

TAXBOOK⁺

Working steps of solutions

B1 to B15

Residential Status & Scope of Total Income

Build Your Confidence (BYC)

RESIDENTIAL STATUS

B1. 182/60 DAY RULE - Determine the residential status of Mr. French, a citizen

Rule applicable	182/60 day rule since none of the special rules apply
182 day rule - Condition of ≥ 182 days in current PY	Stay for 182 days is ≥ 182 days; satisfied
60 day rule – Not relevant	Not relevant
Residential status	Resident
First RNOR condition of NR in 9 out of 10 preceding 10 PY's	Not satisfied
Second RNOR condition of ≤ 729 days in preceding 7 PY's	Not satisfied
Residential status	ROR

B2. 182/60 DAY RULE – CA2011(N) – Brett Lee, an Australian cricket player, visits

Particulars	Result
Rule applicable	182/60 day rule since none of the special rules apply
Period of stay during the previous year 2021-22	100 days
Period of stay during the preceding 4 previous years	400 days
Period of stay during the preceding 7 previous years	700 days
182 day rule - Condition of ≥ 182 days in current PY	Not satisfied
60 day rule -	
• First basic condition of ≥ 60 days in current PY	Satisfied since stay is of 100 days
• Second basic condition of ≥ 365 days in preceding 4 PY's	Satisfied since stay is of 400 days
Residential status	Resident
First RNOR condition of NR in 9 out of 10 preceding 10 PY's	Details not available. Assumed not satisfied.
Second RNOR condition of ≤ 729 days in preceding 7 PY's	Satisfied since stay is of 700 days
Residential status	Resident but not ordinarily resident

B3. 182/60 DAY RULE - Mr. US is a US citizen. He visited India for the first time

Particulars	Result
Rule applicable	182/60 day rule since no special rule applies
Period of stay during the previous year 2021-22	75 days
Period of stay during the preceding 4 previous years	355 days
182 day rule - Condition of ≥ 182 days in current PY	Not satisfied
60 day rule -	
• First basic condition of ≥ 60 days in current PY	Satisfied
• Second basic condition of ≥ 365 days in preceding 4 PY's	Not satisfied
Residential status	Non-resident
First RNOR condition of NR in 9 out of 10 preceding 10 PY's	-
Second RNOR condition of ≤ 729 days in preceding 7 PY's	-
Residential status	Non-resident

India includes its territorial waters. Hence, period of stay in India will not change if he stayed for 15 days during FY 2021-22 on the ship located in the territorial waters of India and the answer will remain the same.

B4.182/60 DAY RULE – CA2019(N) (modified) - Bansuri, a Chinese national, got married to Keshav of India

Particulars	She returned on 20 Feb 2022	She returned on 20 Jan 2022
Stay during PY 2021-22	1 April 2021 to 11 August 2021 = 133 days 20 Feb 2022 to 31 Mar 2022 = 40 days Total = 173 days	1 April 2021 to 11 August 2021 = 133 days 20 Jan 2022 to 31 Mar 2022 = 71 days Total = 204 days
Rule applicable	182/60 day rule since none of the special rules apply as Chin is neither a citizen of India nor PIO	182/60 day rule since none of the special rules apply as Chin is neither a citizen of India nor PIO
182 day rule - Condition of ≥ 182 days in current PY	Not satisfied	204 days ≥ 182 days Satisfied
60 day rule -		
• First basic condition of ≥ 60 days in current PY	173 days ≥ 60 days. Satisfied	-
• Second basic condition of ≥ 365 days in preceding 4 PY's	14 Feb 2021 to 31 Mar 2021 = 47 days Not satisfied	-
Residential status	Non-resident	Resident
First RNOR condition of NR in 9 out of 10 preceding 10 PY's	-	Satisfied, since she stayed only for 47 days during PY 2020-21 and did not visit India earlier
Second RNOR condition of ≤ 729 days in preceding 7 PY's	-	Satisfied, since stay is 47 days
Residential status	Non-resident	Resident but not ordinarily resident

B5. SHIP CREW RULE – CA2017(M) (modified) - During the last 4 years preceding the PY 2021-22, Damodhar.....

