



# CONSTITUTION OF BOARD FOR ADVANCE RULING UNDER INCOME TAX - PROPOSED AMENDMENTS IN BUDGET 2021

**CMA Niranjan Swain**  
Advocate & Tax Consultant

## 1. Background:

1.1. With a view to avoiding dispute in respect of assessment of tax liability and to provide tax certainty, a scheme of Advance Rulings was incorporated in the Act vide the Finance Act, 1993 by inserting a new Chapter XIX-B. Under these provisions the Authority for Advance Rulings (AAR) pronounces rulings on the applications of the non-resident/ residents and such rulings are binding both on the applicants and the Tax department.

1.2. AAR consists of a Chairman and various Vice-Chairman, revenue members and law members. There are three benches of the Authority. The principal bench consists of Chairman, one revenue member and one law member. The other benches consist of one Vice-Chairman, one revenue member and one law member, each. A bench cannot function if the post of Chairman or Vice-Chairman is vacant. As per section 245-O of the Act, persons eligible for appointment as Chairman of AAR are retired judges of the Supreme Court, retired Chief Justice of a High Court or retired Judge of a High Court who has served in that capacity for at least seven years. Similarly, the persons eligible for appointment as Vice-Chairman are retired judges of a High Court. As per past experience, the posts of Chairman and Vice-Chairman have remained vacant for a long time due to non-availability of eligible persons.

## 2. Budget 2021 proposals to constitute 'Board for Advance Ruling' :

2.1. This has seriously hampered the working of AAR and a large number of applications are pending since last many years. There is, therefore, a need to look for an alternative method of providing advance ruling which can give rulings to taxpayers in timely manner.

2.2. Hence, it is proposed to constitute a Board of Advance Ruling and to make the following amendments in the existing provisions of AAR:-

- i. The Authority for Advance Rulings shall cease to operate with effect from such date, as may be notified by the Central Government in the Official Gazette (hereinafter referred to as the notified date).
- ii. It is proposed that the Central Government shall constitute one or more Board for Advance Rulings for giving advance rulings under the said Chapter on and after the notified date. Every such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner. Advance rulings of such Board shall not be binding on the applicant or the Department and if aggrieved, the applicant or the Department may appeal against the ruling or order passed by the Board before the High Court.
- iii. Since the work of Authority shall be carried out by the Board for Advance Rulings on and after the notified date, amendments are proposed to be made to the various provisions of the Chapter to this effect.
- iv. Section 245N is proposed to be amended to incorporate the definitions of the Board of Advance Rulings, notified date, Member of the Board of Advance Rulings and change in the definition of Authority to include the Board for Advance Rulings.
- v. Section 245-O is proposed to be amended to provide that the Authority constituted under the said section shall cease to operate on or after the notified date.
- vi. Section 245-OB shall be inserted to provide for the constitution of the Board of Advance Rulings.

