R E S I D E N T I A L   S T A T U S

Basic rules for determining residential status of an assessee

- Residential status (R/S) is determined for each category of persons separately.
- R/S of a person is to be determined for every previous year because it may change from year to year.
- There is distinction between Citizenship and R/S. A person may be non-resident in India even though he is an Indian citizen. Similarly a person may be resident in India even though he is a foreign citizen.

Residential status of an "Individual"

INDIVIDUAL

- RESIDENT
  - ORDINARILY RESIDENT
  - NOT ORDINARILY RESIDENT
- NON-RESIDENT

When an individual is said to be resident in India

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year,

or

2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Exceptions :

There are two exceptions to the above rule :

Exception 1 :

- In case of an individual,
- Who is citizen of India and
- Who leaves India in any P.Y.:
  i) for the purpose of employment outside India or
  ii) as a member of crew of an Indian ship
- the period of 60 days, in conditon no. 2) above, shall be substituted by 182 days.

Exception 2 :

- In case of an individual,
- Who is citizen of India or is a person of India origin and
- Who being outside India, comes on a visit to India in any P.Y.
- The period of 60 days in the condition no. 2) above, shall be substituted by 182 days.

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Note 1 :

According to Section 115C, a person is said to be of Indian origin if he, or either of his parents or any of his grand parents was born in undivided India.

Note 2 :

In a question where hour of entry and departure is not given, we should take both day of entry and day of departure as stay in India.

When an individual is said to be non-resident in India [Section 2 (30)]

An individual is said to be non-resident (NR) in India if he does not satisfy any one of the conditions required for ***resident in India.***

When an individual is said to be resident and ordinarily resident in India

An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

1. He has been ***resident*** in India for at least 2 out of 10 P.Ys. Immediately preceding the relevant P.Y.

&

2. He has been in India for 730 days or more, during 7 P.Ys. Immediately preceding the relevant P.Y.

When an individual is said to be resident but not ordinarily resident in India [Section 6 (6) (a)]

If an individual does not satisfy anyone or both the conditions required for ROR then he will be resident but not ordinarily resident in India (RNOR).

Residential status of "HUF" [Section 6 (2)]

When is HUF said to be resident in India

A HUF is said to be resident in India in any P.Y. where during that year the "**control and management**" of its affairs is situated ***wholly or partly*** in India.

When is HUF said to be non-resident in India

A HUF is said to be non-resident in India in any P.Y. where during that year the "**control and management**" of its affairs is situated ***wholly*** outside India

Note : "Control & Management" refers to the decisions taken regarding affairs of the HUF. The control and management lies at the place where decisions regarding the affairs of the HUF are taken.

When is HUF said to be resident and ordinarily resident in India

A HUF, which is resident in India, is said to be ROR, if the Karta (i.e. the head of the family) satisfies ***both*** of the following conditions :

He has been ***resident*** in India for at least 2 out of 10 P.Ys. Immediately preceding the relevant P.Y.

&

He has been in India for 730 days or more, during 7 P.Ys. Immediately preceding the relevant P.Y.

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When is HUF said to be resident but not ordinarily resident in India [Section 6 (6) (b)]

A HUF, which is resident in India, is said to be RNOR, if the Karta (i.e. the head of the family) does not satisfy ***both*** of the following conditions :

He has been ***resident*** in India for at least 2 out of 10 P.Ys. Immediately preceding the relevant P.Y.

&

He has been in India for 730 days or more, during 7 P.Ys. Immediately preceding the relevant P.Y.

Residential status of a "Company" [Section 6 (3)]

A company may either be resident or non-resident company.

When is a company said to be resident in India

A company is said to be resident in India if :

Company is an **"Indian company"**.

or

During the relevant P.Y., the **"control and management"** of its affairs is situated ***wholly*** in India

When is a company said to be non-resident in India

A company is said to be non-resident in India if :

Company is not an **"Indian company"**.

&

During the relevant P.Y., the **"control and management"** of its affairs is situated ***wholly or partly*** outside India.

Note :

1. **"Control & Management"** refers to the head and brain which directs the affairs of policy, finance, disposal of profit and other vital things concerning the general and corporate affairs of the company.

2. **"Indian company" [Section 2 (26)] :**

   "Indian Company" means a company formed and registered under the Companies Act, 1956 and includes :

   (i) a company formed and registered under any law relating to companies formerly in force in any part of India [other than the State of Jammu & Kashmir and in the union territories specified in Sub-Clause (iii) of this Clause];

   (ia) a corporation established under a Central / State / Provincial Act;

   (ib) any institution / association / body which is declared by the Board to be a company;

   (ii) in the case of the State of Jammu & Kashmir, a company formed / registered under any law for the time being in force in that state;

   (iii) in case of any of the Union Territories of Dadra & Nagar Haveli, Goa, Daman & Diu, and Pondicherry, a company formed / registered under any law for the time being in force in that Union Territory.

   Provided that the registered / principal office in all cases is in India.

