

Advance Rulings in India

Introduction

With growing acceptance of the idea that no economy can flourish in isolation, the international trade has been the driving force of the modern world. The rise in international trade has acted as a fillip for improved international tax laws and practices. The Double Taxation Avoidance Agreements ('DTAA') entered between nations have acted as a catalyst in remission of problems of double taxation arising from cross border transactions and investment. One of the measures for improved international tax practices is formulation of Authority for Advanced Rulings ('AAR'). In order to avoid any kind of litigation in future and its associated costs, taxpayers generally like to be sure of the tax implications of their proposed transactions.

The AAR is a high level quasi-judicial and independent authority chaired by a retired judge of the Supreme Court. In India, the advance rulings given by the authority are binding on the applicant and the Income-tax authorities unlike many other countries. Only in cases where the aggrieved party chooses to exercise its constitutional right to go in Writ to the High Court or file a SLP before the Supreme Court, do the issues take time to resolve.

Who can seek advance ruling?

The section 245N to 245V of the Income Tax Act ('Act') specify provisions with regard to advance rulings. As per the Act, the ruling can be obtained by the following:

- A resident can apply 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.
- A resident applicant, in relation to his tax liability arising out of one or more transactions valuing INR 100 crore or more.
- A non-resident who has undertaken or proposes to undertake a transaction.
- A public-sector company can seek advance ruling in respect of issues relating to computation of total income

For the purpose of seeking advance ruling, the applicant must be a non-resident in the financial year immediately preceding the financial year in which the application is made. Therefore, a non-resident who comes to India for business can avail the benefits of these provisions even after starting the business, who may have become a resident by the time he realizes the need to seek an advance ruling.

Relating to specific transactions

The advance ruling is to be given on **questions specified** in relation to a transaction by the applicant. In case of ***Trade Circles Enterprises LLC, In re [2009] 184 Taxmann 99***, it was held that where a non-resident company applied to seek ruling for its Indian subsidiary, the application was liable to be rejected.

However, the AAR is bound to mandatorily reject application which raises three categories of questions:

- Questions pending before other authorities under the Income Tax Act: A similar question before any other income tax authority prevents the authority to accept the application made before it. The pendency before the income tax authority must be

specific to the question for which advance ruling is sought. It would not be applicable wherein the applicant is yet to undertake the transaction.

Eg: Where the Assessing Officer is of the view that services rendered by a non-resident is not in the nature of Fee for Technical Services (FTS) but business income, and the non-resident decides to file an appeal before CIT(A), the matter cannot be brought before AAR.

- Questions pertaining to market value of any property: The applicant cannot seek advance ruling for matters relating to valuation and transfer pricing since it may involve determination of market value of a property.
- Questions pertaining to transactions designed for avoidance of tax: The authority would not allow any application if it relates to a transaction which is designed prima facie for the avoidance of income-tax. It is pertinent to note that there is no reference to any other tax in this section.

Effect of Ruling

In most countries, the applicant or Revenue Department has the option to accept the advance ruling. However, the advance ruling is binding on the applicant as well as the Revenue Department in India. Further, the advance ruling is binding as long as there is no change in law or facts on the basis of which ruling was pronounced. The ruling is only applicable to the specific transaction for which ruling is sought, however it has some persuasive value for persons other than the applicant. The AAR generally follows the ruling in cases where the material facts are similar or in cases which raise the same question of law.

There is no provision in the law for appealing against the ruling of the AAR. However, the Supreme Court has been granted the discretionary jurisdiction to hear appeals from subordinate courts by way of special leave petition. Alternatively, the applicant or Revenue Department may file a writ petition before the High Court or Supreme Court alleging that fundamental rights of the applicant have been violated.

Conclusion

The advance ruling has provided with an effective mechanism for seeking an expeditious ruling on matters which would otherwise take a much longer time. Moreover, it has also provided better solution to foreign investors for obtaining clarity on tax implications of a particular transaction.