

July 10, 2018

The Honourable Mélanie Joly  
Minister of Canadian Heritage  
15 Eddy Street  
Gatineau, Quebec K1A 0M5

Subject: Non-resident taxation and the Creative Export Strategy

Dear Minister,

We are collectively writing on behalf of the Performing Arts Tax Working Group to congratulate you on the launch of the Creative Export Strategy and to bring to your attention fiscal barriers that are bound to impede this strategy.

At the launch of the Creative Export Strategy, on June 26, you rightfully claimed the strategy will “improve [creative industries’] competitiveness and ensure their long-term success”. In the live performance domain, the Creative Export Strategy appears poised to achieve just that:

- Cultural and trade officers were hired in key Canadian missions abroad;
- The Canada-China joint committee on culture was struck to open up new opportunities in the vast Chinese market;
- Trade missions have been and will be showcasing Canadian performers abroad;
- New funds have been allocated to MusicAction and FACTOR through the Canada Music Fund to support international touring and showcasing of artists, marketing, business development, and buyers’ missions to Canada;
- New funds have been allocated to the Canada Arts Presentation Fund to support the in-coming participation of delegations of international arts presenters and stakeholders at key Canadian festivals and arts events, as well as the outgoing participation of delegations of Canadian arts presenters at key international arts events.

One could definitely qualify this as a comprehensive and sound strategy. But what guarantee is there that it will improve competitiveness and ensure long-term success if legal frameworks related to artist mobility – and to international taxation in particular – aren’t considered?

Back in 2015 and 2016, our Performing Arts Tax Working Group sent you letters indicating that “taxation of non-residents is creating systemic barriers to cultural exchanges between Canada and other countries”. As we pointed out back then, the taxation regime of non-resident entertainers has become so cumbersome that it impedes the regular business of the Canadian live performance sector. According to our Working Group’s estimation, the costs of compliance to non-resident

taxation for non-resident performing artists are up to 10 times greater than the income tax revenues for the Canada Revenue Agency. Such costs are inevitably passed on to Canadian presenting organizations, one way or another (that is, when foreign artists still agree to tour in Canada).

Over more than three years, the Performing Arts Tax Working Group has sought administrative, legal and treaty-level relief to the intricacies of non-resident taxation with the Canada Revenue Agency and with Finance Canada. While we have been able to establish a good dialogue with the Canada Revenue Agency, we have been at best able to receive an acknowledgement of receipt from Finance Canada.

Our dialogue with the Canada Revenue Agency recently led to the introduction of a simplified income tax process for non-resident artists (known as R105-S). This simplified process brought about a few administrative reliefs, but the scope of this new policy is so narrow that it will only benefit 10 to 15 % of touring artists coming from the United States. Artists residing in any other country targeted by Canada's export efforts will remain unaffected.

Through our work with the Canada Revenue Agency, we have become acutely aware that the source of the problems with non-resident taxation is to be found and remedied in Canada's tax treaties, which fall under the purview of Finance Canada.

International taxation is particularly stringent in the live performance sector, because non-resident artists are subject to exceptional rules in the OECD Model Tax Convention (after which Canada's tax treaties are modeled). "Article 17" of the OECD Model Tax Convention states that entertainers and sportspersons need to pay income tax in the country of performance, regardless of the general rules for companies, self-employed persons or employees. This means that income tax must be withheld by Canadian presenters on fees paid to a non-resident performing arts companies, and that the non-resident company must also withhold tax on payments it makes to its individual performers (and vice-versa for Canadian artists touring abroad). Along with this come the administrative intricacies of identification, T4's and tax returns.

Several countries, including Canada and the United States, have introduced exclusions to limit the unintended negative effects of Article 17. But such limits aren't systematically included in each of Canada's tax treaties and non-resident taxation remains a significant administrative obstacle to trade in the performing arts.

The Performing Arts Tax Working Group has prepared and submitted to the Minister of Finance a White Paper on International Taxation of Entertainers (attached). This White Paper highlights options and exclusions that should be considered by the government of Canada and its trade partners in the negotiation of new tax treaties or in the renegotiation of existing treaties. In addition, the White Paper suggests that the government of Canada could take advantage of cultural diplomacy initiatives, such as the Canada-China Joint Committee on Culture, to pilot potential changes without re-opening tax treaties.

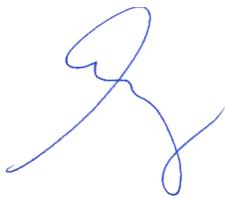
An effective, efficient and smart non-resident taxation regime is needed to adequately support rather than hinder the federal government's Creative Export Strategy.

We trust that we can count on the assistance of your office in conveying to the Minister of Finance the necessity and urgency to consider the White Paper on International Taxation of Entertainers and to seize every opportunity to implement its recommendations.

Sincerely,



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Martin Roy  
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**Members of the Performing Arts Tax Working Group:**

Arts Commons

BAM! Baird Artists Management

Canadian Arts Presenting Association / Association canadienne des organisme artistiques

Canadian Dance Assembly

Canadian Independent Music Association

Cusson Management

Danse Danse

East Coast Music Association

Eponymous

evenko

Festival international de Jazz de Montréal

Festival Transamériques

Festivals and Major Events Canada (FAME)

Indie Montréal

Kokoro Dance / Vancouver International Dance Festival

Les Grands Ballets Canadiens de Montréal

Lula Music and Arts Centre

Montréal, arts interculturels

Music Canada Live

National Arts Centre

North American Performing Arts Managers and Agents

Regroupement des événements majeurs internationaux (RÉMI)

Small World Music Society

The CanDance Network

TOHU et Montréal Complètement Cirque