

APPLICATION FOR ADVANCE RULINGS

A resident taxpayer may have some taxation issues in respect of a transaction which has been undertaken or proposed to be undertaken with a non-resident. Similarly, a non-resident may have some taxation issues in respect of transaction which has been undertaken or proposed to be undertaken by him in India. In order to get clarification on taxation of those transactions, a person can make an application to the Authority for Advance Rulings ('AAR'). Provisions relating to advance ruling are provided in sections 245N to 245V.

In this part, you can gain knowledge about various provisions relating to advance ruling.

Meaning of advance ruling

Section 245N(a) gives the definition of 'advance ruling'. As per section 245N(a) "Advance Ruling" means :

- A determination by the AAR in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant.
- A determination by the AAR 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.
- A determination by the AAR in relation to the tax liability of a resident applicant, arising out of one or more transaction valuing Rs.100 crore or more [vide Notification No. 73/2014, dated 28-11-2014] in total 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 determination or decision by the AAR in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal. It 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.
- A determination or decision by the AAR 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. [Chapter X-A contains provisions relating to General Anti-Avoidance Rule (GAAR)].

Meaning of Applicant

The application for advance ruling can be made by an applicant as defined in section 245N(b). As per section 245N an 'applicant' would mean the following:

- A non-resident who has undertaken or proposes to undertake a transaction in India.

- A resident who has undertaken or proposes to undertake a transaction with a non-resident.
- A resident who has undertaken or propose to undertake one or more transactions of value of Rs.100 crore or more in total[vide Notification No. 73, dated 28-11-2014]
- A resident falling within notified class or category of persons (presently includes public sector companies).
- Any person (resident or non-resident) making an application for determining whether an arrangement, is an impermissible avoidance agreement as referred to in Chapter X-A (applicable from 1-4-2015).

In Union Budget 2017, the Government had decided to merge the Authority for Advance Ruling (AAR)# for income-tax, central excise, custom duty and service tax. Hence, the meaning of ‘applicant’ is expanded with effect from 1/4/2017 to include-

1. An applicant as defined in section 28E(c) of the Customs Act, 1962;
2. An applicant as defined in section 23A(c) of the Central Excise Act, 1944;
3. An applicant as defined in section 96A(b) of the Finance Act, 1994

The Finance Act, 2021 has amended provisions of section 245N(b) to provide that above three points shall be omitted with effect from such date as appointed by the Central Government by notification in the Official Gazette.

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

Applicant vis-a-vis the application

After understanding the meaning of “Advance Ruling” and “Applicant”, it is important to understand the nature of application which can be made by an applicant. Following Chart highlights the nature of application which can be made by various applicants:

<i>Nature of applicant</i>	<i>Nature of application</i>
A non-resident applicant	A determination by the AAR in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant. Such determination shall include the determination of any question of law or of fact specified in the application.
A resident applicant who has undertaken a transaction with non-resident or proposes to undertake a transaction with	A determination by the AAR <i>in relation to the tax liability of a non-resident</i> arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident

non-resident.	applicant with such non-resident. Such determination shall include the determination of any question of law or of fact specified in the application.
A resident who has undertaken or propose to undertake one or more transactions of value of Rs.100 crore or more in total; or	A determination by the AAR in relation to the tax liability of a resident applicant arising out of such transactions and such determination shall include the determination of any question of law or of fact specified in the application.
A resident falling within notified class or category of persons (i.e., a public sector company).	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.
Any person (resident or non-resident) making an application for determination of whether an arrangement is an impermissible avoidance agreement as referred to in Chapter X-A. (applicable from 1-4-2015)	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. (applicable from. 1-4-2015)

Certain circumstances in which the application cannot be allowed

In following circumstances the application is not allowed by the AAR:

- when the question raised is already pending before any income-tax authority or appellate tribunal or any Court. However, exception will apply in the case of a resident applicant falling within the notified class or category of persons *i.e.* a public sector company.
- when the question involves determination of fair market value of any property.
- when the question relates to a transaction which is designed *prima facie* for the avoidance of income-tax. Exception to this provision: (i) resident taxpayer falling within notified class or category of persons *i.e.* a public sector company and (ii) Any person (i.e., resident or non-resident) making an application to determine whether an arrangement proposed to be undertaken is an impermissible avoidance arrangement under Chapter X-A.

