



HANDBOOK ON ADVANCE RULINGS



BOARD FOR ADVANCE RULINGS



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
CENTRAL BOARD OF DIRECT TAX
BOARD FOR ADVANCE RULINGS

A HANDBOOK ON
ADVANCE RULINGS

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© Board for Advance Rulings, New Delhi, India [2023]

DISCLAIMER

This handbook should not be construed as an exhaustive statement of law and procedures. In case of doubt, reference should be made to the relevant provisions of the Direct Tax Laws, Rules, notifications, circulars, etc., issued from time to time.



Preface

This handbook aims to provide general guidance on the scheme of Advance Rulings under the Indian Income-tax Act, 1961 (the Act). In addition to law and procedure relating to this scheme, relevant provisions of the Act and the Income-tax Rules, 1962 (the Rules), statutory forms, notifications issued by the Central Board of Direct Taxes and other orders etc. of the Government of India have also been included.

Vide Notification No. 96/2021 dated 1st September, 2021 three Boards for Advance Rulings (BAR) have been constituted. Under the scheme, it has been decided to entrust the power of giving advance rulings to a Board and to ensure that the procedure is simple, inexpensive, expeditious and technology-driven.

Further, by Notification No. 07 of 2022, the Scheme of E-advance Ruling is introduced, enabling an entire process of advance rulings with a minimal interface and ensuring greater efficiency. Presently, the functionality of BAR is being operationalized through an e-mail system. As and when a dedicated web portal is ready, this Handbook will be suitably updated.

The information contained in this publication is intended for general guidance only. It is not a substitute for the relevant Acts, Rules, circulars, or orders for which a reference must invariably be made to the authorized text.

This handbook is available through the Income Tax Department of India website, i.e. www.incometaxindia.gov.in.



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INTRODUCTION

The advent of globalisation led to inextricable linkages of the world economies and gave rise to the creation of multi-national enterprises (MNEs) operating in multiple jurisdictions and undertaking cross-border transactions. This led to challenges relating to taxation besides others regarding the said transactions. To begin with, the main area of concern of jurisdictions has been to attempt to avoid double taxation. In order to ensure the same, jurisdictions across the globe have been entering into what we call Double Taxation Avoidance Agreement (DTAA). India has entered into DTAAAs with several countries, and the list is provided in Annexure II.

The jurisdictions have generally been conscious of providing tax certainty to the non-residents, one such mechanism being through advance rulings. The system for Advance Rulings, which means written decisions by the empowered authority regarding the tax consequences of a transaction in academic parlance, is in vogue in many countries, with substantial variations.

In India, the mechanism of Advance Ruling was first recommended by the Wanchoo Committee in the mid-seventies and was introduced by the Finance Act, 1993. Under this, the power of giving advance rulings was conferred upon an independent high-level adjudicatory body headed by a retired judge of the Supreme Court. It was called Authority for Advance Rulings (AAR).

Later, the Finance Act, 2021 made amendments to the Income-tax Act, 1961 (the Act) and in accordance therewith the Government of India, *vide* Notification No. 96/2021 dated 1st September, 2021 constituted three Boards for Advance Rulings (BAR), each consisting of two senior officers not below the rank of Chief Commissioner of Income-tax as Members. Further, the Government of India, *vide* Notification No. 97/2021 dated 1st September, 2021 notified 1st September, 2021 as the appointed date for the relevant provisions relating to operationalization of the BAR. Subsequently, e-advance rulings Scheme, 2022 (the Scheme) has been notified *vide* Notification No 07/2022 dated 18th January 2022, which was amended by e-advance ruling (amendment) Scheme, 2023 *vide* Notification No. 38/2023 dated 12.06.2023. Further, the relevant rules and Forms of the Income-

tax Rules, 1962 (the Rules) were also amended *vide* Notification No. 49/2022 dated 5th May 2022 and Notification No. 37/2023 dated 12th June 2023. The substantive provisions of law relating to BAR are contained in Chapter XIX-B of the Act (sections 245N to 245W), and the procedures are laid out in rules 44E and 44FA of the Rules.

The handbook is intended to provide information regarding the related provisions of laws and procedures.



ACRONYMS/ ABBREVIATIONS

Act	The Income-tax Act, 1961
AAR	Authority for Advance Rulings
AR	Authorized Representative
BAR	Board for Advance Ruling
CBDT	Central Board of Direct Taxes
CCIT	Chief Commissioner of Income-tax
CCIT (IT)	Chief Commissioner of Income-tax (International Taxation)
CIT	Commissioner of Income-tax
CIT(DR)	Commissioner of Income-tax (Departmental Representative)
DGIT	Director General of Income-tax
DTAA	Double Taxation Avoidance Agreement
GAAR	General Anti-Avoidance Rules
IPC	Indian Penal Code, 1860
PCCIT	Principal Chief Commissioner of Income-tax
PCCIT(IT)	Principal Chief Commissioner of Income-tax (International Taxation)
PDGIT	Principal Director General of Income-tax
Rules	The Income-tax Rules, 1962
Scheme	e-advance rulings Scheme, 2022



CHAPTER 1

ADVANCE RULINGS UNDER THE INDIAN DIRECT TAX LAWS

1.1 BOARD FOR ADVANCE RULINGS:

Under the direct tax laws, the power of giving advance rulings has been entrusted to BAR, and it has been ensured that the procedure is simple, inexpensive, expeditious and technology-driven. The BAR has full power of civil court under the Code of Civil Procedure, 1908 as referred to in section 131 of the Act to give its rulings in respect of specific questions of law and facts.

1.2 SALIENT FEATURES OF THE BAR:

Some of the salient features of the BAR are:

- **Electronic mode-** Receipt of applications, processing of applications, conduct of hearings and disposals is carried out through electronic mode.
- **Automated allocation** - Applications are to be received by the Secretary of BAR-I, Delhi (designated as the Nodal Secretary for Boards for Advance Rulings) electronically. After that, PDGIT/ DGIT (Systems) randomly allocates the applications to the respective BAR.
- **Greater transparency-** The mode of conduct of the hearing shall be through e-platform or e-mode, thereby reducing interface with the applicant and ensuring transparency and convenience.
- **Appealable-** All orders are appealable before the Hon'ble High Court.
- **Expeditious disposal-** BAR is introduced with the sole

intention of speedy disposal of applications through electronic mode. BAR is headed by two serving senior officers of the Income Tax Department to ensure that applications are disposed of expeditiously.

- **Grievances redressal:** The specific emphasis has been laid on speedy and time-bound disposal of the applicants' grievances, if any.

1.3 ADVANTAGES OF THE SCHEME:

- (i) The non-resident investor can be sure of its liability towards income-tax even before undertaking the investment in India, which may facilitate investment in such a way to avoid long-drawn tax litigation.
- (ii) BAR is best suited to sort out complex issues, including those concerning application of DTAA which may arise due to differences of opinion between the tax authorities and the taxpayers.
- (iii) Not only a non-resident investor but even a resident investor can get certainty, and uniformity and avail the benefit of avoiding long-drawn litigation as the scheme is also applicable to a resident taxpayer seeking an advance ruling in relation to its tax liability arising out of one or more transactions, valuing Rs.100 crore or more in total, undertaken or proposed to be undertaken by it.
- (iv) The scheme also provides certainty to applicants, both residents and non-residents, seeking an advance ruling on whether an arrangement proposed to be undertaken by them is an impermissible avoidance arrangement under General Anti-Avoidance Rules (GAAR) provisions.
- (v) The Public Sector Companies can take advantage of getting advance rulings on questions of facts or law pending before any income-tax authority or Appellate Tribunal. This would help in expeditious decisions on their tax disputes.
- (vi) The rulings of the BAR are appealable before the Hon'ble High court by both the applicant and the Department. If both accept the ruling on a given set of facts, then the taxpayer is sure about its future tax liabilities, which will help it manage its financial affairs efficiently.

- (vii) Under this scheme, the BAR is expected to pronounce its rulings expeditiously.

1.4 WHO CAN SEEK ADVANCE RULING

The power and functions of the BAR are provided in Chapter XIX-B of the Act consisting of sections 245N to 245W. From a coherent reading of section 245N, it can be gathered that the ruling can be obtained by the following applicants:

- (i) A non-resident in regard to a tax liability arising out of a transaction undertaken or proposed to be undertaken;
- (ii) A resident undertaking or proposing to undertake a transaction with a non-resident to determine the tax liability of the non-resident arising out of such a transaction;
- (iii) A resident who has undertaken or proposes to undertake one or more transactions of the value of Rs.100 crore or more in total [*vide* Notification No. 73 dated 28th November, 2014] to determine tax liability arising out of such a transaction;
- (iv) A Public Sector Company¹ can also apply to seek a ruling in advance in respect of issues relating to the computation of total income which is pending before any income-tax authority or Appellate Tribunal;
- (v) Any person, being a resident or non-resident, can obtain a decision or determination whether an arrangement proposed to be undertaken by it is an impermissible avoidance arrangement as referred to in Chapter X-A or not.

The Applicant can be a/an:

- (i) individual,
- (ii) Hindu undivided family,
- (iii) company,
- (iv) firm,

¹Central Government *vide* Notification No. 11456, dated 3rd August, 2000 has specified public sector company as defined in *clause* (36A) of section 2 of the Act being such class of persons under item (iii) of *sub-clause A* of *clause* (b) of section 245N of the Act.

- (v) association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) artificial juridical person, not falling within any of the above.

1.5 THE COMPOSITION OF THE BAR:

The BAR consists of two members, each being an officer not below the rank of Chief Commissioner of Income-tax, as nominated by the CBDT.

1.6 FUNCTIONS OF THE BAR:

Both the Members of the BAR function as a body in disposing of the applications before them. Section 245P of the Act provides that no proceeding before the BAR, or the pronouncement of advance ruling by the BAR, shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in its constitution.

1.7 POWERS OF THE BAR

The BAR has all the powers of a Civil Court under the Code of Civil Procedure, 1908, as referred to in section 131 of the Act. The BAR shall be deemed to be a civil court for the purposes of section 195 but not for Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the BAR shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for section 196, of the Indian Penal Code, 1860.

1.8 E-ADVANCE RULINGS SCHEME, 2022:

Sub-sections (9) and (10) of section 245R of the Act empower the Central Government to make a scheme for the purposes of giving advance rulings and to direct that any of the provisions of this Act shall not apply or shall apply with certain exceptions, modifications and adaptations.

Further, sub-sections (2) and (3) of section 245W of the Act empower the Central Government to make a scheme for the purposes of filing an appeal to the High Court under sub-section (1) of section 245W by the Assessing Officer (AO) and to direct that any of the provisions of this Act shall not apply or shall apply with certain exceptions, modifications and adaptations.

In exercise of the above, the e-advance rulings Scheme, 2022 (the Scheme) was notified on 18th January, 2022 which has been further amended on 12th June, 2023.

1.9 POWERS AND FUNCTION OF SECRETARY:

The BAR has a secretary, which has been defined in the Scheme to mean a Commissioner appointed by the CBDT as Secretary of the BAR. Paragraph 11 of the Scheme provides his powers and functions as under:

- (1) The Secretary shall have the custody of the records or e- records of the Board for Advance Rulings and shall exercise such other functions as are assigned to him under this Scheme or by the Board for Advance Rulings by separate order.
- (2) The official seal of the Board for Advance Rulings shall be kept in the custody of the Secretary.
- (3) The Secretary shall also have the following powers and duties, namely: -
 - (i) to receive random allocated applications from PDGIT(Systems)/ DGIT(Systems) filed before the BAR;
 - (ii) to scrutinize the applications to find out whether they conform with the Act, the Rules and the procedure;
 - (iii) to point out defects in such application to the parties and require them to remove the defects by affording them a reasonable opportunity to do so and, where, within the time granted, the defects are not removed, to obtain necessary orders of the BAR;
 - (iv) to fix the date of hearing for the applications in

- consultation with the members of the BAR and direct the issue of notices;
- (v) to issue the service of notices or other processes and to ensure that the parties are properly served;
 - (vi) to requisition records from the custody of any person, including a Commissioner of Income-tax or any other authority;
 - (vii) to allow inspection of records of the BAR;
 - (viii) to direct any formal amendment of the records of the BAR;
 - (ix) to grant certified copies of the orders of the BAR to the parties;
 - (x) to grant certified copies of documents filed in the proceedings to the parties in accordance with the relevant rules;
 - (xi) to bring on record legal representatives, in case of death or retirement of any party to the proceedings and to make such appropriate amendments in the cause title as may become necessary in the other situations; and
 - (xii) to discharge any other function as may be assigned by the BAR by special or general order.

1.10 LANGUAGE OF THE BAR:

Paragraph 20 of the Scheme provides that the language of the BAR shall be Hindi or English, at the applicant's option and that in case where the document is in a language other than Hindi or English, then an English translation should also be filed. Further, it is provided that the BAR can pass its Orders or Rulings in Hindi or English at its discretion.

Accordingly, in cases where the documents such as incorporation certificates of companies, salary certificates of individuals etc. submitted by the non-residents might be in languages other than English or Hindi when they are issued in foreign countries, the applicants would be required to submit English translations of such documents in addition to the copies of original documents. Such translations should also be properly verified.

1.11 DRESS REGULATIONS:

The authorized representative appearing before the BAR through video conferencing requires to be in the dress prescribed for the members of his profession by the competent professional body. Other persons appearing before the BAR through video conferencing should be dressed appropriately.



CHAPTER 2

**REQUISITES FOR OBTAINING
ADVANCE RULINGS****2.1 APPLICANTS WHO CAN SEEK ADVANCE RULING**

Clause (b) of section 245N of the Act provides that the advance ruling could be sought by an applicant who is:

- (i) A non-resident in regard to tax liability arising out of a transaction undertaken or proposed to be undertaken [section 245N (b) (A) (I)];
- (ii) A resident undertaking or proposing to undertake a transaction with a non-resident to determine the tax liability of the non-resident arising out of such a transaction [section 245N (b) (A) (II)];
- (iii) A resident who has undertaken or proposes to undertake one or more transactions of the value of Rs.100 crore or more in total [vide Notification No. 73 dated 28th November, 2014] to determine tax liability arising out of such a transaction [section 245N (b) (A)(III)];
- (iv) A Public Sector Company can also apply to seek a ruling in advance in respect of issues relating to the computation of total income which is pending before any Income-tax Authority or Appellate Tribunal [section 245N (b) (A) (IV)];
- (v) Any person, being a resident or non-resident, can obtain a decision or determination whether an arrangement proposed to be undertaken by it is an impermissible avoidance arrangement as referred to in Chapter X-A or not [section 245N(b) (A) (V)].

