

# CHAPTER 1

## RESIDENTIAL STATUS

### 1. ICAI STUDY MATERIAL QUESTIONS

#### Concept problem 1

Mr. Anand is an Indian citizen and a member of the crew of a Singapore bound Indian ship engaged in carriage of passengers in international traffic departing from Chennai port on 6<sup>th</sup> June, 2021. From the following details for the PY 2021-22, determine the residential status of Mr. Anand for AY 2022-23, assuming that his stay in India in the last 4 previous years (preceding PY 2021-22) is 400 days:

Particulars	Date
Date entered into the CDC in respect of joining the ship by Mr. Anand	6 <sup>th</sup> June, 2021
Date entered into the CDC in respect of signing off the ship by Mr. Anand	9 <sup>th</sup> December, 2021

#### Solution

In this case, since Mr. Anand is an Indian citizen and leaving India during P.Y. 2021-22 as a member of the crew of the Indian ship, he would be resident in India if he stayed in India for 182 days or more.

The voyage is undertaken by an Indian ship engaged in the carriage of passengers in international traffic, originating from a port in India (i.e., the Chennai port) and having its destination at a port outside India (i.e., the Singapore port). Hence, the voyage is an eligible voyage for the purposes of section 6(1).

Therefore, the period beginning from 6<sup>th</sup> June, 2021 and ending on 9<sup>th</sup> December, 2021, being the dates entered into the Continuous Discharge Certificate in respect of joining the ship and signing off from the ship by Mr. Anand, an Indian citizen who is a member of the crew of the ship, has to be excluded for computing the period of his stay in India. Accordingly, 187 days [25+31+31+30+31+30+9] have to be excluded from the period of his stay in India. Consequently, Mr. Anand's period of stay in India during the P.Y. 2021- 22 would be 178 days [i.e., 365 days – 187 days]. Since his period of stay in India during the P.Y. 2021-22 is less than 182 days, he is a non-resident for A.Y. 2022-23.

#### Concept Problem 2

Brett Lee, an Australian cricket player visits India for 100 days in every financial year. This has been his practice for the past 10 financial years.

- Find out his residential status for the assessment year 2022-23.
- Would your answer change if the above facts relate to Srinath, an Indian citizen who resides in Australia and represents the Australian cricket team?
- What would be your answer if Srinath had visited India for 120 days instead of 100 days every year, including P.Y. 2021-22?

#### Solution

##### (a) Determination of Residential Status of Mr. Brett Lee for the A.Y. 2022-23:

Period of stay during previous year 2021-22 = 100 days

Calculation of period of stay during 4 preceding previous years (100 x 4 = 400 days)

2020-21	100 days
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2019-20	100 days
2018-19	100 days
2017-18	100 days
<b>Total</b>	<b>400 days</b>

Mr. Brett Lee has been in India for a period more than 60 days during previous year 2021-22 and for a period of more than 365 days during the 4 immediately preceding previous years. Therefore, since he satisfies one of the basic conditions under section 6(1), he is a resident for the assessment year 2022-23.

Computation of period of stay during 7 preceding previous years =  $100 \times 7 = 700$  days

2020-21	100 days
2019-20	100 days
2018-19	100 days
2017-18	100 days
2016-17	100 days
2015-16	100 days
2014-15	100 days
<b>Total</b>	<b>700 days</b>

Since his period of stay in India during the past 7 previous years is less than 730 days, he is a not-ordinarily resident during the assessment year 2022-23. (See Note below)

Therefore, Mr. Brett Lee is a resident but not ordinarily resident during the previous year 2021-22 relevant to the assessment year 2022-23.

Note: An individual, not being an Indian citizen, would be not-ordinarily resident person if he satisfies any one of the conditions specified under section 6(6), i.e.,

- i) If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or
- ii) If such individual has during the 7 previous years preceding the relevant previous year been in India for a period of 729 days or less.

In this case, since Mr. Brett Lee satisfies condition (ii), he is a not-ordinarily resident for the A.Y. 2022-23.

- (b) If the above facts relate to Mr. Srinath, an Indian citizen, who residing in Australia, comes on a visit to India, he would be treated as non-resident in India, irrespective of his total income (excluding income from foreign sources), since his stay in India in the current financial year is, in any case, less than 120 days.
- (c) In this case, if Srinath's total income (excluding income from foreign sources) exceeds INR 15 lakh, he would be treated as resident but not ordinarily resident in India for P.Y.2021-22, since his stay in India is 120 days in the P.Y.2021-22 and 480 days (i.e., 120 days x 4 years) in the immediately four preceding previous years.