Form of application

The application of advance ruling is to be made in the form prescribed in this regard. Different forms are prescribed for different applicants. Following Chart highlights the form of application applicable to different applicants.

<i>Applicant</i>	<i>Form of application</i>
A non-resident applicant.	Form No. 34C (application should be in quadruplicate)
A resident seeking advance ruling in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident.	Form No. 34D (application should be in quadruplicate)
A resident seeking advance ruling in relation to his tax liability arising out of one or more transactions valuing Rs.100 crore or more in total which has been undertaken or proposed to be undertaken by him	Form No. 34DA (application should be in quadruplicate)
A resident falling within any such class or category of person as is notified by Central Government (i.e., a public sector company)	Form No. 34E (application should be in quadruplicate)
Any person (resident or non-resident) making an application for determination of whether an arrangement, is an impermissible avoidance agreement as referred to in Chapter X-A. (applicable from 1-4-2015)	Form No. 34EA (application should be in quadruplicate)

Fees for filing the application

The fees payable along with application for advance ruling shall be in accordance with the following table:

Category of applicant	Category of case	Fee
<ul style="list-style-type: none"> • A non-resident applicant. • A resident seeking advance ruling in relation to the tax liability of a non-resident arising out of transaction undertaken or proposed to be undertaken 	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought does not exceed Rs. 100 crore.	Rs.2,00,000
	Amount of one or more	Rs.5,00,000

by him with a non-resident. • A resident seeking advance ruling in relation to his tax liability arising out of one or more transactions valuing Rs.100 crore or more in total which has been undertaken or is proposed to be undertaken by him	transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds Rs. 100 crore but does not exceed Rs. 300 crore.	
	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds Rs. 300 crore	Rs.10,00,000
Any other applicant	In all cases	Rs.10,000

Documents to be submitted along with the application

- 4 copies of application in the prescribed form.
- Account-payee demand draft for the prescribed fees in favour of 'Authority for Advance Ruling's payable at New Delhi.

Person entitled to sign the application

The application shall be signed by –

a) In the case of an individual -

- By the individual himself;
- Where, for any unavoidable reason, it is not possible for the individual to sign the application, the application can be signed by any person duly authorised by the individual in this behalf. However, in such a case, the person signing the application shall hold a valid power of attorney from the individual to do so, which shall be attached to the application.

b) In the case of a Hindu Undivided Family–

- By the karta thereof, and
- Where, for any unavoidable reason, it is not possible for the Karta to sign the application, by any other adult member of such family.

c) In the case of a company –

- by the Managing Director thereof, or where for any unavoidable reason such Managing Director is not able to sign and verify the application, or where there is no Managing Director, by any Director thereof;
- Where, for any unavoidable reason, it is not possible for the Managing Director or the Director to sign the application, by any person duly authorised by the company in this behalf. However, in such a case, the person signing the application shall hold a valid power of attorney from the company to do so, which shall be attached to the application.

d) In the case of a firm –

- i) by the managing partner of the firm.
 - ii) Where for any unavoidable reason such managing partner is not able to sign and verify the application or where there is no managing partner as such, by any partner of the firm other than a minor.
- e) **In case of an association of persons** , the application should be signed by any member of the association or the principal officer thereof.
- f) **In case of any other person**, the application should be signed by that person or by some person competent to act on his behalf.

Add Every application in the form as applicable shall be accompanied by the proof of payment of fees as specified in above table.

Can the application be withdrawn?

Application once made by the applicant can be withdrawn within a period of 30 days from the date of application.

Procedure on receipt of application for advance ruling

On receipt of an application, the AAR shall send a copy thereof to the Principal Commissioner or Commissioner and, if necessary, will call upon him to furnish the relevant records. 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.