(a) NON-RESIDENT APPLICANT

A non-resident is defined under clause (30) of section 2 of the Act as a person who is not a 'resident' and for the purposes of sections 92, 93 and 168 of the Act, includes a person who is not ordinarily resident within the meaning of clause (6) of section 6 of the Act.

(b) RESIDENT APPLICANT

A resident has been defined under clause (42) of section 2 of the Act as a person who is resident in India within the meaning of section 6.

(c) RESIDENT APPLICANT HAVING TRANSACTIONS WITH NON-RESIDENTS

A resident can apply in relation to a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with a non-resident.

(d) SPECIFIED CATEGORY OF RESIDENT APPLICANTS

A resident falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify in this behalf may also apply to advance rulings.

The Central Govt. specified public sector companies [as defined in clause (36A) of section 2 of the Act] as applicant, vide Notification No. SO 725(E), dated 3rd August, 2000.

A resident who has undertaken or proposes to undertake one or more transactions of the value of Rs. 100 crore or more in total has also been notified vide Notification No.73 dated 28th November, 2014.

A person has been defined under clause (31) of section 2 of the Act as including—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

2.2 CONCEPT OF RESIDENCE:

The term “resident” has been defined in section 6 of the Act (Annexure-I). According to the provisions of this section -

An individual is said to be resident in any financial year, if it has been in India during that year:

- for a period or periods of 182 days or more; or
- for a period or periods of 60 days or more and has also been in India within the preceding four years for a period or periods of 365 days or more. However, the period of 60 days is increased to 182 days in the case of a citizen of India or a person of Indian origin who has been outside India and comes on a visit to India or a citizen of India who leaves India for the purpose of employment outside India, or as a member of the crew of an Indian ship.

Further, a person who is a citizen of India or a person of Indian origin who has been outside India and comes to a visit to India, the aforementioned period of 60 days is increased to 120 days, instead of 182 days, if the total income of such person, other than income from foreign sources, exceeds rupees 15 lakh during the relevant previous year.

Furthermore, irrespective of the above-mentioned conditions, an individual, who is a citizen of India and has a total income, other than the income from foreign sources, exceeding Rs 15 lakh will be deemed to be a resident if it is not liable to tax in any other country or territory due to its domicile or residence or any other criterion.

A Hindu undivided family or an association of persons: An association of persons or a Hindu undivided family is resident in India in every case except where the control and management of its affairs are situated wholly outside India.

A company is resident in India, if it is an Indian company or its place of effective management is situated in India.

2.3 SCOPE OF TOTAL INCOME:

Based on the residential status of the taxpayer and the place where the income is earned, the income is included in the total income under the Act as under

Residential Status	Nature of Income
1. Resident	All income which is received or is deemed to be received in India by or on behalf of such person; or accrues or arises or is deemed to accrue or arise to him in India; or accrues or arise to him outside India, during such year
2. Resident not ordinarily resident	All income which is received or is deemed to be received in India by or on behalf of such person; or accrues or arises or is deemed to accrue or arise to it in India or accrue or arise to it outside India, during such year, provided it is derived from a business controlled in or a profession set up in India.
3. Non-resident	All income which is received or is deemed to be received in India by or on behalf of such person; or accrues or arises or is deemed to accrue or arise to it in India during such year.

Since a resident is liable to pay tax in India on its world income, it is possible that it may have to pay tax on the income earned in a foreign country also; such a situation leads to double taxation of the same income in India and again in the country where the income has been sourced, and *vice-versa* in case of a non-resident. To avoid such a situation, the Government of India has entered into agreements for the avoidance of double taxation with many countries. The applicant may refer to the relevant DTAA's available on the Income Tax Department of India website, and a list of all such DTAA's is given in Annexure II.

2.4 TRANSACTIONS ON WHICH ADVANCE RULINGS CAN BE SOUGHT:

The advance ruling is to be given on questions specified in relation to a transaction by the applicant. There are **two** aspects of this requirement.

- (i) The **first** is the use of the words “in relation to”. The question must relate to the applicant itself and not to any other person. Thus, where the question sought to be raised relates not to the applicant, which is a non-resident company, but to its resident Indian subsidiary, the application will not be admitted.
- (ii) The **Second** is “tax liability”. A non-resident can seek advance ruling on questions regarding its tax liability on the income sourced in India.

2.5 QUESTIONS ON WHICH RULING CAN BE SOUGHT:

- (a) Even though the word used in the definition is ‘question’, it is clear from the wordings used in the form(s) for advance rulings that the applicant can raise more than one question in one application.
- (b) Though the word “question” is unqualified, it is only proper to read it as a reference to questions, of law or fact, pertaining to the income-tax liability of the applicant arising out of the transaction undertaken or proposed to be undertaken by him.
- (c) The questions may be on points of law as well as on fact. Therefore, mixed questions of law and fact can also be included in the application. The questions should be so drafted that each question is capable of a proper answer. This may need avoiding complex questions and having two or more simple questions.
- (d) The questions should arise out of the statement of facts given in the application.
- (e) No ruling will be given on a purely hypothetical question.
- (f) Normally, a question is not allowed to be amended, but

in deserving cases, the amendment of one or more questions may be allowed with the leave of the BAR.

- (g) Subject to the limitations referred to above, the question may relate to any aspect of the applicant's tax liability, including aspects governed by the DTAA.
- (h) The questions may cover aspects of allied laws that may have a leaning on tax liability, such as the Law of Contracts, the Law of Trusts and the like, but the question must have a direct bearing on taxation under the Act.
- (i) Thus, for example, a Ruling can be sought on the following issues :
 - 1) Conflicts between provisions of the DTAA's and domestic legislation.
 - 2) Taxation of international partnerships.
 - 3) Transfer of assets into and out of tax jurisdictions *vis-à-vis* Indian taxation.
 - 4) Application of DTAA's entered into by India with other countries and their use in tax planning, e. g. determination of permanent establishment and residence on the basis of facts of a given case.
 - 5) Taxation of services, royalties, technical fees and income from supply of labour, equipment, etc.
 - 6) Taxation of investment funds, venture capital funds, offshore funds, financial instruments and derivatives, cross border leasing.
 - 7) Withholding of tax
 - 8) Applicability of GAAR provisions.

The list above is indicative only and not exhaustive.

2.6 THREE TYPES OF QUESTIONS PRECLUDED:

Under section 245R of the Act, certain restrictions have been imposed on the admissibility of the application. The BAR is bound to reject applications which raise the following three categories of questions.

A. Questions pending before other authorities: The BAR cannot allow any application where the question raised is

already pending in the applicant's case before any Income-tax authority, the Appellate Tribunal or any Court. However, in case of a public sector company, the issue can be brought before the BAR even if the issue is pending before the income-tax authority or Appellate Tribunal.

B. Market value of any property: The second prohibition relates to the determination of the fair market value of any property, movable or immovable.

C. Transactions designed for the avoidance of tax: Thirdly, the BAR would not allow any application if it relates to a transaction which is designed *prima facie* for the avoidance of income-tax. However, whether the transaction is an impermissible avoidance arrangement or not under GAAR provisions can be brought for an advance ruling by both resident and non-resident applicants.

2.7 APPLICATION & FEE FOR ADVANCE RULING:

(i) An applicant desirous of obtaining an advance ruling should apply to BAR at email id bar.application@incometax.gov.in in a prescribed form stating the question on which ruling is sought. The Forms are detailed below:

- 34C - Applicable to a non-resident applicant in relation to a transaction which has been undertaken or is proposed to be undertaken by it as referred to in section 245N (b) (A) (I).
- 34D - Applicable to a resident seeking an advance ruling in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident as referred to in section 245N (b) (A) (II).
- 34DA - Applicable to a resident applicant in relation to the tax liability arising out of a transaction undertaken or proposed to be undertaken as referred to in section 245N (b) (A) (III).
- 34E - Applicable to a resident applicant, notified by the Government, viz., as referred to in section 245N(b) (A) (IV).
- 34EA - Applicable to a non-resident or resident applicant seeking advance ruling on whether an arrangement proposed to be undertaken is an impermissible avoidance arrangement as referred to in Chapter X-A or not, as referred to in section 245N (b) (A) (V)

- (ii) The application is to be accompanied by proof of payment of fee in accordance with sub-rule (4) of rule 44E of the Rules, as detailed as under:

TABLE

Category	Amount of one or more transactions entered into or proposed to be undertaken, in respect of which ruling is sought.	Fee
(1)	(2)	(3)
An applicant referred to in sub-clauses A(I) or A(II) or A(III) of clause (b) of section 245N	Amount not exceeding Rs. 100 crores.	Rs. 2 lacs
	Amount exceeds Rs. 100 crores but not exceeding Rs. 300 crores.	Rs. 5 lacs
	Amount exceeding Rs. 300 crores.	Rs. 10 lacs
Any other applicant	In all cases	Rs. 10000

- (iii) The Fee is required to be paid on Bharatkosh, Government of India receipts portal, as per the following steps:
1. Visit the URL <https://bharatkosh.gov.in>
 2. Go to 'Payment to GoI', then go to 'Non-Registered Users', then go to 'Depositor's category' (Choose as applicable in your case), then go to 'Purpose', then go to 'Ministry', then select '(CBDT)' from the drop-down options, then go to 'Purpose', and fill '(Fee towards Board for Advance Rulings)', then go to 'Search', then select 'Fee towards Board for Advance Rulings (BAR)', (Now, the 'Payment Purpose' page will display Function Head 007500800130000; PAO 057288 - ZAO(CBDT), New Delhi and DDO 206714-DDO, Authority for Advance Rulings, Income Tax, Chanakyapuri)
 3. Fill up the correct fee amount, and in the space for 'Remarks' on the 'Payment Purpose' page, write i) The name of the applicant applying for Advance Ruling ii) The transaction value and PAN.
 4. On the next page titled 'Depositor's Details', fill up the relevant information, as applicable (ensuring that only the registered email id, as defined in the scheme is filled); and then, on the next page titled 'Confirm Info', confirm the Depositor's Details and Purpose Details.
 5. Make the payment using any of the payment modes

displayed.

6. Please attach the fee payment receipt generated on bharatkosh.gov.in to your application for Advance Ruling as the proof of payment.

- (iv) An applicant may withdraw an application within thirty days from the date of the application.
- (v) Where an application for advance ruling under this Chapter is made before 1st September, 2021 in respect of which no order under sub-section (2) of section 245R has been passed or no advance ruling under sub-section (4) of section 245R has been pronounced before such date, such application along with all the relevant records, documents or material, by whatever name called, on the file of the erstwhile AAR shall be transferred to the BAR and shall be deemed to be the records before it for all purposes.

2.8 CONTENTS OF APPLICATION AND VERIFICATION:

Form Nos. 34C, 34D, 34DA, 34E, 34EA are simple application forms. Notes for guidance for filling up the application are also set out in these forms. The main information which the applicant is required to furnish in the application is as follows:

- (a) The question(s) relating to the transaction on which the advance ruling is required.
- (b) Details of the relevant facts having a bearing on the question, e. g. the nature of the business or profession, the date/likely date of the transaction, nature of the transaction, etc.
- (c) The applicant's interpretation of law or facts in respect of the question on which the advance ruling has been sought.
- (d) If the applicant is assessed to tax in India or is aware of the jurisdiction of its case, the address of the Pr. Commissioner/ Commissioner of Income-tax and PAN or Aadhaar Number of the applicant, if any, may be given in the application.
- (e) Further, in case the transaction on which advance ruling is sought relates to an event of national or international importance, the name of the event is required to be furnished.
- (f) Where the PAN is not allotted, the Department would allot the PAN after obtaining the requisite particulars from the applicant.
- (g) If questions of law or fact are pending before any

income-tax authority, the details thereof need be submitted.

2.9 SIGNATURE AND VERIFICATION:

The application for Advance Ruling under the Act, the verification appended thereto, the annexure to the said application and the statements and documents accompanying it, shall be signed or digitally signed and furnished through registered e-mail address by the following:

Individual	<ul style="list-style-type: none"> - By the individual himself, or - Where, for any unavoidable reason, it is not possible for the individual to sign the application by any person duly authorised by him on this behalf. Provided that the person signing the application shall attach a power of attorney to the application
Hindu undivided family	<ul style="list-style-type: none"> - By the Karta thereof, or - Where, for any unavoidable reason, it is not possible for the karta to sign the application by any other adult member of such family
Company	<ul style="list-style-type: none"> - By the Managing Director, or - Where, for any unavoidable reason, it is not possible for the M.D. to sign the application, or where there is no managing director, by any director thereof. - Where for any unavoidable reason, it is not possible for Managing Director and director to sign the application by any person duly authorized by the company in this behalf. Power of Attorney shall also be attached to the application.
Firm	<ul style="list-style-type: none"> - By the managing partner thereof, or - 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 thereof, not being a minor.
AOP	<ul style="list-style-type: none"> - By any member of the association or principal officer thereof
Any other person	<ul style="list-style-type: none"> - By that person or by some person competent to act on his behalf

2.10 CHECKLIST FOR SUBMISSION OF APPLICATION:

While submitting an application to seek an advance ruling, the following may be kept in view:

- (i) The scanned copy of the application (original to be kept safely by the applicant), in the prescribed form, shall be sent by the applicant by electronic mail to the Nodal Secretary of the Boards for Advance Rulings on bar.application@incometax.gov.in using registered e-

mail id as defined in the Scheme (registered email id).

- (ii) The application and the accompanying annexure may be neatly typed on plain paper of A-4 size (210×297 mm), leaving a sufficient margin on all four sides and may be duly indexed and paged.
- (iii) Only scanned copies of the documents on A-4 size may be enclosed with the application which is to be sent to the Nodal Secretary (original to be kept safely by the applicant).
- (iv) The applicant is entitled to represent his case before the BAR either on his own or through an authorized representative (AR). If the applicant desires to be represented by an AR, a duly authenticated scanned copy document authorizing him to appear for the applicant should be e-mailed to the Secretary of the concerned BAR, with signature/digital signature.