If his total income (excluding income from foreign sources) does not exceed INR 15 lakh, he would be treated as non-resident in India for the P.Y.2021-22, since his stay in India is less than 182 days in the P.Y.2021-22.

### Concept problem 3

Mr. B, a Canadian citizen, comes to India for the first time during the P.Y. 2017-18. During the financial years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22, he was in India for 55 days, 60 days, 90 days, 150 days and 70 days, respectively. Determine his residential status for the A.Y. 2022-23.

### Solution

During the PY 2021-22, Mr. B was in India for 70 days and during the 4 years preceding the previous year 2021-22, he was in India for 355 days (i.e. 55+60+90+150 days).

Thus, he does not satisfy any of basic conditions given under section 6(1). Therefore, he is a non-resident for the previous year 2021-22.

#### Concept problem 4

The business of a HUF is transacted from Australia and all the policy decisions are taken there. Mr. E, the Karta of the HUF, who was born in Kolkata, visits India during the PY 2021-22 after 15 years. He comes to India on 1.4.2021 and leaves for Australia on 1.12.2021.

Determine the residential status of Mr. E and the HUF for AY 2022-23.

#### Solution

- a) During the P.Y. 2021-22, Mr. E has stayed in India for 245 days (i.e. 30+31+30+ 31+31+ 30+31+30+1 days). Therefore, he is a resident in India for PY 2021-22. However, since he has come to India after 15 years, he does not satisfy any of the conditions for being ordinarily resident.

Therefore, the residential status of Mr. E for the P.Y. 2021-22 is resident but not ordinarily resident.

- b) Since the business of the HUF is transacted from Australia and nothing is mentioned regarding its control and management, it is assumed that the control and management is also wholly outside India. Therefore, the HUF is a nonresident for the P.Y. 2021-22.

#### Concept problem 5

Mr. Dey, a non-resident, residing in US since 1990, came back to India on 1.4.2020 for permanent settlement. What will be his residential status for assessment year 2022-23?

#### Solution

Mr. Dey is a resident in A.Y. 2021-22 and A.Y. 2022-23 since he has stayed in India for a period of 365 days (more than 182 days) during the P.Y. 2020-21 and P.Y. 2021-22, respectively.

As per section 6(6), a person will be “Not ordinarily Resident” in India in any previous year, if such person:

- has been a non-resident in 9 out of 10 previous years preceding the relevant previous year; or
- has during the 7 previous years immediately preceding the relevant previous year been in India for 729 days or less.

If he does not satisfy either of these conditions, he would be a resident and ordinarily resident.

For the previous year 2021-22 (A.Y. 2022-23), his status would be “Resident but not ordinarily resident” since he was non-resident in 9 out of 10 previous years immediately preceding the P.Y. 2021-22. He can be resident but not ordinarily resident also due to the fact that he has stayed in India only for 366 days (i.e., less than 730 days) in 7 previous years immediately preceding the P.Y. 2021-22.

## 2. ICAI RTPS, MTPS AND PAST YEAR QUESTIONS

#### Concept problem 6

Mr. D, an Indian citizen, leaves India on 22.9.2021 for the first time, to work as an officer of a company in France. Determine his residential status for the A.Y. 2022-23.

#### Solution

During the previous year 2021-22, Mr. D, an Indian citizen, was in India for 175 days (i.e., 30+ 31+30+31+31+22 days). He does not satisfy the minimum criteria of 182 days. Also, since he is an Indian citizen leaving India for the purposes of employment, the second condition under section 6(1) is not applicable to him.

Therefore, Mr. D is a non-resident for the A.Y. 2022-23.

**Concept problem 7**

Determine the residential status of Ms. Nicole Kidman, an Australian actress, for the A.Y. 2022-23, from the following information about her stay in India contained in her passport.

F.Y.	From	To	F.Y.	From	To
2021-22	May 3 <sup>rd</sup>	August 12 <sup>th</sup>	2016-17	May 3 <sup>rd</sup>	August 12 <sup>th</sup>
2020-21	July 23 <sup>rd</sup>	August 11 <sup>th</sup>	2015-16	May 3 <sup>rd</sup>	August 12 <sup>th</sup>
2019-20	February 9 <sup>th</sup>	March 26 <sup>th</sup>	2014-15	May 3 <sup>rd</sup>	August 12 <sup>th</sup>
2018-19	September 8 <sup>th</sup>	March 26 <sup>th</sup>	2013-14	May 3 <sup>rd</sup>	August 12 <sup>th</sup>
2017-18	May 17 <sup>th</sup>	September 30 <sup>th</sup>	-	-	-

**Solution**

The residential status of Ms. Nicole Kidman, a foreign national, would be determined in the following manner:

PY	2021-22	2020-21	2019-20	2018-19	2017-18	2016-17	2015-16	2014-15	2013-14
No. of days of stay in India	102	20	46	201	137	102	102	102	102

Ms. Nicole Kidman is said to be resident in India if she satisfies any one of the following basic conditions:

- Has been in India during the previous year for a total period of 182 days or more
- or
- Has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days during the previous year.