The Authority may, after examining the application and the records called for from the Commissioner, either allow or reject the application. The AAR shall not allow the application in certain circumstances (already discussed earlier). However, no application shall be rejected unless an opportunity has been given to the applicant of being heard. Where the application is rejected, reasons for such rejection shall be given in the order. A copy of every such order shall be sent, both to the applicant and to the Principal Commissioner or Commissioner.

Where an application is allowed, the AAR shall, after examining such further material as may be placed before it by the applicant or obtained by the AAR, pronounce its advance ruling on the question specified in the application.

On a request received from the applicant, the AAR shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorized representative (The term "Authorised representative" shall have the meaning assigned to it in section 288(2)).

The AAR shall pronounce its advance ruling in writing within six months of the receipt of application.

A copy of the advance ruling pronounced by the AAR, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Principal Commissioner or Commissioner, as soon as possible, after such pronouncement.

Restriction on further procedure

No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made to the AAR by an applicant, being a resident.

Applicability of advance ruling

The advance ruling pronounced by the AAR shall be binding only on the applicant who had sought it and that too in respect of the transaction in relation to which the ruling had been sought. Further, it shall be binding on the Principal Commissioner or Commissioner and the Income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

The advance ruling pronouncement as stated above shall be binding as aforesaid, unless there is a change, in law, or facts on the basis of which the advance ruling was pronounced.

Advance ruling to be void in certain circumstances.

Where the AAR finds, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, then the Authority may, by an order, declare such ruling to be void *ab initio* and thereupon all the provisions of the Act shall apply to the applicant as if such advance ruling had never been made.

A copy of the order made as above shall be sent to the applicant and to the Principal Commissioner or Commissioner.

Powers of the AAR

The AAR shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 as are referred to in section 131 of this Act. Powers vested under section 131 are discovery and inspection, enforcing the attendance of any person, including any officer of a banking company and examining him on oath, compelling the production of books of account and other documents, and issuing commissions. It will also have the power to regulate its own proceeding in all the matters arising out of the exercise of its powers under the Income-tax Act.

The AAR 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 and every proceeding before the Authority shall be deemed to be a judicial proceeding under certain provisions of the Indian Penal Code.

Discontinuation of Authority for Advance Ruling

The Finance Act, 2021 has provided that the Authority for Advance Rulings shall cease to operate with effect from such date, as may be notified by the Central Government in the Official Gazette.

Boards for Advance Rulings

To provide an alternative method of providing prompt advance ruling to the taxpayers, the Finance Act, 2021 has inserted a new Section 245-OB to empower the Central

Government to constitute one or more Board for Advance Rulings for giving advance rulings on and after the notified date. Every such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner.

Consequential amendments have been made under relevant sections of Authority for Advance Rulings to provide a reference of Board for Advance Rulings.

The Central Board of Direct Taxes (CBDT), *vide notification no. 96/2021, dated 01-09-2021*, has notified Board for Advance Rulings effective from 01-09-2021. The Board has specified Boards having its headquarters in Delhi and Mumbai.

Appeal against Ruling

A new section 245W is inserted by the Finance Act, 2021 to provide for appeal to High Court against the order passed or ruling pronounced by the Board for Advance Ruling or the AO on directions of PCIT or CIT.

This appeal can be filed by the applicant as well as by the Department. Such appeal shall be filed within 60 days from the date of the communication of such ruling or order, in such form and manner as may be prescribed. However, where the High Court is satisfied, on an application made in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in this section, it may allow a further period of 30 days for filing such appeal.

Procedure on receipt of Application

The Central Board of Direct Taxes (CBDT), *vide notification 07/2022, dated 18-01-2022* has notified e-advance rulings Scheme, 2022 applicable with effect from 18-01-2022. The Scheme shall be applicable to the applications of advance rulings made to the Board for Advance Ruling or applications of advance rulings transferred to such Board.

