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.

- **appreciate** the constitution of Authority for Advance Ruling.

- **appreciate** the procedure for making an application to the Authority for Advance Ruling and the procedure to be followed by the Authority on receipt of application.

- **appreciate** the restricted binding nature of an Advance Ruling.

- **know** the circumstances when an advance rulings can be declared void.
4.1 INTRODUCTION

Chapter XIX-B, consisting of sections 245N to 245V provides a scheme for giving advance rulings in respect of transactions involving non-residents and specified residents with a view to avoiding needless litigation and promoting better tax-payer relations.

4.2 DEFINITIONS

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

<table>
<thead>
<tr>
<th>Section</th>
<th>Determination by the Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>245N(a)(i)</td>
<td>in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant.</td>
</tr>
<tr>
<td>245N(a)(ii)</td>
<td>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.</td>
</tr>
<tr>
<td>245N(a)(iia)</td>
<td>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.</td>
</tr>
<tr>
<td>245N(a)(iii)</td>
<td>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.</td>
</tr>
<tr>
<td>245N(a)(iv)</td>
<td>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.</td>
</tr>
</tbody>
</table>

(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 – Notification No. 725(E) dated 3.8.2000]; or

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

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

On account of the merger of Authority for Advance Rulings for income-tax, central excise, customs duty and service tax, the definition of applicant would now also include an applicant defined under the Central Excise Act, 1944, Customs Act, 1962 and the Finance Act, 1994.

Restrictions on Appellate Authority: Section 245RR provides that where a resident applicant has made an application to AAR and referred issues therein for decision of AAR, then, any Income-tax Authority or Tribunal should not 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 AAR, in respect of an issue.

4.3 AUTHORITY FOR ADVANCE RULINGS [SECTION 245-O]

The Authority for Advance Rulings shall be constituted by the Central Government.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Composition of AAR</td>
<td>AAR to consist of a Chairman and such number of Vice Chairmen, revenue Members and law Members as the Central Government may, by notification, appoint.</td>
</tr>
<tr>
<td>Qualifications for appointment:</td>
<td></td>
</tr>
<tr>
<td>(a) Chairman – a person 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;</td>
<td></td>
</tr>
<tr>
<td>(b) Vice Chairman – a person who has been a Judge of a High Court;</td>
<td></td>
</tr>
<tr>
<td>(c) A Revenue Member from the Indian Revenue Service – a</td>
<td></td>
</tr>
<tr>
<td>Terms &amp; Conditions</td>
<td>The terms and conditions of service and the salaries and allowances payable to the Members shall be such as may be prescribed.</td>
</tr>
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</tr>
<tr>
<td>Officers &amp; Employees</td>
<td>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 the Act.</td>
</tr>
<tr>
<td>Location of AAR</td>
<td>National Capital Territory of Delhi</td>
</tr>
<tr>
<td>Constitution of Benches</td>
<td>The powers and functions of the AAR may be discharged by its Benches as may be constituted by the Chairman from amongst its Members thereof.</td>
</tr>
<tr>
<td>Composition of Benches</td>
<td>A Bench shall consist of the Chairman or the Vice-Chairman and one revenue and one law Member.</td>
</tr>
<tr>
<td>Any vacancy in the office of the Chairman by reason of his death, resignation or otherwise</td>
<td>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 the Act to fill such vacancy, enters upon his office.</td>
</tr>
<tr>
<td>In case the Chairman is unable to discharge his functions owing to absence, illness or other cause</td>
<td>The senior-most Vice Chairman shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.</td>
</tr>
<tr>
<td>Location of Benches</td>
<td>At such places as the Central Government may, by notification, specify.</td>
</tr>
</tbody>
</table>

(d) **A Revenue Member from the Indian Customs and Central Excise Service** – a person who is, or is qualified to be a Member of the Central Board of Excise and Customs on the date of occurrence of vacancy.

(e) **A law Member from the Indian legal service** – a person who is, or is qualified to be, an Additional Secretary to the Government of India (‘GOI’) on the date of occurrence of vacancy.
4.4 QUALIFICATIONS, TERMS AND CONDITIONS OF SERVICE OF CHAIRMAN, VICE CHAIRMAN AND MEMBERS [SECTION 245-OA]

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 26.05.2017, being the date on which the provisions of Part XIV of Chapter VI of the Finance Act, 2017 came into force, shall be governed by the provisions of section 184 of Finance Act 2017.

However, the Chairman, Vice-Chairman and Member appointed before 26.05.2017 shall continue to be governed by the provisions of the Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force."

Section 184 of Finance Act, 2017

(1) Power to Central Government to make rules: The Central Government may, by notification, make rules to provide for qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Chairman, Vice-Chairman or Member of the Authority.

(2) Term of Chairman, Vice-Chairman or Member of the Authority: The Chairman, Vice-Chairman or Member of the Authority shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for reappointment.