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R/S of Firm/AOP/BOI [Section 6 (2)] & Other Persons [Section 6 (4)]

Firms / AOP / BOI / other persons may either be resident or non-resident in India in any P.Y.

When is a Firm/AOP/BOI/other persons said to be resident in India

Resident in India if control and management of affairs is ***wholly or partly*** situated within India during the relevant P.Y.

When is a Firm / AOP / BOI / other persons said to be non-resident in India

Non-resident in India if control and management of affairs is ***wholly*** situated outside India during the relevant P.Y.

Incidence of Tax [Section 5]

In case of Resident / ROR assessee [Section 5 (1)]

A ROR assessee is assessable to tax in respect of :

(a) Income received or deemed to be received in India

(b) Income accrued or deemed to be accrued in India

(c) Income accrued outside India

during the relevant P.Y.

In case of RNOR assessee [Section 5 (1)]

A RNOR assessee is assessable to tax in respect of :

(a) Income received or deemed to be received in India

(b) Income accrued or deemed to be accrued in India

(c) Income accrued outside India if it derived from a ***business controlled from a place within India or profession is set up in India***

during the relevant P.Y.

In case of NR assessee [SECTION 5 (2)]

A NR assessee is assessable to tax in respect of :

(a) Income received or deemed to be received in India

(b) Income accrued or deemed to be accrued in India

during the relevant P.Y.

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RESIDENTIAL STATUS

PRACTICAL PROBLEMS

Question No. 1 :

A citizen of U.S.A. has been staying in India since 1988. He leaves India on 16.07.2010 on a visit to U.S.A. and returns on 4.01.2011.

Determine the R/S for the P.Y. 2010-11.

Question No. 2 :

Mr. Shyam was born in Switzerland in 1966. His father was born in America in 1936. His grandfather was born in Lahore in 1916.

Will Mr. Shyam be a resident in India if he visits India for 180 days during the P.Y. 2010-11?

Question No. 3 :

Mr. Manish, a citizen of India left India for the 1st time on 21.09.2010 for employment in Germany.

During the P.Y. 2011-12 he comes to India on 05.05.2011 for 150 days.

Determine the R/S of Mr. Manish for A.Y. 2011-12 & 2012-13.

Question No. 4 :

Mr. Sanjay, an Indian Citizen and businessman, who resides in Jaipur, went to Hongkong on a leisure trip on 15.08.2010 and came back to India on 10.11.2011.

He has never been out of India in the past.

Determine the R/S of Mr. Sanjay for the A.Y. 2011-12.

Question No. 5 :

The Head Office of N. K. Agarwal & Sons, a HUF, is situated in Hong Kong.

The family is managed by Mr. N. K. Agarwal (since 1981) who is resident in India in only 3 out of 10 years preceding the P.Y 2010-11 and he is present in India for more than 729 days during the last 7 years.

Determine the R/S of the family for the A.Y. 2011-12 if the affairs of the family's business are :

(a) wholly controlled from Hong Kong

(b) partly controlled from India.

Question No. 6 :

Mr. Xavier came to India from America for the first time on 1-10-2009. He returned to his home country after staying in India upto 28-9-2010.

Will he be resident in India for the A.Y. 2010-11 and 2011-12?

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Question No. 7 :

The following are the particulars of income of Mr. Neeraj for the P.Y. 2010-11 :

		Rs.
a)	Rent from a property in Delhi received in U.S.A.	80,000.00
b)	Income from business in U.S.A. controlled from Delhi	1,20,000.00
c)	Income from business in Banglore controlled from U.S.A.	1,80,000.00
d)	Rent from a property in U.S.A. received there but subsequently remitted to India	60,000.00
e)	Interest from deposits with an Indian Company received in U.S.A.	20,000.00
f)	Profits for the year 2009-10 of a business in U.S.A. remitted to India during the P.Y. 2010-11	75,000.00
g)	Gift received from his parents	45,000.00

Compute income of Mr. Neeraj for the A.Y. 2011-12 if he is :

a) Resident in India

b) Not-ordinarily resident in India

c) Non-resident in India.

Question No. 8 :

Mr. X furnishes the following particulars of his income earned during the P.Y. relevant to the A.Y. 2011-12 :

		Rs.
a)	Interest on German Development Bonds (One sixth is received in India)	36,000.00
b)	Income from agriculture in Pakistan received there but later on Rs. 86,000/- is remitted to India.	3,41,000.00
c)	Income from property in USA received outside India (Rs. 92,000/- is used in Canada for meeting the education expenses of X's son in Canada and Rs. 2,48,000 is later on remitted to India)	3,40,000.00
d)	Income earned from business in Iran which is controlled from New Delhi (Rs. 70,000/- is received in India)	4,05,000.00
e)	Dividend paid by an Indian company on 10-05-2010 but received outside India	1,95,800.00
f)	Past untaxed profit of 2007-08 brought to India in May, 2010	2,10,000.00
g)	Profit from business in New Delhi and managed from outside India (60% of the profit is received outside India)	92,000.00
h)	Profit on sale of a building in India but received in Nepal	18,74,000.00
i)	Pension from a former employer in India received in Iran	2,15,000.00
j)	Gift in foreign currency from a friend received in India on 06-09-2010.	80,000.00

Find out the gross total income of Mr. X for the A.Y. 2011-12 if he is :

(i) A resident in India

(ii) Not ordinarily resident in India, and

(iii) Non-resident.

