

Residential status and tax incidence

What is the relevance of residential status

22. There are two types of taxpayers—residents in India and non-residents in India. Indian income is taxable in India, whether the person earning it is a resident or a non-resident. Conversely, a person's foreign income is taxable in India only if the person is a resident in India. Foreign income of a non-resident is not taxable in India.

Residential status - General norms

23. One must keep in mind the following norms while deciding the residential status of an assessee :

23.1 Different taxable entities - Section 6 lays down the test of residence for the following taxable entities :

- a. an individual;
- b. a Hindu undivided family;
- c. a firm or an association of persons or a body of individuals;
- d. a company; and
- e. every other person.

23.2 Different kinds of residential status - Assesseees are either (a) resident in India, or (b) non-resident in India. As far as resident individuals and Hindu undivided families are concerned, they can be further divided into two categories, viz., (a) resident and ordinarily resident, or (b) resident but not ordinarily resident. All other assesseees (viz., a firm, an association of persons, a company and every other person) can be either a resident or a non-resident.

23.3 Different residential status in respect of different sources of income in the same tax year [Sec. 6(12), corresponding to sec. 6(5) of the 1961 Act] - If a person is resident in a tax year for any source of income, he shall be deemed to be resident in India in that tax year(s) for each of his other sources of income [see problem 24-P9].

23.4 Residential status may vary across tax years - An assessee may have different residential status in different tax years. For example, an individual who has been regularly assessed as a resident and ordinarily resident shall be treated as a non-resident in a particular tax year if, in that year, he satisfies none of the conditions specified in section 6(2).

23.5 Resident in India and abroad - It is not necessary that a person who is resident in India cannot become resident in any other country for the same tax year. A person may be a resident in more than one country at the same time for tax purposes, though he cannot have two domiciles simultaneously. It is, therefore, not necessary that a person who is resident in India will be non-resident for all other countries for the same tax year.

23.6 Onus of proof - Whether an assessee is a resident or a non-resident is a question of fact, and it is the duty of the assessee to place all relevant facts before the Income-tax authorities—*Rai Bahadur Seth Teomal v. CIT* [1963] 48 ITR 170 (Cal.).

In the case of *V.V.R. N.M. Subbayya Chettiar v. CIT* [1951] 19 ITR 168, the Supreme Court held that section 6(9) makes a presumption that a Hindu undivided family, a firm, or an association of persons has to be a resident in India, and the onus of proving that they are not residents is on them. However, the burden of proving that an individual or a company is resident in India lies on the department—*Moosa S. Madha & Azam S. Madha v. CIT* [1973] 89 ITR 65 (SC).

Residential status of an individual [Sec. 6(1)/(2)/(3)/(4)/(5)/(6)/(7)/(8)]

24. An individual may be (a) resident and ordinarily resident, (b) resident but not ordinarily resident, or (c) non-resident.

24.1 Resident and ordinarily resident - To find out whether an individual is “resident and ordinarily resident” in India, one has to proceed as follows—

■ *Step 1* - First, find out whether such an individual is “resident” in India [see para 24.1-1].

■ *Step 2* - If such an individual is “resident” in India, then find out whether he is “ordinarily resident” in India [see para 24.1-2].

24.1-1 BASIC CONDITIONS TO TEST AS TO WHEN AN INDIVIDUAL IS RESIDENT IN INDIA - Under section 6(2), an individual is said to be resident in India in any tax year, if he satisfies at least one of the following basic conditions—

a. he is in India for a total period of 182 days or more in the tax year; or

b. he is in India cumulatively for 60 days or more during the tax year and 365 days or more in the 4 years preceding such tax year.

■ *Exceptions* - The rule governing residential status, based on fulfilment of either of the two conditions stated above, shall be subject to the exceptions outlined below –

1. *Exception one* - By virtue of section 6(3), an Indian citizen who leaves India during the tax year either for the purpose of employment outside India or as a member of the crew¹ of an Indian ship, shall be treated as a resident only if Condition (a) is fulfilled; Condition (b) shall not apply in such cases.

For this purpose, the requirement is not leaving India for taking employment outside India but leaving India for the purposes of employment (the employment may be in India or may be outside India). To put it differently, the individual need not be an unemployed person—*British Gas India (P.) Ltd., In re* [2006] 155 Taxman 326 (AAR - New Delhi). He may be employed in India and leave India during the tax year on a foreign assignment for his employer company. Alternatively, he may be an unemployed person who goes outside India to take employment.