(d) 245N to 245V

The definition of applicant as given in section 245N(b) includes both resident as well as non-resident applicant. In other words, application for advance ruling can be made by resident as well as non-resident applicant.

Thus, the statement given in the question is false and hence, option (b) is the correct option.

Q5. A resident can seek advance ruling in relation to his tax liability arising out of one or more transactions valuing Rs.100 crore or more in total which has been undertaken or is proposed to be undertaken by him and such determination shall include the determination of any question of law or of fact specified in the application.

- (a) True (b) False

Correct answer : (a)

Justification of correct answer :

As the statement given in the question is true and hence, option (a) is the correct option.

Q6. The authority will not allow the application when the question involves determination of fair market value of any property.

- (a) True (b) False

Correct answer : (a)

Justification of correct answer :

In following circumstances the application is not allowed by the Authority:

- The authority will not allow the application when the question raised is already pending before any income-tax authority or appellate tribunal or any Court. However, exception will apply in the case of a resident applicant falling within the notified class or category of persons.
- The authority will not allow the application when the question involves determination of fair market value of any property.
- The authority will not allow the application when the question relates to a transaction which is designed *prima facie* for the avoidance of income-tax. Exception to this rule is for : (i) resident taxpayer falling within notified class or category of persons notified in the official gazette by the Central Government; and (ii) whether or not an arrangement proposed to be undertaken by resident or non-resident is an impermissible avoidance arrangement under Chapter X-A.

Thus, the statement given in the question is true and hence, option (a) is the correct option.

Q7. An application (in quadruplicate) for advance ruling by any person (resident or non-resident) for determination whether an arrangement, is an impermissible avoidance agreement as referred to in Chapter X-A is to be made in Form No _.

- (a) 34C (b) 34D

(c) 34E

(d) 34EA

Correct answer : (d)

Justification of correct answer :

An application (in quadruplicate) for advance ruling by any person (resident or non-resident) for determining whether an arrangement, is an impermissible avoidance agreement as referred to in Chapter X-A is to be made in Form No.34EA.

Thus, option (d) is the correct option.

Q8. An application (in quadruplicate) for advance ruling by a resident applicant for determination of his tax liability arising out of one or more transactions valuing Rs.100 crore or more in total which has been undertaken or is proposed to be undertaken by him is to be made in Form No _.

(a) 34D

(b) 34DA

(c) 34E

(d) 34EA

Correct answer: (b)

Justification of correct answer:

An application (in quadruplicate) for advance ruling shall be made by a resident applicant, for determination of his tax liability arising out of one or more transactions valuing Rs.100 crore or more in total which has been undertaken or is proposed to be undertaken by him, in Form No. 34DA.

Thus, option (b) is the correct option.

Q9. The fee for application for advance ruling is Rs. 10,000 in all cases.

(a) True

(b) False

Correct answer : (b)

Justification of correct answer :

The fees payable along with application for advance ruling shall be in accordance with the following table:

Category of applicant	Category of case	Fee
A non-resident applicant. A resident seeking advance ruling in relation to the tax liability of a non-resident arising out of transaction undertaken or proposed to be undertaken by him with a non-resident. A resident seeking advance	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought does not exceed Rs. 100 crore.	Rs.2,00,000
	Amount of one or more transaction, entered into or proposed to be undertaken,	Rs.5,00,000

ruling in relation to his tax liability arising out of one or more transactions valuing Rs.100 crore or more in total which has been undertaken or is proposed to be undertaken by him	in respect of which ruling is sought exceeds Rs. 100 crore but does not exceed Rs. 300 crore.	
	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought exceeds Rs. 300 crore	Rs.10,00,000
Any other applicant	In all cases	Rs.10,000

Thus, the statement given in the question is false and hence, option (b) is the correct option.

Q10. An application for advance ruling once made, it cannot be withdrawn by the applicant.

(a) True

(b) False

Correct answer : (b)

Justification of correct answer :

An application for advance ruling once made by the applicant can be withdrawn within a period of 30 days from the date of application.

Thus, the statement given in the question is false and hence, option (b) is the correct option.