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Question No. 9 :

From the following information of Mr. Akshay Saini, compute his taxable income for the A.Y. 2011-12 assuming Mr. Akshay is :

i) not ordinarily resident, and

ii) non-resident .

		Rs.
a)	Remuneration for consultancy service in Japan but received in India	50,000.00
b)	Income from business in Scotland received in Scotland. The business is however controlled from India.	65,000.00
c)	Pension for services rendered in India but received in China	20,000.00
d)	Interest on deposit in a bank Canada received in Canada	25,000.00

Question No. 10 :

Mr. Arnold, a German National, came to India for the first time on 1-7-04. During the period from 1-7-04 to 31-3-11, he stays in India as follows :

From 1-7-04 to 31-10-04

From 1-5-05 to 31-10-05

From 1-11-06 to 31-12-06 and

From 1-7-09 to 31-8-10

During the P.Y. ended on 31.03.2011, Mr. Arnold's income consisted of :

		Rs.
a)	Business in India	40,000.00
b)	Interest from an Indian company	2,000.00
c)	Dividend from non-Indian companies received in Germany but remitted to India	5,000.00
d)	Business in Germany (controlled from India)	25,000.00
e)	Income from house property in Germany	8,000.00

Determine the taxable Income of Mr. Arnold for the A.Y. 2011-12 after ascertaining his R/S for the purpose of income-tax.

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R E S I D E N T I A L   S T A T U S

SOLUTIONS TO PRACTICAL PROBLEMS

Answer to Question No. 1 :

Determination of R/S

Name of assessee : …….
Previous Year : 2010-11
Assessment Year : 2011-12

Period of stay in India during P.Y. 2010-11 :

Month	Days
April, 2010	30
May, 2010	31
June, 2010	30
July, 2010	16
August, 2010	-
September, 2010	-
October, 2010	-
November, 2010	-
December, 2010	-
January, 2011	28
February, 2011	28
March, 2011	31
Total	194

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since assessee was in India for 194 days, he satisfies first condition and therefore he is resident in India.

An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

He has been ***resident*** in India for at least 2 out of 10 P.Ys. immediately preceding the relevant P.Y. **&**

He has been in India for 730 days or more, during 7 P.Ys. immediately preceding the relevant P.Y.

Since assessee has been staying in India since 1988 and left India only during relevant P.Y., he satisfies both of the above conditions and therefore he is ROR in India.

Answer to Question No. 2 :

Determination of R/S

Name of assessee : Mr. Shyam
Previous Year : 2010-11
Assessment Year : 2011-12

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

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Since grandfather of Mr. Shyam was born in undivided India, Mr. Shyam is a person of Indian origin and therefore period of 60 days in condition No. 2 above shall be substituted by 182 days.

Since Mr. Shyam visits India for 180 days only, he is NR in India during the P.Y. 2010-11.

Answer to Question No. 3 :

Determination of R/S

Name of assessee : Mr. Manish
Previous Year : 2010-11
Assessment Year : 2011-12

Period of stay in India during P.Y. 2010-11 :

Month	Days
April, 2010	30
May, 2010	31
June, 2010	30
July, 2010	31
August, 2010	31
September, 2010	21
October, 2010	-
November, 2010	-
December, 2010	-
January, 2011	-
February, 2011	-
March, 2011	-
Total	174

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions:

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since Mr. Manish is an Indian citizen and left India for employment purpose, period of 60 days in condition No. 2 above shall be substituted by 182 days.

Mr. Manish was in India for only 174 days during the P.Y. 2010-11, he neither satisfies first nor second condition. Hence Mr. Manish is NR in India during P.Y. 2010-11.

Previous Year : 2011-12
Assessment Year : 2012-13

Period of stay in India during P.Y. 2011-12 = 150 days.

In this case also period of 60 days shall be substituted by 182 days as he is citizen of India and left India for employment purpose. Hence he will be a NR in India during P.Y. 2011-12.

Answer to Question No. 4 :

Determination of R/S

Name of assessee : Mr. Sanjay
Previous Year : 2010-11
Assessment Year : 2011-12

Period of stay in India during P.Y. 2010-11 :

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Month	Days
April, 2010	30
May, 2010	31
June, 2010	30
July, 2010	31
August, 2010	15
September, 2010	-
October, 2010	-
November, 2010	-
December, 2010	-
January, 2011	-
February, 2011	-
March, 2011	-
Total	137

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since Mr. Sanjay was in India for 137 days during relevant P.Y. and he never left India before 15.08.2010, he satisfies second condition and therefore he is resident in India.

An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

He has been ***resident*** in India for at least 2 out of 10 P.Ys. Immediately preceding the relevant P.Y. **&**

He has been in India for 730 days or more, during 7 P.Ys. Immediately preceding the relevant P.Y.