(3) Age Criteria of Chairman, Vice-Chairman or Member of the Authority: No Chairman, Vice-Chairman or Member of the Authority shall hold office as such after he has attained such age as specified in the rules made by the Central Government which shall not exceed,—

<table>
<thead>
<tr>
<th>In case of</th>
<th>Age</th>
</tr>
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<tbody>
<tr>
<td>Chairman</td>
<td>seventy years</td>
</tr>
<tr>
<td>Vice-Chairman or any other Member</td>
<td>sixty-seven years</td>
</tr>
</tbody>
</table>
4.5 VACANCIES, ETC., NOT TO INVALIDATE PROCEEDINGS [SECTION 245P]

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.

4.6 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 and be accompanied by a fee of ₹ 10,000 or such fee as may be prescribed, whichever is higher.

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.

4.7 PROCEDURE ON RECEIPT OF APPLICATION [SECTION 245R]

The Authority 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.

The Authority may either allow or reject an application. However, the Authority shall not allow an application where the question raised in the application is:

<table>
<thead>
<tr>
<th>Pending with income-tax authorities/tribunal/court</th>
<th>is already pending before any income-tax authority, or Appellate Tribunal or any court.</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>However, notified resident applicant can seek for advance ruling even if question raised is pending before any income-tax authority or Appellate.</td>
</tr>
</tbody>
</table>
\textbf{Determination of Fair Market Value} involves the determination of the fair market value of any property;

\textbf{Transaction designed for avoidance of income-tax} relates to a transaction or issue which is designed \textit{prima facie} for avoidance of income-tax (except in case of a notified resident applicant 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 and a copy of order shall be sent to the applicant and to the PCIT/CIT.

An applicant on request can appear either in person or can be represented through a duly authorised representative. The authority will pronounce the advance ruling within 6 months from the receipt of application by the authority and the copy of advance ruling pronounced, duly signed by the Members and certified, shall be sent to the applicant and to the PCIT/CIT.

\section*{4.8 APPLICABILITY OF ADVANCE RULING [SECTION 245S]}

The advance ruling shall be binding only on

- Applicant who had sought it
- In respect of the specific transaction in relation to which it was sought
- on the Principal Commissioner or Commissioner and the income-tax authorities subordinate to the Principal Commissioner or Commissioner who are having jurisdiction over the applicant

The advance ruling will continue to remain in force unless there is a change either in law or in fact on the basis of which the advance ruling was pronounced.
4.9 ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 245T]

Where an advance ruling has been obtained by the applicant by fraud or misrepresentation of facts, the Authority may, by order, declare such ruling to be *void ab initio*. The provisions of the Act shall apply (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 shall be sent to the applicant and the Principal Commissioner or Commissioner.

4.10 POWERS OF THE AUTHORITY [SECTION 245U]

The Authority 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 Authority shall be deemed to be a Civil Court for the purposes of section 195 of the Code of Criminal Procedure, 1973 and every proceeding before the Authority shall be deemed to be a judicial proceeding under the Indian Penal Code.

4.11 PROCEDURE OF AUTHORITY [SECTION 245V]

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 the Act.

For ease of reference, the process of application for Advance Ruling is explained below in a summarized form:
Cannot make an application

No

Eligible Applicant

Yes

Make an application for Advance Ruling

Within 30 Days

No further processing

Yes

Withdrawal of application by applicant

No

Application rejected

Yes

Whether application includes:
- Issue pending with income-tax authorities/Tribunal/court
- Determination of FMV
- Transaction designed for avoidance of income-tax

No

Whether application accepted

Yes

Application sent to Principal Commissioner or Commissioner for seeking records, if required

Ruling by AAR (within 6 months)

Ruling binding on:
- Applicant who has sought it
- In respect of the specific transaction
- On jurisdictional revenue authorities

No

No further processing

Yes

Ruling obtained by fraud/misrepresentation

Void ab initio

No

Ruling valid
Question 1

Examine whether a person resident in India can seek advance ruling from the Authority for Advance Ruling.

Answer

A resident can make an application to the Authority for Advance Ruling to seek an advance ruling in the following cases:

(i) Section 245N(b)(A)(III) enables a resident referred in section 245N(a)(iiia) falling within any such class or category of persons as may be notified by the Central Government to make an application to Authority for Advance Rulings. Such notified resident applicant can seek ruling in relation to his tax liability 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.

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 proposed to be undertaken would be an applicant for this purpose.

(ii) Section 245N(b)(A)(IV) enables a resident falling within any such class or category of persons as may be notified by the Central Government to make an application for Advance Ruling. Such notified resident applicant can seek ruling in respect of issues relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal. Such a resident applicant can make an application to seek determination or decision by the AAR on a question of law or a question of fact relating to such computation of total income specified in the application.

“Public sector companies” as defined in section 2(36A) of the Income-tax Act, 1961 have been notified as applicant for this purpose.

(iii) A resident can also make an application seeking advance ruling in relation to the tax liability of a non-resident arising out of a transaction undertaken or proposed to be undertaken by him with such non-resident.