2.11 PROCEDURE FOR FILING APPLICATION:

- (i) An application, under sub-section (1) of section 245Q of the Act, shall be made in Form Nos., 34C, 34D, 34DA, 34E, 34EA as applicable and mentioned under rule 44E of the Rules (para 2.6 above), by the applicant on the designated electronic mail id, i.e., bar.application@incometax.gov.in using the registered email id.
- (ii) if the applicant is not hitherto assessed to tax in India, it shall indicate in Annexure I as provided in the relevant Forms to the application:
 - (a) its head office in any country;
 - (b) Gender, in the case of Individual Categories only
 - (c) Country of Citizenship/ Incorporation of applicant & ISD Code
- (iii) The registered e-mail id has been defined in the Scheme to mean the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including, -
 - (a) the e- mail address available in the electronic filing account of the addressee registered in the designated portal; or

- (b) the e-mail address available in the last income-tax return furnished by the addressee; or
 - (c) the e-mail address available in the permanent account number database relating to the addressee; or
 - (d) in the case of an addressee being an individual who possesses the Aadhaar number, the e-mail address of the addressee available in the database of the Unique Identification Authority of India; or
 - (e) in the case of an addressee being a company, the e-mail address of the company as available on the official website of the Ministry of Corporate Affairs; or
 - (f) any e-mail address made available by the addressee to the income-tax authority or any person authorized by such authority;
- (iv) Any application or any communication in connection with such pending application will not be entertained if the applicant uses any other email ID different from any of the registered email ID referred above.
- (v) The applicant must use any email id as a registered email id which is regularly accessed by it and regularly monitored.
- (vi) The applicant is advised to check their registered email id frequently to remain updated about the status of its application. If the applicant fails to answer any important communication from BAR on its registered e-mail ID, the BAR may decide the issue based on the information available on record.
- (vii) If the applicant wishes to change the e-mail ID registered with BAR due to any reason, the same has to be intimated to the BAR.
- (viii) Once an application is received from the registered e-mail ID of the applicant to the designated email ID of BAR, then acknowledgement of the receipt of the application will be generated and thereafter, a unique number will be assigned to it.
- (ix) The application for advance rulings pending before the erstwhile AAR, as referred to in sub-section (4) of

section 245Q of the Act, shall be the application before the Nodal Secretary, and he/ she shall assign a unique number to it in appropriate cases.

- (x) The Secretary BAR may send the application back to the applicant if it is defective in any manner for removing the defects within such time as he/ she may allow. Such application shall be deemed to have been made on the date when it is re-submitted after removing the defects;
- (xi) An applicant may withdraw an application within thirty days from the date of the application.
- (xii) If any application filed with due process referred above, and after scrutiny is found to be correct in all aspects by the Secretary of the BAR, then such application shall be considered as valid application, and such valid application shall be kept before the BAR, to which the application is allocated for further adjudication.



CHAPTER 3

PROCEDURE OF THE BAR

3.1 PROCEDURE ON RECEIPT OF VALID APPLICATION:

- (i) The BAR shall hear only those applications which are:
 - (a) found to be correct in all aspects and valid; and
 - (b) in case of old Applications, where an application filed before the AAR, has been allowed by means of an order of the AAR under sub-section (2) of section 245R of the Act, on or prior to the date on which such case is transferred to the BAR, such application shall be deemed to have been allowed by the BAR;
- (ii) The Secretary of the BAR, to which the application is allotted/ transferred, shall intimate the applicant about the said allocation or transfer.
- (iii) The Secretary shall scrutinize the application to find out whether they are in conformity with the provisions of the Act read with relevant rules.
- (iv) If the application is defective, the Secretary shall send the said application to the applicant for removing the defects within such time as he/she may allow. The applicant may resubmit the application after removing the defects, and the same shall be dealt with as per steps and processes enumerated below.
- (v) The BAR shall forward a copy of the application to the jurisdictional Principal Commissioner of Income-tax (PCIT) or Commissioner of Income-tax (CIT), as the case may be, along with a requisition to furnish the relevant records, if necessary.
- (vi) The jurisdictional PCIT/ CIT shall furnish the relevant records, and the Secretary shall forward the report, if any, received from PCIT/ CIT to the applicant.
- (vii) If the jurisdictional PCIT/ CIT fails to furnish the relevant records, BAR may proceed to allow or reject the application without waiting for the said records.
- (viii) The BAR, after examining the application and the requisitioned records, if submitted, shall -

- (a) by an order allow the application; or
 - (b) seek an explanation from the applicant as to why the application may not be rejected and direct it to submit any relevant material or information in support of such application within such time as allowed by the BAR.
- (ix) In case of the explanation sought the applicant may also request the BAR to provide a hearing which the BAR shall provide.
 - (x) Where the applicant fails to furnish the explanation sought within the time allowed, the BAR shall pass the order under sub-section (2) of section 245R of the Act, without waiting for the said explanation.
 - (xi) Where the applicant furnishes the explanation and requests for a hearing, the same shall be scheduled and communicated to the applicant, the jurisdictional PCIT/ CIT, and the Commissioner of Income-tax (Departmental Representative) [CIT(DR)] through a notice *via* e-mail.
 - (xii) The hearing shall be conducted using e- platform or e-mode.
 - (xiii) The BAR shall, by an order under sub-section (2) of section 245R of the Act, allow or reject the application, providing reasons for rejection in case the application is rejected.
 - (xiv) The Secretary shall send the order allowing or rejecting the application to the applicant and the jurisdictional PCIT/ CIT *via* e-mail.

3.2 EFFECT OF RULINGS (*vis-à-vis* the applicant, in respect of the transaction for which a ruling has been sought)

The effect of the advance ruling is related to the transaction. The ruling would remain in force so long as the transaction continues and so long as there is no change in law or facts on the basis of which the ruling was pronounced. There is no limitation as to the number of assessment years for which it would continue to be applicable except where the law itself restricts the period of applicability.

3.3 WITHDRAWAL OF APPLICATION:

As per the provisions of sub-section (3) of section 245Q, an application filed with the BAR can be withdrawn by the

applicant within thirty days from the date of application.

3.4 REJECTION OF APPLICATION:

The amended proviso to sub-section (2) of section 245R of the Act requires the BAR to reject the application for advance ruling where:

- (i) the question raised in the application is already pending before any income-tax authorities or Appellate Tribunal. [However, this restriction would not be operative in the case of a resident applicant falling under section 245N (b) (A) (III)] or any Court in regard to a non-resident applicant and to a resident applicant in relation to a transaction with a non-resident; or
- (ii) the question involves determination of fair market value of any property; or
- (iii) the question relates to a transaction or issue which is designed *prima facie* for the avoidance of income-tax.

The BAR is required to give a reasonable opportunity of being heard to the applicant before rejecting the application. Wherever, the application for advance ruling is rejected, reasons for same should be stated in the order. Every order of the BAR must be sent through e-mail both to the applicant and to the PCIT/ CIT, as the case may be.

3.5 HEARING WHEN NECESSARY:

- (i) If the application is allowed and the applicant desires to be heard, an opportunity shall be provided to the applicant of being heard by the BAR. However, the application may be allowed/ rejected by the BAR even without hearing the applicant and the PCIT/ CIT where the opportunity of being heard is not availed.
- (ii) On receipt of an application, the BAR shall notify the applicant and the PCIT/ CIT of the date of the hearing. The hearings and other proceedings of the BAR shall be in e-mode or through e-platform only.
- (iii) The hearings are not open to the public.

3.6 AUTHORISED REPRESENTATIVE:

An applicant's authorised representative should fulfil the requirements spelt out in sub-section (2) of section 288 of the Act. The expression "*authorised representative*", in relation to the PCIT/ CIT, means a person authorised by it in writing to appear, plead and act for it in any proceedings before the BAR.

3.7 ISSUE AND SERVICE OF NOTICES:

When a hearing becomes necessary, and even otherwise, notices and communications may have to be served on the applicant and the PCIT/ CIT. As per the Scheme, the functioning of BAR is through electronic mode. All hearing notices and communication and orders are to be served through electronic mode i. e. through email to the registered email ID of the applicant.

3.8 PROCEDURE FOR HEARING:

The hearing is required to be provided where the application is proposed to be rejected and where the applicant requests for a hearing at the time of pronouncement of the advance ruling by the BAR. There would be no personal appearance before the BAR. All the hearings would be either in e-mode or on e-platform, for which the link shall be provided by the Secretary of the BAR.

If, on the date fixed for the hearing, there is a default of appearance, the BAR can dispose off the application *ex-parte*.

3.9 ADDITIONAL FACTS:

Paragraph 7 of the Scheme provides for the submission of additional facts (verified in the same manner as provided for the application) before the BAR as under:

- (1) The BAR may at its discretion, permit or require the applicant to submit such additional facts as may be necessary to enable it to pronounce its advance ruling.
- (2) Where in the course of the proceedings before the

Authority, a fact is alleged which cannot be borne out by or is contrary to the record, it shall be stated clearly and concisely and supported by a duly sworn affidavit.

Depending upon the circumstances of the case, an applicant can be allowed to modify or reframe the questions until the hearing. Similarly, additional facts or a change in the facts can be intimated by the applicant (or the PCIT/ CIT) before the time of the hearing. They can also be gathered by the BAR on its own. When additional facts are so intimated and the same are allowed by the BAR, the other party is confronted with these facts. When such facts are gathered by the BAR on its own, both the parties, namely the applicant and the PCIT/ CIT, are confronted with the same.

3.10 THE RULING AND ITS COMMUNICATION:

- (i) If the application is allowed under sub-section (2) of section 245R of the Act, the BAR shall send a notice to the applicant and the jurisdictional PCIT/ CIT to submit such further material, information or evidence as may be relevant to the proceedings, within such time or extended time, as may be allowed by the BAR.
- (ii) The applicant or jurisdictional PCIT/ CIT shall furnish the same within the time allowed, which the Secretary shall forward to the applicant or jurisdictional PCIT/ CIT, as the case may be.
- (iii) Where the application has been allowed, the applicant or the jurisdictional PCIT/ CIT may, *suo motu*, submit any further relevant material, information or evidence.
- (iv) The hearing for the purpose of pronouncing advance ruling under sub-section (4) of section 245R of the Act, if requested by the applicant under sub-section (5) of section 245R of the Act, shall be conducted using e-platform or e-mode, as the case may be, after sending a notice to the applicant, jurisdictional PCIT/ CIT and the CIT(DR) *via* e-mail.

- (v) After the hearing, the BAR shall pronounce the advance ruling and send the copy thereof to the applicant and the jurisdictional PCIT/ CIT *via* e-mail.
- (vi) If the Members of a Board for Advance Rulings differ in opinion on any point or points, the Board for Advance Rulings shall refer such point or points to the Principal Chief Commissioner of Income-tax (International Taxation), who shall nominate one Member from any other Board for Advance Rulings and such point or points shall be decided according to the opinion of the majority of the Members.

3.11 RECTIFICATION OF MISTAKES:

Paragraph 15 of the Scheme provides for the rectification of mistakes, which is apparent from the record as under:

- (1) The BAR may, with a view to rectifying any mistake apparent from the record, amend any order passed by it before the ruling pronounced by the BAR has been given effect to by the AO.
- (2) Such amendment may be made *suo moto* or when the mistake is brought to its notice by the applicant or the PCIT/ CIT, but only after allowing the applicant and the PCIT/ CIT reasonable opportunity of being heard.

Section 245T of the Act also provides that the BAR may pass order after the disposal of an application under section 245R of the Act if the BAR finds that the advance ruling pronounced has been obtained by fraud or misrepresentation of facts.

3.12 INSPECTION AND COPIES:

As per the Scheme, the functioning of BAR is through electronic mode. All applications, hearing notices, communication and orders are to be served through electronic mode.

Secretary of BAR shall allow inspection of records of BAR to the applicant in accordance with the provisions of the Scheme.

3.13 EFFECT OF VACANCIES IN THE BAR:

Section 245P of the Act provides that no proceeding before or the pronouncement of an advance ruling by the BAR shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the BAR.

3.14 EXCLUSION OF TIME:

It has been provided by Explanation 1 to section 153 of the Act and Explanation to section 153B of the Act that the period commencing on the date on which the application for advance ruling is filed and ending on the date on which the order rejecting the application is received by the PCIT/ CIT shall be excluded for computing the period of limitation under said sections.