Since Mr. Sanjay has never been out of India in the past and left India only during relevant P.Y., he satisfies both of the above conditions and therefore he is ROR in India.

Answer to Question No. 5 :

(a) Since N.K. Agarwal & Sons is wholly controlled from Hong Kong, N.K. Agarwal & Sons is NR in India for the A.Y. 2011-12.

(b) Since N. K. Agarwal & Sons is partly controlled from India, N. K. Agarwal & Sons is resident in India. However in order to determine whether HUF is ROR in India, Mr. N. K. Agarwal has to satisfy ***both*** of the following conditions:

He has been ***resident*** in India for at least 2 out of 10 P.Ys. Immediately preceding the relevant P.Y.

He has been in India for 730 days or more, during 7 P.Ys. Immediately preceding the relevant P.Y.

Since Mr. N.K. Agarwal is resident in 3 out of 10 P.Ys. immediately preceding the P.Y. 2010-11 and he is also present in India for more than 729 days, he satisfies both the abovementioned conditions and therefore HUF is ROR in India.

Answer to Question No. 6 :

Determination of R/S

Name of assessee : Mr. Xavier
Previous Year : 2009-10
Assessment Year : 2010-11

Period of stay in India during P.Y. 2009-10 :

Month	Days
April, 2009	-
May, 2009	-
June, 2009	-
July, 2009	-
August, 2009	-
September, 2009	-
October, 2009	31
November, 2009	30
December, 2009	31
January, 2010	31
February, 2010	28
March, 2010	31
Total	182

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions:

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since Mr. Xavier is in India for 182 days during the relevant P.Y., he satisfies the first condition and therefore he is resident in India.

An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

He has been ***resident*** in India for at least 2 out of 10 P.Ys. Immediately preceding the relevant P.Y. **&**

He has been in India for 730 days or more, during 7 P.Ys. Immediately preceding the relevant P.Y.

Since Mr. Xavier came to India for the first time on 1-10-2009 he does not satisfy any of the above two conditions and therefore he is RNOR in India.

Previous Year : 2010-11
Assessment Year : 2011-12

Period of stay in India during P.Y. 2010-11 :

Month	Days
April, 2010	30
May, 2010	31
June, 2010	30
July, 2010	31
August, 2010	31
September, 2010	28
October, 2010	-
November, 2010	-
December, 2010	-
January, 2011	-
February, 2011	-
March, 2011	-
Total	181

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An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since Mr. Xavier was in India for only 181 days during the relevant P.Y., he does not satisfy the first condition. Since Mr. Xavier came in India for the first time on 1-10-2009, he also does not satisfy the second condition and therefore he is NR during the relevant P.Y.

Answer to Question No. 7 :

Computation of taxable income

Name of assessee : Mr. Neeraj
Previous Year : 2010-11
Assessment Year : 2011-12

	Particulars	ROR (Rs.)	RNOR (Rs.)	NR (Rs.)
a)	Rent from a property in Delhi received in U.S.A.	80,000	80,000	80,000
b)	Income from business in U.S.A. controlled from Delhi	1,20,000	1,20,000	-----
c)	Income from business in Banglore controlled from U.S.A.	1,80,000	1,80,000	1,80,000
d)	Rent from a property in U.S.A. received there but subsequently remitted to India	60,000	-----	-----
e)	Interest from deposits with an Indian Company received in U.S.A.	20,000	20,000	20,000
f)	Profits for the year 2009-10 of a business in U.S.A. remitted to India during the P.Y. 2010-11 ***(Note 1)***	-----	-----	-----
g)	Gift received from his parents ***(Note 2)***	-----	-----	-----
	Taxable Income	**4,60,000**	**4,00,000**	**2,80,000**

Notes :

1. Profits of the year 2009-10 are not income of the P.Y. 2010-11 and hence cannot be included in the income for the A.Y. 2011-12.
2. Gift received from parents are not taxable income.

Answer to Question No. 8 :

Computation of Gross Total Income

Name of assessee : Mr. X
Previous Year : 2010-11
Assessment Year : 2011-12

	Particulars	ROR (Rs.)	RNOR (Rs.)	NR (Rs.)
a)	Interest on German Development Bonds (one sixth is received in India)	36,000	6,000	6,000
b)	Income from agriculture in Pakistan received there but later on Rs. 86,000/- is remitted to India.	3,41,000	-----	-----
c)	Income from property in USA received outside India (Rs. 92,000/- is used in Canada for meeting the education expenses of X's son in Canada and Rs. 2,48,000 is later on remitted to India)	3,40,000	-----	-----
d)	Income earned from business in Iran which is controlled from New Delhi (Rs. 70,000/- is received in India)	4,05,000	4,05,000	70,000

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e) Dividend paid by an Indian company on 10-05-2010 but received outside India ***(Note 1)***	-----	-----	-----
f) Past untaxed profit of 2007-08 brought to India in May, 2010 ***(Note 2)***	-----	-----	-----
g) Profit from business in New Delhi and managed from outside India (60% of the profit is received outside India)	92,000	92,000	92,000
h) Profit on sale of a building in India but received in Nepal	18,74,000	18,74,000	18,74,000
i) Pension from a former employer in India received in Iran	2,15,000	2,15,000	2,15,000
j) Gift in foreign currency from a friend received in India on 06-09-2010. ***(Note 3)***	80,000	80,000	80,000
Gross Total Income	**33,83,000**	**26,72,000**	**23,37,000**

Notes :

1. Dividend paid by Indian company is exempt in the hands of the shareholder as per Section 10 (34).
2. Past untaxed profit of 2007-08 is not taxable in A.Y. 2011-12.
3. Gift received from friend is an income as per Section 2 (24).

