

TEST 2: RESIDENTIAL STATUS

Illustration 1

X is a citizen of Bangladesh. His grandmother was born in a village near Dhaka in 1940. He came to India for the first time since 1981 on 2/10/2019 for a visit of 190 days.

Find out the residential status of X for the assessment year 2022-23 on the assumption that wife of X is a resident but "not ordinarily resident in India" for the same year.

Solution

His stay in India during previous year 2021-22 is 181 days. He is a person of Indian origin because his grandmother was born in undivided India. He will be considered resident only when he had been in India for 182 days or more.

He is therefore non-resident.

Illustration 2

'M' an Indian citizen left India for the first time on 24/09/2018 for employment in USA. During the previous year 2021-22 he comes to India on 5/6/2019 for 165 days. Determine the residential status of 'M' for the assessments year 2022-23 and 2023-24.

Solution

(a) During the previous year 2021-22, his stay in India is of 177 days (i. e 30+31+30+31+31+24). He is a citizen of India and has left India during the previous year 2021-22 for employment abroad. In his case, neither first nor second condition (where 60 days are substituted by 182 days) is satisfied and therefore, he is not-residents in India.

(b) During the previous year 2021-22, his stay in India is of 165 days. Since he is a citizen of India and makes a visit to India, neither first nor second condition (as it will be 182 days instead of 60 days) is satisfied and therefore, he is non-resident in India.

Illustration 3

Mrs Kohli, a citizen of India is an export manager of Arjun Overseas Limited, an Indian company, since 1.5.2014. he has been regularly going to USA for export promotion. He spent the following days in USA for the last five years:

Previous year ended	No. of days spent in USA
31.3.16	317 days
31.3.17	150 days
31.3.18	271 days
31.3.19	311 days
31.3.20	294 days

Determine his residential status for assessment year 2022-23 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 2021-22 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 - 16 - resident

He satisfied 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 year. He is "resident and ordinarily resident in India".

Illustration 4

R Ltd and S Ltd companies are registered in Nepal and India respectively. All meetings of board of directors of R Ltd were held in India. Whereas all board meetings of S Ltd were held in Nepal during the previous year 2021-22. Determine the residential status of both the companies for the assessment year 2022-23.

Solution

Both are resident.

Illustration 5

Determine the residential status in the following cases for the assessment year 2022 - 23:

- The control and management of a HUF is situated in India. The manager of the HUF. Visited England with his wife from 14.8.19 to 30.6.2020. earlier to that he was always in India.

- A company, whose registered office is in America, has a place of its effective management in the previous year in India.
- 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.
- A VIP 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 2022-23.

- HUF is a resident in India, as it is partly controlled from India. Further, the karta of the HUF satisfies both the condition of the 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 year. Hence, the Karta is "resident and ordinarily resident in India.
- Company is resident in India as its place of effective management in the previous year is in India.
- A partnership firm is said to be resident in India if controlled and management of its affairs is partly situated in India.
- VIP club is non-resident - no part of the control and management was in India.

Illustration 6

During the previous year 2021-22, X a foreign citizen, stayed in India for just 69 days. Determine the his residential status for the assessments year 2022-23 on the basis of the following information:

- During 2018-19, he was not present in India but during 2017-18 he came to India for 276 days.
- During 2016-17, X was present in India for 90 days.
- During 2013-14 and 2011-12, X was in India for 359 and 348 days respectively.
- Earlier to 2012-13 he had been regularly coming to India for 100 days every year.

Solution

To determine whether he is resident or not-

- He is resident for previous year 2021-22 as he satisfied the second condition because he was here for more than than 60 days in the relevant previous year and more than 365 days in the four preceding previous year.
- To determine whether he is "resident and ordinarily resident in India" he has to satisfy both the condition of category B.

As he satisfies both the conditions of category B of being resident in a least 2 out of 10 preceding previous year and the second condition of being in India for 730 days or more during 7 years preceding the relevant previous year, he is resident and ordinarily resident in India.

Hence, he is resident and ordinarily resident in India.

Year	Stay in India
2018-19	Nil
2017-18	276
2016-17	90
2015-16	Nil
2014-15	Nil
2013-14	359
2012-13	348

Illustration 7

A earns the following income during the financial year 2021-22:

Particulars		Amount (₹)
A	Interest paid by an Indian company but received in London	2,00,000
B	Pension from former employer in India, received in USA	8,000
C	Profile earned from business in Paris which is controlled in India, half of the profits beings received in India.	40,000
D	Income from agriculture in Bhutan and remitted to India	10,000
E	Income from property in England and received there	8,000
F	Past foreign untaxed income brought to India	20,000

Determine the total income of A for the assessment year 2022-23 if he is (i) resident and ordinarily resident, (ii) not ordinarily resident, and (iii) non-resident in India.

Solution

	Resident and ordinarily resident (₹)	Not ordinarily (₹)	Non resident (₹)
A	2,00,000	2,00,000	2,00,000
B	8,000	8,000	8,000
C	40,000	40,000	20,000
D	10,000	-	-
E	8,000	Nil	Nil
F	Nil	Nil	Nil
	2,66,000	2,48,000	2,28,000

Illustration 8

Following are the incomes of R, a citizen of India, for the previous year 2021-22:

1	Interest on savings bank deposit in corporation bank, Delhi	12,000
2	Income from agriculture in Africa invested in Russia	5,000
3	Dividends received in USA from an English company, out of which ₹2,000 were remitted to India	12,000
4	Salary drawn for two months for working in India Embassy's office in Australia and salary received there	48,000
5	Income from house property. (the building is situated in Iraq, out of which ₹20,000 deposited in banks in Iraq and the balance remitted to India)	25,000
6	Pension received in Belgium for services rendered in India with a limited company	10,000

You are required to compute his gross total income for the assessment year 2022 - 23 if he is (a) a resident and ordinarily resident, (b) not ordinarily resident, and (c) a non-resident.

Solution**Computation of Gross Total Income of R**

	Particulars	Resident and ordinarily resident	Not ordinarily resident	Non-resident
		(₹)	(₹)	(₹)
1	Interest on savings bank deposit	12,000	12,000	12,000
2	Income from agricultural in Africa	5,000	-	-
3	Dividends received in USA	12,000	-	-
4	Salary drawn for working in Indian Embassy in Australia	48,000	48,000	48,000
5	Income from house property in Iraq	25,000	-	-
6	Pension received in Belgium for service rendered in India	10,000	10,000	10,000
	Gross total income	1,12,000	70,000	70,000

Illustration 8

Compute taxable income of G a non-resident for the previous year 2021-22:

	Particulars	Amount (₹)
1	Income from operations confined to the purchase of goods in India for the purpose of export	40,000
2	Income from operations confirmed to shooting of a cinematography film	1,00,000

	in India G is an Indian citizen	
3	Income from salary received in India for service rendered outside India	60,000

Solution

Computation of taxable income of G
(For the assessment year 2022-23)

	Particulars	Amount (₹)
1	Income from purchase of goods in India [not taxable under section 9(1)(1)(a)]	-
2	Income from shooting of a cinematograph film in India (taxable as G is an Indian citizen)	1,00,000
3	Salary income	60,000
	Gross total income	1,60,000