CHAPTER 23

ADVANCE RULINGS



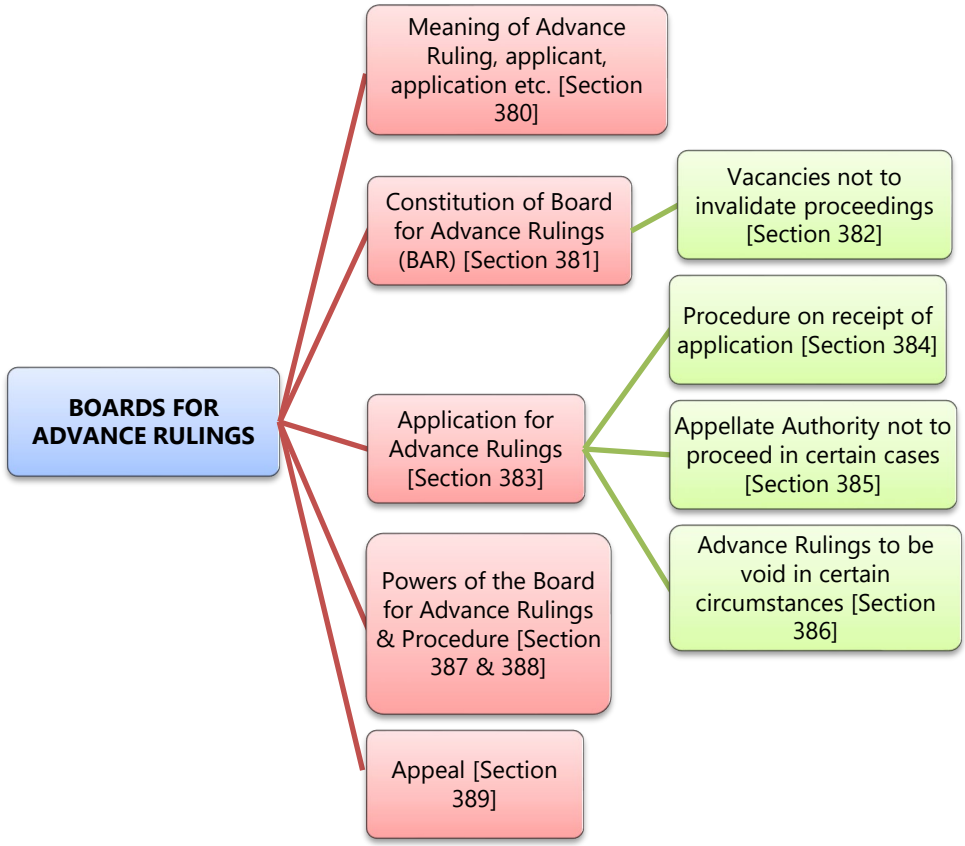
LEARNING OUTCOMES

After studying this Chapter, you will be able to–

- **comprehend** the meaning and scope of the term "advance ruling" and the need for obtaining advance ruling;
- **understand** the constitution of Board for Advance Rulings;
- **appreciate** the procedure for making an application to the Board for Advance Rulings and the procedure to be followed by the Board on receipt of application;
- **know** the circumstances when an advance ruling can be declared void.

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CHAPTER OVERVIEW





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23.1 BOARD FOR ADVANCE RULINGS – AN INTRODUCTION

The Board for Advance Rulings is a Board set up under the Income-tax Act to give advance rulings on tax matters, mainly in cases involving non-residents and specified persons. At present, three Boards for Advance Rulings have been constituted for giving advance rulings. Every such Board shall consist of two members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board (i.e., the Central Board of Direct Taxes). The ruling pronounced or order passed by the Board for Advance Rulings is appealable before the High Court in accordance with the appellate mechanism provided under section 389 of the Income-tax Act, 2025.

23.2 CONSTITUTION OF BOARD FOR ADVANCE RULINGS [SECTION 381]

One or more Boards for Advance Rulings (BAR), as may be necessary, shall be constituted by the Central Government for giving advance rulings under Chapter XVIII (Appeals, Revisions and Alternate Dispute Resolutions) of Income-tax Act, 2025.

Accordingly, the Central Government has, in exercise of such powers, vide Notification No. 96/2021 dated 1.9.2021, constituted three Boards for Advance Rulings, for the purposes of giving advance rulings. Board for Advance Rulings – I and Board for Advance Rulings – II have their headquarters in Delhi and Board for Advance Rulings – III has its headquarters in Mumbai.

Every such Board for Advance Ruling (BAR) shall consist of two members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board.