2. *Exception two* - By virtue of section 6(4), an Indian citizen (or a person of Indian origin) who is outside India and comes on a visit to India in a tax year can become resident only if Condition (a) is satisfied. Condition (b) shall not apply in such a case. A person is deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India.

3. *Exception three* - In certain cases, specified under section 6(5)/(7), an individual may be deemed a “resident” even if neither of the two basic conditions for residency is satisfied. For these provisions, see para 24.3-1.

24.1-2 ADDITIONAL CONDITIONS TO TEST WHEN A RESIDENT INDIVIDUAL IS ORDINARILY RESIDENT IN INDIA - Under section 6(13), a resident individual is treated as “resident and ordinarily resident” in India if he satisfies the following additional conditions—

i. he has been resident² in India in at least 2 out of 10 years immediately preceding the relevant tax year; and

ii. he has been in India for a period of 730 days or more during the 7 years immediately preceding the relevant tax year.

■ *Exceptions* - For a few exceptions, see para 24.3-1.

24.1-2a OTHER POINTS - In determining the residential status of an assessee, the following settled propositions have to be borne in mind :

1. In the 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 not include the period given in rule 8 (corresponding to rule 126 of the 1962 Rules). Under rule 8, the period beginning on the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage, shall not be included in the period of stay in India.

2. According to basic conditions given in para 24.1-1.

■ *Stay at the same place not necessary* - It is not essential that the stay should be at the same place—*Kinloch v. IRC* 14 TC 736. It is equally unnecessary that the stay be continuous. Similarly, the place or purpose of stay is not material.

■ *Stay in territorial waters* - A stay by an individual on a yacht moored in the territorial waters of India would be treated as his presence in India for the purpose of this section—*Baryard Brown v. Burt* 5 TC 667.

■ *Presence for a part of a day* - Where a person is in India only for a part of a day, the calculation of physical presence in India in respect of such broken period should be made on an hourly basis. A total of 24 hours of stay spread over a number of days is to be counted as being equivalent to the stay of one day—*Walkie v. IRC* [1952] 1 AER 92. If, however, data is not available to calculate the period of stay of an individual in India in terms of hours, then the day on which he enters India as well as the day on which he leaves India shall be taken into account as stay of the individual in India—*Advance Ruling P. No.7 of 1995, In re* [1997] 90 Taxman 62 (AAR - New Delhi).

■ *Involuntary stay* - Involuntary stay of a person in India caused by unauthorized impounding of passport must be excluded for determining his residential status under section 6—*CIT v. Suresh Nanda* [2015] 233 Taxman 4 (Delhi).

24.2 Resident but not ordinarily resident [Sec. 6(13)(a)] - An individual who satisfies one or more of the basic conditions laid down in section 6(2) but does not satisfy the two additional conditions laid down in section 6(13) is treated as resident but not ordinarily resident in India.

■ *Exceptions* - For a few exceptions, see para 24.3-1.

24.3 Non-resident - An individual is a non-resident in India during the tax year if he satisfies none of the basic conditions laid down in section 6(2) [see para 24.1-1].

24.3-1 EXCEPTIONS - Even if an individual satisfies none of the two basic conditions, he is deemed to be resident but not ordinarily resident in the cases given below –

■ *First exception* - This exception is provided under section 6(7), read with section 6(13)(c). A corresponding exception has been in effect under the 1961 Act since the previous year 2020-21. Under this exception, an individual shall be deemed to be resident but not ordinarily resident in India, if he satisfies the following 4 conditions –

- he is an Indian citizen;
- he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of a similar nature, and
- his total income (other than the income from foreign sources) exceeds Rs. 15,00,000 during the relevant tax year;
- he is not a resident in India within the parameters of section 6(2).

This exception does not apply to a foreign citizen, even if he is of Indian origin.

■ *Second exception* - This exception is provided under section 6(5) read with section 6(13)(b). A corresponding exception has been in effect under the 1961 Act since the previous year 2020-21. Under this exception, an individual shall be deemed to be resident but not ordinarily resident in India if he satisfies the following 4 conditions –

- he is an Indian citizen or a person of Indian origin;
- his total income (other than the income from foreign sources) exceeds Rs. 15,00,000 during the relevant tax year;
- he comes to India on a visit during the relevant tax year, and
- he is in India for 120 days or more (but less than 182 days) during the relevant tax year and 365 days (or more) during 4 years immediately preceding the relevant tax year.

24.3-1a OTHER POINTS - For the aforesaid two exceptions, the following should be kept in view –

■ *How to find out the total income of Rs. 15,00,000* - The total income for the ceiling of Rs. 15,00,000 is calculated after ignoring income from foreign sources. “Income from foreign sources” means income which accrues or arises outside India (except income derived from a business controlled in or

a profession set up in India). Income which is deemed to accrue or arise in India shall be included in the computation of the ceiling of Rs. 15,00,000.

