

ADVANCE RULINGS

(Section 245N –245V)

SECTION 245N: DEFINITIONS

(a)	"Advance Ruling" means –	"Applicant" means any person who is a–
(i)	<ul style="list-style-type: none"> - A determination by the BOAR - in relation to a - transaction which has been undertaken or is proposed to be undertaken - by an NR applicant and - such determination shall include the determination of any question of law or question of fact specified in the application 	non-resident referred to in a(i),
(ii)	<ul style="list-style-type: none"> - A determination by the BOAR - in relation to 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 question of fact specified in the application 	resident referred to in (a)(ii)
(iia)	<ul style="list-style-type: none"> - A determination by the BOAR - 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 question of fact specified in the application 	<p>a resident referred to in clause (a)(iia) above, as may be notified by Central Government.</p> <p>[Central Government has notified that a resident can move application for Advance Ruling, in relation to his tax liability arising out of one or more transactions valuing ₹ 100 crore or more in total which have been undertaken or proposed to be undertaken]</p>
(iii)	<ul style="list-style-type: none"> - A determination by the BOAR - in respect of - an issue relating to computation 	Public sector company (PSU)

	of total income <ul style="list-style-type: none"> - which is pending before any Income Tax Authority, or ITAT and - such determination shall include the determination of any question of law or question of fact specified in the application 	
(iv)	<ul style="list-style-type: none"> - A determination by BOAR - whether an arrangement - PROPOSED TO BE UNDERTAKEN BY A RESIDENT OR NON-RESIDENT - is an impermissible avoidance arrangement or not as referred in Chapter of GAAR 	resident or non-resident referred in (a)(iv)

* **BOAR** means **Board for Advance Ruling**.

SECTION 245Q: APPLICATION FOR ADVANCE RULINGS

Steps for obtaining an advance ruling under Income Tax Act.

Step 1: Make an Application in prescribed form and manner stating the question on which the advance ruling is sought.

Step 2: Application can be withdrawn within 30 days from the date of application.

However, the High Court, in case of M.K.JAIN has observed that though section 245Q 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 BOAR from permitting withdrawal of the application after the said period with the permission of the BOAR, if the circumstances of the case so justify.

Step 3: Application shall be in quadruplicate and be accompanied by a fee as given below:

Category of applicant	Category of case	Fee
An applicant referred to in sub-clauses (i) or (ii) or (iia) 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

SECTION 245R: PROCEDURE ON RECEIPT OF APPLICATION

Step I	BOAR shall forward a copy of application to PCIT/CIT to ascertain whether the case is pending or not, and if necessary call for the records.								
Step II	BOAR may allow or reject the application. However, in following 3 cases, AAR shall reject the application:								
	<table border="1"> <thead> <tr> <th>(i)</th> <th>(ii)</th> <th>(iii)</th> </tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> With regard to NR & Resident applicant (except PSUs), when the question raised in the application is pending before any ITA, ITAT or COURT on the date of application. (can be pending later on) With regard to PSUs, when the issue is pending before any COURT <ul style="list-style-type: none"> Opportunity of being heard shall be given to the applicant before order of rejection of application. Reason for rejection shall be given in the order Copy of order shall be sent to the applicant and to the PCIT/CIT No appeal is possible against order of rejection </td><td> <p>Question raised in the application involves determination of FMV of any property</p> </td><td> <p>Question in the application relates to a transaction which is designed prima facie for the avoidance of tax</p> <p>This restriction shall not be applicable for the PSUs</p> </td></tr> </tbody> </table>	(i)	(ii)	(iii)	<ul style="list-style-type: none"> With regard to NR & Resident applicant (except PSUs), when the question raised in the application is pending before any ITA, ITAT or COURT on the date of application. (can be pending later on) With regard to PSUs, when the issue is pending before any COURT <ul style="list-style-type: none"> Opportunity of being heard shall be given to the applicant before order of rejection of application. Reason for rejection shall be given in the order Copy of order shall be sent to the applicant and to the PCIT/CIT No appeal is possible against order of rejection 	<p>Question raised in the application involves determination of FMV of any property</p>	<p>Question in the application relates to a transaction which is designed prima facie for the avoidance of tax</p> <p>This restriction shall not be applicable for the PSUs</p>		
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Step III	After allowing application and after examining the information placed by the applicant or obtained by the authority, BOAR pronounces its Advance Ruling on the question specified in the application.								
Step IV	On request of applicant, BOAR shall, before pronouncing its Advance Ruling, provide an opportunity of being heard either in person or through a duly authorized representative								
Step V	BOAR shall pronounce its Advance Ruling within 6 months from the date of receipt of application								
Step VI	A copy of the Advance Ruling pronounced by BOAR shall be sent to applicant and to the PCIT/CIT								
<p>"The Order of BOAR giving its opinion is an appealable order as the same is not binding on the assessee or the income-tax department. Hence Assessee/ Income-tax department can file an appeal to High Court against the order of Board for Advance Rulings (BOARD)"</p>									

ADVANCE RULING CAN BE OBTAINED BY:

- (i) **NON-RESIDENT:** The case **should not be pending** before any Income-tax authority/ ITAT/ High Court/ Supreme Court **on the date of application.** **Though, it may become pending later on.**
- (ii) **RESIDENT DEALING WITH A NON-RESIDENT:** The case **should not be pending** before any Income-tax authority/ ITAT/ High Court/ Supreme Court **on the date of application.** **Though, it may become pending later on.**
- (iiia) **RESIDENT MOVING APPLICATION IN RELATION TO HIS TAX LIABILITY ARISING OUT OF TRANSACTIONS OF ₹ 100 CRORES OR MORE:** The case **should not be pending** before any Income-tax authority/ ITAT/ High Court/

Supreme Court **on the date of application**. Though, it may become pending later on.