- vii. Section 245P is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words “Authority”, the words “Board for Advance Rulings” had been substituted;
- viii. Section 245Q (which deals with filing of application) is proposed to be amended to provide that the pending application with the Authority i.e. in respect of which order under section 245R(2) or section 245R(4) has not been passed before the notified date shall be transferred to the Board for Advance Rulings along with all records, documents or material, by whatever name called and shall be deemed to be records before the Board for all purposes.
- ix. Section 245R (which deals with the procedure) is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words “Authority”, the words “Board for Advance Rulings” had been substituted and the provisions of the said section shall apply mutatis mutandi to the Board for Advance Rulings as they apply to the Authority.
- x. The Central Government is also proposed to be empowered to make a scheme by notification in the Official Gazette for the purpose of giving advance ruling by Board of Advance Ruling under this provision. The scheme shall impart greater efficiency, transparency and accountability by eliminating interface to the extent technologically feasible, by optimising utilisation of resources and introducing dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the scheme, 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 notification. However, no such direction shall be issued after the 31st day of March, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.
- xi. Section 245S (which deals with the applicability of advance ruling and makes it binding on the assessee and the Department) is proposed to be amended to provide that nothing contained in the said section shall apply on and after the notified date.
- xii. Section 245T (which deals with advance ruling to be void in certain situation) is proposed to be amended to provide that on or from the notified date, the provisions of the said section shall have effect as if for the words “Authority”, the words “Board for Advance Rulings” had been substituted. Also, a specific reference to advance ruling pronounced by the Authority shall be amended to make it advance ruling pronounced under sub-section (6) of section 245R so that the Board for Advance Ruling can also exercise powers under the said section in respect of rulings pronounced by the present Authority.
- xiii. Section 245U is proposed to be amended to provide that on or from the notified date, the powers of the “Authority” under the said section shall be exercised by the “Board for Advance Rulings” and the provisions of the said section shall apply mutatis mutandi to the Board for Advance Rulings as they apply to the Authority.
- xiv. Section 245V is proposed to be amended to provide that nothing contained in the said section shall apply on and after the notified date
- xv. A new section 245W is proposed to be inserted to provide for appeal to High Court against the order passed or ruling pronounced by the Board for Advance Ruling. This appeal can be filed by the applicant as well as by the Department. Such appeal shall be filed within sixty days from the date of the communication of such ruling or order, in such form and manner as may be prescribed. However, where the High Court is satisfied, on an application made in this behalf, that the appellant was prevented by sufficient cause from presenting the appeal within the period specified in this section, it may allow a further period of thirty days for filing such appeal. The Central Government shall be empowered to notify a scheme for filing of appeal by the Assessing Officer so as to impart greater efficiency, transparency and accountability by optimising utilisation of the resources through economies of scale and functional specialisation; introducing a system with dynamic jurisdiction. The Central Government may, for the purposes of giving effect to the scheme, 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 notification. However, no such direction shall be issued after the 31st day of March, 2023. Every such notification shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

xvi. References to Customs Act, 1962, Central Excise Act, 1944 and Finance Act, 1994 in the definition of applicant in section 245N and in section 245Q relating to application for advance ruling is proposed to be omitted.

**2.3.** A brief comparison of major differences in the old scheme of AAR and the proposed Board for Advance Ruling has been given below.

<b>Particulars</b>	<b>Authority for Advance Rulings</b>	<b>Board for Advance Rulings</b>
Panel	AAR consists of Chairman, Vice-Chairman, revenue members and law members.  Chairman a “Retired Judge of a Supreme Court or Chief Justice of High Court. Vice-Chairman a “Retired Judge of a High Court	Each Board to have two members, each not below the rank of Chief Commissioner.
Binding nature	The Ruling of AAR is binding on the applicant and the Department.	The Ruling or the Order of the Board will not be binding on the Department or on the applicant.
Appeal	Income-tax Act/ Rules does not provide for appeal against the ruling of AAR.	The proposed amendment allows the Department and the applicant an option to appeal before the jurisdictional High Courts.

**2.4.** Above amendments will take effect from 1st April, 2021

### **3. Text of the Relevant Clause of the Finance Bill 2021:**

**3.1. Clause 67** of the Bill seeks to amend section 245N of the Income-tax Act relating to definitions.

It is proposed to omit sub-clauses (B), (C) and (D) of said section with effect from such date as may be appointed by the Central Government by notification in the Official Gazette.

It is further proposed to amend clause (c) of said section so as to insert the words “or the Board for Advance Rulings”. It is also proposed to insert clause (ca) to said section so as to provide definitions of Board for Advance Rulings and members of the Board for Advance Rulings.

This amendment will take effect from 1st April, 2021.

**3.2. Clause 77** of the Bill seeks to insert a new section 245W to the Income-tax Act relating to Appeal.

It is proposed to insert a new section 245W so as to provide that the applicant may, if he 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 or Commissioner, appeal to the High Court within sixty days from the date of the communication of such ruling or order, in such form and manner as may be provided by rules. However, 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 a further period of thirty days for filing such appeal. It is also proposed that the Central Government may make a scheme, by notification in the Official Gazette, for the purposes of preferring appeal to the High Court by the Assessing Officer, so as to impart greater efficiency, transparency and accountability by optimising utilisation of the resources through economies of scale and functional specialisation; introducing a team-based mechanism with dynamic jurisdiction. It is also proposed that the Central Government may, for the purposes of giving effect to the said scheme, by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no direction shall be issued after 31st March, 2023. Every notification so issued shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

This amendment will take effect from 1st April, 2021.