■ *Liable to tax* - “*Liable to tax*” (in relation to a person and with reference to a country) means that there is an income-tax liability on such person under the law of that country for the time being in force and shall include a person who has subsequently been exempted from such liability under the law of that country.

■ *Person of Indian origin* - A person is deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India.

24.4 Rule of residence in brief - The table below summarizes the residential status rules applicable for the tax year 2026-27. However, the exceptions detailed in para 24.3-1 must also be considered –

BASIC CONDITIONS AT A GLANCE		
<i>An Indian citizen who leaves India during the tax year 2026-27 for the purpose of employment or, as a member of the crew of an Indian ship</i>	<i>An Indian citizen or a person of Indian origin (who is abroad) who comes to India on a visit during the tax year 2026-27</i>	<i>An individual [other than an individual mentioned in columns (1) and (2)]</i>
(1)	(2)	(3)
a. Presence for at least 182 days in India during the tax year 2026-27	a. Presence for at least 182 days in India during the tax year 2026-27	a. Presence for at least 182 days in India during the tax year 2026-27
b. Not applicable	b. Not applicable	b. Presence in India for at least 60 days during the tax year 2026-27 and 365 days during April 1, 2022 to March 31, 2026.

ADDITIONAL CONDITIONS AT A GLANCE
i. Resident in India in at least 2 years during financial years 2016-17 to 2025-26 [or must have satisfied at least one of the basic conditions, in 2 out of 10 immediately preceding financial years] (i.e., during the financial years 2016-17 to 2025-26).
ii. Presence of at least 730 days in India during April 1, 2019 and March 31, 2026.

RULE OF RESIDENCE AT A GLANCE		
<i>Resident and ordinarily resident</i>	<i>Resident and not ordinarily resident</i>	<i>Non-resident</i>
Must satisfy at least one of the basic conditions and both of the additional conditions [i.e., one of (a) or (b) and both of (i) and (ii)]	Must satisfy at least one of the basic conditions and one or none of the additional conditions [i.e., one of (a) or (b) and one or none of (i) or (ii)]	Should not satisfy any of the basic conditions.

24-P1 X, a foreign national (not being a person of Indian origin), came to India for the first time from USA on July 11, 2020. He stayed here for 3 years and left for Japan on July 11, 2023. He returned to India on April 10, 2024, and remained there until August 17, 2024, when he returned to the USA. He again came back to India on January 30, 2027 at 11.59 p.m. and continued to stay in India thereafter. Determine his residential status for the tax year 2026-27.

SOLUTION: During the tax year 2026-27, X is in India for a period of 60 days (i.e., January 2027 : 1 + February 2027 : 28 days + March 2027 : 31 days). Moreover, during the 4 years immediately preceding the tax year 2026-27, he is in India for 597 days (i.e., 2022-23 : 365 days, 2023-24 : 102 days, 2024-25 : 130 days, and 2025-26 : Nil). Thus, he satisfies condition (b) mentioned in para 24.1-1 (namely, presence of at least 60 days during the tax year and 365 days during 4 years preceding the tax year). He, therefore, becomes resident in India. A resident individual may either be ordinarily resident or not ordinarily resident in India. To determine it, one must apply the test of two additional conditions mentioned in para 24.1-2.

During 7 years immediately preceding the tax year 2026-27, X is in India for 1228 days and during 10 years immediately preceding the tax year 2026-27, he is resident in India for 5 years as follows:

Year	Presence in India (number of days)	Resident (R) or non-resident (NR)	Which of the condition (a) or (b) of para 24.1-1 is satisfied to become resident or non-resident
2025-26	Nil	NR	None
2024-25	130	R	(b)

Year	Presence in India (number of days)	Resident (R) or non- resident (NR)	Which of the condition (a) or (b) of para 24.1-1 is satisfied to become resident or non-resident
2023-24	102	R	(b)
2022-23	366	R	(a) as well as (b)
2021-22	365	R	(a)
2020-21	264	R	(a)
2019-20	Nil	NR	None
2018-19	Nil	NR	None
2017-18	Nil	NR	None
2016-17	Nil	NR	None

Thus, he satisfies one of the basic conditions and the two additional conditions. He will, therefore, be treated as resident and ordinarily resident in India for the tax year 2026-27. If X comes to India at any time after zero hour on January 30, 2027, he will be non-resident for the tax year 2026-27.