Answer to Question No. 9 :

Computation of taxable income

Name of assessee : Mr. Akshay
Previous Year : 2010-11
Assessment Year : 2011-12

Particulars	**RNOR (Rs.)**	**NR (Rs.)**
a) Remuneration for consultancy service in Japan but received in India	50,000	50,000
b) Income from business in Scotland received in Scotland. The business is however controlled from India.	65,000	-----
c) Pension for services rendered in India but received in China	20,000	20,000
d) Interest on deposit in a bank Canada received in Canada	-----	-----
Taxable Income	**1,35,000**	**70,000**

Answer to Question No. 10 :

Determination of R/S

Name of assessee : Mr. Arnold
Previous Year : 2010-11
Assessment Year : 2011-12

Period of stay in India during P.Y. 2010-11 :

Month	**Days**
April, 2010	30
May, 2010	31
June, 2010	30
July, 2010	31
August, 2010	31
September, 2010	-
October, 2010	-
November, 2010	-
December, 2010	-
January, 2011	-
February, 2011	-
March, 2011	-
Total	**153**

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Period of stay in India during 4 P.Ys. immediately preceding the P.Y. 2010-11 :

P.Y.	Days
2009-10	274 (31+31+30+31+30+31+31+28+31)
2008-09	Nil
2007-08	Nil
2006-07	61 (30+31)
Total	**335**

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions:

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since Mr. Arnold does not satisfy any of the above conditions, he is NR in India.

Computation of taxable income

Name of assessee : Mr. Arnold
Previous Year : 2010-11
Assessment Year : 2011-12

Particulars	NR (Rs.)
a) Business in India	40,000
b) Interest from an Indian company	2,000
c) Dividend from non-Indian companies received in Germany but Remitted to India	-----
d) Business in Germany (controlled from India)	-----
e) Income from house property in Germany	-----
Taxable Income	**42,000**

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RESIDENTIAL STATUS

Do yourself

PRACTICAL PROBLEMS

Problem No. 1 :

X comes to India, for the first time, on April 16, 2008. During his stay in India up to October 5, 2010, he stays at Delhi up to April 10, 2010 and thereafter remains in Chennai till his departure from India. Determine his residential status for the assessment year 2011-12.

Problem No. 2 :

X, a foreign citizen, comes to India for the first time on June 20, 2010. On September 6, 2010, he leaves India for Burma on a business trip. He comes back on January 1, 2011. He maintains a dwelling place in India from the date of his arrival in India (i.e. June 20, 2010) till January 15, 2011 when he leaves for Kuwait. Determine his residential status for the assessment year 2011-12. Does it make any difference if X is a person of Indian origin?

Problem No. 3 :

X, a foreign national (not being a person of Indian origin), comes to India for the first time on April 15, 2006. During the financial year 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11, he is in India for 130 days, 80 days, 13 days, 210 days and 75 days respectively. Determine the residential status for the assessment year 2011-12.

Problem No. 4 :

X, a foreign citizen (not being a person of Indian origin), leaves India for the first time in the last 12 years, on June 15, 2008. During the calendar year 2009, he comes to India on November 20 for a period of 46 days. During the calendar year 2010, he does not come to India at all. He finally comes back on January 30, 2011 at 10.30 p.m. Determine his residential status for the assessment year 2011-12.

Problem No. 5 :

X, is a foreign citizen (not being a person of Indian origin). During the financial year 2010-11, he comes to India for 85 days. Determine his residential status for the assessment year 2011-12 on the assumption that during financial year 1996-97 to 2009-10, he was present in India as follows :

1996-97	85 days	2003-04	16 days
1997-98	310 days	2004-05	360 days
1998-99	6 days	2005-06	181 days
1999-00	5 days	2006-07	305 days
2000-01	65 days	2007-08	65 days
2001-02	180 days	2008-09	10 days
2002-03	360 days	2009-10	126 days

Problem No. 6 :

X, an Indian citizen, is appointed as senior taxation officer by the Government of Libya. He leaves India, for the first time, on November 3, 2010 for joining his duties in Libya. During the previous year 2011-12, he comes to India on December 3, 2011 for 190 days. Determine the residential status of X for the assessment year 2011-12 and 2012-13.