Ms. Nicole Kidman's stay in India during the P.Y. 2021-22 is less than 182 days. However, her stay in India during the P.Y. 2021-22 is 102 days, which exceeds 60 days; and her stay in India during the four previous years prior to P.Y. 2021-22 is 404 days [20 + 46 + 201 + 137], which exceeds 365 days. Hence, she is a resident for P.Y. 2021-22.

Further, Ms. Nicole Kidman would be "Resident but not ordinarily resident" in India in during the previous year 2021-22, if she:

- has been a non-resident in 9 out of 10 previous years preceding the relevant previous year; or
- has during the 7 previous years immediately preceding the relevant previous year been in India for less than 730 days.

If she does not satisfy both of these conditions, she would be a resident and ordinarily resident.

In the present case, her stay in India in the last seven previous years prior to P.Y. 2021-22 is 710 days [20 + 46 + 201 + 137 + 102 + 102 + 102], which is less than 730 days. Therefore, she is resident but not ordinarily resident for the P.Y. 2021-22 even if she is resident in the two assessment years i.e., A.Y. 2019-20 and A.Y. 2018-19 as per the information given in the question.

**Concept problem 8**

Determine the residential status of the Assessee in the following cases for the FY 2021-22:

- Ronaldo comes to India to participate in an Asian Football Tournament on 4<sup>th</sup> April, 2021. He stays in India upto 15<sup>th</sup> September, 2021. He again comes back to India on 14<sup>th</sup> January, 2022 and stays in India upto 31<sup>st</sup> March, 2022.
- Saina Nehwal leaves India for the first time on 28<sup>th</sup> of September, 2021 to participate in The International Badminton Tournament. She does not come back to India upto 31<sup>st</sup> March, 2022.

**3.** Ricky Ponting comes to India for the first time on 10<sup>th</sup> October, 2021 and stays in India for 185 days.

### Solution

**1)** An individual is said to be Resident in India in a Previous Year, if he satisfies at least one of the following basic conditions:

a) He stays in India during the previous year for a period of 182 days or more

**OR**

b) He stays in India for a period of 60 days or more during the previous year **and** 365 days or more during the 4 years immediately preceding the previous year

In this case, Ronaldo's total stay in India in PY 2021-22 is 242 days. Hence, satisfying the first basic condition, Ronaldo is resident in India for PY 2021-22.

**2)** An individual is said to be Resident in India in a Previous Year, if he satisfies at least one of the following basic conditions:

a) He stays in India during the previous year for a period of 182 days or more

**OR**

b) He stays in India for a period of 60 days or more during the previous year **and** 365 days or more during the 4 years immediately preceding the previous year.

In this case, Saina's total stay in India in PY 2021-22 is 181 days which is more than 60 days. Further, her stay during preceding 4 previous years is more than 365 days. Hence, satisfying the second basic condition, Saina is resident in India for PY 2021-22.

**3)** An individual is said to be Resident in India in a Previous Year, if he satisfies at least one of the following basic conditions:

a) He stays in India during the previous year for a period of 182 days or more

**OR**

b) He stays in India for a period of 60 days or more during the previous year **and** 365 days or more during the 4 years immediately preceding the previous year.

In this case, Ricky Ponting's total stay in India in PY 2021-22 is 173 days. Further, his stay during preceding 4 previous years is Nil.

Since, none of the conditions are satisfied, Ricky Ponting is Non- Resident in India for PY 2021-22.

### Concept problem 9

Decide whether we need to test the second condition for determining the residential status in the following cases:

S No.	Particulars	Comment
1	Mr. Ram, citizen of India, leaves India for a job in UK.	
2	Neha, citizen of India, leaves for Germany to start her business.	
3	Bharat, an Indian citizen, leaves India in an Indian ship, as passenger.	
4	Ravi, citizen of India, leaves India as a crew member of Titanic (Foreign Ship).	
5	Ashish, citizen of India, leaves India as a crew member of INS Virat (Indian Ship).	
6	Mr. Bobby Jindal, citizen of US, born in India in 1975, comes on a visit to India. All his parents and grandparents were born in US.	
7	M.F Husain, citizen of Qatar, was born in India in 1940, comes on a visit to India.	
8	Shyam, an Indian citizen comes on a visit to India (Indian Income 15 lakhs).	
9	Shyam, an Indian citizen comes on a visit to India (Indian Income 16 lakhs).	