Where an Indian citizen leaves India as a member of crew of an Indian ship, he will be resident in India only if he stays in India for 182 days or more during the previous year.

As per Rule 126, in case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of an eligible voyage, not include the period commencing from the date entered into the CDC in respect of joining the ship by the said individual for the eligible voyage and ending on the date entered into the CDC in respect of signing off from the ship in respect of such voyage.

Eligible voyage includes a voyage undertaken by an Indian ship in the carriage of passengers in international traffic, originating from any port in India and having its destination at a port outside India.

In this case, voyage is undertaken by a foreign bound Indian ship engaged in the carriage of passengers in international traffic, originating from a port in India and having its destination at a port outside India. Hence, the voyage is an eligible voyage.

Particulars	Singapore/Malaysia trip	No Singapore/Malaysia trip
Rule applicable	Ship crew rule	Ship crew rule
Stay during PY 2021-22	Period from 12 August 2021 to 21 January 2022, i.e., 163 days, has to be excluded for computing period of stay of Damodhar in India. Further, 29 days with respect to the private tour outside India will also be excluded. Hence, Damodhar is in India during the previous year 2021-22 for 173 days.	Period of 29 days will not be excluded from stay in India during PY 2021-22 which will then be 173 + 29 = 202 days.
Ship crew rule - Condition of ≥ 182 days in current PY	Not satisfied	202 days ≥ 182 days Satisfied
Residential status	Non-resident	Resident

First RNOR condition of NR in 9 out of 10 preceding 10 PY's	-	NR in 3 out of 10 preceding years. Not satisfied
Second RNOR condition of \leq 729 days in preceding 7 PY's	-	Not satisfied, since stay is 830 days in preceding 7 PY's
Residential status	Non-resident	Resident and ordinarily resident

B6. SHIP CREW, EMPLOYMENT RULE – MASTER QUESTION - Suraj is a citizen of India. He has been

Particulars	Left for purposes of employment	Left on personal tour	Left as ship crew member
Condition to become a resident	As per employment rule, an Indian citizen leaving India for the purposes of employment outside India will be resident in India only if he stays in India for \geq 182 days during PY	General 182/60 day rule will apply as none of the special rules apply.	As per ship crew rule, an Indian citizen leaving India as a member of crew of an Indian ship will be resident in India only if he stays in India for \geq 182 days during PY
Stay during PY 2021-22	1 Apr to 22 Sep = 175 days	1 Apr to 22 Sep = 175 days	Period from 25 Sep to 31 Dec of 98 days is to be excluded. Stay during PY = 267 days
Ship Crew / Employment rule - Condition of \geq 182 days in current PY	Not satisfied since $<$ 182 days	-	Satisfied since \geq 182 days
182 day rule - Condition of \geq 182 days in current PY	-	Not satisfied	-
60 day rule -			
• First basic condition of \geq 60 days in current PY	-	Satisfied since \geq 60 days	-
• Second basic condition of \geq 365 days in preceding 4 PY's	-	Satisfied since he did not leave India before PY 2021-22	-
Residential status	Non-resident	Resident	Resident
First RNOR condition of NR in 9 out of 10 preceding 10 PY's	-	Not satisfied since he did not leave India before PY 2021-22	Not satisfied since he did not leave India before PY 2021-22
Second RNOR condition of \leq 729 days in preceding 7 PY's	-	Not satisfied since he did not leave India before PY 2021-22	Not satisfied since he did not leave India before PY 2021-22
Residential status	Non-resident	ROR	ROR

B7. CA2015(M) (modified) – Bindu, a non-resident, residing in New York since 1992,

Particulars	Result
Period of stay during the previous year 2021-22	365 days
Period of stay during the preceding 4 previous years	365 days
Condition of \geq 182 days in current PY for becoming a resident	Satisfied
Residential status	Resident
First RNOR condition of NR in 9 out of 10 preceding 10 PY's	Satisfied since she was not at all in India for 9 out of 10 preceding years
Second RNOR condition of \leq 729 days in preceding 7 PY's	Satisfied since stay was only of 365 days
Residential status	Resident but not ordinarily resident

B8. VISIT RULE - Shalu is a citizen of India living in Singapore. She wants to**Assessment year 2022-23**

As per visit rule, where an Indian citizen comes on a visit to India, he/she will be resident in India only if stay in India is 182 days or more during the previous year. Thus, if Shalu comes to India on 2 October 2021, she would stay in India for 181 days during the previous year 2021-22 and would be a non-resident.