24-P2 X, a chief executive of a company, had undertaken foreign tours on various occasions for the company's work and was out of India for a total number of 255 days during the tax year ending March 31, 2027. He submits his return of income for the tax year 2026-27 in the status of non-resident. Is he justified? He visited a foreign country for the first time during May 2025.

SOLUTION: In the given problem, X had left India for purposes of employment outside India. He can become resident in India only if he is in India for at least 182 days during the tax year 2026-27. Since his total stay in India during the said year is less than 182 days, he will be treated as non-resident for the tax year 2026-27. Hence, the submission of his return of income for the tax year 2026-27 in the status of non-resident is justified.

24-P3 During his 196-day stay in India in the tax year 2026-27, X, a citizen of the UK, was always moving from one place to another. He claims that he is a non-resident in India for the tax year 2026-27 on the following grounds :

1. He had never visited India before April 1, 2026.
2. During 2026-27, though he is in India for 196 days, he could not spend two consecutive nights at any one place.
3. For the tax year 2026-27, he is resident in the U.K. according to the English Income-tax Act. He insists that he cannot be resident of two countries for the same tax year. Do you agree with him?

SOLUTION: The claim of X is not tenable, as he is in India for 196 days during the tax year 2026-27. He satisfies one of the two basic conditions (namely, the presence of 182 days or more during the tax year 2026-27) and none of the additional conditions. He is, therefore, a resident but not ordinarily resident in India for the tax year 2026-27. The fact that he could not spend two consecutive nights at any one place is immaterial. Moreover, a person who is resident in India may become a resident of any other country according to the tax laws of that country for the same or a different tax year.

24-P4 X, after about 30 years' stay in India, returns to America on January 29, 2024. He returns to India in June 2026 to join an American company as its overseas branch manager. Determine his residential status for the tax year 2026-27.

SOLUTION: During 2026-27, X is in India for more than 275 days. He is, therefore, a resident in India. He is resident in India for 2 years out of 10 years (i.e., 2016-17 to 2025-26), and he has stayed for more than 730 days during the seven years preceding the tax year 2026-27. He is, therefore, resident and ordinarily resident in India for the tax year 2026-27.

24-P5 X sets up a new profession on January 14, 2026, and keeps his books of account on the basis of the financial year. Though he has never gone out of India, he claims that he is resident and not ordinarily resident for the tax year 2026-27. In support of his claim, he submits that he does not fulfil one of the additional conditions (i.e., he is not resident in India for at least 2 out of 10 preceding years), as he has not been assessed as resident during 2 out of the preceding 10 years due to the absence of taxable income. Comment on the claim of X and determine his residential status for the tax year 2026-27.

SOLUTION: The claim of X is not acceptable. Section 6(13) lays down additional conditions for determining whether a resident individual qualifies as "ordinarily resident." These conditions relate to physical presence in India during the preceding 7 years and residential status during the preceding 10 years. Importantly, residential

status for the preceding 10 years must be determined irrespective of whether the individual was assessed as a resident in those years. In other words, the mere absence of taxable income in the preceding ten years does not make an individual non-resident simply because he was not assessed as resident during that period. Accordingly, X's claim is unjustified. Since X has never left India, he satisfies both the basic and additional conditions and will therefore be treated as a resident and ordinarily resident for the tax year 2026-27.

24-P6 X is a foreign citizen, not being a person of Indian origin. Determine his residential status for the tax year 2026-27 on the assumption that during financial years 2012-13 to 2026-27 he was present in India as follows :

2012-13	221 days	2019-20	160 days
2013-14	22 days	2020-21	96 days
2014-15	50 days	2021-22	286 days
2015-16	72 days	2022-23	100 days
2016-17	130 days	2023-24	182 days
2017-18	340 days	2024-25	85 days
2018-19	30 days	2025-26	280 days
		2026-27	86 days

SOLUTION: During 2026-27, X is in India for a period of 86 days and during four years preceding the tax year 2026-27, he is in India for 647 days. Thus, he satisfies one of the two basic conditions laid down by section 6(2) [i.e., condition (b) mentioned in para 24.1-1] and, consequently, he becomes resident in India. A resident individual may either be an ordinarily resident or not ordinarily resident. To determine whether X is ordinarily resident or not ordinarily resident, one must test the two additional conditions as laid down by section 6(13) [see conditions (i) and (ii) in para 24.1-2]. Information presented in the Table given below may be used to test the additional conditions :