- (iii) **PUBLIC SECTOR COMPANIES:** The case should be pending before any **Income-tax authority/ ITAT on the date of application**. Public Sector Company cannot seek advance ruling if on the date of application, the case is pending before any court.
- (iv) **RESIDENT OR NON-RESIDENT** can seek Advance Ruling only for the transaction proposed to be undertaken to know whether the transaction is an impermissible avoidance arrangement or not as per GAAR. **The application cannot be made for a transaction which has already been entered into.**

KEY NOTE:

In the above cases, Income-tax authority/ ITAT cannot pass their orders without waiting for the decision of the “Board for Advance Ruling”.

Illustration:

A foreign company entered into contracts with several Indian companies for installation of mobile telephone system and made an application to the **BOAR** on the rate of withholding tax on receipts from Indian companies. One of the Indian companies made an application to its Assessing Officer for determination of the rate of tax at which tax is deductible on payment to the said foreign company. The **BOAR** 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:

As per section 245R(2), the **BOAR** may, after examining the application and the records called for, either allow or reject the application. However, the **BOAR** shall not allow the application where the question raised in the application is already pending in his case before any income-tax authority, ITAT or Court in regard to:

- a non-resident applicant referred to in section 245N(b)(i),
- a resident applicant in relation to a transaction with a non-resident referred to in section 245N(b)(ii), and
- a resident applicant referred to in section 245N(b)(iia).
- a resident or non-resident applicant referred to in section 245N(b)(iv).

The applicant in the present case is the foreign company. The case of foreign company is not pending before any income tax authority, ITAT or Court.

The facts are similar to **Ericsson Telephone Corporation India AB v. Commissioner of Income-tax [1997] (AAR)**.

In this case, it was held that the question raised in the application by foreign company is not pending in case of the foreign company before Income Tax Authority/ITAT/Court. **The Indian company in question 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 pertained to one of the payments made to the applicant, it was not one pending determination before any other authority in the applicant's case. Therefore, it would not be proper to reject the application, relying on section 245R of the Income-tax Act.**

Hence rejection of the application of the foreign company by the **BOAR** is not justified.

SECTION 245RR: INCOME TAX AUTHORITY OR APPELLATE AUTHORITY NOT TO PROCEED IN CERTAIN CASES

No Income Tax Authority or ITAT shall proceed to decide any issue in respect of which an application has been made by the Applicant. It shall wait for the decision of BOAR.

SECTION 245T: ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES

- Where the **BOAR** finds that Advance Ruling sought by applicant by **fraud or misrepresentation of facts**,
- then it may by order declare such ruling to be **void-ab-initio**.
- and all the provisions of this Act shall apply as if such advance ruling has never been made.

EXPLANATION 1 TO SECTION 153: COMPUTATION OF PERIOD OF LIMITATION

In computing period of limitation for making assessment or reassessment, **following time period shall be excluded from the time period referred to in section 153:**

The period commencing **from the date on which an application is made** before the **BOAR** under section 245Q and **ending on the date** on which the:

- the order of **REJECTING** the application; or
- the Advance Ruling **PRONOUNCED** by **BOAR**

is received by CIT under section 245R.

Illustration 1:

For Assessment Year 2022-23, the assessee made an application to **Board for Advance Ruling** on 1.12.2022. The **BOAR** pronounces its Advance Ruling on 30.04.2023 and the Advance Ruling is received by the CIT on 31.05.2023. Upto what time can the Assessing Officer make the assessment.

Answer:

The assessment of Assessment Year 2022-23 can be completed under section 143(3) upto 31.12.2023 + (1.12.2022 to 31.05.2023) i.e. 182 days = 30.06.2024.

Illustration 2:

ECO & Co. filed an application for advance ruling for A.Ys. 2021-22, 2022-23 and 2023-24 with the **Board for Advance Ruling (BOAR)**. For the assessment years 2021-22 and 2022-23, notices under section 143(2) were issued to the assessee and subsequently, before the date of filing application with **BOAR**, notice under section 142(1) along with questionnaire was issued. For the assessment year 2023-24, notice under section 143(2) was issued before the date of filing of application with the **BOAR** and notice under section 142(1) along with questionnaire was served on the assessee after the date of filing of application with the **BOAR**.

Can the **BOAR** reject the application on the ground that proceedings are already pending?

Answer:

The facts of the case are similar to the facts in **Hyosung Corporation v. AAR (2016)**, wherein the above issue came up before the Delhi High Court. The Court observed that mere issue of notice under section 143(2) in pre-printed format will not amount to 'proceedings pending' for the purpose of applying the proviso to section 245R(2). However, issue of notice under section 142(1) accompanied by a questionnaire before filing of the application by the assessee with the **BOAR** would tantamount to 'proceedings pending' before an income-tax authority.

Thus, applying the rationale of the Delhi High Court ruling to the case on hand, the application for the assessment year 2023-24 cannot be rejected by the **BOAR** since notice under section 142(1) issued for the assessment year 2023-24 after the date of filing of application will not result in the proceedings being 'already pending' before an Income-tax authority.

However, for the assessment years 2021-22 and 2022-23, the rejection of the application by **BOAR** is tenable in law, since notice under section 142(1) along with detailed questionnaire was issued before the date of filing of such application.