

THE INS AND OUTS OF INTERNATIONAL TAXATION

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A SERVICE OFFERED BY RAM MANAGEMENT – ATTORNEYS AT LAW

Why are Non-Resident Artists Taxable?

- Canada has Tax Treaties with over 80 countries around the world (including all of the Western countries) which determine that Non-Resident Artists from those countries are taxable in Canada with only a few exceptions.
- Regulation 105 of the Canada Income Tax Regulations requires all those who pay a Non-Resident a fee for services rendered in Canada to withhold 15% of such fee.
- All of those Artists from non-Tax Treaty countries are automatically subject to Canadian taxation and Regulation 105.
- Artists who are subject to taxation are not only the Primary Contracted Artist(s), but all of those Secondary Artists and Support Staff who work for the Primary Contracted Artist while in Canada.

What Exceptions allow for a Non-Resident Artist to be Non-Taxable?

➤ Examples:

- Under the Canada - US Tax Treaty, any US Artist earning less than \$ 15,000 CAN in a calendar year is exempt from taxation.
 - Under the Canada - France Treaty, any French Artist who is performing in Canada as a result of "principal support of public funds from France" is exempt from taxation.
 - Under the Canada - UK Treaty, any UK Artist who is performing in Canada as a result of "principal support of public funds from the UK", or who is a Non-Profit Entity, is exempt from taxation.
 - Under all Canadian International Tax Treaties, all Contracted Non-Resident Companies not owned by Non-Resident Artists are exempt from taxation under Business Profits provisions.
 - Under all Canadian International Tax Treaties, all Secondary Support Staff are exempt from taxation under Employment Services provisions.
- In addition, although there is no actual Canadian legislation or legal regulation to support this exemption, the Canadian Revenue Agency exempts from taxation all Non-Resident Artists who earn less than \$ 5,000 CAN in any calendar year whether or not the Artist from a Treaty or Non-Treaty country.

How Does a Non-Resident Artist Confirm Their Tax Exemption?

- The Primary Contracted Artist files for a Regulation 105 Tax Waiver.
- The Secondary Artists and Support Staff file for Regulation 102 (for employees) and/or Regulation 105 (for sub-contractors) Tax Waivers as the case may be.

If a Primary Contracted Artist does not qualify for a full Tax Waiver (eliminating all of the withholding tax), can the Artist apply for a reduction in withholding tax?

- Yes, the Primary Contracted Artist may apply for a reduction in tax by filing a Regulation 105 Income and Expense Tax Waiver.
 - This kind of Waiver analyses income and expenses for the Artist's performance dates in Canada and a net tax payable is determined.
- The Secondary Artist(s) cannot apply for a tax reduction Waiver as an income/expense analysis never applies to them (they are simply paid by the Primary Artist who applies these fees as an expense to them).

Should an Artist always apply for a Regulation 105 Waiver if performing in Canada?

- Not necessarily - If the Artist does not qualify for a full Tax Waiver, the tax amount assessed from an Income and Expense Waiver may not be any less than if the Artist had simply allowed the 15% withholding to take place - The Artist should analyze their revenue/expense numbers before deciding on whether or not to submit a Tax Waiver.
- The Secondary Artist should only apply for a Waiver if this Secondary Artist qualifies for a full Tax Waiver.
- The Secondary Support Staff from a Tax Treaty country should always apply for a Tax Waiver as they are always tax exempt.

If you decide to apply for a Tax Waiver, do you have the absolute right to a Tax Waiver Ruling?

- Not necessarily – a Tax Waiver will only be granted if the Applicant has no outstanding tax issues in Canada.

