

12. ADVANCE RULING

"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 CG may, by notification in the Official Gazette, specify; or

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

v) is referred to in sub-clause (iv) of clause (a).

b) and makes an application u/s 245Q(1);

c) an applicant as defined in sec 28E(c) of the Customs Act, 1962;

d) an applicant as defined in sec 23A(c) of the Central Excise Act, 1944;

an applicant as defined in sec 96A(b) of the Finance Act, 1994;

"application" means an application made to the Authority u/s 245Q(1);

"Authority" means the Authority for Advance Rulings constituted u/s 245-O;

"Chairman" means the Chairman of the Authority;

"Member" means a Member of the Authority and includes the Chairman and Vice-chairman;

"Vice-chairman" means the Vice-chairman of the Authority.

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Sec.245Q Application for advance ruling.

Sec 245Q(1) - An applicant desirous of obtaining an advance ruling under this Chapter / Chapter V of the Customs Act, 1962 / under Chapter IIIA of the Central Excise Act, 1944 / under Chapter VA of the FA, 1994 may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

Sec 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 in this behalf, whichever is higher:

Sec 245Q(3) - An applicant may withdraw an application within 30 days from the date of the application.

Sec.245R Procedure on receipt of application

Sec 245R(1) - On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Principal Commissioner or Commissioner &, 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.

Sec 245R(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 u/s 245N(b)(iii)] 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

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avoidance of income-tax [except in the case of a resident applicant falling u/s 245N(b)(iii) or in the case of an applicant falling u/s 245N(b)(iiiia)]

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.

Sec 245R(3) - A copy of every order made under sub-section (2) shall be sent to the applicant and to the Principal Commissioner or Commissioner.

Sec 245R(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.

Sec 245R(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.

Sec 245R(6) - The Authority shall pronounce its advance ruling in writing within 6 months of the receipt of application.

Sec 245R(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 Principal Commissioner or Commissioner, as soon as may be, after such pronouncement.

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Sec.245RR Appellate authority not to proceed in certain cases

This section bars any ITA or the ITAT from proceeding to decide any issue in respect of which an application has been made by a resident applicant.

Sec.245S Applicability of advance ruling

Sec 245S(1) - The advance ruling pronounced by the Authority u/s 245R shall be binding only-

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

Sec 245S(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.

Sec.245T Advance ruling to be void in certain circumstances

Sec 245T(1) - Where the Authority finds, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, that an advance ruling pronounced by it u/s 245R(6) 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 & ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

Sec 245T(2) - A copy of the order made under sub-section (1) shall be sent to the applicant and the Principal Commissioner or Commissioner.

Sec.245U Power of AAR

Will have all power of vested in civil court & referred in Sec 131 which includes :

- a) Discovery & inspection
- b) Enforcing the attendance of person
- c) Compelling the production of books of account & other document
- d) Issuing Commission

Know Your Exams

- P1 State the powers of the Authority for Advance Ruling under the Income - tax Act, 1961.[Nov-02/Nov-08/May12]
- P2 Mr. Balram is a non-resident. The appeal pertaining to the AY 2015-16 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 AY 2020-21 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 said ruling for his assessment pertaining to AY 2020-21. Can he do so?[May1997/May2011]
- P3 Explain as to what term 'Advance Ruling' means under Income-tax.[RTP]
- P4 Q, a NR, made an application to the Authority for Advance Rulings on 2.7.2019 in relation to a transaction proposed to be undertaken by him. On 31.8.2019, he decides to withdraw the said application. Can he . withdraw the application on 31.8.2019?
[Nov-06/Nov-13]

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- P5 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 AO for determination of the rate at which tax is deductible on payment to the said foreign co. The Authority for Advance Rulings rejected the application of the foreign co on the ground that the question raised in the application is already pending before an ITA. Is the rejection of the application of the foreign company justified in law?[May06]
- P6 Can a person resident in India seek advance ruling from the Authority for Advance Ruling?[May-05]
- P7 When can an advance ruling pronounced by the Authority for Advance Rulings be declared void? What is the consequence?[May-01]
- P8 Macline Cola Co. of UK entered into contracts with three Indian companies namely ABC Ltd., Pepsi Co. Ltd. and Coca Cola Ltd. for supplying know-how. Macline Cola Co. made an application to the Authority for Advance Rulings (AAR) on the rate of withholding tax on receipts applicable to it. Also, Coco Cola Ltd. also made an application to the AO for determination of the rate at which tax is deductible on the payment made to non-resident company i.e., Macline Cola Co. The Authority for Advance Rulings (AAR) rejected application of Macline Cola Co. on ground that the question raised in the application is already pending before an ITA. Explain whether rejection of application by AAR is justified in law?[May-15]