Assessment year 2023-24

For the preceding 4 previous years, i.e., 2018-19 to 2021-22, Shalu would stay for 100 + 181 days = 281 days. This is less than 365 days. Thus, she does not qualify as resident under the 60 day rule even if her stay in India during the previous year is 60 days or more. She should, however, ensure that her stay is not ≥ 182 days. Thus, she should leave India on 28 September 2022 to limit her stay to 181 days.

Thus, in all, her stay would be 362 days without a break.

It is assumed that the law to determine residential status for AY 2022-23 is the same for AY 2023-24. It is also assumed that the total income (other than income from foreign sources) of Shalu is not more than 15 lakh during the previous year 2021-22 and, hence, visit & income rule does not apply.

B9. VISIT, VISIT & INCOME RULE – MASTER QUESTION - Shalu, a citizen of India, lives with her family

As per visit rule, where an Indian citizen comes on a visit to India, he/she will be resident in India only if stay in India is 182 days or more during the previous year. However, where the total income (other than income from foreign sources) is more than Rs. 15 lakh during the previous year, the person will become a resident if stay in India is 120 days or more during the previous year and 365 days or more during the 4 preceding previous years. Further, the person will be treated as a resident but not ordinarily resident in such case if stay in India is less than 182 days.

Particulars	TI (other than IFS) \leq 15 lakh	TI (other than IFS) > 15 lakh
Period of stay during the previous year 2021-22	1 April to 28 September = 181 days	1 April to 28 September = 181 days
Rule applicable	Visit rule	Visit & Income rule
Visit rule - Condition of ≥ 182 days in current PY	Not satisfied	
Visit & Income rule -		
• First basic condition of ≥ 120 days in current PY	-	Satisfied
• Second basic condition of ≥ 365 days in preceding 4 PY's	-	Satisfied since stay is of 400 days
Residential status	Non-resident	Resident
First RNOR condition of NR in 9 out of 10 preceding 10 PY's	-	Not applicable
Second RNOR condition of ≤ 729 days in preceding 7 PY's	-	Not applicable
Residential status	Non-resident	RNOR since stay is 120 days or more and less than 182 days

B10. VISIT, VISIT & INCOME RULE - Mr. Happy, a US citizen, came to India on an assignment

Stay during preceding 4 PY's:

PY 2017-18	11 Jan 2018 to 31 Mar 2018	81 days
PY 2018-19	1 Apr 2018 to 9 Oct 2018	192 days
PY 2019-20	-	-
PY 2020-21	5 July 2020 to 31 Mar 2021	270 days
Total		543 days

182/60 day rule will apply since Mr. Happy is neither a citizen of India nor a PIO and, thus, none of the special rules apply. He qualifies the second basic condition of 60 day rule, i.e., stay of ≥ 365 during preceding 4 PY's. To qualify as NR, Mr. Happy should stay for a maximum of 59 days during PY 2021-22. Period from 1 April 2021 to 26 May 2021 = 56 days. He can stay for 3 more days to limit his stay to 59 days, i.e., till 29 May 2021.

If Mr. Happy is a PIO and has total income (other than income from foreign sources) of Rs. 18 lakh: Since a grandparent of Mr. Happy was born in undivided India, he would be a person of Indian origin. In such case, Mr. Happy will become a resident if he stays for 120 days or more during the previous year 2021-22 and is in India for 365 days or more during the preceding 4 previous years. This is because the Visit & Income rule will apply. He is in India for 543 days during the preceding 4 previous years. Thus, he should leave India latest by 28 July 2021 to limit his stay to 119 days.

B11. VISIT, VISIT & INCOME RULE – Saurabh is an Indian citizen, who resides in Finland.