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23.3 INTERPRETATION

(1) Advance Ruling [Section 380(a)]: Advance Ruling means:

Section	Determination by the Board for Advance Rulings
380(a)(i)	a determination by the BAR in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant.
380(a)(ii)	a determination by BAR 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
380(a)(iii)	a determination by BAR 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.
380(a)(iv)	a determination or decision by BAR 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 fact in relation to such computation of total income specified in the application.
380(a)(v)	a determination or decision by BAR 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 XI or not.

(2) Applicant [Section 380(b)]: 'Applicant' means any person who –

(i) is a non-resident referred to in section 380(a)(i) above; or

(ii) is a resident referred to in section 380(a)(ii) above; or

(iii) is a resident referred to in section 380(a)(iii) above falling within any such class or category of persons as the Central Government may, by notification specify.

[A resident in relation to his tax liability arising out of one or more transactions valuing ₹ 100 crore or more in total which has been

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undertaken or is proposed to be undertaken would be an applicant – Notification No.73/2014 dated 28.11.2014] or

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

[Public sector company as defined under section 2(88) of the Income-tax Act, 2025 would be an applicant – Notification No. 725(E) dated 3.8.2000]; or

(v) is referred to in section 380(a)(v) above; and

who makes an application for advance ruling under section 383(1).

Who can be an applicant in relation to different clauses of section 380(a) defining advance ruling?

S. No.	Applicant u/s 380(b)	Advance Ruling u/s 380(a) means determination by the BAR in relation to
(i)	Non-resident (NR)	a transaction which has been undertaken or is proposed to be undertaken by him.
(ii)	Resident	the tax liability of a NR arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such NR
(iii)	Resident falling within any such class or category of persons notified by Central Government	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.
	Note: *The Central Government notified a resident, in relation to his tax liability arising out of one or more transactions valuing ₹ 100 crore or more in total.*	
(iv)	Resident falling within such class or category of persons notified by Central Government	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 fact in relation to such computation of total income specified in the application.

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	Note: *A public sector company has been notified by the Central Government [Notification No. 725(E) dated 3.8.2000].* [There is no monetary limit as regards tax liability would be applicable for public sector companies]	
(v)	Resident or NR	whether an arrangement, which is proposed to be undertaken by any person being a resident or a NR, is an impermissible avoidance arrangement as referred to in Chapter XI or not.

(3) Application [Section 380(c)]: Applications means an application made to the Board for Advance Rulings under section 383(1).

(4) Board for Advance Rulings [Section 380(d)]: BAR means the Board for Advance Rulings constituted by the Central Government under section 381.

(5) Member [Section 380(e)]: Member means a Member of the Board for Advance Rulings.

23.4 VACANCIES, ETC., NOT TO INVALIDATE PROCEEDINGS [SECTION 382]

A proceeding before, or pronouncement of advance ruling by, the Board for Advance Rulings would not be questioned or would not be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Board for Advance Rulings.

23.5 APPLICATION FOR ADVANCE RULING [SECTION 383]

Section 383(1) provides that an applicant desirous of obtaining an advance ruling may make an application stating the question on which the advance ruling is sought in the prescribed form and in the prescribed manner.

As per section 383(2), the application shall be accompanied by a prescribed fee.

Rule 200 prescribes the fees mentioned in column (3) to be paid by the applicant mentioned in column (1) in the cases of column (2).

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Category of applicant	Amount of transaction or one or more transaction for which ruling is sought	Fee
(1)	(2)	(3)
Seeking advance rulings in relation to the tax liability arising out of a transaction undertaken or proposed to be undertaken by a non-resident applicant under section 380(a)(i) or resident applicant under sub-clause (ii) thereof.	Amount less than ₹ 100 crores.	₹ 2 lakhs
	Amount between ₹ 100 crores and ₹ 300 crores	₹ 5 lakhs
	Amount more than ₹ 300 crores.	₹ 10 lakhs
Seeking advance rulings in relation to the tax liability of a resident applicant, arising out of a transaction undertaken or proposed to be undertaken by a resident applicant under section 380(a)(iii)	Amount between ₹ 100 crores and ₹ 300 crores	₹ 5 lakhs
	Amount more than ₹ 300 crores.	₹ 10 lakhs
Any other applicant	In all cases	₹ 10,000

Rule 200 prescribes the form of application[1] for obtaining an advance ruling. Every application shall be accompanied by the proof of payment of fees.

Manner of furnishing application electronically [Rule 200(3)]

The application, the verification appended thereto, the annexures and the statements and documents accompanying the application shall be furnished electronically and shall be signed or digitally signed in the following manner.

