance Rulings;

(g) "Vice-chairman" means the Vice-chairman of the Authority.

### **245-O. Authority for Advance Rulings**

(1) The Central Government shall constitute an Authority for giving advance rulings, to be known as “Authority for Advance Rulings”.

Provided that the Authority shall cease to act as an Authority for Advance Rulings for the purposes of Chapter V of the Customs Act, 1962 (52 of 1962) on and from the date of appointment of the Customs Authority for Advance Rulings under section 28EA of that Act.

~~~~~

~~~~~

Provided further that the Authority so constituted shall cease to operate on and from such date as the Central Government may, by notification in the Official Gazette, appoint

(1A) On and from the date of appointment of the Customs Authority for Advance Rulings referred to in the proviso to subsection (1), the Authority shall act as an Appellate Authority, for the purpose of Chapter V of the Customs Act, 1962 (52 of 1962):

Provided that the Authority shall not admit any appeal against any ruling or order passed earlier by it in the capacity of the Authority for Advance Rulings in relation to any matter under Chapter V of the Customs Act, 1962 (52 of 1962) after the date of such appointment of the Customs Authority for Advance Rulings.

(2) The Authority shall consist of a Chairman and such number of Vice-chairmen, revenue Members and law Members as the Central Government may, by notification, appoint.

(3) A person shall be qualified for appointment as--

(a) Chairman, who has been a Judge of the Supreme Court or the Chief Justice of a High Court or for at least seven years a Judge of a High Court;

(b) Vice-chairman, who has been Judge of a High Court;

(c) a revenue Member--

(i) from the Indian Revenue Service, who is, or is qualified to be, a Member of the Board; or

(ii) from the Indian Customs and Central Excise Service, who is, or is qualified to be, a Member of the Central Board of Excise and Customs, on the date of occurrence of vacancy;

~~~~~

~~~~~

(d) a law Member from the Indian Legal Service, who is, or is qualified to be, an Additional Secretary to the Government of India 3[on the date of occurrence of vacancy.

(4) The terms and conditions of service and the salaries and allowances payable to the Members shall be such as may be prescribed.

(5) The Central Government shall provide to the Authority with such officers and employees, as may be necessary, for the efficient discharge of the functions of the Authority under this Act.

(6) The powers and functions of the Authority may be discharged by its Benches as may be constituted by the Chairman from amongst the Members thereof.

(6A) In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the senior-most Vice-chairman shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(6B) In case the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Vice-chairman shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

(7) A Bench shall consist of the Chairman or the Vice-chairman and one revenue Member and one law Member.

Provided that where the Authority is dealing with an application seeking advance ruling in any matter relating to this Act, the revenue Member of the Bench shall be such Member as referred to in sub-clause (i) of clause (c) of sub-section (3).

~~~~~

~~~~~

(8) The Authority shall be located in the National Capital Territory of Delhi and its Benches shall be located at such places as the Central Government may, by notification specify.

**245-OA. Qualifications, terms and conditions of service of Chairman and Member**

Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman, Vice-Chairman and other Members of the Authority appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:

Provided that the Chairman, Vice-Chairman and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act and the rules made thereunder as if the provisions of Section 184 of the Finance Act, 2017 had not come into force.

**245-OB. Board for Advance Rulings**

(1) The Central Government shall constitute one or more Boards for Advance Rulings, as may be necessary, for giving advance rulings under this Chapter on or after such date as the Central Government may, by notification in the Official Gazette, appoint.

(2) The Board for Advance Rulings shall consist of two members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board.

**245P. Vacancies, etc., not to invalidate proceedings**

~~~~~

~~~~~

(1) No proceeding before, or pronouncement of advance ruling by, the Authority shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

(2) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, the provisions of this section shall have effect as if for the word “Authority”, the words “Board for Advance Rulings” had been substituted.

**245Q. Application for advance ruling**

(1) An applicant desirous of obtaining an advance ruling under this Chapter (52 of 1962) may make an application in such form and in such manner as may be prescribed<sup>1</sup>, stating the question on which the advance ruling is sought.

(2) The application shall be made in quadruplicate and be accompanied by a fee of ten thousand rupees or such fee as may be prescribed in this behalf, whichever is higher.

(3) An applicant may withdraw an application within thirty days from the date of the application.

(4) Where an application for advance ruling under this Chapter is made before such date as the Central Government may, by notification in the Official Gazette, appoint, and in respect of which no order under sub-section (2) of section 245R has been passed or no advance ruling under sub-section (4) of section 245R has been pronounced before such date, such application along with all the relevant records, documents or material, by whatever name called, on the file of the Authority shall be transferred to the Board for Advance Rulings and shall be deemed to be the records before the Board for Advance Rulings for all purposes.

~~~~~

~~~~~  
Provided that the applicant may, on or before the 31st day of October, 2024, request the Board for Advance Rulings in writing that the application so transferred may not be proceeded with, if up to the date of such request, the Board for Advance Rulings has not passed an order under sub-section (2) of section 245R.

