

Residential Status and Taxability of Crew Members of a Ship or Aircraft

- Contributed by CA Sri Harsha and CA Narendra

In our previous articles¹, the concept of deemed residency and various aspects of residency under Section 6 has been discussed in detail. In this part, the concept of determination of residential status of a crew member of a ship or aircraft along with taxability of such person has been dealt with.

As per Section 6(1) of the Income Tax Act, 1961 ('ITA' or 'Act'), an individual shall be treated as resident:

- a. If he is in India for a period of 182 days or more during previous year or
- b. If he is in India for a period of 365 days within 4 years immediately preceding previous years and 60 days or more during the previous year.

In other words, a person being an individual is treated as resident in India, if any of conditions i.e., (a) or (b) above is satisfied, otherwise such person is treated as non-resident.

Crew Member of a Ship:

Further, Explanation 1 to Section 6(1) states that in the case of an Individual being a citizen of India who leaves in India in any previous year as a member of ***crew member of an Indian ship***, the period of stay for that year specified above as 60 days is to be replaced with 182 days.

Further, Explanation 2 to Section 6(1) read with Rule 126 states that to compute number of days stay in India, in respect of citizen of India who is

a crew member of a foreign bound ship, the period starting from date entered into the continuous discharge certificate ('CDC') in respect of joining the ship for 'eligible voyage' to date entered into the CDC in respect of signing off by that individual from the ship in respect such voyage will not be included.

'Eligible voyage' has been defined to mean a voyage entered by the ship in carriage of passengers or freight in international traffic, for the voyage having originated from any port in India and has a destination any port outside India and vice versa.

On reading of Explanation 1, it can be understood that Explanation 1 i.e., enhanced period is applicable only in the case of Indian ships thereby for other ships, 60 days period of stay must be applied.

Explanation 2 does not contain any reference to Indian ships thereby such explanation may be applicable for every foreign bound ship.

Further, Explanation 1 and Explanation 2 are applicable only if such person being an individual, is a citizen of India.

Particulars	Indian Ship	Other than Indian Ships
Citizen	182 days and explanation 2	60 days and explanation 2
Other than Citizen	60 days and no explanation 2	60 days and no Explanation 2

However, in respect of crew member of a aircraft, Income Tax Act does not contain any special provisions for determination of residential status. Hence, normal provisions may be applicable for such persons for

¹[Deemed Residency - Concept and Issues Thereof SBS Wiki E- Journal Dec 2021](#)

determining the residential status.

Taxability of Income by crew members of a ship or aircraft:

Income earned by a person is taxable in the country of resident of the person based on the residential status of such person. Such income may also be taxable in the country of source based on the source rule.

In the above paras, determination of residential status has been discussed. Based on the above conditions, if one becomes resident in India, income earned by such person is taxable in India subject to availing of credit of taxes paid in source country.

However, in the context of crew members of ship or aircraft, it may be difficult to identify the country of source for taxing the income earned by way of exercising employment aboard on a ship or aircraft.

To remove such difficulties, provisions of Article 15/16 of DTAA², which deals with ‘dependent personal services’, states that income earned by a person in respect of an employment exercised aboard on a ship or aircraft operating in international traffic is taxable in the country of enterprise which operates such ship or aircraft.

However, different DTAA provides different treatment for taxability of such income in a particular jurisdiction the details of which are provided in the Table below:

DTAA	Taxability
Article 15 of India -Australia	May be taxable in the country of enterprise which operates such aircraft or ship.
Article 15 of India – China	Shall be taxable only in the CS of enterprise which operates such aircraft or ship.
Article 15 of India – Germany	May be taxed in the CS of which the enterprise operating the ship or aircraft is a resident.
Article 16 of India -Hongkong	Shall be taxable only in the CS of enterprise which operates such aircraft or ship.
Article 15 of India – Japan	May be taxable in the country of enterprise which operates such aircraft or ship.
Article 15 of India -Korea	Shall be taxable only in the CS of enterprise which operates such aircraft or ship.
Article 15 of India – Saudi Arabia	May be taxable in the country of enterprise which operates such aircraft or ship.
Article 15 of India – Singapore	Shall be taxable only in the CS of enterprise which operates such aircraft or ship.
Article 15 of India -UK	May be taxed in the CS of which the person deriving the profits from the operation of the ship or aircraft is a resident.
Article 16 of India – USA	May be taxable in the country of enterprise which operates such aircraft or ship.

² DTAA between India-USA.