

Chapter 12 : Advance Ruling

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12. ADVANCE RULING

Advance Ruling (Remember it through Samdhiji)

IMPORTANT	NOT SO IMPORTANT	OMITTED
245Q Application	245N Definition	-
245R Procedure upon receipt of Application	245O AAR	
245S Applicability of AR	245P Proceeding not to be valid	
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Basic

1. Chapter XIX-B of the Income-tax Act, which deals with advance rulings, came into force with effect from 1-6-1993.
2. Ruling means a Decision having a binding effect and Advance Ruling means a decision taken in advance.
3. Under the scheme, the power of giving advance rulings has been entrusted to an independent adjudicatory body.
4. The scheme provides for determination of Question of law or Fact in respect of Transaction involving NR.
5. Accordingly, a high level body headed by a retired judge of the Supreme Court has been set up.
6. This is empowered to issue rulings, which are binding both on the Income-tax Department and the applicant

Sec 245O Authority for Advance Rulings

Sec 245O(1) - CG 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 on and from the date of appointment of the Customs Authority for Advance Rulings u/s 28EA of that Act.

12. ADVANCE RULING

Sec 245O(1A) - On and from the date of appointment of Customs Authority for Advance Rulings referred to in the proviso to sub-section (1), the Authority shall act as an Appellate Authority, for the purpose of Chapter V of the Customs Act, 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 after the date of such appointment of the Customs Authority for Advance Rulings.]

Sec 245O(2) - The Authority shall consist of a Chairman and such number of Vice-chairmen, revenue Members & law Members as the CG may, by notification, appoint.

Sec 245O(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 7 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 & Central Excise Service, who is, or is qualified to be, a Member of the CBEC,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 GOI on the date of occurrence of vacancy.

Sec 245O(4) - The terms and conditions of service and the salaries and allowances payable to the Members shall be such as may be prescribed.

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Sec 245O(5) - The CG shall provide to the Authority with such officers & employees, as may be necessary, for the efficient discharge of the functions of the Authority under this Act.

Sec 245O(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.

Sec 245O(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.

Sec 245O(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.

Sec 245O(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 sec (3)(c)(i)

Sec 245O(8) - The Authority shall be located in the National Capital Territory of Delhi and its Benches shall be located at such places as the CG may, by notification specify.

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

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

Sec.245N Definitions

"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 NR applicant; or
- ii) a determination by the Authority 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; or
- ii a) 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 NR, is an impermissible avoidance arrangement as referred to in Chapter X-A or not

Provided that where an advance ruling has been pronounced, before date on which FA'03 receives assent of the President, by Authority in respect of an application by a resident applicant referred to in (ii) above as it stood immediately before such date, such ruling be binding on the persons u/s 245S