

PROBLEMS AND SOLUTIONS ON RESIDENTIAL STATUS

Q.1) During the previous year 2019-20, X, a foreign citizen, stayed in India for just 69 days. Determine his residential status for the assessment year 2020-2021 on the basis of the following information: (i) During 2016-17, X was present in India for 366 days. (ii) During 2013-14 and 2012-13, X was in Japan for 359 and 348 days respectively and for the balance period in India. (iii) Mrs. X is ‘resident’ in India for the assessment year 2020-2021.

- To determine whether he is resident or not — He is resident for previous year 2019-20 as he satisfies the second condition as he was here during the previous year for 69 days and in the preceding 4 years for 366 days.
- To determine whether he is ordinarily resident or not — He should satisfy both of the additional conditions.

2018-19	Nil	<i>Non-resident</i>
2017-18	Nil	<i>Non-resident</i>
2016-17	366 days	<i>Resident</i>
2015-14	Nil	<i>Non-resident</i>
2014-15	Nil	<i>Non-resident</i>
2013-14	7 days	<i>Non-resident</i>
2012-11	17 days	<i>Non-resident</i>
2011-12	Nil	<i>Non-resident and</i>
<i>earlier years</i>	<i>Nil</i>	<i>Non-resident</i>

He was in India for less than 730 days in the 7 preceding previous years. He is also non-resident in 9 out of 10 previous years preceding the previous year. Hence he is “resident but not ordinarily resident”.

Q.2) Mr. Kohli, a citizen of India, is an export manager of Arjun Overseas Limited, an Indian Company, since 1.5.2015. He has been regularly going to USA for export promotion. He spent the following days in U.S.A. for the last five years:

Previous year ended	No. of days spent in USA
31.3.2016	317 days
31.3.2017	150 days
31.3.2018	271 days
31.3.2019	311 days
31.3.2020	294 days

Determine his residential status for assessment year 2020-2021 assuming that prior to 1.5.2015 he had never travelled abroad.

Solution

Total stay in India

2015-16	48 days
2016-17	216 days
2017-18	94 days
2018-19	54 days
2019-20	71 days

During previous year 2019-20 his stay in India is 71 days and in the four preceding years $48 + 216 + 94 + 54 = 412$ days.

Resident in India (condition of 182 days for citizen not applicable as he has not gone for employment abroad but has been going out of India during the course of employment).

2018-19 — 54 days (Non-Resident) 2017-18 — 94 days but more than 365 days in the 4 preceding previous year. Hence, resident.

2016-17 — 216 days — resident

2015-16 — 48 days non-resident

Prior to 2015-156 — resident

He satisfies the first condition of being resident in at least 2 out of 10 previous year prior to relevant previous year and the 2nd condition of being in India for 730 days or more in the 7 preceding previous years. He is “resident and ordinarily resident in India”.

Q.3)

(a) R was bom in Lahore in 1949. He has been staying in America since 1971. He came to visit India on 2.10.2019 and returns on 31.3.2020. Determine his residential status for the assessment year 2020-2021.

(b) Shane Warne, an Australian cricket player, has been coming to India since 1995-96 every year to play cricket and has been staying here for about 4 months. What will be his residential status for the assessment year 2020-2021.

Solution

(a) Non-resident as he neither satisfy the first conditions of 182 days nor the 2nd conditions as although he was in India during the previous year for 181 days (i.e. more than 60 days), but he was not in India for at least 365 days in the 4 preceding previous year.

(b) Resident in India, as he is in India for more than sixty days in the previous year and was in India for more than 365 days in the 4 preceding previous years. Further, he satisfies both the conditions of category B. He was resident in at least 2 out of 10 previous year prior to relevant previous year and was in India for 730 days or more in the 7 preceding previous years. Hence, he is “resident and ordinarily resident in India”.

Q.4)

Determine the residential status in the following cases for the assessment year 2020-2021:

- (i) The control and management of a HUF is situated in India. The manager of the H.U.F. visited England with his wife from 14.8.2019 to 30.6.2020. Earlier to that he was always in India.
- (ii) A company, whose registered office is in America, has a place of its effective management in the previous year in India.
- (iii) In a partnership firm, there are three partners namely A, B and C. A and B reside in India while C lives in Germany. The firm is fully controlled by C. During the previous year, Mr. C stayed for 6 months in India.
- (iv) A V.I.P. Club is in India, whose director Mr. X belongs to China. The Club is controlled fully by Mr. X. In the previous year. Mr. X did not come for a single day to India.

Solution

Residential Status for the assessment year 2020-21

HUF is a resident in India, as it is partly controlled from India. Further, the karta of the HUF satisfies both the conditions of category B. He was resident in at least 2 out of 10 previous year prior to relevant previous year and was in India for 730 days or more in the 7 preceding previous years. Hence, the HUF is “resident and ordinarily resident in India”.

2. Company is resident in India as its place of effective management in the previous year is in India.

3. A partnership firm is said to be resident in India if control and management of its affairs is partly situated in India.

4. VIP Club is non-resident — no part of the control and management was in India.

Q.5)

Sam came to India first time during the P.Y. 2019-20. During the previous year, he stayed in India for (i) 50 days; (ii) 183 days; & (iii) 153 days. Determine his residential status for the A.Y. 2020-2021.

Solution

- (i) Since Sam resides in India only for 50 days during the P.Y. 2019-20, he does not satisfy any of the conditions specified in sec. 6(1). He is, therefore, a non-resident in India for the P.Y. 2019- 20.
- (ii) Since Sam resides in India for 183 days during the previous year 2019-20, he satisfies one of the conditions specified in sec. 6(1). He is, therefore, a resident in India for the P.Y. 2019-20.
- (iii) Sam resides in India only for 153 days during the previous year 2019-20. Though he resided for more than 60 days during the previous year but in 4 years immediately preceding the previous year (as he came India first time), he did not reside in India. Hence, he does not satisfy any of the conditions specified in sec. 6(1). Thus, he is a non-resident for the P.Y. 2019-20.