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Problem No. 7 :

X is a foreign citizen. Since 1983, he comes to India every year in month of April for 105 days. Find out the residential status of X for the assessment year 2011-12 if :

(a) X is not a person of Indian origin,

(b) X was born in Lahore on March 8, 1941,

Problem No. 8 :

U was born in 1975 in India. His parents were also born in India in 1948. His grand parents were, however, born in England. U was resident in India till 15-3-2008. Thereafter, he migrated to England and took the citizenship of that country on 15-3-2010. He visits India during 2010-11 for 90 days. Determine the residential status of U for the assessment year 2011-12.

Problem No. 9 :

Mr. Kohli, a citizen of India, is an export manager of Arjun overseas limited, an Indian company, since 1-5-2006. 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
31-3-2007	319 days
31-3-2008	150 days
31-3-2009	270 days
31-3-2010	310 days
31-3-2011	295 days

Determine the residential status of Mr. Kohli for the assessment year 2011-12 assuming that prior to 1-5-2006 he had never traveled abroad.

Problem No. 10 :

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 2010-11.

Determine the residential status of both the companies for the assessment year 2011-12.

Problem No. 11 :

Determine the residential status in the following cases for the assessment year 2011-12 :

(a) Control and management of a HUF is situated in India. The manager of the HUF visited England with his wife from 14-8-2010 to 30-6-2011. Earlier to that he was always in India.

(b) A company, whose registered office is in America, is partly controlled and managed from branch established in India.

(c) In a partnership firm, there are three partners namely A, B & 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.

(d) 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.

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RESIDENTIAL STATUS

Do yourself

SOLUTIONS

Solution to Problem No. 1 :

Determination of R/S

Name of assessee : X
Previous Year : 2010-11
Assessment Year : 2011-12

Period of stay in India during P.Y. 2010-11 :

Month	Days
April, 2010	30
May, 2010	31
June, 2010	30
July, 2010	31
August, 2010	31
September, 2010	30
October, 2010	5
November, 2010	-
December, 2010	-
January, 2011	-
February, 2011	-
March, 2011	-
Total	188

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since assessee was in India for 188 days, he satisfies first condition and therefore he is resident in India.

An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

1. He has been ***resident*** in India for at least 2 out of 10 P.Ys. immediately preceding the relevant P.Y.

&

2. He has been in India for 730 days or more, during 7 P.Ys. immediately preceding the relevant P.Y.

Since assessee has been staying in India since April 16, 2008 and left India only on 5th October, 2010, he satisfies first condition because he is resident in India in P.Y. 2008-09 & 2009-10. However he does not satisfy the second condition because he was in India for 715 days only during 7 P.Ys. immediately preceding the relevant P.Y. (i.e. from April 16, 2008 to March 31, 2010).

X is, therefore, RNOR in India for the A.Y. 2011-12.

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Solution to Problem No. 2 :

Determination of R/S

Name of assessee : X
Previous Year : 2010-11
Assessment Year : 2011-12

Period of stay in India during P.Y. 2010-11 :

Month	Days
April, 2010	-
May, 2010	-
June, 2010	11
July, 2010	31
August, 2010	31
September, 2010	6
October, 2010	-
November, 2010	-
December, 2010	-
January, 2011	15
February, 2011	-
March, 2011	-
Total	94

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since assessee was in India for 94 days only during relevant previous year and he came to India for the first time on June 20, 2010, he satisfies neither of the above conditions and therefore he is NR in India.

No. It does not make any difference, if X is a person of Indian origin.

Solution to Problem No. 3 :

Determination of R/S

Name of assessee : X
Previous Year : 2010-11
Assessment Year : 2011-12

Period of stay in India during P.Y. 2010-11 = 75 days

Period of stay in India during 4 P.Ys. immediately preceding the P.Y. 2010-11 :

P.Y.	Days
2009-10	210
2008-09	13
2007-08	80
2006-07	130
Total	433

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An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year, **or**

2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since X satisfies the second condition, he is Resident in India.

An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

1. He has been ***resident*** in India for at least 2 out of 10 P.Ys. immediately preceding the relevant P.Y.

&

2. He has been in India for 730 days or more, during 7 P.Ys. immediately preceding the relevant P.Y.

During 2 out of 10 P.Ys. immediately preceding the relevant P.Y., X is resident in India only during the P.Y. 2009-10.

During 7 years preceding the P.Y. 2010-11, he was present in India for 433 days only.

Therefore, X does not satisfy none of the above two conditions. He is, therefore, RNOR in India for the A.Y. 2011-12.

Solution to Problem No. 4 :

Determination of R/S

Name of assessee : X
Previous Year : 2010-11
Assessment Year : 2011-12

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year, **or**

2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

During P.Y. 2010-11, assessee is present in India for 61 days (i.e. Jan, 2011 : 2 days, Feb, 2011 : 28 days and Mar, 2011 : 31 days) and during 4 previous years immediately preceding the relevant previous year for 853 days (2009-10 : 46 days, 2008-09 : 76 days, 2007-08 : 366 days and 2006-07 : 365 days).

Since X satisfies the second condition, he is Resident in India.