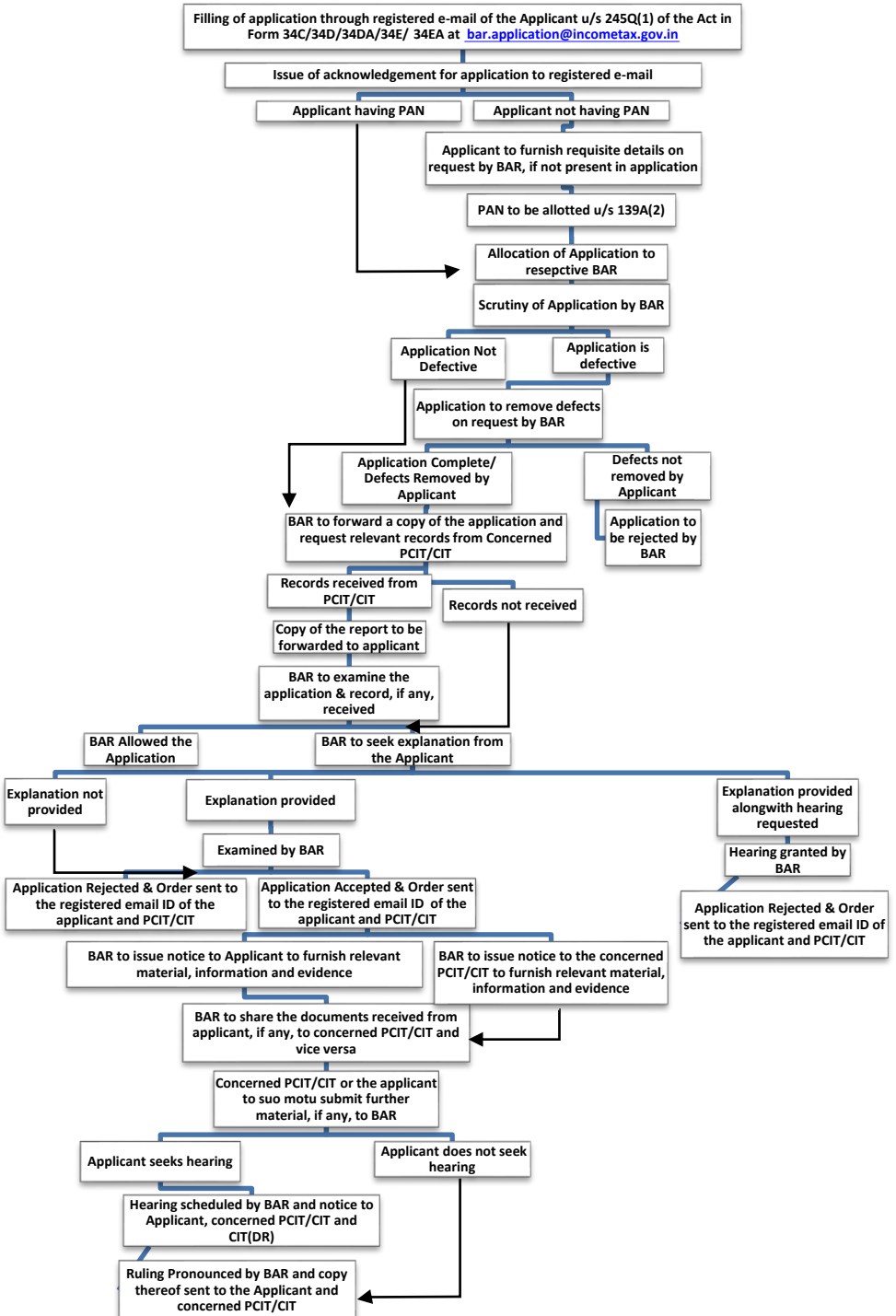
Further, the period commencing on the date on which the application is filed for advance ruling and ending on the date on which the advance ruling pronounced by the BAR is received by the PCIT/ CIT shall be excluded for computing the period of limitation under section 153 of the Act.

3.15 APPEAL:

As per section 245W, with effect from 1st April, 2021, the ruling pronounced by the BAR can be appealed by either party before the High Court.

Even if advance ruling is accepted by the both the parties, the effect of the ruling is, understandably, stated to be confined to the applicant who has sought it as well as the PCIT/ CIT and income-tax authorities subordinate to him/ her having jurisdiction over the case, that too, only in relation to transaction for which advance ruling was sought.

3.16 FLOWCHART OF PROCEDURE OF BAR:





CHAPTER 4

RELEVANT PROVISIONS OF INCOME-TAX ACT, 1961 (ADVANCE RULING)

4.1 RELEVANT PROVISIONS OF INCOME-TAX ACT, 1961

Definitions

245N. In this Chapter, unless the context otherwise requires,—

(a) "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 non-resident applicant; or;

(ii) 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

(iia) 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 a non-resident, is an impermissible avoidance arrangement as referred to in Chapter X-A or not:

Provided that where an advance ruling has been pronounced, before the date on which the Finance Act, 2003 receives the assent of the President, by the Authority in respect of an application by a resident applicant referred to in sub-clause (ii) of this clause as it stood immediately before such date, such ruling shall be binding on the persons specified in section 245S;

(b) "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 Central Government may, by notification in the Official Gazette, specify; or

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

(V) is referred to in sub-clause (iv) of clause (a), and makes an application under sub-section (1) of section 245Q;

(B) an applicant as defined in clause (c) of section 28E of the Customs Act, 1962 (52 of 1962);

(C) an applicant as defined in clause (c) of section 23A of the Central Excise Act, 1944 (1 of 1944);

(D) an applicant as defined in clause (b) of section 96A of the Finance Act, 1994 (32 of 1994);

(c) "application" means an application made to the Authority or the Board for Advance Rulings under sub-section (1) of section 245Q;

- (ca) "Board for Advance Rulings" means the Board for Advance Rulings constituted by the Central Government under section 245-OB;
- (d) "Authority" means the Authority for Advance Rulings constituted under section 245-O;
- (e) "Chairman" means the Chairman of the Authority;
- (f) "Member" means a Member of the Authority and includes the Chairman and Vice-chairman [or a Member of the Board for Advance Rulings];
- (g) "Vice-chairman" means the Vice-chairman of the Authority.

Board for Advance Rulings.

245-OB. (1) The Central Government shall constitute one or more Boards for Advance Rulings, as may be necessary, for giving advance rulings under this Chapter on or after such date as the Central Government may, by notification in the Official Gazette, appoint.

(2) The Board for Advance Rulings shall consist of two members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board.

Vacancies, etc., not to invalidate proceedings.

245P. (1) 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.

(2) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, the provisions of this section shall have effect as if for the word "Authority", the words "Board for Advance Rulings" had been substituted.

Application for advance ruling.

245Q. (1) An applicant desirous of obtaining an advance ruling under this Chapter or under Chapter V of the Customs Act, 1962 (52 of 1962) [or under Chapter IIIA of the Central Excise Act, 1944 (1 of 1944) or under Chapter VA of the Finance Act, 1994 (32 of 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.

(2) The application shall be made in quadruplicate and be accompanied by a fee of ten thousand rupees or such fee as may be prescribed in this behalf, whichever is higher.

(3) An applicant may withdraw an application within thirty days from the date of the application.

(4) Where an application for advance ruling under this Chapter is made before such date as the Central Government may, by notification in the Official Gazette appoint, and in respect of which no order under sub-section (2) of section 245R has been passed or no advance ruling under sub-section (4) of section 245R has been pronounced before such date, such application along with all the relevant records, documents or material, by whatever name called, on the file of the Authority shall be transferred to the Board for Advance Rulings and shall be deemed to be the records before the Board for Advance Rulings for all purposes.

Procedure on receipt of application.

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

(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 in sub-clause (iii) of clause (b) of section 245N 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 avoidance of income-tax [except in the case of a resident applicant falling in

sub-clause (iii) of clause (b) of section 245N or in the case of an applicant falling in sub-clause (iiia) of clause (b) of section 245N]

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.

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

(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.

(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.

Explanation.— For the purposes of this sub-section, "authorised representative" shall have the meaning assigned to it in sub-section (2) of section 288, as if the applicant were an assessee.

(6) The Authority shall pronounce its advance ruling in writing within six months of the receipt of application.

(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/ Commissioner, as soon as may be, after such pronouncement.

[8) On and from such date as the Central Government may, by notification in the Official Gazette, appoint, the provisions of this section shall have effect as if for the word "Authority", the words "Board for Advance Rulings" had been substituted and the provisions of this section shall apply *mutatis mutandis* to the Board for Advance Rulings as they apply to the Authority.

(9) The Central Government may, by notification in the Official Gazette, make a scheme for the purposes of giving advance

rulings under this Chapter by the Board for Advance Rulings, so as to impart greater efficiency, transparency and accountability by—

- (a) Eliminating the interface between the Board for Advance Rulings and the applicant in the course of proceedings to the extent technologically feasible;
- (b) Optimizing utilisation of the resources through economies of scale and functional specialization;
- (c) Introducing a system with dynamic jurisdiction.

(10) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (9), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification:

Provided that no such direction shall be issued after the 31st day of March, 2023.

Provided further that the Central Government may amend any direction, issued under this sub-section on or before the 31st day of March, 2023, by notification in the official gazette.

(11) Every notification issued under sub-section (9) and sub-section (10) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]

Appellate authority not to proceed in certain cases.

245RR. No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident, under sub-section (1) of section 245Q.

Advance ruling to be void in certain circumstances.

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

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

(3) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, the provisions of this section shall have effect as if for the word "Authority", the words "Board for Advance Rulings" had been substituted.

Powers of the Authority.

245U. (1) The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) as are referred to in section 131 of this Act.

(2) The Authority 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 (2 of 1974) and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) On and from such date as the Central Government may, by notification in the Official Gazette, appoint, the powers of the Authority under this section shall be exercised by the Board for Advance Rulings and the provisions of this section shall *mutatis mutandis* apply to the Board for Advance Rulings as they apply to the Authority.

Appeal:

245W. (1) The applicant, if it is aggrieved by any ruling pronounced or order passed by the Board for Advance Rulings or the Assessing Officer, on the directions of the Principal Commissioner / Commissioner may appeal to the High Court against such ruling or order of the Board for Advance Rulings within sixty days from the date of the communication of that ruling or order, in such form and manner, as may be prescribed:

Provided that where the High Court is satisfied, on an application made by the appellant in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in sub-section (1), it may grant further period of thirty days for filing such appeal.

(2) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of filing appeal to the High Court under sub-section (1) by the Assessing Officer, so as to impart greater efficiency, transparency and accountability by—

- (a) Optimizing utilisation of the resources through economies of scale and functional specialization;
- (b) Introducing a team-based mechanism with dynamic jurisdiction.
- (3) The Central Government may, for the purposes of giving effect to the scheme made under sub-section (2), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the said notification:

Provided that no such direction shall be issued after the 31st day of March, 2023.

(4) Every notification issued under sub-section (2) and sub-section (3) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

4.2 E-Advance Rulings Scheme, 2022

On 18th January, 2022, by Notification No. 07/2022/F.No.370142/62/2021-TPL(Part-I), the Central Government has published the notification governing the procedural aspects of the BAR.

Notification No. 07/2022

S.O. 248(E).— In exercise of the powers conferred by sub-sections (9) and (10) of section 245R and subsections (2) and

(3) of section 245W of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely: _____

1. Short title and commencement.—(1) This Scheme may be called the “e-advance rulings Scheme, 2022”.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. Definitions.— (1) In this Scheme, unless the context otherwise requires,—

(i) “Act” means the Income-tax Act, 1961 (43 of 1961);

(ii) “Addressee” shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(iii) “Advance ruling” shall have the same meaning as assigned to it in clause (a) of section 245N of the Act;

(iv) “Applicant” means the assessee who had filed an application under section 245Q of the Act;

(v) “Authorised representative” shall have the same meaning as assigned to it in sub-section (2) of section 288 of the Act;

(vi) “automated allocation system” means an algorithm for randomized allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to eliminate discretion and

optimize the use of resources;

(vii) “Board for Advanced Rulings” means the Board for Advance Rulings constituted under section 245-OB of the Act;

(viii) “Computer resource” shall have the same meaning as assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(ix) “Computer system” shall have the same meaning as assigned to it in clause (l) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(x) “Designated portal” means the web portal designated as such by the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be;

(xi) “Digital signature” shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(xii) “Electronic mode” means any communication by way of an e-mail, video-telephony or video conferencing or any other electronic media;

(xiii) “Electronic record” shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(xiv) “email” or “electronic mail” and “electronic mail message” means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;

(xv) “Joint Secretary (Foreign Tax and Tax Research)” shall mean a person appointed by the Central Government as the Joint Secretary, Foreign Tax and Tax Research in the Department of Revenue, Ministry of Finance;

(xvi) “Principal Commissioner/ Commissioner”, in respect of an application, means- (i) the Principal Commissioner/ Commissioner or Commissioner of Income-tax, specified in the application; or

(ii) the Principal Commissioner/Commissioner of Income- tax

designated by the Board in respect of the application;

(xvii) “Registered e-mail address” means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including-

(a) the e- mail address available in the electronic filing account of the addressee registered in the designated portal; or

(b) the e-mail address available in the last income-tax return furnished by the addressee; or

(c) the e-mail address available in the permanent account number database relating to the addressee; or

(d) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or

(e) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or

(f) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority;

(xviii) “Rules” means the Income-tax Rules, 1962;

(xix) “Secretary” shall mean a Commissioner appointed by Central Board of Direct Taxes as Secretary of Board for Advance Rulings;

(xx) “video conferencing or video telephony” means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.

(2) Words and expressions used herein and not defined, but defined in the Act, shall have the meaning respectively assigned to them in the Act.

3. Scope of the Scheme.— This Scheme shall be applicable to applications of advance rulings,—

(a) made to the Board for Advance Rulings under sub-section (1) of section 245Q of the Act; or

(b) transferred to Board for Advance Rulings under sub-section (4) of section 245Q of the Act.

4. E-advance rulings by Board for Advance Rulings.—

(1) The Board for Advance Rulings shall pronounce e-advance rulings of applications allocated or transferred to it under paragraph 5, in accordance with the provisions of this Scheme;

(2) The Board for Advance Rulings shall have such other income-tax Authority, ministerial staff, executive or consultant to assist the members of the Board for Advance Rulings, as considered necessary by the Central Board of Direct Taxes.

5. Allocation of applications for advance ruling.- The Principal Director General of Income-tax (Systems) or the Director General of Income tax (Systems), as the case may be, shall, with the approval of the Central Board of Direct Taxes, devise a process to randomly allocate or transfer the applications for advance ruling, referred to in paragraph 3, to the Board for Advance Rulings through an automated allocation system.

6. Procedure for giving advance ruling.— The procedure for giving advance ruling on applications allotted or transferred to a Board for Advance Rulings, referred to in paragraph 5, shall be as per the following, namely:-

A. Procedure for filing applications.-

(i) an application, referred to in clause (a) of paragraph 3, shall be made, in Form Nos., 34C, 34D, 34DA, 34E, 34EA mentioned in under Rule 44E of the Rules, by the applicant, to the Secretary or any other officer authorised in writing by the Secretary of Board for Advance Rulings, by electronicmail;

(ii) if the applicant is not hitherto assessed in India, it shall indicate in Annexure I as provided in the relevant Forms to the application:

(a) its head office in any country,

(b) the place where its office and residence is located or is likely to be located in India, and

(c) the name and address of its representatives in India,

if any, authorised to receive notices and papers and act on its behalf;

(iii) the Secretary may send the application back to the applicant if it is defective in any manner for removing the defects within such time as he/she may allow. Such application shall be deemed to have been made on the date when it is re-submitted after removing the defects;

(iv) an applicant may withdraw an application within thirty days from the date of the application.

