

# **Topic: Residential Status (Part-2)**

## **Unit: 1**

**Class: M.Com Semester: IV**

**Subject: Corporate Tax Planning and Management Paper: MC4.2**

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### **EXCEPTIONS**

In the following cases, condition (ii) of sec. 6(1) [i.e. sec. 6(1)(c)] is irrelevant:

1. An Indian citizen, who leaves India during the previous year for employment purpose.
2. An Indian citizen, who leaves India during the previous year as a member of crew of an Indian ship.
3. An Indian citizen or a person of Indian origin, who normally resides outside India, comes on a visit to India during the previous year.

**Person of Indian origin means:** A person is deemed to be of Indian origin if he or she either of his or her parents or grandparents were born in undivided India. Here, grand parents may be paternal or maternal.

**Tax point:** Above assessee shall be treated as resident in India only if he or she resides in India for 182 days or more instead of 60 days in the relevant previous year.

### **Example**

Mr. Hans Raj an Indian citizen left India for first time on 1st April, 2019 for joining job in Tokyo. He came to India on 5th October, 2019 for only 200 days. Determine his residential status for P.Y. 2019-20.

## **Solution**

Number of days Mr. Hans Raj stayed in India can be calculated as under:

In Previous Year 2019-20: April, Oct, Nov, Dec, Jan, Feb, March respectively 1, 27, 30, 31, 31, 29  
31 = Total 180 days

In Previous Year 20-21: 20 days.

Since he left India for employment purpose, hence for becoming resident he has to stay in India for at least 182 days. However, He is in India for only 180 days during the previous year, thus Mr. Hans Raj is a non-resident for the P.Y. 2019- 20.

## **Important Points**

- Stay at same place in India is not necessary.
- Continuous stay in India is not necessary.
- A person shall be deemed to reside in India, if he or she is on the territorial waters of India. For instance, if an individual stays on a ship, which is in the territorial waters of India, then it shall be treated as his or her presence in India.

## **ADDITIONAL CONDITIONS TO TEST WHETHER RESIDENT INDIVIDUAL IS 'ORDINARILY RESIDENT OR NOT' [SEC. 6(6)]**

A resident individual in India can further be categorized as –

- **Resident and ordinarily resident in India.**
- **Resident but not ordinarily resident in India.**

**Resident and ordinarily resident:** If a resident individual satisfies the following two additional conditions, he will be treated as resident & ordinarily resident in India –

- a) He has been resident in India [as per sec. 6(1)] in at least 2 out of 10 previous years immediately preceding the relevant previous year; and
- b) He has resided in India for a period of 730 days or more during 7 previous years immediately preceding the relevant previous year.

**Tax point:** To be a Resident & Ordinarily resident in India, one has to satisfy at least one condition of sec. 6(1) & both the additional conditions of sec. 6(6).

**Resident but not ordinarily resident:** If a resident individual does not satisfy both additional conditions as given u/s 6(6), he is “Resident but not ordinarily resident in India”.

### **Example,**

Mrs. Anuradha left India for first time on May 31, 2019. Determine her residential status for the previous year 2019-20 if: i) she left India for employment purpose ii) she left India on world tour.

### **Solution**

Computation of No. of days of Mrs. Anuradha Living in India during the previous year 2019-20

In Month April = 30 days

In Month May = 31 days

Total = 61 days

Thus during the previous year 2019-20, Mrs. Anuradha was in India for 61 days.

. Further, she was in India for more than 365 days during 4 years immediately preceding the relevant previous year (as she left India for first time).

- I. Since she left India for employment purpose, condition of sec. 6(1) (c) shall not be applicable on such assessee. She will be treated as resident in India, if and only if, she resided in India for at least 182 days during the previous year. Hence, Mrs. Anuradha is a non-resident in India for the previous year 2019-20.
- II. Since Mrs. Anuradha left India on world tour, which is not an exception of sec. 6(1), satisfaction of any one condition of sec. 6(1) makes him resident in India for the previous year 2019-20. As she satisfies 2nd condition of sec. 6(1) [shown above], She is resident in India. Further, she also satisfies dual conditions specified u/s 6(6) (since she left India for first time). Therefore, she is an ordinarily resident for the previous year 2019-20.

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