An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

1. He has been ***resident*** in India for at least 2 out of 10 P.Ys. immediately preceding the relevant P.Y.

&

2. He has been in India for 730 days or more, during 7 P.Ys. immediately preceding the relevant P.Y.

Since X leaves India for the first time in the last 12 years, on June 15, 2008, he satisfies both of the abovementioned conditions and, therefore, X is ROR in India for A.Y. 2011-12.

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Solution to Problem No. 5 :

Determination of R/S

Name of assessee : X
Previous Year : 2010-11
Assessment Year : 2011-12

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

For the A.Y. 2011-12, financial year 2010-11 is the previous year. During P.Y. 2010-11, X is in India for a period of 85 days and during 4 years preceding the previous year 2010-11 he is in India for 506 days.

Since X satisfies the second condition he is resident is India during A.Y. 2011-12.

An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

1. He has been ***resident*** in India for at least 2 out of 10 P.Ys. immediately preceding the relevant P.Y.

&

2. He has been in India for 730 days or more, during 7 P.Ys. immediately preceding the relevant P.Y.

Information in the table given below may be used to test the above conditions :

P.Y.	Stay in India in relevant P.Y.	Stay in India during 4 P.Ys. immediately preceding the relevant P.Y.	Which of the conditions (1) or (2) is satisfied to become "resident"	Whether resident (R) or non-resident (NR)
2009-10	126 days	561 days (10+65+305+181)	(2)	R
2008-09	10 days	911 days (65+305+181+360)	None	NR
2007-08	65 days	862 days (305+181+360+16)	(2)	R
2006-07	305 days	Not necessary to determine	Not necessary to determine	Not necessary to determine
2005-06	181 days			
2004-05	360 days			
2003-04	16 days			
2002-03	360 days			
2001-02	180 days			
2000-01	65 days			
1999-00	5 days			
1998-99	6 days			
1997-98	310 days			
1996-97	85 days			

Period of stay in India during 7 P.Ys. immediately preceding the relevant P.Y. = 1063 days (126+10+65+305+181+360+16)

From the above it is clear that X satisfies both the conditions required to become ROR and therefore he is ROR in India in A.Y. 2011-12.

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Solution to Problem No. 6 :

Determination of R/S

Name of assessee : X
Previous Year : 2010-11
Assessment Year : 2011-12

Period of stay in India during P.Y. 2010-11 :

Month	Days
April, 2010	30
May, 2010	31
June, 2010	30
July, 2010	31
August, 2010	31
September, 2010	30
October, 2010	31
November, 2010	3
December, 2010	-
January, 2011	-
February, 2011	-
March, 2011	-
Total	217

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions:

1. Must be in India for at least 182 days during the relevant previous year, **or**

2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since X is an Indian citizen and left India for employment purpose, period of 60 days in condition No. 2 above shall be substituted by 182 days.

Since X was in India for 217 days during the P.Y. 2010-11, he is resident in India during A.Y. 2011-12.

An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

1. He has been ***resident*** in India for at least 2 out of 10 P.Ys. immediately preceding the relevant P.Y.

&

2. He has been in India for 730 days or more, during 7 P.Ys. immediately preceding the relevant P.Y.

Since X left India for the first time on November 3, 2010, he satisfies the both conditions and therefore he is ROR in India during A.Y. 2011-12.

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Previous Year : 2011-12
Assessment Year : 2012-13

Period of stay in India during P.Y. 2011-12 :

Month	Days
April, 2011	-
May, 2011	-
June, 2011	-
July, 2011	-
August, 2011	-
September, 2011	-
October, 2011	-
November, 2011	-
December, 2011	29
January, 2012	31
February, 2012	29
March, 2012	31
Total	120

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions:

1. Must be in India for at least 182 days during the relevant previous year, **or**

2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since X is an Indian citizen and came on a visit to India, period of 60 days in condition No. 2 above shall be substituted by 182 days.

Since X was in India for 120 days during the P.Y. 2011-12, he neither satisfies the first nor the second condition and therefore he is non-resident in India during A.Y. 2012-13.

Solution to Problem No. 7 :

Determination of R/S

Name of assessee : X
Previous Year : 2010-11
Assessment Year : 2011-12

Answer to part (a) :

Period of stay in India during P.Y. 2010-11 = 105 days

Period of stay in India during 4 P.Ys. immediately preceding the relevant P.Y. = 420 days (105+105+105+105)

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions:

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since X satisfies the second condition he is resident in India during relevant P.Y.

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An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

1. He has been ***resident*** in India for at least 2 out of 10 P.Ys. immediately preceding the relevant P.Y.

&

2. He has been in India for 730 days or more, during 7 P.Ys. immediately preceding the relevant P.Y.

Since X is resident in India in 2 P.Ys. out of 10 P.Ys. immediately preceding the previous year 2010-11 (during the P.Y. 2000-01 to P.Y. 2009-10, he is resident in India in all years) and during 7 years immediately preceding the P.Y 2010-11, he is present in India for 735 days (105x7), he satisfies the both conditions and therefore he is ROR in India during A.Y. 2011-12.