B. Procedure on receipt of application.-

(i) the Board for Advance Rulings shall intimate the applicant about the allocation or transfer, as the case may be;

(ii) where an application, referred to in clause (b) of paragraph 3, has been allowed by means of an order of the Authority for Advance Rulings under sub-section (2) of section 245R of the Act, on or prior to the date on which such case is transferred to the Board for Advance Rulings, such application shall be deemed to have been allowed by the Board for Advance Rulings;

(iii) upon allocation or transfer, as the case may be, of an application, other than the application referred to in sub-clause (ii), the Board for Advance Rulings shall,-

(a) where the applicant is assessed to tax in India, forward a copy of the application to the Principal Commissioner/ Commissioner, as the case may be; or

(b) where the applicant is hitherto not assessed to tax in India, forward a copy of the application to Joint Secretary (Foreign Tax and Tax Research), along with a requisition to furnish the relevant records within such time as allowed by the Board for Advance Rulings;

(iv) upon receipt of the requisition, as referred to in item (b) of sub-clause (iii), the Joint Secretary (Foreign Tax and Tax Research) shall assign such application to the Principal Chief Commissioner of Income-tax (International Taxation) or Chief Commissioner of Income-tax (International Taxation), as the case may be, connected to the details mentioned in items (b) or (c) of sub-clause (ii) of clause A, requesting him/her to furnish the relevant records, within such time as may be

specified by Board for Advance Rulings;

(v) upon receipt of request, as referred to in item (a) of sub-clause (iii), or in sub-clause (iv), the relevant records shall be furnished to the Board for Advance Rulings by the authority to whom the reference has been made;

(vi) where the request is in respect of a transaction already undertaken, the Board for Advance Rulings may require the authority to whom the reference has been made to verify the facts contained in the application;

(vii) where the authority to whom the reference has been made fails to furnish relevant records, as referred to in item (a) of sub-clause (iii) or sub-clause (iv), the Board for Advance Rulings may proceed to allow or reject the application, by order, without waiting for the said records;

(viii) where the relevant records, as referred to in item (a) of sub-clause (iii) or sub-clause (iv), have been submitted by the authority to whom the reference has been made, the Board for Advance Rulings, after examination of the application and the said records, in accordance with the provisions of sub-section (2) of section 245R of the Act, may-

(a) by an order allow the application; or

(b) call upon the applicant to explain as to why the application may not be rejected and direct it to submit any relevant material or information in support of such application within such time as allowed by the Board for Advance Rulings;

(ix) in case of an explanation, referred to in item (b) of sub-clause (viii), has been called from the applicant, it may also request the Board for Advance Rulings to provide it a hearing which may be provided through video conference or video telephony;

(x) where the applicant fails to furnish explanation, referred to in item (b) of sub-clause (viii), within such time or extended time, as may be allowed by the Board for Advance Rulings, it may proceed to pass the order under the provisions of sub-section (2) of section 245R of the Act, without waiting for the said explanation;

(xi) where the applicant furnishes the explanation, referred to in item (b) of sub-clause (viii), the Board for Advance Rulings may, by an order under sub-section (2) of section 245R of the

Act, allow or reject the application, providing reasons for rejection in case the application is rejected;

(xii) The Board for Advance Rulings shall send a copy of the order referred to in sub-clause (vii) or item (a) of sub-clause (viii) or sub-clause (x) or sub-clause (xi), as the case may be, to the applicant and the Principal Commissioner or Commissioner, as the case may be.

C. Order for advance ruling.-

(i) where an application for advance rulings has been allowed by an order, as referred to in sub-clause (vii) or item (a) of sub-clause (viii) or sub-clause (x) or sub-clause (xi) of clause B, the Board for Advance Rulings may send a notice to the applicant and the authority to whom the reference has been made, to submit such further material, information or evidence, as may be relevant to the proceedings, within such time or extended time, as may be allowed by the Board for Advance Rulings;

(ii) the applicant or the authority to whom the reference has been made may, after the application has been allowed, suo motu submit any further material, information or evidence, as may be relevant to such proceedings, to the Board for Advance Rulings;

(iii) the applicant or the authority to whom the reference has been made, shall respond to the notice, as referred to in clause (i), within the specified time or such time as may be extended by the Board for Advance Rulings, on the basis of a request made in this behalf;

(iv) the Board for Advance Rulings shall, after considering the response, as referred to in clause (iii), and after providing an opportunity of being heard (through video conferencing or video telephony) under sub-section (5) of section 245R of the Act on the request of the applicant pronounce the advance ruling on the question specified in the application and send a copy thereof to the applicant and the authority to whom the reference has been made.

7. Submission of additional facts before the Board for Advance Rulings.—

(1) The Board for Advance Rulings may at its discretion permit or require the applicant to submit such additional facts as may be necessary to enable it to pronounce its advance ruling.

(2) Where in the course of the proceedings before the Board for Advance Rulings, a fact is alleged which cannot be borne out by, or is contrary to, the record, it shall be stated clearly and concisely and supported by a duly sworn affidavit.

8. Questions contained in the application.— The applicant shall not, except by leave of the Board for Advance Rulings, urge or be heard in support of any additional question not set forth in the application, but in deciding the application the Board for Advance Rulings shall, at its discretion, consider all aspects of the questions set forth as may be necessary to pronounce a ruling on the substance of the questions posed for its consideration.

9. Verification of additional facts.— Where in the course of any proceedings before the Board for Advance Rulings any fact not contained in the application for advance ruling (including the annexure and the statements and other documents accompanying such annexure), referred to in paragraph 3, are sought to be relied upon, they shall be submitted to the Board for Advance Rulings in writing and shall be verified in the same manner as provided for in such application.

10. Powers of the Board for Advance Rulings.—

(1) The Board for Advance Rulings shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908) as are referred to in section 131 of the Act.

(2) The Board for Advance Rulings 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 (2 of 1974) and every proceeding before the Board for Advance Rulings shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(3) If any difficulty arises in giving effect to any order of the Board for Advance Rulings, it may, on its own motion or on an application made by the applicant or the Principal Commissioner of Income-tax or the Commissioner of Income-tax, as the case may be, remove the difficulty in so far as it is not inconsistent with the provisions of the Act.

11. Powers and functions of the Secretary.—

(1) The Secretary shall have the custody of the records or e-records of the Board for Advance Rulings and shall exercise such other functions as are assigned to him under this Scheme or by the Board for Advance Rulings by separate order.

(2) The official seal of the Board for Advance Rulings shall be kept in custody of the Secretary.

(3) The Secretary shall also have the following powers and duties, namely:—

(i) to receive all applications filed before the Board for Advance Rulings ;

(ii) to scrutinize the applications to find out whether they are in conformity with the Act, the rules and the procedure;

(iii) to point out defects in such application to the parties and require them to remove the defects by affording them a reasonable opportunity to do so and, where, within the time granted, the defects are not removed, to obtain necessary orders of the Board for Advance Rulings ;

(iv) to fix the date of hearing for the applications in consultation with the members of the Board for Advance Rulings and direct the issue of notices therefore;

(v) to issue the service of notices or other processes and to ensure that the parties are properly served;

(vi) to requisition records from the custody of any person including a Pr. Commissioner/ Commissioner of Income-tax or any other authority;

(vii) to allow inspection of records of the Board for Advance Rulings ;

(viii) to direct any formal amendment of the records of the Board for Advance Rulings ;

(ix) to grant certified copies of the orders of the Board for Advance Rulings to the parties;

(x) to grant certified copies of documents filed in the proceedings to the parties in accordance with the rules;

(xi) to bring on record legal representatives, in case of death or retirement of any party to the proceedings and to make such appropriate amendments in the cause title as may become necessary in the other situations; and

(xii) to discharge any other function as may be assigned by the Board for Advance Rulings by special or general order.

12. Authorization to be filed.— An authorised representative appearing for the applicant at the hearing shall file, before the commencement of the hearing, a document authorizing him/herto appear for the applicant and if he/she is a relative of the applicant, the document shall state the nature of his/her relationship with the applicant, or if he/she is a person regularly employed by the applicant the capacity in which he/she is at the time employed.

13. Authentication of electronic record.— for the purposes of this Scheme, an electronic record shall be authenticated by the—

(a) Board for Advance Rulings, the Principal Commissioner of Income-tax or the Commissioner of Income-tax, as the case may be, by affixing its digital signature;

(b) applicant or its authorised representative, by affixing its digital signature if it is required under the Rules to furnish its return of income under digital signature, and in any other case, by communicating through its registered email address.

14. No personal appearance before the Board for Advance Rulings—

(1) The applicant shall not be required to appear either personally or through authorised representative in connection with any proceedings under this Scheme before the Board for Advance Rulings or before the Secretary, ministerial staff, executive or consultant posted with the Board for Advance Rulings.

(2) The Principal Director General of Income Tax (Systems) or Director General of Income Tax (Systems), as the case may be, shall establish suitable facilities for video

conferencing including telecommunication application software which supports video telephony at such locations as may be necessary, so as to ensure that the applicant, or its authorised representative, is not denied the benefit of this Scheme merely on the ground that such applicant or its authorised representative, or any other person does not have access to video conferencing at his end.

15. Rectification of mistakes.—

(1) The Board for Advance Rulings may, with a view to rectifying any mistake apparent from the record, amend any order passed by it before the ruling pronounced by the Board for Advance Rulings has been given effect to by the Assessing Officer.

(2) Such amendment may be made suo motu or when the mistake is brought to its notice by the applicant or the Principal Commissioner of Income-tax or Commissioner of Income-tax, as the case may be, but only after allowing the applicant and the Principal Commissioner/ Commissioner of Income-tax or Commissioner of Income-tax, as the case may be, reasonable opportunity of being heard.

16. Appellate Proceedings.—

(1) An appeal against an order for advance ruling passed by the Board for Advance Rulings under this Scheme shall lie before the High Court.

(2) The Assessing Officer, having jurisdiction over the applicant, on the directions of the Principal Commissioner or / Commissioner, may file an appeal to the High Court against an order of Board for Advance Rulings. .

17. Proceedings not open to the public.— the proceedings before the Board for Advance Rulings shall not be open to the public and no person (other than the applicant, its employee, the concerned officers of the Board for Advance Rulings or the Income-tax authority or the authorised representatives) shall, without the permission of the Board for Advance Rulings, remain present during such proceedings, even on video conferencing or video telephony.

18. Communication on behalf of the Board for Advance Rulings.—

(1) The opportunity for hearing through video conferencing or video telephony shall be facilitated by any income-tax authority as authorised by the Board for Advance Rulings, who will provide the link and password to the applicant and concerned parties in advance.

(2) All communication of the Board for Advance Rulings inward and outward shall be carried out by any income-tax authority as authorised by the Board for Advance Rulings.

19. Communication exclusively by electronic mode.—

(1) for the purposes of this Scheme,-

(a) all communications between the Board for Advance Rulings and the applicant, or its authorised representative, shall be exchanged by electronic mode;

(b) all communications between the Board for Advance Rulings and the Principal Commissioner of Income-tax or the Commissioner of Income-tax, as the case may be, shall be exchanged by electronic mode. Provided that any application received in a mode other than electronic mode by the Board for Advance Rulings may be forwarded to the Principal Commissioner of Income-tax or the Commissioner of Income-tax, as the case may be, electronically, to the extent technologically feasible;

(c) every notice or order or any other electronic communication under this Scheme from the Board for Advance Rulings shall be delivered to the addressee, being the applicant by sending an e-mail to the registered email address of the applicant or its authorised representative;

(d) the applicant or the authorised representative shall file its response to any notice or order or any other electronic communication, under this Scheme, to the Board for Advance Rulings through its registered email address;

(e) the Principal Commissioner of Income-tax or the Commissioner of Income-tax, as the case may be, shall file his/her response to any notice or order or any other electronic communication, under this Scheme, to the Board for Advance Rulings through official electronic mail facility.

20. Language of the Board for Advance Rulings.—

(1) The language of the Board for Advance Rulings shall be in Hindi or English, at the option of the applicant.

(2) Where any document is in a language other than English or Hindi, an English translation thereof should also be filed along therewith.

(3) The ruling, and other orders passed by the Board for Advance Rulings may, at the discretion of the Board for Advance Rulings, be in Hindi or English.

21. Publication of orders.— The Board for Advance Rulings, if deems fit its order to be published in any authoritative report or the press, may be sent for publication with such conditions as the Board for Advance Rulings specify.

22. Application of the provisions of Chapter XIX-B of the Act.— Save as otherwise provided herein above, all other provisions of the Chapter XIX-B of the Act shall apply.

23. Power to specify format, mode, procedure and processes.— The Principal Chief Commissioner of Income-tax (International Taxation) shall, wherever required, in consultation with Principal Director General of Income Tax (Systems) or Director General of Income Tax (Systems), as the case may be, with the approval of Board, lay down the standards, procedures and processes for effective functioning of the conduct of e-advance rulings proceedings under this Scheme, including format, mode, procedure and processes in respect of the following, namely: ___

(i) service of the notice, order or any other communication;

(ii) receipt of any information or documents from the person in response to the notice, order or any other communication;

(iii) issue of acknowledgment of the response furnished by the person;

(iv) provision of “e-advance rulings” facility including login account facility, tracking status of e-advance rulings proceedings, display of relevant details, and facility of download;

(v) accessing, verification and authentication of information

and response including documents submitted during the e-advance rulings proceedings;

(vi) receipt, storage and retrieval of information or documents in a centralized manner; and

(vii) general administration and grievance redressal mechanism in the respective Boards for advance ruling.

4.3 E-advance Ruling (Amendment) Scheme, 2023

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 12th June, 2023
(Income-Tax)

S.O. 2569(E)— In exercise of the powers conferred by sub-sections (9) and (10) of section 245R of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following amendments in the e-advance rulings Scheme, 2022, namely:

1. Short title and commencement.— (1) This Scheme may be called the e-advance rulings (Amendment) Scheme, 2023.

(2) It shall come into force on the date of its publication in the Official Gazette.

2. In the e-advance rulings Scheme, 2022, in paragraph 6, in subparagraph (C), for clause (iv), the following clauses shall be substituted, namely:—

“(iv) the Board for Advance Rulings shall, after considering the response as referred to in clause (iii), and after providing an opportunity of being heard (through video conferencing or video telephony) under sub-section (5) of section 245R of the Act on the request of the applicant, subject to the provisions of clause (v), if applicable, pronounce the advance ruling on the question specified in the application and send a copy thereof to the applicant and the authority to whom the reference has been made;

(v) if the Members of a Board for Advance Rulings differ in opinion on any point or points, the Board for Advance Rulings shall refer such point or points to the Principal Chief Commissioner of Income-tax (International Taxation), who shall nominate one Member from any other Board for Advance Rulings and such point or points shall be decided according to the opinion of the majority of the Members.”.