Year	Presence in India (number of days)	Status	Which of the condition (a) or (b) [para 24.1-1] is satisfied to become resident or non-resident
2027-28	280	Resident	(a) or (b)
2024-23	85	Resident	(b)
2023-22	182	Resident	(a) or (b)
2022-21	100	Resident	(b)
2021-20	286	Resident	(a) or (b)
2020-19	96	Resident	(b)
2019-20	160	Resident	(b)
2018-19	30	Non-resident	None
2017-18	340	Resident	(a)
2016-17	130	Resident	(b)
2015-16	72	Not necessary to determine	
2014-15	50		
2013-14	22		
2012-13	221		

Condition (i) of para 24.1-2 - This condition requires that an individual should be resident in India for at least 2 out of 10 years immediately preceding the relevant tax year. X, in the present case, is resident in India in 9 years out of 10 years (i.e., during 2016-17 to 2025-26, he is resident in India in all the years except 2018-19). He, thus, satisfies this condition.

Condition (ii) of para 24.1-2 - This condition requires that an individual should be present in India for at least 730 days during 7 years immediately preceding the relevant tax year. X is in India for 1189 days during 2019-20 to 2025-26. He, thus, satisfies this condition.

X satisfies one of the two basic conditions and the two additional conditions. He is, therefore, resident and ordinarily resident in India for the tax year 2026-27.

24-P7 X is a foreign citizen (not being a person of Indian origin). Since 1981, he visits India every year in the month of April for 100 days. Find out the residential status of X for the tax year 2026-27.

SOLUTION: During the tax year 2026-27, X is in India for 100 days and during 4 years preceding the year 2026-27 (i.e., 2022-23 to 2025-26), he is in India for 400 days. Thus, he satisfies basic condition (b) to become resident in India. To determine, whether a resident individual is ordinarily resident or not ordinarily resident, one has to test two additional conditions as laid down by section 6(13).

Condition (i) of para 24.1-2 - Every year X satisfies basic condition (b), as he is in India for 100 days during the relevant tax year 2026-27 and 400 days during 4 years preceding the tax year. Therefore, he satisfies this condition.

Condition (ii) of para 24.1-2 - X is in India for 700 days during 7 years prior to the tax year 2026-27. He does not satisfy this condition.

X satisfies one of the basic conditions and one of the two additional conditions. He is, therefore, resident but not ordinarily resident in India for the tax year 2026-27.

24-P8 X (a foreign citizen, not a person of Indian origin) arrives in India for the first time on September 1, 2026. On September 15, 2026, he joins a company on monthly salary of Rs. 60,000, as a part-time production consultant (duty hours - 6:30 PM to 9:30 PM). Prior to September 15, 2026, X does not have any source of income. On October 9, 2026, he starts a computer hardware trading business after obtaining approval from his employer. For the tax year ending March 31, 2027, he has the following income :

Salary from part-time employment : Rs. 43,90,000, income from the business of trading in computer hardware in India : Rs. 7,86,000; and foreign income from the same business : \$ 40,000. Find out the residential status of X for the tax year 2026-27.

SOLUTION: For the tax year 2026-27, X has the following sources of income in India -

Sources of income	Tax year	Number of days when X was in India
Salary income	September 15, 2026 to March 31, 2027	198 days
Business income	October 9, 2026 to March 31, 2027	174 days

For the first source of income, X becomes a resident in India by satisfying one of the basic conditions. As he comes to India for the first time in 2026, he is unable to satisfy any of the additional conditions. Thus, he is a resident but not ordinarily resident in India for the first source of income.

For the second source of income, X is a non-resident, as he satisfies none of the basic conditions. It may be noted that he is non-resident in India for the business income and resident but not ordinarily resident for the salary income. In view of section 6(12), if a person is resident in India for one of the sources of income, he will be deemed to be resident in India for all other sources of income in the same tax year. In respect of the tax year 2026-27, X will, therefore, be regarded as resident but not ordinarily resident for all sources of income.

24-P9 X is an Indian citizen. Currently, he is employed with an overseas company located in Dubai. During different years, he has been in India as follows -

Financial year	Presence in India	Financial year	Presence in India	Financial year	Presence in India
2026-27	55 days	2023-24	170 days	2020-21	70 days
2025-26	190 days	2022-23	200 days	2019-20	71 days
2024-25	200 days	2021-22	250 days	2018-19	72 days

For the tax year 2026-27, X is not taxable in Dubai or in any other country/territory by reason of his domicile or residence. Income of X (other than income from foreign sources) for the tax year 2026-27 is Rs. 16,00,000 (Situation 1) or Rs. 14,00,000 (Situation 2). X wants to know his residential status for the tax year 2026-27.