1. Where applicant is required to file Return of Income

Particulars	Requirement
Who will sign the application	Person authorised to verify return under section 265
Mode of signature	(i) Digital Signature – if return is required to be filed with DSC (ii) Electronic Verification Code (EVC) – in other cases

[1] *Form No. 120*

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2. Where applicant is NOT required to file Return of Income

Particulars	Requirement
Who will sign the application	Any person authorised by the applicant and holding a valid power of attorney
Mode of signature	Digital Signature or EVC as specified by the Board

Section 383(3) provides that an applicant may withdraw an application **within 30 days from the date of the application**.

23.6 PROCEDURE ON RECEIPT OF APPLICATION [SECTION 384]



(i) Send copy of the application and call for records: The Board, on receipt of an application, will send a copy to the Principal Commissioner or Commissioner concerned and call upon the Principal Commissioner or Commissioner to furnish relevant records. Such records will be returned to the Principal Commissioner or Commissioner at the earliest.

(ii) Allow or reject the application: After examining the application and the records called for, the Board may either allow or reject an application. However, the Board **shall not allow** an application where the question raised in the application is:

Pending with income-tax authority/ Appellate Tribunal/ court	is already pending before any income-tax authority, or Appellate Tribunal. or any court. However, a resident applicant falling within any class or category of persons as notified by the Central Government (i.e., a public sector company) referred under section 380(b)(iv)[2] can seek advance ruling even if the question raised is pending before any income-tax authority or Appellate Tribunal.

[2] *Reference in the Income-tax Act, 2025 is made to section 380(b)(iii) in place of section 380(b)(iv). However, having regard to the corresponding provision under the repealed Income-tax Act, 1961, where a question is already pending before any income-tax authority or the Appellate Tribunal, the legislative intent appears to be that an application made by the notified resident referred to in section 380(b)(iv), i.e., a public sector company, should not be rejected on the ground that such question is pending before any income-tax authority or the Appellate Tribunal.*

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Determination of Fair Market Value	involves the determination of the fair market value of any property;
Transaction designed for avoidance of income-tax	relates to a transaction or issue which is designed *prima facie* for avoidance of income-tax [except in case of a resident applicant falling in section 380(b)(iii) i.e., a resident in relation to his tax liability arising out of one or more transactions valuing ₹ 100 crore or more in total) or an applicant falling under section 380(b)(v)[3] i.e., a resident or a non-resident for determination of whether an arrangement, which is proposed to be undertaken, is an impermissible avoidance arrangement.

(iii) **Principle of Natural Justice:** No application shall be rejected unless an opportunity has been given to the applicant of being heard. Further, where an application is rejected, the reason for rejection shall be given in the order.

A copy of every order (rejected or allowed) shall be sent to the applicant and to the PCIT/CIT.

(iv) **Pronouncement of Advance Ruling:** Where an application is allowed, after examining such further material as may be placed before it by the applicant or obtained by the Board, the Board would pronounce its advance ruling on that question specified in the application **within 6 months** from the receipt of application by the Board.

Where a request is received from an applicant, the Board has to provide an opportunity of being heard, either in person or through a duly authorised representative, before pronouncing its advance ruling. For this purpose, "authorised representative" has the meaning assigned to it in section 515(3)(a), as if the applicant were an assessee [Section 384(9)].

(v) **Send copy of pronouncement:** A copy of advance ruling pronounced, duly signed by the Members and certified, has to be sent to the applicant and to the PCIT/CIT, as soon as may be, after pronouncement.

As per Rule 201, the copy of the advance ruling pronounced by the Board,

[3] *Likewise, in the Income-tax Act, 2025, reference is made to section 380(b)(iv) in place of section 380(b)(v). However, having regard to the corresponding provision under the repealed Income-tax Act, 1961, the legislative intent appears to be that an application made by a resident or a non-resident for determination as to whether an arrangement proposed to be undertaken is an impermissible avoidance arrangement should not be rejected.*

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to be sent to the applicant and to the Commissioner having jurisdiction over his case, shall be certified to be true copy thereof by the Commissioner or Deputy Commissioner or Board for Advance Rulings, as the case may be.

23.7 ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 386]

Where the Board for Advance Rulings finds, on a representation made to it by the Principal Commissioner of Income-tax/Commissioner of Income-tax or otherwise, that an advance ruling pronounced under section 384(6) has been obtained by the applicant by fraud or misrepresentation, the Board may, by order, declare such ruling to be *void ab initio*.



All the provisions of the Income-tax Act, 2025 would apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this section) to the applicant as if such advance ruling had never been made.