[F. No. 38/2023 F. No. 370142/62/2021-TPL(Part-III)]

4.4 RELEVANT PROVISIONS OF INCOME TAX RULES (ADVANCERULING)

PART IX-B

(As amended by Notification No. 37/2023 dated 12.06.2023)

Application for obtaining an advance ruling:

44E. (1) An application for obtaining an advance ruling under sub-section (1) of section 245Q shall be made,—

- (a) in Form No.34C in respect of a non-resident applicant referred to in sub-clause (i) of clause (a) of section 245N;
- (b) in Form 34D in respect of a resident applicant referred to in sub-clause (ii) of clause (a) of section 245N seeking advance ruling in relation to a transaction undertaken or proposed to be undertaken by it with a non-resident; and
- (c) in Form No.34DA in respect of a resident applicant referred to in sub-clause (ia) of clause (a) of section 245N falling within any such class or category of person as notified by the Central Government in exercise of the powers conferred by item (III) of sub-clause (A) of clause (b) of that section;
- (d) in Form No.34E in respect of a resident falling within any such class or category of person as notified by the Central Government in exercise of the powers conferred by item (IV) of sub-clause (A) of clause (b) of section 245N; and
- (e) in Form No.34EA, in respect of an applicant referred to in item (V) of sub-clause (A) of clause (b) of section 245N of the Act and shall be verified in the manner indicated therein.

(2) The application referred to in sub-rule (1), the verification appended thereto, the annexures to the said application and the statements and documents accompanying the annexures, shall be,—

(a) in the case of an individual,—

(I) Signed or digitally signed —

- (i) by the individual himself; or
- (ii) where, for any unavoidable reason, it is not possible for the individual to sign the application, by any person duly authorised by him in this behalf :

Provided that in a case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the individual to do so, which shall be attached to the application ; and

(II) furnished through his registered e-mail address;

(b) in the case of a Hindu undivided family,—

(I) Signed or digitally signed—

- (i) by the karta thereof; or
- (ii) where, for any unavoidable reason, it is not possible for the karta to sign the application, by any other adult member of such family; and

(II) furnished through its registered e-mail address

(c) in the case of a company —

(I) Signed or digitally signed—

- (i) 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 ;or
 - (ii) 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 :
Provided that in the case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the company to do so, which shall be attached to the application;and
 - (II) furnished through its registered e-mail address
- (d) in the case of a firm,
- (I) Signed or digitally signed,—
 - (i) by the managing partner thereof; or
 - (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 thereof, not being a minor ; and
 - (II) furnished through its registered e-mail address;
- (e) in the case of an association of persons,—
- (I) Signed or digitally signed by any member of the association or the principal officer thereof; and
 - (II) furnished through its registered e-mailaddress;
- (f) in the case of any other person,—

- (I) Signed or digitally signed by that person or by some other person competent to act on its behalf; and
- (II) furnished through its registered e-mail address;

(3) Every application in the Form as applicable shall be accompanied by the proof of payment of as specified in sub-rule (4).

(4) The fees payable along with application for advanceruling shall be in accordance with the following table:

TABLE

Category of applicant	Category of case (Amount of one or more transaction entered into or proposed to be undertaken, in respect of which ruling is sought)	Fee
(1)	(2)	(3)
An applicant referred to in sub-clauses (i) or (ii) or (iia) of clause (b) of section 245N	Amount not exceeding Rs. 100 crores	Rs. 2 lacs
	Amount exceeds Rs. 100 crores but not exceeding Rs. 300 crores	Rs. 5 lacs
	Amount exceeding Rs. 300 crore.	Rs. 10 lacs
Any other applicant	In all cases	Rs. 10000

Form and manner of filing appeal to the High Court on ruling pronounced or order passed by the Board for Advance Rulings under sub-section (1) of section 245W.

44FA. The form and manner of filing appeal to the High Court under sub-section (1) of section 245W of the act against the ruling pronounced or order passed by the Board for Advance Rulings by the assessee, or the Assessing Officer on the directions of the Principal Commissioner or Commissioner shall be the same as provided in the applicable procedure laid down by the Jurisdictional High Court for filing an appeal to the High Court.

4.5 CONSTITUTION OF THE BOARDS FOR ADVANCE RULINGS

MINISTRY OF FINANCE
(Department of Revenue)
 (CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
 New Delhi, the 1st September, 2021

S.O. 3561(E).— In exercise of the powers conferred by sub-section (1) of section 245-OB of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby constitutes the Boards for Advance Rulings specified in column (2) of the Schedule below, having its headquarters at the place mentioned in column (3) of the said Schedule, for the purposes of giving advance rulings under Chapter XIX-B of the said Act on or after the 1st day of September, 2021.

SCHEDULE

Sl. No.	Board for Advance Rulings	Headquarters
(1)	(2)	(3)
1.	Board for Advance Rulings-I	Delhi
2.	Board for Advance Rulings-II	Delhi
3.	Board for Advance Rulings-III	Mumbai

[Notification No. 96/2021/F.No. 370142/31/2021-TPL (Part II)]

4.6 NOTIFICATION OF THE APPOINTED DATE FOR THE RELEVANT PROVISIONS RELATING TO OPERATIONALISATION OF BAR

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION

New Delhi, the 1st September, 2021

S.O. 3562(E).— In exercise of the powers conferred by the second proviso to sub-section (1) of section 245-O, sub-section (2) of section 245P, sub-section (4) of section 245Q, sub-section (8) of section 245R, sub-section (3) of section 245S, sub-section (3) of section 245T, sub-section (3) of section 245U and the proviso to section 245V of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby appoints 1st day of September, 2021 as the date for the purposes of said provisos and said sub-sections of the said Act.

[Notification No. 97 /2021/F.No. 370142/31/2021-TPL (Part II)]



CHAPTER 5

**RELEVANT FORMS &
NOTIFICATIONS****5.1 RELEVANT FORMS:****FORM No. 34C**

[See rule 44E]

Form of application by a non-resident applicant for obtaining an advance ruling under section 245Q(1) of the Income-tax Act, 1961

(PLEASE READ THE NOTES CAREFULLY BEFORE FILLING THIS FORM) BEFORE THE BOARD FOR ADVANCE RULINGS

1. In case of an individual, Last Name/ Surname First Name
Middle Name
2. Date of Birth
3. Father's name
4. Full name (in case the applicant is not an individual)
5. Date of Incorporation (in case applicant is not an individual)
6. Type of incorporation
7. Address
8. Telephone, Fax No. and email address
9. Country of residence
10. Status
11. Basis of claim for being a non-resident
12. The Commissioner and the Assessing Officer having jurisdiction over the applicant(only in the case of existing assesses)
13. Permanent Account Number (in the case of existing assesses)
14. Question(s) relating to the transaction on which the advance ruling is required

15. Whether the transaction referred to in item No. 14 relates to an event of national or international importance?
16. If yes, name of the event
17. Statement of the relevant facts having a bearing on the question(s) referred to in item No. 14
18. Statement containing the applicant's interpretation of law or facts, as the case may be, in respect of the aforesaid questions
19. List of documents or statements attached
20. Fee payment details, such as Transaction Reference No./Challan Identification Number/Payment Identification Number etc. accompanying the application.
21. Name and address of authorised representative in India, if any
22. Taxpayer Registration Number or Taxpayer Identification Number or Functional equivalent or Any unique number used for identification by the Government of that country or specified territory of which applicant claims to be a resident
23. Particulars of the Parent Company or Companies of the applicant:
 - (a) Name of the Immediate parent company of the applicant
 - (b) Address of Immediate parent company of the applicant
 - (c) Country of residence of Immediate parent company of the applicant
 - (d) Permanent Account Number of Immediate parent company of the applicant (if allotted)
 - (e) Taxpayer Registration Number or Taxpayer Identification Number or Functional equivalent or Any unique number used for identification of the Immediate parent company of applicant by the Government of that country or specified territory of which it claims to be a resident
 - (f) Name of Ultimate parent company of the applicant
 - (g) Address of Ultimate parent company of the applicant
 - (h) Country of residence of Ultimate parent company of the applicant
 - (i) Permanent Account Number of Ultimate parent company of the applicant (if allotted)
 - (j) Taxpayer Registration Number or Taxpayer Identification Number or Functional equivalent or Any unique number used for identification of the Ultimate parent company of applicant by the Government of that country or

specified territory of which it claims to be a resident

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Signed
(Applicant)

Verification

.....

..... son/daughter/wife[name in
full and in block letters] of

.....
do hereby solemnly declare that to the best of my
knowledge and belief what is stated above and in the
annexure(s), including the documents accompanying such
annexure(s), is correct and complete. I further declare that I
am making this application in my capacity
as.....(designation) and that I am
competent to make this application and verify it.

I also declare that the question on which the advance ruling
is sought is/are not pending in my case before any income-
tax authority, the Appellate Tribunal or any Court.

Verified today, the.....day
of.....

.....

Signed (Applicant)

Place.....

Notes:

1. The application shall be filled in English or Hindi.
2. The application shall be accompanied by proof of payment, of applicable fees in accordance with sub-rule (4) of rule 44E of rules, made in favour of Board for Advance Rulings, payable at New Delhi. Details of payment shall be given in reply to item No. 20.
3. In reply to item No. 7, in the case of an applicant, who is not an existing assessee, the following addresses are to be given:-
 - The place where office and residence are located or is likely to be located in India
 - The address in his country of incorporation.
4. In reply to item No. 9, if the applicant is a company,

association of persons or Hindu undivided family, etc., the country of residence thereof is to be given and not of the individual who is filing the application on behalf of such person.

5. In reply to item No. 10, the applicant shall state whether he/she/it is an individual, Hindu undivided family, firm, and association of persons or company.

6. For item No. 11, the reply shall be given in the context of the provisions regarding residence in India as contained in section 6 of the Income-tax Act. The position in this regard is as follows: An individual is said to be resident in any financial year, if he has been in India during that year:

- for a period or periods of one hundred and eighty-two days or more; or

- for a period or periods of sixty days or more and has also been in India within the preceding four years for a period or periods of three hundred and sixty-five days or more.

However, the period of sixty days is increased to one hundred and eighty-two days in the case of a citizen of India or a person of Indian origin who has been outside India and comes on a visit to India or a citizen of India who leaves India for purposes of employment outside India, or as a member of the crew of an Indian ship. Further, a person who is a citizen of India or a person of Indian origin who has been outside India and comes to a visit to India, the afore mentioned period of sixty days is increased to one hundred and twenty days if the total income of such person, other than income from foreign sources, exceeds fifteen lakh rupees during the relevant previous year.

Furthermore, irrespective of the above mentioned conditions, an individual, who is a citizen of India and has total income, other than the income from foreign sources, exceeding fifteen lakh rupees will be deemed to be a resident if he is not liable to tax in any other country or territory due to his domicile or residence or any other criterion.

An association of persons or a Hindu undivided family or firm is resident in India in every case except where the control and management of its affairs is situated wholly

outside India.

A company is resident in India, if it is an Indian company or its place of effective management is in India.

A person, who is not resident in India as above, is non-resident in India.

7. Regarding item No. 14, the questions shall be based on actual or proposed transactions. Hypothetical questions shall not be entertained.

8. In respect of item No. 17, in Annexure I, the applicant shall state in detail the relevant facts and also disclose the nature of its business or profession and the likely date and purpose of the proposed transactions. Relevant facts reflected in documents submitted along with the application must be included in the statement of facts and not merely incorporated by reference.

9. For item No. 18, in Annexure II, the applicant shall clearly state its interpretation of law or facts in respect of the questions on which the advance ruling has been sought.

10. The application, the verification appended thereto, the annexures to the application and the statements and documents accompanying the annexures, shall be,—

(a) in the case of an individual,—

(I) signed or digitally signed,—

(i) by the individual himself; or

(ii) where, for any unavoidable reason, it is not possible for the individual to sign the application, by any person duly authorised by him in this behalf

Provided that in a case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the individual to do so, which shall be attached to the application; and

(II) furnished through his registered e-mail address;

(b) in the case of a Hindu undivided family,—

(I) signed or digitally signed,—

(i) by the karta thereof; or

(ii) where, for any unavoidable reason, it is not possible for

the karta to sign the application, by any other adult member of such family; and

(II) furnished through its registered e-mail address;

(c) in the case of a company, —

(I) signed or digitally signed,—

(i) 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; or

(ii) 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:

Provided that in the case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the company to do so, which shall be attached to the application; and

(II) furnished through its registered e-mail address;

(d) in the case of a firm,—

(I) signed or digitally signed,—

(i) by the managing partner thereof; or

(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 thereof, not being a minor; and

(II) furnished through its registered e-mail address;

(e) in the case of an association of persons,—

(I) signed or digitally signed, by any member of the association or the principal officer thereof; and

(II) furnished through its registered e-mail address;

(f) in the case of any other person,—

(I) signed or digitally signed by that person or by some person competent to act on his behalf; and

(II) furnished through its registered e-mail address;

ANNEXURE I

Statement of the relevant facts having a bearing on the questions on which the advance ruling is required

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Signed

Place(Applicant)

Date.....

ANNEXURE II

Statement containing the applicant’s interpretation of law or facts, as the case may be, in respect of the question(s) on which advance ruling is required

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Place.....

Signed Date.....