SOLUTION:

Situation 1 - X is in India for 55 days during the tax year 2026-27. He is unable to satisfy any of the basic conditions set out in section 6(2). However, he satisfies the following 3 conditions given by section 6(7) read with section 6(13)(c) -

- X is an Indian citizen;
- his total income (other than the income from foreign sources) exceeds Rs. 15,00,000 during the relevant tax year, and
- he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

He is deemed to be a resident in India under section 6(7). But he is resident but not ordinarily resident in India by virtue of section 6(13)(c). The data given in the table pinpoints that X is resident in India for 4 years out of preceding 10 years and he is in India for 1151 days out of preceding 7 years. He satisfies the two conditions given by section 6(13)(a). However, the additional conditions of section 6(13)(a) are not relevant when a person is deemed to be resident in India within the parameters of section 6(13)(c).

Situation 2 - X does not satisfy the conditions of section 6(7). Moreover, he does not satisfy the conditions of section 6(2). Consequently, he is non-resident in India for the tax year 2026-27.

24-P10 X is an Indian citizen. Currently, he is employed with a multinational company and is posted in Singapore. During the tax year 2026-27, he comes to India for a visit of 145 days. In earlier 4 years, he is in India for more than 900 days. X wants to know his residential status for the tax year 2026-27. His annual income for the tax year 2026-27 is as follows –

	Rs.
Income from salary, rent, consultancy, and interest earned and received in Singapore	29,00,000
Income from business (accrued and received outside India, controlled from Singapore)	21,00,000
Income from another business (accrued and received outside India, controlled from India)	8,00,000
Interest on bank fixed deposits in India	11,00,000
Any other income in India or outside India	Nil
Life insurance premium paid in India	2,60,000

SOLUTION: In the tax year 2026-27, X is in India for 145 days. Total income of X (other than income from foreign sources) is Rs. 17,50,000 (i.e., Rs. 8,00,000 + Rs. 11,00,000 – deduction under section 80C : Rs. 1,50,000). X satisfies 4 conditions of the second exception [see para 24.3-1] as follows –

- X is an Indian citizen or a person of Indian origin;
- total income of X (other than the income from foreign sources) exceeds Rs. 15,00,000 during the relevant tax year;
- he comes to India on a visit during the tax year 2026-27, and
- he is in India for 145 days (i.e., his Indian visit is for 120 days or more but less than 182 days) during the relevant tax year and 365 days (or more) during 4 years immediately preceding the relevant tax year.

Consequently, for the tax year 2026-27, X is resident but not ordinarily resident in India.

24-P11 X is an Indian citizen (or he is a person of Indian origin). He wants to know his residential status in India for the tax year 2026-27 in the following different possible situations –

- if he visits India during the tax year 2026-27 for less than 120 days; or
- if he visits India during the tax year 2026-27 for 120 days or more but not more than 181 days; or
- if he visits India during the tax year 2026-27 for 182 days or more.

SOLUTION: The table given below highlights the provisions of regulating residential status in the case of an Indian citizen or person of Indian origin who visits India during the relevant tax year –

How many days an Indian citizen/a person of Indian origin visits India during the relevant tax year		
Less than 120 days	120 days or more but not more than 181 days	182 days or more
Non-resident in India	■ If he satisfies both of the following conditions, he will be resident but not ordinarily resident – - During the preceding 4 years, he was in India for 365 days or more; and - His taxable income (other than the income from foreign sources) exceeds Rs. 15,00,000 during the relevant tax year	■ If he satisfies both of the following conditions, he will be resident and ordinarily resident – - He has been resident in India in at least 2 out of 10 years immediately preceding the relevant tax year; and - He has been in India for a period of 730 days or more during the 7 years immediately preceding the relevant tax year.
	■ If he satisfies one or none of the above two conditions, he will be non-resident in India	■ If he satisfies one or none of the above two conditions, he will be resident but not ordinarily resident

Residential status of a Hindu undivided family [Sec. 6(9) (corresponding to sec. 6(2) of the 1961 Act)]

25. A Hindu undivided family (like an individual) is either resident in India or non-resident in India. A resident Hindu undivided family is either ordinarily resident or not ordinarily resident.

25.1 When a Hindu undivided family is resident or non-resident - A Hindu undivided family is said to be resident in India if control and management of its affairs is wholly or partly situated in India. A Hindu undivided family is non-resident in India if control and management of its affairs is wholly situated outside India.