Answer to part (b) :

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions:

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

In this situation X was born in undivided India. Therefore X is a person of Indian origin and therefore period of 60 days mentioned in Condition No. 2 above will be substituted by 182 days. Since X was in India for less than 182 days he is non-resident in India during A.Y. 2011-12.

Solution to Problem No. 8 :

Determination of R/S

Name of assessee : U
Previous Year : 2010-11
Assessment Year : 2011-12

In this case, U is neither a citizen of India nor a person of Indian origin (because neither he nor his parents nor his grand parents was born in undivided India).

Period of stay in India during P.Y. 2010-11 = 90 days

Period of stay in India during 4 P.Ys. immediately preceding the P.Y. 2010-11 :

P.Y.	Days
2009-10	Nil
2008-09	Nil
2007-08	350
2006-07	365
Total	715

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year, **or**
2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since U satisfies the second condition, he is Resident in India during A.Y. 2011-12.

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An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

1. He has been ***resident*** in India for at least 2 out of 10 P.Ys. immediately preceding the relevant P.Y.

&

2. He has been in India for 730 days or more, during 7 P.Ys. immediately preceding the relevant P.Y.

Since U was resident in India till 15-3-2008, he satisfies the both conditions and therefore he is ROR in India during A.Y. 2011-12.

Solution to Problem No. 9 :

Determination of R/S

Name of assessee : Mr. Kohli
Previous Year : 2010-11
Assessment Year : 2011-12

Period of stay in India during P.Y. 2010-11 = 70 days (365 days – 295 days)

Period of stay in India during 4 P.Ys. immediately preceding the P.Y. 2010-11 :

P.Y.	Days
2009-10	55 (365-310)
2008-09	95 (365-270)
2007-08	216 (366-150)
2006-07	46 (365-319)
Total	412

An individual is said to be resident in India if he satisfies ***any one*** of the following two conditions :

1. Must be in India for at least 182 days during the relevant previous year, **or**

2. Must be in India for at least 60 days during the relevant previous year **and** 365 days during 4 previous years immediately preceding the relevant previous year.

Since Mr. kohli satisfies the second condition, he is Resident in India during A.Y. 2011-12 (Mr. Kohli has not gone for employment abroad. He is going only for export promotion work of the employer).

An individual will be a resident and ordinarily resident (ROR) in India if he satisfies ***both*** of the following conditions :

1. He has been ***resident*** in India for at least 2 out of 10 P.Ys. immediately preceding the relevant P.Y.

&

2. He has been in India for 730 days or more, during 7 P.Ys. immediately preceding the relevant P.Y.

Since Mr. Kohli never travelled abroad prior to 1-5-2006 he satisfies both the conditions and therefore he is ROR in India during A.Y. 2011-12.

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Solution to Problem No. 10 :

A company is said to be resident in India if :

Company is an **"Indian company"** **Or**

During the relevant P.Y., the **"control and management"** of its affairs is situated ***wholly*** in India

R limited is not an Indian company. However during the relevant P.Y., the **"control and management"** of its affairs is situated ***wholly*** in India because all meetings of Board of Directors of R Ltd were held in India. Hence R limited is resident in India.

R limited is an Indian company. Hence R limited is resident in India.

Solution to Problem No. 11 :

Answer to part (a) :

A HUF is said to be resident in India in any P.Y. where during that year the "**control and management**" of its affairs is situated ***wholly or partly*** in India.

HUF is resident in India, as it is partly controlled from India.

A HUF, which is resident in India, is said to be ROR, if the Karta (i.e. the head of the family) satisfies ***both*** of the following conditions :

1. He has been ***resident*** in India for at least 2 out of 10 P.Ys. immediately preceding the relevant P.Y.

&

2. He has been in India for 730 days or more, during 7 P.Ys. immediately preceding the relevant P.Y.

Since Karta of the HUF was always in India prior to 14-8-2010, he satisfies both the above conditions and therefore HUF is ROR in India.

Answer to part (b) :

A company is said to be resident in India if :

Company is an **"Indian company"** **Or**
During the relevant P.Y., the **"control and management"** of its affairs is situated ***wholly*** in India

Since registered office of the company is in America, it is not an Indian company. Again, company is partly controlled and managed from branch established in India.

Therefore, company is NR in India.

Answer to part (c) :

A firm is resident in India if control and management of affairs is ***wholly or partly*** situated within India during the relevant P.Y.

Since Mr. 'C' fully controls the firm and he stays in India for 6 months during the relevant P.Y., control and management of affairs is ***partly*** situated within India during the relevant P.Y. Hence firm is resident in India during relevant P.Y.

Answer to part (d) :

An AOP/BOI is resident in India if control and management of affairs is ***wholly or partly*** situated within India during the relevant P.Y.

Since Mr. X fully controls the club and he did not come for a single day to India, control and management of affairs of club is ***wholly*** situated outside India during the relevant P.Y. Hence club is NR in India during the relevant P.Y.

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