(Applicant)

FORM No. 34D

[See rule 44E]

Form of application by a resident applicant for seeking an advance ruling in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident, under section 245Q(1) of the Income-tax Act, 1961

(PLEASE READ THE NOTES CAREFULLY BEFORE FILLING THIS FORM) BEFORE THE BOARD FOR ADVANCE RULINGS

1. Full name and address of the applicant
2. Telephone, Fax No. and email address
3. Status
4. The Commissioner and Assessing Officer having jurisdiction over the applicant
5. Permanent Account Number, and Aadhaar Number (if applicable)
6. Particulars of the non-resident with whom the transaction is undertaken or proposed to be undertaken
 - (a) Name of the non-resident
 - (b) Address of the non-resident
 - (c) Country of residence
 - (d) Telephone and Fax Number of the non-resident
 - (e) Permanent Account Number of the non-resident (if allotted)
 - (f) Taxpayer Registration Number or Taxpayer Identification Number/Functional equivalent or Any unique number used for identification of the non-resident by the Government of that country or specified territory of which it claims to be a resident.
 - (g) Name of Immediate parent company of the non-resident
 - (h) Address of Immediate parent company of the non-resident
 - (i) Country of residence of immediate parent company of the non-resident
 - (j) Permanent Account Number of Immediate parent company of the non-resident (if allotted)
 - (k) Taxpayer Registration Number or Taxpayer Identification Number or Functional equivalent/ Any unique number used for identification of the Immediate parent

company of the non-resident by the Government of that country or specified territory of which it claims to be a resident

- (l) Name of Ultimate parent company of the non-resident
- (m) Address of Ultimate parent company of the non-resident
- (n) Country of residence of Ultimate parent company of the non-resident
- (o) Permanent Account Number of Ultimate parent company of the non-resident (if allotted)
- (p) Taxpayer Registration Number or Taxpayer Identification Number or Functional equivalent or Any unique number used for identification of the Ultimate parent company of the non-resident by the Government of that country/specified territory of which it claims to be a resident;

7. Basis of claim that the person referred to in serial number 6 with whom the transaction is undertaken or proposed to be undertaken is a non-resident

8. Question(s) of law or of fact relating to a transaction undertaken or proposed to be undertaken on which the advance ruling is required

9. Whether the transaction referred to in item No. 8 relates to an event of national or international importance?

10. If yes, name of event

11. Statement of the relevant facts having a bearing on the question(s) referred to in item No. 8

12. Statement containing the applicant's interpretation of law or facts, as the case may be, in respect of the aforesaid question(s)

13. List of documents or statements attached

14. Fee payment details, such as Transaction Reference No./Challan Identification Number/Payment Identification Number etc. accompanying the application.

.....
Signed
(Applicant)

Verification

I,
..... son/daughter/wife
[name in full and in block letters] of
.....

do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents accompanying such annexure(s), is correct and complete. I further declare that I am making this application in my capacity as (designation) and that I am competent to make this application and verify it. I also declare that the question(s) on which the advance ruling is sought is/are not pending in my case before any income-tax authority, the Appellate Tribunal or any court.

Verified today, the.....day of.....
.....

Signed
(Applicant)

Place.....

Notes:

1. The application shall be filled in English or Hindi.
2. The application shall be accompanied by proof of payment, of applicable fees in accordance with sub-rule (4) of rule 44E of rules, made in favour of Board for Advance Rulings, payable at New Delhi. Details of payment shall be given in reply to item No.14.
3. In reply to item No. 3, the applicant shall state whether the applicant is an individual, Hindu undivided family, firm, association of persons or company.
4. For item No. 6, the reply shall be given in the context of the provisions regarding residence in India as contained in section 6 of the Income-tax Act. The position in this regard is as follows: An individual is said to be resident in any financial year, if he has been in India during that year:
 - for a period or periods of one hundred and eighty-two days or more; or
 - for a period or periods of sixty days or more and has also been in India within the preceding four years for a period or periods of three hundred and sixty-five days or more.

However, the period of sixty days is increased to one hundred and eighty-two days in the case of a citizen of India or a person of Indian origin who has been outside India and comes on a visit to India or a citizen of India who leaves India for purposes of employment outside India, or as a member of the crew of an Indian ship. Further, in the case of a person who is a citizen of India or a person of Indian origin who has been outside India and comes to a visit to India, the aforementioned period of sixty days is increased to one hundred and twenty days if the total income of such person, other than income from foreign sources, exceeds fifteen lakh rupees during the relevant previous year.

Furthermore, irrespective of the above mentioned conditions, an individual, who is a citizen of India and has total income, other than the income from foreign sources, exceeding fifteen lakh rupees will be deemed to be a resident if he is not liable to tax in any other country or territory due to his domicile or residence or any other criterion.

An association of persons or a Hindu undivided family or firm is resident in India in every case except where the control and management of its affairs is situated wholly outside India.

A company is resident in India, if it is an Indian company or its place of effective management is in India.

A person, who is not resident in India as above, is non-resident in India.

5. Regarding item No. 8, the question(s) shall be based on actual or proposed transactions. Hypothetical questions shall not be entertained.
6. In respect of item No. 11, in Annexure I, the applicant shall state in detail the relevant facts and also disclose the nature of his business or profession and the likely date and purpose of the proposed transaction(s). Relevant facts reflected in the documents submitted along with the application shall be included in the statement of facts and

not merely incorporated by reference.

7. For item No. 12, in Annexure II, the applicant shall clearly state his interpretation of law or facts in respect of the question(s) on which the advance ruling has been sought.

8. The application, the verification appended thereto, the annexures to the application and the statements and documents accompanying the annexures, shall be,—

(a) in the case of an individual,—

(I) signed or digitally signed,—

(i) by the individual himself; or

(ii) where, for any unavoidable reason, it is not possible for the individual to sign the application, by any person duly authorised by him in this behalf:

Provided that in a case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the individual to do so, which shall be attached to the application; and

(II) furnished through his registered e-mail address;

(b) in the case of a Hindu undivided family,—

(I) signed or digitally signed,—

(i) by the karta thereof; or

(ii) where, for any unavoidable reason, it is not possible for the karta to sign the application, by any other adult member of such family; and

(II) furnished through its registered e-mail address;

(c) in the case of a company, —

(I) signed or digitally signed,—

(i) 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; or

(ii) 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:

Provided that in the case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the company to do so, which shall be attached

to the application; and

(II) furnished through its registered e-mail address;

(d) in the case of a firm,—

(I) signed or digitally signed,—

(i) by the managing partner thereof; or

(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 thereof, not being a minor; and

(II) furnished through its registered e-mail address;

(e) in the case of an association of persons,—

(I) signed or digitally signed, by any member of the association or the principal officer thereof; and

(II) furnished through its registered e-mail address;

(f) in the case of any other person,—

(I) signed or digitally signed by that person or by some person competent to act on his behalf; and

(II) furnished through its registered e-mail address;

ANNEXURE I

Statement of the relevant facts having a bearing on the question(s) on which the advance ruling is required:

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Place

Sign (Applicant)

Date.....

ANNEXURE II

Statement containing the applicant’s interpretation of law or facts, as the case may be, in respect of the question(s) on which advance ruling is required

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Place.....

Signed Date.....
(Applicant)

FORM No. 34DA

[See rule 44E]

Form of application by a resident applicant for seeking an advance ruling, in relation to transaction which has been undertaken or is proposed to be undertaken, under section 245Q(1) of the Income-tax Act, 1961

(PLEASE READ THE NOTES CAREFULLY BEFORE FILLING THIS FORM) BEFORE THE BOARD FOR ADVANCE RULINGS

1. Full name and address of the applicant
2. Telephone, Fax No. and email address
3. Status
4. The Commissioner and Assessing Officer having jurisdiction over the applicant
5. Permanent Account Number, and Aadhaar Number (if applicable)
6. Name, address, telephone or fax number and email address of the person with whom the transaction is undertaken or proposed to be undertaken
7. Question(s) of law or of fact relating to a transaction undertaken or proposed to be undertaken on which the advance ruling is required
8. Whether the transaction referred to in item No. 7 relates to an event of national or international importance?
9. If yes, name of event
10. Statement of the relevant facts having a bearing on the question(s) referred to in item No. 7
11. Statement containing the applicant's interpretation of law or facts, as the case may be, in respect of the aforesaid question(s)
12. Whether there are any decisions of the Court on the question raised on which ruling is required? If yes, list such relevant decisions.
13. List of documents or statements attached
14. Fee payment details, such as Transaction Reference No./Challan Identification Number/Payment Identification Number etc. accompanying the application.

.....
Signed (Applicant)

Verification

I,

.....
 [name in full and in block letters]
 son/daughter/wife of

.....
 do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents accompanying such annexure(s), is correct and complete. I further declare that I am making this application in my capacity as

..... (designation) and that I am competent to make this application and verify it.

I also declare that the question(s) on which the advance ruling is sought is/are not pending in my case before any income-tax authority, the Appellate Tribunal or any court.

Verified today, the..... day of.....

.....
Signed
(Applicant)

Notes:

1. The application shall be filled in English or Hindi.
2. The application shall be accompanied by proof of payment, of applicable fees in accordance with sub-rule (4) of rule 44E of Income-tax Rules, 1962, made in favour of Board for Advance Rulings, payable at New Delhi. Details of payment shall be given in reply to item No. 14.
3. In reply to item No. 3, the applicant shall state whether the applicant is an individual, Hindu undivided family, firm, association of persons or company.
4. Regarding item No. 7, the questions shall be based on

actual or proposed transactions. Hypothetical questions shall not be entertained.

5. In respect of item No. 10, in Annexure I, the applicant shall state in detail the relevant facts and also disclose the nature of its business or profession and the likely date and purpose of the proposed transactions. Relevant facts reflected in the documents submitted along with the application shall be included in the statement of facts and not merely incorporated by reference.

6. For item No. 11, in Annexure II, the applicant shall clearly state his interpretation of law or facts in respect of the question(s) on which the advance ruling has been sought.

7. The application, the verification appended thereto, the annexures to the application and the statements and documents accompanying the annexures, shall be,—

(a) in the case of an individual,—

(I) signed or digitally signed,—

(i) by the individual himself; or

(ii) where, for any unavoidable reason, it is not possible for the individual to sign the application, by any person duly authorised by him in this behalf:

Provided that in a case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the individual to do so, which shall be attached to the application; and

(II) furnished through his registered e-mail address;

(b) in the case of a Hindu undivided family,—

(I) signed or digitally signed,—

(i) by the karta thereof; or

(ii) where, for any unavoidable reason, it is not possible for the karta to sign the application, by any other adult member of such family; and

(II) furnished through its registered e-mail address;

(c) in the case of a company, —

(I) signed or digitally signed,—

(i) 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; or

(ii) 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:

Provided that in the case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the company to do so, which shall be attached to the application; and

(II) furnished through its registered e-mail address;

(d) in the case of a firm,—

(I) signed or digitally signed,—

(i) by the managing partner thereof; or

(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 thereof, not being a minor; and

(II) furnished through its registered e-mail address;

(e) in the case of an association of persons,—

(I) signed or digitally signed, by any member of the association or the principal officer thereof; and

(II) furnished through its registered e-mail address;

(f) in the case of any other person,—

(I) signed or digitally signed by that person or by some person competent to act on his behalf; and

(II) furnished through its registered e-mail address;

ANNEXURE I

Statement of the relevant facts having a bearing on the question(s) on which the advance ruling is required

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Sign (Applicant)

Place

Date.....

ANNEXURE II

Statement containing the applicant’s interpretation of law or facts, as the case may be, in respect of the question(s) on which advance ruling is required

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Place.....

Date.....

Sign. (Applicant)

FORM No. 34E

[See rule 44E]

Form of application by a resident falling within such class or category of persons as notified by Central Government for obtaining an advance ruling under section 245Q(1) of the Income-tax Act, 1961

(PLEASE READ THE NOTES CAREFULLY BEFORE FILLING THIS FORM) BEFORE THE BOARD FOR ADVANCE RULINGS

1. Full name and address of the applicant
2. Telephone, Fax No. and email address
3. Status
4. The Commissioner and Assessing Officer having jurisdiction over the applicant
5. Permanent Account Number, and Aadhaar Number (if applicable)
6. Particulars of the appeal number and date of appeal before the CIT(A) or the Tribunal wherever applicable
7. Assessment year, date of assessment order and section under which the original order was passed by the Assessing Officer wherever applicable (enclose copy of the assessment order and appellate order)
8. Question(s) of law or of fact involved on which the advance ruling is required
9. Whether the transaction referred to in item No. 8 relates to an event of national or international importance?
10. If yes, name of event
11. Statement of the relevant facts having a bearing on the question(s) referred to in item No. 8
12. Statement containing the applicant's interpretation of law or facts, as the case may be, in respect of the aforesaid question(s)
13. List of documents or statements attached
14. Fee payment details, such as Transaction Reference No./Challan Identification Number/Payment Identification Number etc. accompanying the application.

.....
Signed
(Applicant)

Verification

I,

.....
 son/daughter/wife
 [name in full and in block letters] of

do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents accompanying such annexure(s), is correct and complete. I further declare that I am making this application in my capacity as..... (designation) and that I am competent to make this application and verify it.

I also declare that the question(s) on which the advance ruling is sought is/are not pending in my case before any income-tax authority, the Appellate Tribunal or any court.

Verified today, the.....day
 of.....

.....
Signed
(Applicant)

Place.....

Notes:

1. The application shall be filled in English or Hindi.
2. The application shall be accompanied by proof of payment, of applicable fees in accordance with sub-rule (4) of rule 44E of rules, made in favour of Board for Advance Rulings, payable at New Delhi. Details of payment shall be given in reply to item No. 14
3. In reply to item No. 3, the applicant shall state whether applicant is an individual, Hindu undivided family, firm, and association of persons or company.
4. Regarding item No. 8, the questions shall be based on actual or proposed transactions. Hypothetical questions shall not be entertained.
5. In respect of item No. 11, in Annexure I, the applicant shall state in detail the relevant facts. The tax effect on each question shall also be spelt out.

6. For item No. 12, in Annexure II, the applicant shall clearly state its interpretation of law or facts in respect of the questions on which the advance ruling is being sought.

7. The application, the verification appended thereto, the annexures to the application and the statements and documents accompanying the annexures, shall be,—

(a) in the case of an individual,—

(I) signed or digitally signed,—

(i) by the individual himself; or

(ii) where, for any unavoidable reason, it is not possible for the individual to sign the application, by any person duly authorised by him in this behalf:

Provided that in a case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the individual to do so, which shall be attached to the application; and

(II) furnished through his registered e-mail address;

(b) in the case of a Hindu undivided family,—

(I) signed or digitally signed,—

(i) by the karta thereof; or

(ii) where, for any unavoidable reason, it is not possible for the karta to sign the application, by any other adult member of such family; and

(II) furnished through its registered e-mail address;

(c) in the case of a company, —

(I) signed or digitally signed,—

(i) 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; or

(ii) 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:

Provided that in the case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the company to do so, which shall be attached to the application; and

(II) furnished through its registered e-mail address;

(d) in the case of a firm,—
 (I) signed or digitally signed,—
 (i) by the managing partner thereof; or
 (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 thereof, not being a minor; and
 (II) furnished through its registered e-mail address;

(e) in the case of an association of persons,—
 (I) signed or digitally signed, by any member of the association or the principal officer thereof; and
 (II) furnished through its registered e-mail address;

(f) in the case of any other person,—
 (I) signed or digitally signed by that person or by some person competent to act on his behalf; and
 (II) furnished through its registered e-mail address;

ANNEXURE I

Statement of the relevant facts having a bearing on the question(s) on which the advance ruling is required

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Place
Date.....