A copy of this order has to be sent to the applicant and the Principal Commissioner or Commissioner.

23.8 POWERS AND PROCEDURE OF THE BOARD FOR ADVANCE RULINGS [SECTION 387 & 388]

As per section 387, the Board for Advance Rulings shall have all the powers of the Civil Court in respect of discovery and inspection, enforcing the attendance of any person, including any officer of a banking company and examining on oath, issuing commissions and compelling the production of books of accounts and other documents as provided under section 246 of Income-tax Act, 2025.

The Board shall be deemed to be a Civil Court for the purposes of section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023 but not for the purposes of Chapter XXVIII of that Sanhita.

Every proceeding before the Board shall be deemed to be a judicial proceeding under sections 229 and 267 and for the purposes of section 233 of the Bharatiya Nyaya Sanhita, 2023.

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As per section 388, the BAR has powers to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

Rectification of Mistake: 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.

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 of Income-tax or Commissioner of Income-tax, as the case may be, reasonable opportunity of being heard. [Rule 15 of e-Advance Rulings Scheme, 2022].

23.9 APPEAL [SECTION 389]



The applicant who 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, may appeal to the High Court against such ruling or order of the Board of Advance Rulings. He has to do so within **sixty days from the date of the communication** of that ruling or order, in the prescribed form and manner.

As per rule 202, the form and manner of filing appeal to the High Court under section 389(1) against a ruling pronounced or order passed by the Board for Advance Rulings by the assessee, or the Assessing Officer on the directions of the Commissioner, shall be the same as provided in the applicable procedure laid down by the jurisdictional High Court for filing an appeal to that High Court.

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 60 days period as specified above, it may grant further period of 30 days for filing such appeal **[Section 389(2)].**

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TEST YOUR KNOWLEDGE

Questions

1. *Q, a non-resident, made an application to the Board for Advance Rulings on 3.4.2026 in relation to a transaction proposed to be undertaken by him. On 1.5.2026, he decides to withdraw the said application. Can he withdraw the application on 1.5.2026?*

2. *Examine when can an advance ruling pronounced by the Board for Advance Rulings be declared void. What is the consequence?*

3. *The Board for Advance Rulings has the powers of compelling the production of books of account – Examine the correctness or otherwise of this statement.*

4. *The term 'Advance Ruling' includes within its scope, a determination by the Board for Advance Rulings only in relation to a transaction undertaken by a non-resident applicant. Examine the correctness of this statement, with reference to the provisions of the Income-tax Act, 2025.*

5. *What is the remedy available to an applicant who is aggrieved by the ruling of Board for Advance Rulings? Also, state the time limit within which he should exercise this remedy.*

6. *Whether the Board for Advance Ruling has the power to rectify its own ruling?*

Answers

1. Section 383(3) of the Income-tax Act, 2025 provides that an applicant, who has sought for an advance ruling, may withdraw the application within 30 days from the date of the application. Since the 30 day period from the date of application by Q to the Board for Advance Rulings has not lapsed, he can withdraw the application.

2. As per section 386, an advance ruling can be declared to be *void ab initio* by the Board for Advance Rulings if, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, it finds that the

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ruling has been obtained by fraud or misrepresentation. Thereafter, all the provisions of the Act will apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this section) as if no such advance ruling has been made. A copy of such order shall be sent to the applicant and the Principal Commissioner or Commissioner.

3. The statement is correct.

Under section 387, the Board for Advance Rulings shall have all the powers vested in the Civil Court under the Code of Civil Procedure, 1908 as are referred to in section 246.

Accordingly, the Board for Advance Rulings shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely -

(1) discovery and inspection;

(2) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(3) compelling the production of books of account and other documents; and

(4) issuing commissions.

Therefore, the Board for Advance Ruling has the powers of compelling the production of books of account.

4. The statement is **not** correct. As per section 380, advance ruling not only includes a determination by the BAR in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant, but also includes*, inter alia*, determination by the BAR –

(i) 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.

(ii) 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

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the determination of any question of law or of fact specified in the application.

(iii) in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal; and

(iv) 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 XI or not.

5. As per section 389, an applicant who is aggrieved by any ruling pronounced by the Board for Advance Rulings may appeal to the High Court against such ruling of the Board of Advance Rulings. He has to do so within sixty days from the date of the communication of that ruling, in the prescribed form and manner.

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 60 days period as specified above, it may grant further period of 30 days for filing such appeal.

6. As per rule 15 of e-Advance Rulings Scheme, 2022, 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.

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 of Income-tax or Commissioner of Income-tax, as the case may be, reasonable opportunity of being heard.

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