Particulars	Case 1	Case 2
Rule applicable	Visit rule	Visit & Income rule
Period of stay during the previous year 2021-22	100 days	120 days
Period of stay during the preceding 4 previous years	400 days	480 days
Period of stay during the preceding 7 previous years	700 days	840 days
Visit rule - Condition of ≥ 182 days in current PY	Not satisfied since stay < 182 days	-
Visit & Income rule -		
• First basic condition of ≥ 120 days in current PY	-	Satisfied since stay ≥ 120 days
• Second basic condition of ≥ 365 days in preceding 4 PY's	-	Satisfied since stay is of 480 days
Residential status	Non-resident	Resident
First RNOR condition of NR in 9 out of 10 preceding 10 PY's	-	-
Second RNOR condition of ≤ 729 days in preceding 7 PY's	-	-
Residential status	Non-resident	Resident but not ordinarily resident since stay < 182 days

B12. STATELESS RULE – MASTER QUESTION - Mr. Rakesh lives abroad and he is not liable to tax

Particulars	Situation 1	Situation 2
Rule applicable	Stateless rule, since he is not resident under any other rule (not resident under Visit & Income rule as stay < 120 days) and he is citizen of India having total income from Indian sources > Rs. 15 lakh in the PY and is not liable to tax anywhere else	182 day or 60 day rule as Visit Rule and Visit & Income rules do not apply since he is not a citizen of India or PIO
182 day rule - Condition of ≥ 182 days in current PY	-	Not satisfied
60 day rule -		
• First basic condition of ≥ 60 days in current PY	-	Satisfied
• Second basic condition of ≥ 365 days in preceding 4 PY's	-	Satisfied
Residential status	Deemed resident	Resident
First RNOR condition	-	Not satisfied

of NR in 9 out of 10 preceding 10 PY's		
Second RNOR condition of ≤ 729 days in preceding 7 PY's	-	Satisfied
Residential status	RNOR	RNOR

B13. STATELESS RULE - Mr. Zen lives abroad and he is not liable to tax in any other country

Situation (a) - Since Mr. Zen is a citizen of India having total income (other than income from foreign sources) of more than Rs. 15 lakh during the previous year and he is not liable to tax in any other country by reason of his residence, domicile or any other relevant criteria, he would be deemed to be a resident, irrespective of his stay in India, since he is not resident under any other rule (as stay in India during PY 2021-22 is only 10 days). Further, he would become a resident but not ordinarily resident due to express provisions of the Act.

Situation (b) - Since Mr. Zen is not a citizen of India or a PIO, special rules would not apply. The standard 182 day or 60 day rule would apply.

Particulars	Result
182 day rule - Condition of ≥ 182 days in current PY	Not satisfied
60 day rule -	
• First basic condition of ≥ 60 days in current PY	Not satisfied
• Second basic condition of ≥ 365 days in preceding 4 PY's	Not satisfied
Residential status	Non-resident
First RNOR condition of NR in 9 out of 10 preceding 10 PY's	-
Second RNOR condition of ≤ 729 days in preceding 7 PY's	-
Residential status	Non-resident

B14. HUF – CA2020(N) – MASTER QUESTION - Determine residential status of Sundaram (HUF)

Since affairs of HUF are partly controlled from India, it is resident. Since Mr. Sundaram is NR in 9 out of 10 preceding PYs and he is in India for ≤ 729 days in the preceding 7 PYs, the HUF is RNOR.

B15. HUF - Gaurav HUF carries on trading business in Mexico. The business

Since the control and management of the affairs of the HUF is situated wholly outside India, it is a non-resident for the assessment year 2022-23.

In the second scenario, if the control and management of the affairs of the HUF is situated partly in India, the HUF would become a resident. In order for the HUF to be a resident but not ordinarily resident, Gaurav needs to (a) be a non-resident in 9 out of 10 preceding previous years, or (b) be in India for 729 days or less during the preceding 7 previous years. Since he has come to India after 15 years, he satisfies both the conditions. Hence, the HUF would be a resident but not ordinarily resident for the assessment year 2022-23.