The table given below highlights the same proposition —

Place of control	Residential status of family	Ordinarily resident or not
Control and management of the affairs of a Hindu undivided family is —		
- Wholly in India	Resident	See para 25.2
- Wholly out of India	Non-resident	—
- Partly in India and partly outside India	Resident	See para 25.2

Note - In determining whether a Hindu undivided family is resident or non-resident, the residential status of the karta of the family during the tax year is not relevant. Residential status of the karta during the preceding years is considered for determining whether a resident family is “ordinarily resident”—see para 25.2.

25.1-1 WHAT IS “CONTROL AND MANAGEMENT” - Different courts have defined the term “control and management” as follows —

■ *De facto control* - Control and management means *de facto* control and management, and not merely the right to control or manage—*CIT v. Nandlal Gandhalal* [1960] 40 ITR 1 (SC).

■ *Place of control and management* - Control and management are situated at a place where the head, the seat, and the directing power are situated. The head and brain are situated where vital decisions concerning the policies of the business—such as raising finance and its appropriation for specific purposes, appointment and removal of staff, expansion, extension, or diversification of business—are taken—*San Paulo (Brazilian) Railway Co. v. Carter* [1886] AC 31 (HL).

■ *Residence of HUF in India* - The mere fact that the family has a house in India, where some of its members reside or the karta is in India in the tax year, does not constitute that place as the seat of control and management of the affairs of the family, unless the decisions concerning the affairs of the family are taken at that place. The mere fact of the absence of karta from India does not make the family non-resident—*Annamalai Chettiar v. ITO* [1958] 34 ITR 88 (Mad.).

■ *Broad propositions* - The following propositions can be stated on the basis of the rulings given in *Subbayya Chettiar v. CIT* [1951] 19 ITR 163 (SC) and *Narasimha Rao Bahadur v. CIT* [1950] 18 ITR 181 (Mad.)—

1. Generally, HUF shall be taken to be resident in India unless control and management of its affairs is situated wholly outside India.

2. HUF may be residing in one place and doing a great deal of business in other place.

3. Occasional visit of a non-resident karta to the place of HUF's business in India would be insufficient to make HUF ordinarily resident in India.

25.2 When a resident Hindu undivided family is ordinarily resident in India - A resident Hindu undivided family is ordinarily resident in India if the karta or manager of the family (including successive karta) satisfies the following two additional conditions as laid down by section 6(13)(a) [corresponding to sec. 6(6)(b) of the 1961 Act] —

Additional condition (i)	Karta has been resident in India in at least 2 out of 10 tax years [according to the basic condition mentioned in para 24.1-1] immediately preceding the relevant tax year
Additional condition (ii)	Karta has been present in India for a period of 730 days or more during 7 years immediately preceding the tax year.

If the karta or manager of a resident Hindu undivided family does not satisfy the two additional conditions, the family is treated as resident but not ordinarily resident in India.

25-P1 *The Head Office of XY, a Hindu undivided family, is situated in Hong Kong. The family is managed by Y (since 1980) who is resident in India in only 3 out of 10 years preceding the tax year 2026-27 and he is present in India for more*

than 729 days during the last 7 years. Determine the residential status of the family for the tax year 2026-27 if the affairs of the family's business are (a) wholly controlled from Hong Kong, (b) partly controlled from India.

SOLUTION: If affairs of a Hindu undivided family are controlled from a place outside India, the family will be non-resident. Accordingly XY Hindu undivided family is non-resident for the tax year 2026-27 under situation (a). Under situation (b), affairs of the family's business are partly controlled from India during the tax year 2026-27. Therefore, the family is resident in India. However, it would be ordinarily resident in India if karta satisfies the following two conditions laid down by section 6(13)(a) :

1. He has been resident in India in at least 2 out of 10 years preceding the tax year.
2. He has been present in India for at least 730 days during the seven years preceding the tax year.

As the karta is resident in India in 3 out of 10 years preceding the tax year, the family would be resident and ordinarily resident in India for the tax year 2026-27 in situation (b).

25-P2 A Hindu undivided family (X is karta, A, B and C are other coparceners) carries on a cloth business in Burma. A comes to India and starts a cloth business in Mumbai in partnership with others. The capital supplied by A to this firm is found to have come from the family. Subsequently, B joins the firm as a partner. Later on another business is started at Banaras with the same persons and one outsider as a partner. C joins this firm. The Assessing Officer wants to treat the family as resident on the ground that its coparceners are partners in the firms, financed out of the family funds, and the firms are resident in India. Is the Assessing Officer legally correct ?

SOLUTION: A case on similar facts was examined by the Supreme Court of India in the case of *CIT v. Nandlal Gandhalal* [1960] 40 ITR 1, wherein the Court pointed out that both under the Hindu law and under the law of partnership, the Hindu undivided family as such could exercise no control over the management of a firm in which some of its coparceners were partners, even if capital contributed by coparceners was found to have come from the family.

