
Canadian Snowbirds in the U.S.

Wealth Management Taxation, The Bank of Nova Scotia

To escape from the freezing winters, Canadian “snowbirds” are accustomed to freely spending time in the United States (“U.S.”).

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.

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

U.S. Substantial Presence Test (“SPT”)

The requirement to file a U.S. Individual Income Tax Return is generally based on citizenship, but can be based on the number of days that an individual is present in the U.S. It is mandatory for U.S. tax residents to file U.S. income tax returns and report their worldwide income. An individual may be considered a U.S. tax resident if they meet the “substantial presence test” for a given calendar year.

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

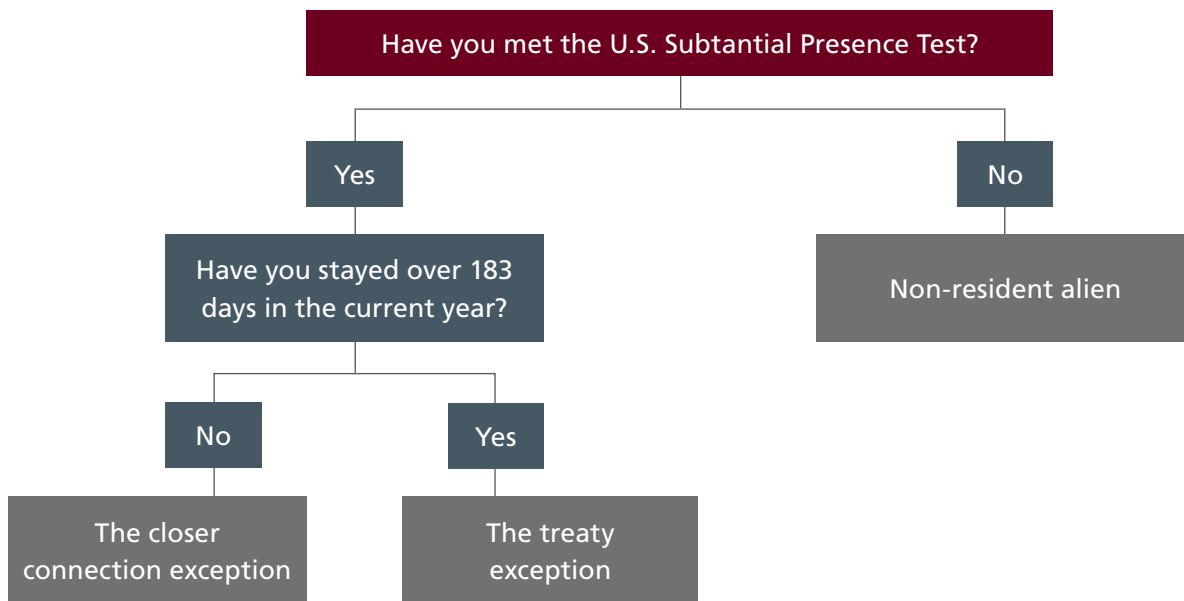
Example

Days that an individual was physically present in the U.S.:

2016 (current year)	2015	2014
100 days	150 days	120 days

$$\begin{aligned} \text{Total days} &= 100 + (150 * 1/3) + (120 * 1/6) \\ &= 170 < 183 \text{ days} \end{aligned}$$

In this example, the substantial presence test is not met, and 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. 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 substantial presence test is met.

The treaty "tie-breaker" rule

This option is applicable if time spent in the U.S. is over 183 days in the current year. An individual will need to refer to the "tie-breaker" rule 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 meets the tests as a Canadian tax resident, 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 complicated than under the closer connection exception. Both of the forms are due on June 15th in the year after meeting the substantial presence test.

Summary

We recommend tracking 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 cross-border tax advisor about your own tax situation, and to confirm your U.S. tax obligation.

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