Signed
(Applicant)

ANNEXURE II

Statement containing the applicant’s interpretation of law or facts, as the case may be, in respect of the question(s) on which advance ruling is required

.....

Place
Signed Date.....
(Applicant)

FORM No. 34EA

[See rule 44E]

Form of application by a person for obtaining an advance ruling under section 245Q(1) of the Income-tax Act, 1961

(PLEASE READ THE NOTES CAREFULLY BEFORE FILLING THIS FORM) BEFORE THE BOARD FOR ADVANCE RULINGS

1. In case of an individual, Last Name/ Surname First Name Middle Name
2. Date of Birth
3. Father's name
4. Full name (in case applicant is not an individual)
5. Date of Incorporation (in case applicant is not an individual)
6. Type of incorporation
7. Address
8. Status
9. Resident or non-resident in India
10. Country of which he is resident (in case of non-resident)
11. Basis of claim for being a non-resident
12. The Commissioner and Assessing Officer having jurisdiction over the applicant (only in case of existing non-resident assesses)
13. Permanent Account Number and Aadhaar Number (if applicable) in case of resident
14. Details of the arrangement to be undertaken by the applicant on which determination or decision of the Board is required
 - (i) brief description of the arrangement
 - (ii) purpose or purposes of the arrangement
 - (iii) details of the other parties to the arrangement in the following format:

S. No.	Name of the other party(ies) to the arrangement	Whether resident in India	Permanent Account Number and Aadhaar Number (if applicable)	Role of such party in arrangement	Relationship with other party(ies) to the arrangement	Tax benefit arising to the other party(ies), if any

- 15. The tax benefit which is likely to arise out of arrangement, if undertaken
- 16. Assessment year, or years during which the tax benefit as indicated in item No. 15 is likely to arise (give year wise break-up)
- 17. Question(s) relating to the proposed arrangement on which the advance ruling is required referred to in item No. 14
- 18. Statement of the relevant facts having a bearing on the item No. 14
- 19. Statement containing the applicant's interpretation of law or facts, as the case may be, in respect of the aforesaid arrangement
- 20. List of documents or statements attached
- 21. Fee payment details, such as Transaction Reference No./Challan Identification Number/Payment Identification Number etc. accompanying the application.
- 22. Name and address of authorised representative in India

.....
Signed (Applicant)

Verification

I,

.....

..... son/daughter/wife

[name in full and in block letters] of

.....

do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents accompanying such annexure(s), is correct and complete. I further declare that I am making this application in my capacity as..... (designation) and that I am competent to make its application and verify it.

I also declare that the question on which the advance ruling is required is not pending in my case before any income-tax authority, the Appellate Tribunal or any court.

Verified today, the.....day
of.....

.....
Signed (Applicant)

Place.....

Notes:

1. The application shall be filled in English or Hindi.
2. In reply to item No. 9, in the case of an applicant, who is not an existing assessee, the following addresses are to be given:-
 - The place where office and residence are located or is likely to be located in India
 - The address in his country of incorporation
3. The application shall be accompanied by proof of payment, of applicable fees in accordance with sub-rule (4) of rule 44E of Income-tax Rules, 1962, made in favour of Board for Advance Rulings, payable at New Delhi. Details of payment shall be given in reply to item No. 21.
4. In reply to item No. 8, the applicant must state whether the applicant is an individual, Hindu undivided family, firm, and association of persons or company.
5. For item No. 11, the reply shall be given in the context of the provisions regarding 'residence' in India as contained in section 6 of the Income-tax Act. The position in this regard is as follows:

An individual is said to be 'resident' in any financial year, if he has been in India during that year:

- for a period or periods of one hundred and eighty-two days or more; or
- for a period or periods of sixty days or more and has also been in India within the preceding four years for a period or periods of three hundred and sixty-five days or more.

However, the period of sixty days is increased to one hundred and eighty-two days in the case of a citizen of

India or a person of Indian origin who has been outside India and comes on a visit to India or a citizen of India who leaves India for purposes of employment outside India, or as a member of the crew of an Indian ship. Further, in the case of a person who is a citizen of India or a person of Indian origin who has been outside India and comes to a visit to India, the aforementioned period of sixty days is increased to one hundred and twenty days if the total income of such person, other than income from foreign sources, exceeds fifteen lakh rupees during the relevant previous year.

Furthermore, irrespective of the above mentioned conditions, an individual, who is a citizen of India and has total income, other than the income from foreign sources, exceeding fifteen lakh rupees will be deemed to be a resident if he is not liable to tax in any other country or territory due to his domicile or residence or any other criterion. An association of persons or a Hindu undivided family or firm is resident in India in every case except where the control and management of its affairs is situated wholly outside India.

A company is resident in India, if it is an Indian company or its place of effective management is in India.

A person who is not resident in India as above, is non-resident in India

6. Regarding item No. 17, the question(s) should be based on actual or proposed arrangements. Hypothetical questions shall not be entertained.

7. In respect of item No. 18, the applicant shall state in detail the relevant facts and also disclose the nature of his business or profession and the likely date and purpose of the proposed arrangement(s). Relevant facts reflected in documents submitted along with the application shall be included in the statement of facts and not merely incorporated by reference.

8. For item No. 19, in Annexure II, the applicant shall clearly state his interpretation of law or facts in respect of the question(s) on which the advance ruling has been sought.

9. The application, the verification appended thereto, the annexures to the application and the statements and documents accompanying the annexures, shall be,—

(a) in the case of an individual,—

(I) signed or digitally signed,—

(i) by the individual himself; or

(ii) where, for any unavoidable reason, it is not possible for the individual to sign the application, by any person duly authorised by him in this behalf:

Provided that in a case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the individual to do so, which shall be attached to the application; and

(II) furnished through his registered e-mail address;

(b) in the case of a Hindu undivided family,—

(I) signed or digitally signed,—

(i) by the karta thereof; or

(ii) where, for any unavoidable reason, it is not possible for the karta to sign the application, by any other adult member of such family; and

(II) furnished through its registered e-mail address;

(c) in the case of a company, —

(I) signed or digitally signed,—

(i) 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; or

(ii) 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:

Provided that in the case referred to in sub-clause (ii), the person signing the application holds a valid power of attorney from the company to do so, which shall be attached to the application; and

(II) furnished through its registered e-mail address;

(d) in the case of a firm,—

(I) signed or digitally signed,—

- (i) by the managing partner thereof; or
- (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 thereof, not being a minor; and
- (II) furnished through its registered e-mail address;

- (e) in the case of an association of persons,—
 - (I) signed or digitally signed, by any member of the association or the principal officer thereof; and
 - (II) furnished through its registered e-mail address;

- (f) in the case of any other person,—
 - (I) signed or digitally signed by that person or by some person competent to act on his behalf; and
 - (II) furnished through its registered e-mail address;

ANNEXURE I

Statement of the relevant facts having a bearing on the question(s) on which the advance ruling is required

.....

Place.....

Date.....

Signed(Applicant)

ANNEXURE II

Statement containing the applicant’s interpretation of law or facts, as the case may be, in respect of the question(s) on which advance ruling is required

.....

Place.....

Date.....

Signed (Applicant)

5.2 Notification No. 53/2023 of 26.07.2023

**MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
CORRIGENDUM
New Delhi, the 26th July, 2023
INCOME-TAX**

G.S.R. 546(E).-In the notification of the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, published in the Gazette of India, Extraordinary, Part-II, Section 3, sub-section (i), *vide* G.S.R. 432(E) dated the 12th June, 2023:-

- (i) in the English version, at page number 39, after *Annexure I* to Form No. 34E, *Annexure-II* is missing. The following shall be inserted:-

“

ANNEXURE II

Statement containing the applicant’s interpretation of law or facts, as the case may be, in respect of the question(s) on which advance ruling is required

.....
.....

.....

Place.....

Signed Date.....

(Applicant)

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[Notification No. 53/2023 (F.No. 370142/62/2021-TPL (Part-III))]

5.3 Notification No. 73/2014 of 28.11.2014

[TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (ii)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
[CENTRAL BOARD OF DIRECT TAXES]

NOTIFICATION

Income-tax

New Delhi, the 28th day of November, 2014

S.O.3014 (E).- In exercise of the powers conferred by sub-clause (iia) of clause (b) of section 245N of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies a resident, in relation to his tax liability arising out of one or more transactions valuing rupees one hundred crore or more in total which has been undertaken or proposed to be undertaken, being such class of persons, as applicant for the purposes of Chapter XIX-B of the said Act.

2. This notification shall come into force on the date of its publication in the Official Gazette.

[Notification No. 73/2014/ F. No. 142/6/2014-TPL]

5.4 Notification No. 11456/2000 of 03.08.2000

Notification: 725(E)
Section(s) Referred: s. 245N(b)(iii)
Statute: INCOME TAX
Date of Issue: 3/8/2000

In exercise of the powers conferred by sub-clause (iii) of clause (b) of section 245N of the Income-tax Act, 1961 (43 of 1961), and in supersession of Notification No. S.O. 473(E), dated 21st June, 1999, the Central Government hereby specifies public sector company as defined in clause (36A) of section 2 of the Income-tax Act being such class of persons, as applicant for the purposes of Chapter XIX-B of the Income-tax Act.
2. It shall come into force on the date of its publication in the Official Gazette.

[Notification No. 11456/F. No. 142/37/2000-TPL]

APPENDIX-I: RESOURCE MATERIAL

1. To access Circulars & Notifications issued by Central Board of Direct Taxes, visit www.incometaxindia.gov.in
2. Government of India has signed DTAA with various countries which can be accessed from www.incometaxindia.gov.in
3. To file any grievances in connection with BAR, e-mail may be sent to the respective BAR
 - (i) grievancebar1@incometax.gov.in
 - (ii) grievancebar2@incometax.gov.in
 - (iii) grievancebar3@incometax.gov.in
4. To download this handbook in softcopy format visit www.incometaxindia.gov.in
5. To get information about filing of applications before High Courts visit <https://hcservices.ecourts.gov.in/hcservices/highcourts>

ANNEXURE-I**RELEVANT PROVISIONS OF INCOME-TAX ACT, 1961
(RESIDENCE IN INDIA)**

6. For the purposes of this Act,-

(1) An individual is said to be resident in India in any previous year, if he/she-

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Explanation 1- In the case of an individual,-

(a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted ;

(b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted and in case of such person having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, for the words "sixty days" occurring therein, the words "one hundred and twenty days" had been substituted.

Explanation 2- For the purposes of this clause, in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period

or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed.

(1A) Notwithstanding anything contained in clause (1), an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that previous year, if he/she is not liable to tax in any other country or territory by reason of his/her domicile or residence or any other criteria of similar nature.

Explanation- For the removal of doubts, it is hereby declared that this clause shall not apply in case of an individual who is said to be resident in India in the previous year under clause (1).

(2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

(3) A company is said to be a resident in India in any previous year, if-

(i) it is an Indian company; or

(ii) its place of effective management, in that year, is in India.

Explanation- for the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made.

(4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of its affairs is situated wholly outside India.

(5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, it shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of its other sources of income.

(6) A person is said to be "not ordinarily resident" in India in any previous year if such person is-

(a) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or

has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or

(b) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years

preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or

(c) a citizen of India, or a person of Indian origin, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year, as referred to in clause (b) of Explanation¹ to clause (1), who has been in India for a period or periods amounting in all to one hundred and twenty days or more but less than one hundred and eighty-two days; or

(d) a citizen of India who is deemed to be resident in India under clause (1A).

Explanation - For the purposes of this section, the expression "income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India) and which is not deemed to accrue or arise in India.

ANNEXURE-II: List of the countries with which India has DTAA

S. No.	Name of Country
1.	Albania
2.	Armenia
3.	Australia
4.	Austria
5.	Bangladesh
6.	Belarus
7.	Belgium
8.	Bhutan
9.	Botswana
10.	Brazil
11.	Bulgaria
12.	Canada
13.	Chile
14.	China
15.	Colombia
16.	Croatia
17.	Cyprus
18.	Czech Republic
19.	Denmark
20.	Estonia
21.	Ethiopia
22.	Fiji
23.	Finland
24.	France
25.	Georgia
26.	Germany
27.	Greece
28.	Hashemite Kingdom of Jordan
29.	Hong Kong
30.	Hungary
31.	Iceland
32.	Indonesia
33.	Iran
34.	Ireland
35.	Israel
36.	Italy
37.	Japan
38.	Kazakhstan
39.	Kenya
40.	Korea
41.	Kuwait
42.	Kyrgyz Republic
43.	Latvia
44.	Libya
45.	Lithuania
46.	Luxembourg
47.	Macedonia
48.	Malaysia

49.	Malta
50.	Mauritius
51.	Mongolia
52.	Montenegro
53.	Morocco
54.	Mozambique
55.	Myanmar (Union of Myanmar)
56.	Namibia
57.	Nepal
58.	Netherlands
59.	New Zealand
60.	Norway
61.	Oman
62.	Oriental Republic of Uruguay
63.	Philippines
64.	Poland
65.	Portuguese Republic
66.	Qatar
67.	Romania
68.	Russia
69.	Saudi Arabia
70.	Serbia
71.	Singapore
72.	Slovak Republic
73.	Slovenia
74.	South Africa
75.	Spain
76.	Sri Lanka
77.	Sudan
78.	Sweden
79.	Swiss Confederation
80.	Syrian Arab Republic
81.	Tajikistan
82.	Tanzania
83.	Thailand
84.	Trinidad and Tobago
85.	Turkey
86.	Turkmenistan
87.	United Arab Emirates
88.	United Arab Republic
89.	United Kingdom of Great Britain and Northern Ireland
90.	United States of America
91.	Uganda
92.	Ukraine
93.	United Mexican States
94.	Uzbekistan
95.	Vietnam
96.	Zambia