The position under Hindu law regarding a coparcener who has entered into a partnership with others is well settled. The partnership is a contractual partnership and is governed by the Indian Partnership Act, 1932. The partnership is between the coparcener individually and the partners and not between the family and other partners. This remains so even if the coparcener is accountable to the family for the income received. Thus, control and management of the firm's business lies in the hands of individual coparceners and not in the hands of the family. The Assessing Officer is, therefore, not justified while holding the Hindu undivided family as resident in India.

Residential status of the firm and association of persons [Sec. 6(9) (corresponding to sec. 6(2) of the 1961 Act)]

26. A partnership firm and an association of persons are said to be resident in India if control and management of their affairs are wholly or partly situated within India during the relevant tax year. They are, however, treated as non-resident in India if control and management of their affairs are situated wholly outside India.

■ The above rule may be summarised as follows —

Place of control	Residential status
Control and management of the affairs of a firm/association of persons is —	
■ Wholly in India	Resident
■ Wholly outside India	Non-resident
■ Partly in India and partly outside India	Resident

Note - A firm/an association of persons cannot be “ordinarily” or “not ordinarily resident”. The residential status of the partners/members of the firm/association is not relevant in determining the status of the firm/association.

26.1 What is “control and management” - While in the case of a firm, control and management is vested in partners, in case of an association of persons it is vested in the principal officer. Control and management means *de facto* control and management and not merely the right to control or manage. Control and management is usually situated at a place where the head, the seat and the directing power are situated. Where the partners of a firm are resident in India, the normal presumption is that the firm is resident in India. This presumption can, however, be effectively rebutted

by showing that the control and management of the affairs of the firm is situated wholly outside India. The onus of rebutting the presumption is on the assessee.

Residential status of a company [Sec. 6(10), corresponding to sec. 6(3) of the 1961 Act]

27. Residential status of a company is determined as follows –

Section	Company	Residential status
6(10)(a)(i)	Indian company	Always resident in India [Note 1]
6(10)(a)(ii)	A foreign company (whose turnover/gross receipt in the tax year is more than Rs. 50 crore)	It will be resident in India if its Place of Effective Management (POEM), during the relevant tax year, is in India [Note 2]
6(10)(a)(ii)	A foreign company (whose turnover/gross receipts in the tax year is Rs. 50 crore or less)	Always non-resident in India [Note 3]

Notes –

1. An Indian company is always resident in India. Even if an Indian company is controlled from a place located outside India (or even if shareholders of an Indian company controlling more than 51 per cent voting power are non-resident and/or located outside India), the Indian company is resident in India. An Indian company can never be non-resident.

2. A foreign company is resident in India if its place of effective management (POEM), during the relevant tax year, is in India. For this purpose, the place of effective management means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made. For this purpose, a set of guiding principles (to be followed in determination of POEM) have been issued by the Board in Circular No. 6/2017, dated January 24, 2017. These guiding principles are briefly explained in para 27.1.

3. Provisions of section 6(10)(a)(ii) shall not apply to a foreign company having turnover or gross receipts of Rs. 50 crore or less in a financial year – Circular No. 8/2017, dated February 23, 2017. In other words, a foreign company (whose annual turnover/gross receipts is Rs. 50 crore or less) cannot be resident in India.

27.1 Place of effective management (POEM) as per Circular No. 6/2017 - “Place of effective management” (POEM) is an internationally recognised test for the determination of the residence of a company incorporated in a foreign jurisdiction. Any determination of the POEM will depend upon the facts and circumstances of a given case. The POEM concept is one of substance over form. An entity may have more than one place of management, but it can have only one place of effective management at any point of time. Since “residence” is to be determined for each year, POEM will also be required to be determined on year to year basis. The process of determination of POEM would be primarily based on the fact as to whether or not the company is engaged in active business outside India.

27.1-1 COMPANY ENGAGED IN ACTIVE BUSINESS OUTSIDE INDIA - The place of effective management in case of a company engaged in active business outside India shall be presumed to be outside India if the majority meetings of the Board of Directors of the company are held outside India.

■ **Active business outside India** - A company shall be said to be engaged in “active business outside India” if –

- the passive income is not more than 50 per cent of its total income;
- less than 50 per cent of its total assets are situated in India;
- less than 50 per cent of total number of employees are situated in India or are resident in India; and
- the payroll expenses incurred on such employees is less than 50 per cent of its total payroll expenditure.

■ **Passive income** - “Passive income” of a company shall be aggregate of, —

- income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and