Question 2

Q, a non-resident, made an application to the Authority for Advance Rulings on 2.7.2017 in relation to a transaction proposed to be undertaken by him. On 31.8.2017, he decides to withdraw the said application. Can he withdraw the application on 31.8.2017?
Answer

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 more than 30 days have elapsed since the date of application by Q to the Authority for Advance Rulings, he cannot withdraw the application.

However, the Authority for Advance Rulings (AAR), in M.K.Jain AAR No.644 of 2004, has observed that though section 245Q(3) provides that an application may be withdrawn by the applicant within 30 days from the date of the application, this, however, does not preclude the AAR from permitting withdrawal of the application after the said period with the permission of the AAR, if the circumstances of the case so justify.

Question 3

Examine when can an advance ruling pronounced by the Authority for Advance Rulings be declared void. What is the consequence?

Answer

As per section 245T, an advance ruling can be declared to be void ab initio by the Authority 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 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.

Question 4

Mr. Balram is a non-resident. The appeal pertaining to the assessment year 2013-14 is pending before the Income-tax Appellate Tribunal, the issue involved being computation of export profit and tax thereon. The same issue persists for the assessment year 2014-15 as well. Mr. Balram’s brother Mr. Krishna has obtained an advance ruling under Chapter XIX - B of Income-tax Act, 1961 from the Authority for Advance Ruling on an identical issue. Mr. Balram proposes to use the said ruling for his assessment pertaining to the assessment year 2014-15. Can he do so?

Answer

As per section 245S(1), the advance ruling pronounced under section 245R by the Authority for Advance Rulings shall be binding only on the applicant who had sought it and in respect of the specific transaction in relation to which advance ruling was sought. It shall also be binding on the Principal Commissioner/Commissioner and the income-tax authorities subordinate to him, in respect of the concerned applicant and the specific transaction.

In view of the above provision, Mr. Balram cannot use the advance ruling, obtained on an identical
issue by his brother, for his assessment pertaining to the assessment year 2014-15.

**Note** – Though the ruling of the Authority for Advance Rulings is not binding on others but there is no bar on the Tribunal taking a view or forming an opinion in consonance with the reasoning of the Authority for Advance Rulings de hors the binding nature [CIT v. P. Sekar Trust (2010) 321 ITR 305 (Mad.)].

**Question 5**

The Authority for Advance Rulings has the powers of compelling the production of books of account—Examine the correctness or otherwise of this statement.

**Answer**

The statement is correct.

Under section 245U, the Authority 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 Authority 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 Authority for Advance Ruling has the powers of compelling the production of books of account.

**Question 6**

The term 'Advance Ruling' includes within its scope, a determination by the Authority for Advance Rulings only in relation to a transaction undertaken by a non-resident application. Examine the correctness of this statement, with reference to the provisions of the Income-tax Act 1961.

**Answer**

The statement is not correct.

The term ‘Advance Ruling’ has been defined in section 245N(a) to mean :-

(a) 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
(b) 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 such non-resident; or

(c) 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.

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 proposed to be undertaken would be an applicant for this purpose.

(d) 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 on any question of law or of fact relating to such computation of total income specified in the application.

**Question 7**

A foreign company entered into contracts with several Indian companies for installation of mobile telephone system and made an application to the Authority for Advance Rulings for advance ruling on the rate of withholding tax on receipts from Indian companies. One of the Indian companies had also made an application to the Assessing Officer for determination of the rate at which tax is deductible on payment to the said foreign company. The Authority for Advance Rulings rejected the application of the foreign company on the ground that the question raised in the application is already pending before an income tax authority. Is the rejection of the application of the foreign company justified in law?

**Answer**

The matter relates to the admission or rejection of the application filed before the Advance Rulings Authority on the grounds specified in clause (i) of the first proviso to sub-section (2) of section 245R of the Income-tax Act, 1961.

Clause (i) of the first proviso of section 245R(2) provides that the Authority shall not allow the application where the question raised in the application is already pending before any income-tax authority or Appellate Tribunal or any court. (except in case of resident falling in sub-clause (iii) of clause (b) of section 245N)

In the above case, no application had been filed or contention urged by the applicant (foreign company) before any income-tax authority/Appellate Tribunal/court, raising the question raised in the application filed with AAR. One of the Indian companies, however, had raised the question before the Assessing Officer, not on the applicant’s behalf or with a view to benefit the applicant,
but only to safeguard its own interest, as it had a statutory duty to deduct the proper amount of tax from payments made to a non-resident. Although the question raised pertains to one of the payments made or to be made to the non-resident applicant, it was not one pending determination before any income-tax authority in the applicant’s case.

Therefore, as held by the AAR in *Ericsson Telephone Corporation India AB v. CIT (1997) 224 ITR 203*, the application filed by the Indian company before the Assessing Officer cannot be treated to have been filed by the non-resident. Hence, it would not be proper to reject the application of the foreign company relying on clause (i) of the proviso to sub-section (2) of section 245R of the Income-tax Act, 1961.