**Solution**

S No.	Particulars	Comment
1	Mr. Ram, citizen of India, leaves India for a job in UK.	No
2	Neha, citizen of India, leaves for Germany to start her business.	No
3	Bharat, an Indian citizen, leaves India in an Indian ship, as passenger.	Yes
4	Ravi, citizen of India, leaves India as a crew member of Titanic (Foreign Ship).	No
5	Ashish, citizen of India, leaves India as a crew member of INS Virat (Indian Ship).	No
6	Mr. Bobby Jindal, citizen of US, born in India in 1975, comes on a visit to India. All his parents and grandparents were born in US.	Yes
7	M.F Husain, citizen of Qatar, was born in India in 1940, comes on a visit to India (Indian Income 16 lakhs).	No Modified Second Condition
8	Shyam, a Indian citizen comes on a visit to India (Indian Income 15 lakhs).	No
9	Shyam, a Indian citizen comes on a visit to India (Indian Income 16 lakhs).	No Modified Second Condition

**Concept problem 10**

Miss Kate, born in US, (both of her parents were born in Canada and one of her grandfather was born in Mexico, a grandmother was born in Alaska, and the other one in Delhi) stays in India during the PY 2021-22 for 196 days. Her stay in India during the preceding 10 years is as follows:

PY	No. of Days	PY	No. of Days
2020-21	200	2015-16	Nil
2019-20	65	2014-15	84
2018-19	56	2013-14	365
2017-18	105	2012-13	10
2016-17	Nil	2011-12	300

Determine the residential status in the above case for PY 2021-22.

**Solution**

Miss Kate is a person of Indian origin who has come on a visit to India, hence second basic condition is not applicable. However, since her stay in India during PY 2021-22 is 182 days or more, she is a Resident in India for PY 2021-22.

However, her stay during 7 preceding previous years is less than 730 days i.e. 510 days. Hence, she fails to satisfy one of the conditions of being Resident and Ordinarily Resident. Accordingly, she is a Not Ordinarily Resident in India for PY 2021-22.

**Concept problem 11**

- Karta of one HUF comes to India every year for a minimum of 60 days and maximum 91 days. Determine the residential status of the HUF and also that of Karta for the AY 2022-23.
- Garg HUF has 15 properties in India & 20 properties outside India. All the Properties are managed by the Karta, Bharat from India. Determine the residential Status of the HUF.



- c) Yadav HUF has certain Properties in India and certain properties outside India. All these properties are managed by its Karta, Ashish from outside India. Determine the residential status of the HUF.
- d) Kant HUF has got 10 businesses all situated in South Africa. However, the Karta Saiyam manages these businesses partly from South Africa and partly from India. Determine the residential status of HUF.
- e) Barnwal HUF has six businesses outside India which are managed by some members outside India and four businesses in India which are managed by some members in India. Determine the residential status of HUF.

### Solution

- a) HUF is resident since control and management of its affair is situated partly in India as Karta visits India. However, since his stay in India during relevant PY can be a maximum of 637 days, HUF shall be considered to be resident but not ordinarily resident.

Karta, in his individual capacity, is a non-resident since he cannot comply with even one of the two conditions prescribed under section 6(1).

- b) HUF is resident since control and management of its affair is situated in India.
- c) HUF is not resident since control and management of its affair is situated wholly outside India.
- d) HUF is resident since control and management of its affair is situated partly in India.
- e) HUF is resident since control and management of its affair is situated partly in India. If a HUF is resident for even a part of its business, it becomes resident for other businesses as well.

### Concept problem 12

ABC Inc., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in April, 2021 in compliance with RBI guidelines to look after its day-to-day business operations in India, spread awareness about the company's products and explore further opportunities. The liaison office takes decisions relating to day-to-day routine operations and performs support functions that are preparatory and auxiliary in nature. The significant management and commercial decisions are, however, in substance made by the Board of Directors at Sweden. Determine residential status of ABC Inc. for AY 2022-23.

### Solution

As per section 6(3) of Income-tax Act, 1961, a foreign company would be resident in India in any previous year, if its place of effective management, in that year, is in India.

In this case, ABC Inc. is a foreign company. Therefore, it would be resident in India for PY 2021-22 only if its place of effective management, in that year, is in India.