**245R. Procedure on receipt of application**

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the principal Commissioner or commissioner and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the principal Commissioner or commissioner.

(2) The authority may, after examining the application and the records called for, by order, either allow or reject the application:

Provided that the Authority shall not allow the application where the question raised in the application, -

(i) is already pending before any income-tax authority or Appellate Tribunal except in the case of a resident applicant falling in sub-clause (iii) of clause (b) of section 245N or any court;

(ii) involves determination of fair market value of any property;

(iii) relates to a transaction or issue which is designed prima facie for the avoidance of income-tax except in the case of a resident applicant falling in sub-clause (iii) of clause (b) of section 245N or in the case of an applicant falling in sub-clause (iiia) of clause (b) of section 245N:



~~~~~

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided also that where the application is rejected, reasons for such rejection shall be given in the order

Provided also that on receipt of an application under the proviso to sub-section (4) of section 245Q, the Board for Advance Rulings may, by an order, reject the application referred to in sub-section (1) thereof as withdrawn on or before the 31st day of December, 2024.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the principal Commissioner or commissioner.

(4) Where an application is allowed under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

Explanation: For the purposes of this sub-section, "authorised representative" shall have the meaning assigned to it in sub-section (2) of section 288, as if the applicant were an assessee.

(6) The Authority shall pronounce its advance ruling in writing within six months of the receipt of application.

~~~~~

~~~~~

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner, as soon as may be, after such pronouncement.

(8) On and from such date as the Central Government may, by notification in the Official Gazette, appoint, the provisions of this section shall have effect as if for the word "Authority", the words "Board for Advance Rulings" had been substituted and the provisions of this section shall apply mutatis mutandis to the Board for Advance Rulings as they apply to the Authority.

(9) The Central Government may, by notification in the Official Gazette, make a scheme for the purposes of giving advance rulings under this Chapter by the Board for Advance Rulings, so as to impart greater efficiency, transparency and accountability by--

(a) eliminating the interface between the Board for Advance Rulings and the applicant in the course of proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a system with dynamic jurisdiction.

(10) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (9), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification:

~~~~~

~~~~~

Provided that no such direction shall be issued after the 31st day of March, 2023

Provided further that the Central Government may amend any direction, issued under this sub-section on or before the 31st day of March, 2023, by notification in the Official Gazette

(11) Every notification issued under sub-section (9) and sub-section (10) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

245RR. Appellate authority not to proceed in certain cases

No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident, under sub-section (1) of section 245Q.

245S. Applicability of advance ruling

(1) The advance ruling pronounced by the Authority under section 245R shall be binding only –

- (a) on the applicant who had sought it;
- (b) in respect of the transaction in relation to which the ruling had been sought; and
- (c) on the Principal Commissioner or Commissioner, and the income-tax authorities, subordinate to him, in respect of the applicant and the said transaction.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

~~~~~

~~~~~

(3) Nothing contained in this section shall apply to any advance ruling pronounced under section 245R on or after such date as the Central Government may, by notification in the Official Gazette, appoint.

245T. Advance ruling to be void in certain circumstances

(1) Where the Authority finds, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, that an advance ruling pronounced under sub-section (6) of section 245R has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Principal Commissioner or Commissioner.

(3) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, the provisions of this section shall have effect as if for the word “Authority”, the words “Board for Advance Rulings” had been substituted.

245U. Powers of the Authority

(1) The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) as are referred to in section 131 of this Act.

~~~~~

~~~~~

(2) The Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).

(3) On and from such date as the Central Government may, by notification in the Official Gazette, appoint, the powers of the Authority under this section shall be exercised by the Board for Advance Rulings and the provisions of this section shall mutatis mutandis apply to the Board for Advance Rulings as they apply to the Authority.

245V. Procedure of Authority

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

Provided that nothing contained in this section shall apply on or after such date as the Central Government may, by notification in the Official Gazette, appoint.

245W. Appeal

(1) The applicant, if he 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 within sixty days from the date of the communication of that ruling or order, in such form and manner, as may be prescribed:

~~~~~

~~~~~

Provided that 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 period specified in sub-section (1), it may grant further period of thirty days for filing such appeal.

(2) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of filing appeal to the High Court under sub-section (1) by the Assessing Officer, so as to impart greater efficiency, transparency and accountability by--

(a) optimising utilisation of the resources through economies of scale and functional specialisation;

(b) introducing a team-based mechanism with dynamic jurisdiction.

(3) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (2), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification:

Provided that no such direction shall be issued after the 31st day of March, 2023.

(4) Every notification issued under sub-section (2) and sub-section (3) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

~~~~~