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# Canadian snowbirds in the U.S.

## U.S. residency rules resulting in tax consequences

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To escape from the freezing winters, Canadian “snowbirds” are accustomed to freely spending time in the United States. However, in September 2012, the U.S. government and the Canadian government implemented the Entry/Exit Information System to track and share entry data, which put snowbirds or frequent visitors at risk of being subjected to the U.S. income tax system by simply staying in the U.S. for too many days. The U.S. income tax laws based a test on physical present days, called Substantial Presence Test (“SPT”), to determine U.S. residency for the particular tax year.

As a result, it is important to monitor your days in the U.S. and to have a good understanding of the U.S. SPT.

### U.S. Substantial Presence Test

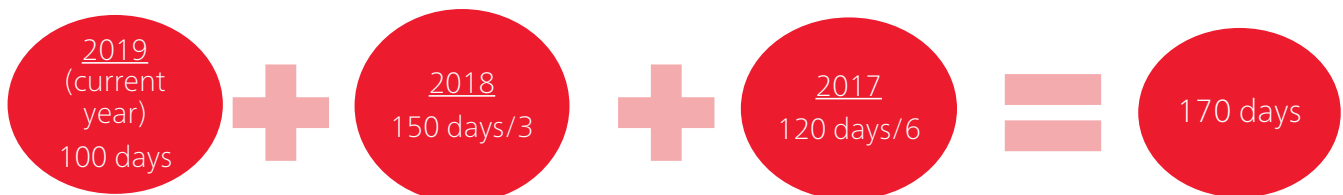
The requirement to file a U.S. Individual Income Tax Return is generally based on citizenship, but can also be based on the number of days that an individual is present in the U.S. An individual may be considered a U.S. tax resident if they meet the SPT for a given calendar year and require filing U.S. income tax returns to report their worldwide income. This test considers days spent in the U.S. in a 3 year period and it counts any day physically present in U.S., at any time during the days. For example, a part of the day spent in the U.S. would count, unless waiting at an airport for a connecting flight.

To meet this test, an individual must be physically present in the U.S. on at least:

1. 31 days during the current year, **and**
2. 183 days during the 3-year period that includes the current year and the 2 years immediately before, counting:
  - < All the days present in the current year, and
  - < 1/3 of the days present in the first year before the current year, and
  - < 1/6 of the days present in the second year before the current year

### Example

An individual was physically present 100 days in 2019, 150 days in 2018 and 120 days in 2017 in the U.S.:



In this example, the substantial presence test is not met as the result is less than 183 days, hence, the individual should not be considered a U.S. tax resident.

## Implications of meeting the SPT

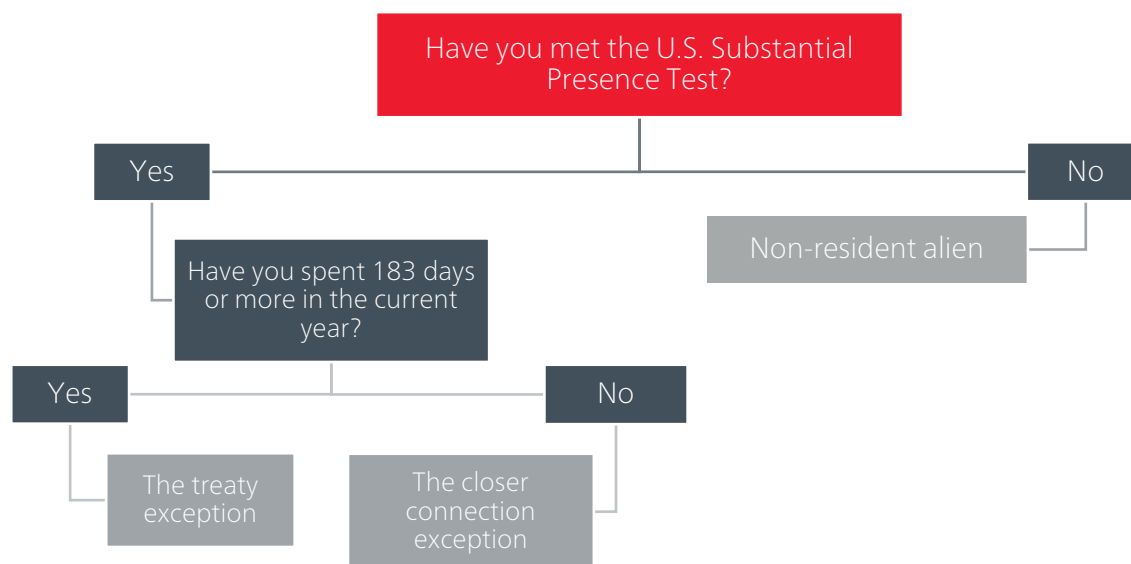
If you have met the SPT, you may be considered a U.S. tax resident and may have a tax filing requirement with the Internal Revenue Service ("IRS"). However, there are two potential methods to exempt you from being considered a U.S. tax resident.

### The closer connection exception

This option is only available if time spent in the U.S. is less than 183 days in the current year. In these circumstances, an individual will need to file U.S. Form 8840 – "Closer Connection Exception Statement for Aliens" with the IRS, which discloses information indicating a closer connection with Canada. This information includes, but is not limited to, the location of family, home and business activities, as well as the jurisdiction in which a driver's license is held and in which an individual votes. Form 8840 is due on June 15th in the year after the SPT is met and it cannot be filed late.

### The treaty "tie-breaker" rules

This option is applicable if time spent in the U.S. is 183 days or more in the current year. An individual will need to refer to the "tie-breaker" rules in the Canada-U.S. Tax Convention (the "Treaty"), which outlines the various tests that must be satisfied in sequence until the individual's residency can be determined. If the individual tie-breaks to Canada, they will need to file U.S. Form 1040NR – "Nonresident Alien Income Tax Return", along with U.S. Form 8833 – "Treaty-Based Return Position Disclosure". Additional information is required to be disclosed, and generally, the process is more detailed than under the closer connection exception. Both forms are due on June 15th in the year after meeting the substantial presence test.



## Summary

It is essential to track your days in the U.S. closely to avoid any unnecessary tax complications. Even with two exceptions to use to mitigate your U.S. tax obligations, there are possible penalties and implications if the required forms are not filed or the forms are not filed on time.

*Speak with your own tax advisors about your own tax situation when evaluating and before implementing any tax planning strategies.*