



## Tax Insights

3 September 2021

### 1 September 2021 specified as notified date for constitution of BAR to replace AAR and to give effect to transitional amendments

#### In brief

The Finance Act, 2021 (effective from 1 April 2021) introduced amendments in the Income-tax Act, 1961 to replace the existing Authority for Advance Rulings (AAR) with the Board for Advance Rulings (BAR). To move a step forward in achieving this objective, the Central Government has constituted a Board for pronouncing advance rulings and notified<sup>1</sup> 1 September 2021 as a date for the Board to be operational.

Furthermore, no effective date was specified for the abolition of the AAR and to give effect to the transitional amendments from AAR to BAR. The Central Government has now specified 1 September 2021 as the date for enforcing such amendments.

#### In detail

##### Background

A scheme of advance rulings was incorporated in the Indian jurisprudence for avoiding disputes regarding the determination of tax liability as well as to provide tax certainty for non-residents (later extended to specified residents). The ruling was pronounced by the AAR on an application made by non-residents or residents (in specified circumstances), and the same was also binding in nature on the applicant for the transaction in relation to which the ruling had been sought as well as Principal Commissioner or Commissioner, and the subordinate income-tax authorities.

AAR is comprised of a chairman and various vice-chairman, revenue members and law members. The persons eligible for appointment as the 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 the retired judges of a High Court.

In the past few years, the Central Government was facing difficulties in filling the vacancies created in the AAR due to the non-availability of eligible personnel, and therefore, as an alternative, the Central Government proposed constituting BAR with an intent to ensure the timely disposal of applications.

<sup>1</sup> Notification No. S.O. 3561(E) dated 1 September 2021

## Constitution of BAR

The constitution of BAR by the Central Government is a first step towards the transition from AAR to BAR. Three boards are proposed to be constituted with two headquartered in Delhi and one headquartered in Mumbai, tabulated below.

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

The BAR will be operational on and after 1 September 2021 for the purpose of pronouncing advance rulings and for the below provisions:

- AAR ceases to operate from 1 September 2021.
- In erstwhile provisions, no proceeding or pronouncements by AAR were questioned or were considered invalid due to any vacancy or defect in its constitution. These provisions will apply to BAR as well w.e.f. 1 September 2021.
- All the applications pending before AAR as on 1 September 2021 will be transferred to BAR along with all the relevant records, documents or material.
- BAR will follow the same procedure for dealing with the applications as was followed by the AAR.
- The provisions on the binding norms of AAR rulings, i.e. binding on applicant as well as Principal Commissioner or Commissioner and their subordinates will no longer be effective from 1 September 2021, and such orders will be appealable before the High Court.
- The rulings pronounced by AAR were declared as *void ab initio* if obtained by fraud or misrepresentation of facts. Similarly, w.e.f. 1 September 2021, any rulings pronounced by BAR would be *void ab initio* if obtained by fraud or misrepresentation of facts.
- BAR will be vested with same powers as AAR w.e.f. 1 September 2021.

## The takeaways

Although the Central Government has taken its first step for the transition from AAR to BAR and has notified 1 September 2021 as the relevant date for enforcing the various provisions, clarity is awaited in terms of scheduling hearings by BAR, members on board, fresh application filings with BAR in terms of prescribed forms for filing the application and similar issues.

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