

Substantial Presence Test and Tax Residency Status

What is the Substantial Presence Test?

The **Substantial Presence Test (SPT)** is a criterion used by the US [Internal Revenue Service](#) (IRS) to determine [the US tax residency status](#) of any individual who is *not* a US Citizen or lawful US Permanent Resident Alien (US PRA). There are a number of exclusions to the SPT, including F and J student visa holders, who are generally granted 5 full calendar years of exempt, “Nonresident” status.

The SPT uses current and past immigration information and days present in the US to determine whether a foreign national is **“Resident”** or **“Nonresident”** for US Tax Purposes.

SPT Formula used by the IRS

The SPT features a [number of exemptions](#) (See below). Ignoring the exemptions, the criterion for the SPT is as follows:

- The individual must be physically present in the US for at least 31 days in the year for which the tax return is being filed; **and** $(1/3)(\text{number of days in the year before the tax year}) + (1/6)(\text{number of days in the year two years before the tax year})$ must be at least 183.

SPT Exclusions (F and J Students)

There are a number of exclusions from the SPT which grant extended exemption periods based on special visa status or other specific qualifications. Examples are:

- **Students in F, J, M, or Q immigration status present in the U.S. for less than 5 calendar years.**
- Non-student in J or Q immigration status present in the U.S. for less than 2 years.
- Foreign national on a foreign-government-related visa, such as A or G.

Any individual using one of the above exclusion needs to file [IRS Form 8843](#) for each year they are exempt. Even those not working in the US need to file form 8843.

What is my Tax Residency Status?

Using the SPT and exclusion criteria above, an individual who is not US Citizen or US PRA is categorized as one of two distinct tax residency categories:

Resident Alien for US Tax Purposes: subject to the same tax regulations as a U. S. Citizen; taxed on their worldwide income; FICA Taxable; may file an electronic tax return online.

Examples of Resident status:

- Green card holder or those meeting the substantial presence test/exclusions.

Nonresident Alien for US Tax Purposes: subject to a separate set of tax laws and forms; taxed only on “US sourced” income; FICA Tax Exempt; must file a paper tax return by mail.

Examples of Nonresident Alien status:

- Student on F1 visa in the US for *less than* 5 years, or J1 Student in US for less than 2 years.

Why is my US Tax Residency Status so important?

US tax residency status is extremely important because it dictates which US tax laws, forms and withholding rates apply to a foreign individual. It is the most critical piece to understanding and meeting your US tax obligations. Please note, the US tax residency status is relative to US Federal Tax information **only**, and has no bearing on immigration status.

If you are unsure of your US Tax status and have US tax obligations, please contact us at nrtax@towson.edu for a tax analysis and applicable tax resources.

Disclaimer

Disclaimer: These are simplified examples and generalizations provided for general informational purposes only. The examples are based on general guidelines and do not include many complexities such as dual status and special elections. This is not a complete source of information; Comprehensive, detailed information on the SPT and Tax Residency status can be found on the [IRS Intro to Tax Residency page](#).