



# RAMA UNIVERSITY

w w w . r a m a u n i v e r s i t y . a c . i n

**FACULTY OF COMMERCE AND MANAGEMENT**

**COURSE: B.COM VI SEM.**

**SUBJECT: Corporate Tax Planning**

**SUBJECT CODE: BCH 403**

**LECTURE: 39**

**NAME OF FACULTY: DR. PALASH BAIRAGI**

## LECTURE-39



## **ADVANCE RULINGS**

The scheme of advance rulings was introduced by the Finance Act, 1993. Chapter XIX-B of the Income-tax Act, which deals with advance rulings, came into force with effect from 1-6-1993. Under the scheme the power of giving advance rulings has been entrusted to an independent adjudicatory body. Accordingly, a high level body headed by a retired judge of the Supreme Court has been set-up. This is empowered to issue rulings, which are binding both on the Income-tax Department and the applicant. The procedure prescribed is simple, inexpensive, expeditious and authoritative.

Advance Ruling means written opinion or authoritative decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto. It has been defined in section 245N(a) of the Income-tax Act, 1961 as amended from time-to-time.

### **Applicant —**

Under section 245N an advance ruling can be obtained by the following persons:-

- a. a non-resident
- b. a resident-undertaking proposing to undertake a transaction with a non-resident can obtain advance ruling in respect of any question of law or fact in relation to the tax liability of the non-resident arising out of such transaction
- c. a resident who has undertaken or propose to undertake one or more transactions of value of Rs.100 crore or more in total [vide Notification No. 73, dated 28-11-2014]
- d. a notified public sector company
- e. any person, being a resident or non-resident, can obtain an advance ruling to decide whether an arrangement proposed to be undertaken by him is an impermissible avoidance arrangements and may be subjected to General Anti Avoidance Rules or not
- f. an applicant as defined in section 28E(c) of the Customs Act, 1962
- g. an applicant as defined in section 23A(c) of the Central Excise Act, 1944
- h. an applicant as defined in section 96A(b) of the Finance Act, 1994

### **Salient features: —**

- a. relates to a transaction entered into or proposed to be entered into by the applicant: -
- The advance ruling is to be given on questions specified in relation to such a transaction by the applicant.

- b. Questions on which ruling can be sought:—
  - i. Even though the word used in the definition is "question", it is clear that the non-resident can raise more than one question in one application. This has been made amply clear by Column No. 8 of the form of application for obtaining an advance ruling (Form No. 34C)
  - ii. 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 non-resident qua the transaction undertaken or proposed to be undertaken.
  - iii. The question may be on points of law as well as on facts; therefore, mixed questions of law and fact can also be included in the application. The questions should be so drafted that each question can be replied in brief answer. This may need breaking-up of complex questiona into two or more simple questions.
  - iv. The questions should arise out of the statement of facts given with the application. No ruling will be given on a purely hypothetical question. A question not specified in the application cannot be urged. Normally a question is not allowed to be amended but in deserving cases the Authority may allow amendment to one or more questions.
  - v. Subject to the limitations, the question may relate to any aspect of the non-resident's liability including international aspects and aspects governed by double tax agreements. The questions may even cover aspects of allied laws that may have a bearing 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 and nexus with the interpretation of the Indian Income-tax Act.
  - vi. Advance Rulings can be obtained to determine 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 (General Anti Avoidance Rules).
- c. Time-limit for advance ruling:—
- The Authority shall pronounce it advance ruling within 6 months of receipt of the application.
- d. Binding nature of advance ruling:—

The effect of the ruling is stated to be limited to the parties appearing before the authority and the transaction in relation to which the ruling is given. This is because the ruling is rendered on a set of facts before the Authority and cannot be for general application.

**Question precluded:** Under section 245R, certain restrictions have been imposed on the admissibility of an application, if the question concerned is pending before other authorities. According to it, the Authority shall not allow an application where the question raised by the non-resident applicant (or a resident applicant having transaction with a non-resident) is already pending before any income-tax authority or appellate Tribunal or any Court of law. Further, the authority shall not allow the application where the question raised in it:—

- i. involves determination of fair market value of any property; or
- ii. it relates to a transaction or issue which is designed, prima facie for the avoidance of income-tax.

**Procedure of application for advance ruling:** An applicant desirous of obtaining an advance ruling should apply to the Authority in the prescribed form stating the question on which the ruling is sought. The application has to be made in quadruplicate in Form Nos:—

**34C** - applicable to a non-resident applicant

**34D** - applicable to a resident having transactions with a non-resident

**34DA** - applicable to a resident seeking advance ruling in relation to his tax liability arising out of one or more transactions valuing Rs.100 crore or more in total which has been undertaken or proposed to be undertaken by him

**34E** - Applicable to Public Sector Company as notified by government via Notification No.11456, dated 3/8/2000

**34EA** - for determining whether an arrangement is an impermissible avoidance arrangement as referred to in Chapter X-A or not

### **Fees for filing the application**

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

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

relation to his tax liability arising out of undertaken, in respect of which one or more transactions valuing Rs.100 ruling is sought exceeds Rs. 100 crore or more in total which has been core but does not exceed Rs. 300 undertaken or is proposed to be crore.

undertaken by him

Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which Rs.10,00,000 ruling is sought exceeds Rs. 300 crore

Any other applicant

In all cases

Rs.10,000

The application is to be accompanied by an account-payee demand draft for 10,000 Indian rupees drawn in favour of the Authority for Advance Ruling and made payable at New Delhi.

The application may be withdrawn within 30 days from the date of the application.