Brief history of the Evolution of the Regulation 105 Waiver Process over the past decade

- The Canadian Revenue Agency Guidelines which govern the Regulation 105 Waiver Application were written over a decade ago in the early 2000's.
- Until the last five years or so, many of the technical aspects of the Guidelines were not implemented by the Tax Service Offices reviewing the Tax Waiver Applications which allowed for more approved Waivers and flexibility on issues such as Application deadline and time of payments.
- There has been a significant increase in the level of enforcement of all of the Guideline provisions over the past five years which has resulted in many more Waivers being denied due to the amount of detailed information required in order to file a successful Application.

Applying for a Regulation 105 Tax Waiver

The following information and documentation must be provided to the CRA at least 30 days* before the first performance date or before the first payment to the Non-Resident Artist:

- Regulation 105 Waiver Application available from the CRA's website
- Signed Performance Contracts
- Tax Number Applications
 - Corporations, Partnerships, and LLCs must apply for a Canadian Business Number and supply their Certificate of Incorporation
 - Individuals, Non-incorporated Groups, and Joint Ventures must apply for Individual Tax Numbers and supply Certified Passports
- Authorization Form if the Application is being submitted by someone other than the Primary Contracted Artist(s)

If a Primary Contracted Artist does not qualify for a full Tax Waiver, expenses supported by documentation (e.g. invoices, quotes from suppliers) are required to calculate a net tax payable.

*To avoid any last minute complications, we suggest applying for a waiver at least 45 days in advance.

Other Matters to Consider

- Corporation vs. Individual
- Deposits
- Salaries to Secondary Artist(s) and Support Staff
- Isolating travel buyouts on Performance Contracts

Tax Waiver Decisions

- The Applicant as well as all Buyers will receive written notification of the CRA's Decision.
- Common for Decisions to be issued on the date of the Artist's first performance.
- There remains an open legal question on whether or not a Tax Waiver decision is subject to judicial review.

Ensuring Tax Compliance

- Tax Returns

- T4 Information Returns

Penalties for Non-Compliance

- Non-Resident Corporations, Partnerships, and LLCs who fail to file a T2 Corporation Income Tax Return 6 months following the year in which services were rendered in Canada will be subject to penalty equal to the greater of:
 - \$100; or
 - \$25 for each complete day that the return is late, up to a maximum of 100 days, or \$ 2,500.00
- All Non-Residents who pay Secondary Artists and Support Staff for work in Canada who fail to file a T4 Information Return by the last day of February following the year in which services were rendered will be subject to penalty equal to the greater of:
 - \$100; or
 - Daily penalty per table below

Number of information returns (slips) filed late	Penalty per day (up to 100 days)	Maximum Penalty
1 to 50	\$10	\$1,000
51 to 500	\$15	\$1,500

Dangers of Non-Compliance to Performing in Canada

- If an Artist has operated in Canada through a Corporation, Partnerships, or LLC and does not file a Tax Return, the CRA may arbitrarily assess tax as well as penalties and interest, and thereafter initiate collection procedures on future performances in Canada.

Quebec Tax Waiver

- For Artists performing in Quebec, Buyers are required to withhold an additional 9% from the Artist's performance fees (Quebec is the only province with its own withholding tax).
- An Artist should always apply for a Quebec Tax Waiver as a full Waiver will automatically be granted and the only way to recover the 9% withholding otherwise is to file a Quebec Tax Return at the end of the year.

Is The Enforcement of Canadian
Tax Rules on International Artists
having a dissuasive effect on
Artists willing to perform in
Canada?

Possible Administrative Relief

- The Canadian Government's 2015 Budget tabled amendments to the Income Tax Act that would allow Non-Resident Artists to not have to file Regulation 102 Waivers for their United States Artist staff earning less than \$ 15,000.00 CAN in the calendar year, or for any Treaty Country Support Staff. The Non-Resident Artists would also no longer be required to file T4 Information Returns forms for these staff.
- Draft Legislation to support this initiative was created at the of July, just prior to the Federal Election Campaign. It is currently not clear if and when this Legislation will be adopted by the new Liberal Government.

Prepared By:



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514-369-4412
info@taxwaivers.ca