Place of effective management means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

In the case of ABC Inc., its place of effective management for PY 2021-22 is not in India, since the significant management and commercial decisions are, in substance, made by the Board of Directors outside India in Sweden.

Hence, ABC Inc., being a foreign company is a non-resident for AY 2022-23, since its place of effective management is outside India in the PY 2021-22.

### Concept Problems 13

- 1) Ram, a chartered accountant, is presently working in a firm in India. He has received an offer for the post of CFO from a company in USA. As per the offer letter, he should join the company at any time between 1<sup>st</sup> September, 2021 and 31<sup>st</sup> October, 2021. He approaches you for your advice on the following issues to mitigate his tax liability in India
  - a) Date by which he should leave India to join the company.

- b) Direct credit of part of his salary to his bank account in Delhi maintained jointly with his mother to meet requirement of his family.
- c) Period for which he should stay in India when he comes on leave.
- 2) Rahul visits India during the PY 2021-22. He arrives on 1<sup>st</sup> May at 4 AM & leaves on 20<sup>th</sup> of June at 9 AM. He again arrives on 17<sup>th</sup> September at 11 AM and leaves on 28<sup>th</sup> October at 5 PM. He again arrives on 10<sup>th</sup> February at 12 Noon and leaves on 16<sup>th</sup> march at 7 PM. He has stayed in India in the preceding 4 years for 850 days. Determine his residential status.

**Solution:**

- 1) The following category of individuals will be treated as resident in India only if the period of their stay in India during the relevant previous year is 182 days or more: -
- Indian citizens who leave India in any previous year for purposes of employment outside India; or
  - Indian citizen or person of Indian origin who comes on a visit to India in any previous year.

- a) Since Ram is leaving India for the purpose of employment outside India, he will be treated as resident only if the period of his stay during the previous year amounts to 182 days or more. Therefore, Ram should leave India on or before 28<sup>th</sup> September, 2021, in which case, his stay in India during the previous year would be less than 182 days and he would become non-resident for the purpose of taxability in India.

In such a case, only the income which accrues or arises in India or which is deemed to accrue or arise in India or received or deemed to be received in India shall be taxable.

The income earned by him in USA would not be chargeable to tax in India for AY 2022-23 if he leaves India on or before 28<sup>th</sup> September, 2021.

- b) If any part of Ram's salary is credited directly to his bank account in India, then that part of his salary would be considered as income received in India during the previous year and would be chargeable to tax under Income-tax Act, 1961, even if he is a non-resident.

Therefore, Ram should receive his entire salary in USA and then send the required amount to his bank account in India.

- c) In case Ram visits India after taking up employment outside India, he would be treated as resident only if the period of his stay during the relevant previous year amounts to 182 days or more.

Therefore, when Ram comes to India on leave, he should stay in India for less than 182 days during the relevant previous year so that his status remains as a non-resident for the relevant previous year.

Moreover, he should not visit India again during the current previous year i.e., PY 2021-22.

Further, if Total Income of Ram excluding income from foreign source exceeds 15 lakhs, he should stay in India for less than 120 days to remain non-resident.

- 2) An individual is said to be Resident in India for a previous year, if he satisfies at least one of the following basic conditions:

- a) He stays in India during the previous year for a period of 182 days or more

**OR**

- b) He stays in India for a period of 60 days or more during the previous year and 365 days or more during the 4 years immediately preceding the previous year.

In case where the arrival and departure is stated in terms of hours/time, a total of 24 hours shall be counted as 1 day.

In this case, Rahul's total duration of stay in PY 2021-22 is 122 days and 90 hours which shall be considered as 125 days. Further, his stay during preceding 4 previous years is more than 365 days.

Hence, satisfying the second basic condition, Mr. Rahul is a resident in India for PY 2021-22.



**Concept Problems 14**

An individual, who is an Indian resident, is allowed to hold two different citizenships simultaneously. Is the citizenship a determining factor for residential status of an individual?

**Solution**

Citizenship of a country and residential status of that country are separate concepts. A person may be an Indian national /citizen, but may not be a resident in India. On the other hand, a person may be a foreign national /citizen, but may be a resident in India.

The residential status of resident, non-resident, etc. are determined on the basis of number of days an individual actually stays in India during the previous year. The provisions of section 6 of the Income-tax Act, 1961 are the determining factor of residential status of an individual.

However, as per section 6(1A), an Indian citizen whose Total Income excluding income from foreign sources exceeds 15 lakhs and such income is not taxed anywhere in other countries due to domicile or residence, he shall be deemed as resident.