

March 16, 2015

The Honourable Kerry-Lynne D. Findlay, P.C.
Minister of National Revenue
House of Commons
Ottawa, Ontario K1A 0A6

The Honourable Joe Oliver, P.C.
Minister of Finance
House of Commons
Ottawa, Ontario K1A 0A6

Re: Regulation 105 withholding

Dear Ministers,

We are writing as a collective of seventeen performing arts organizations representing more than 1,000 Canadian stakeholders in order to explore opportunities of improving the administration of Regulation 105 withholding and waiver application. We believe it is possible to find efficiencies for Canadian payers, non-resident performers and the Canada Revenue Agency, without increasing the risk of foregoing tax payable in Canada. This letter follows earlier correspondence sent to the CRA and to the government by Festival International de Jazz de Montréal, by Murray Rankin, Member of Parliament for Victoria, and by Regroupement des événements majeurs internationaux.

Major performing arts organizations in Canada regularly contract for the services of non-resident artists and companies, in addition to engaging a large number of artists residing in Canada. For theatre, dance, or opera companies, guest appearance contracts are often part of reciprocity agreements that make it possible for Canadian artists to be presented abroad. In other circumstances, artistic practices based on a particular culture require a company to hire non-resident specialists to provide training to Canadian artists. For major performing arts centres and festivals, presenting marquee foreign artists is part of their strategy to attract broader Canadian audiences as well as international cultural tourists. Contracting non-resident artists is a lever that allows the performing arts industry to create more employment and growth opportunities, both on Canadian and international stages.

In recent years, however, increases in standards for compliance and restructuring at Canada Revenue Agency have rendered the administration of Regulation 105 cumbersome to the point of impeding these business practices by Canadian performing arts organizations: a large number of waivers are being denied for failing to meet the increased standards, waiver processing times have nearly doubled, and many foreign artists and companies are no longer interested in touring to Canada or are asking the Canadian engager to pay a higher fee to offset the tax withheld. As an example, the Bolshoi Ballet has recently written Les Grands Ballets Canadiens stating that the company will no longer tour to Canada because of R105.

Our working group has met to identify all issues pertaining to Regulation 105 as applied to performing arts engagements, and to define a series of immediate and longer-term recommendations to the administration of Regulation 105. Here are our priority recommendations for your consideration.

- 1. Develop Performing Arts Specific Guidelines**
- 2. Exempt Deposits from Withholding**
- 3. Streamline and Centralize the Application Process by Using Electronic Means of Submission and Communication**
- 4. Increase and Index Waiver Threshold**

These recommendations are detailed in a short report accompanying this letter.

We would appreciate the opportunity to discuss these and other recommendations with key staff from your office, from the Non-Resident Advisory Services Section of the Canada Revenue Agency, and from the Tax Policy Branch of Finance Canada. We would hope that an initial meeting could take place by the month of June so any action items may be undertaken before the summer.

Sincerely,

Paul Gravett



President, CAPACOA

On behalf of:

'Arts Common Presents' / Arts Commons Programming

Canadian Dance Assembly

Canadian Independent Music Association

CanDance Network

Danse Danse

East Coast Music Association

Eponymous

Festival International de Jazz de Montréal

Festivals and Major Events Canada

Les Grands Ballets Canadiens de Montréal

Lula Music and Arts Centre

National Arts Centre

North American Performing Arts Managers and Agents

Music Canada Live

Regroupement des événements majeurs internationaux

Sunny Artist Management

c.c.: Steve Gillis, Manager, Non-Resident Advisory Services Section, Canada Revenue Agency

Detailed Recommendations by the Performing Arts Tax Working Group

These recommendations were defined by members of the Performing Arts Working Group in a series of meetings held since March 2014. The intent behind these recommendations is to achieve both greater efficiency and better risk management in the administration of R105. As general guidelines, the working group sought to ensure that efforts to protect the fisc are commensurate with the actual risks of foregoing taxation and do not unnecessarily impede the productivity of performing arts organization. This list of recommendations is non-exhaustive. It only includes those recommendations which were considered to be the highest priorities by the working group at the current time.

1 – Develop Performing Arts Specific Guidelines

Many performing arts organizations and non-resident artists and companies are finding it difficult to access information on how to successfully apply for a Regulation 105 Waiver, and/or an Individual Tax Number (T1261) and/or a Business Number (RC1), all of which are required as part of the waiver application process. Similarly, CRA officers could benefit from having a better knowledge of the specificities of performing arts business practices. We therefore recommend the joint development, by the CRA and the industry, of performing arts guidelines addressing both risks and processes, and intended for both CRA officers and applicants. We believe this could go a long way in increasing the success rates of R105, T1261, and RC1 applications, thereby enhancing the efficiency of the process as well as the service standards. Moreover, if these guidelines are developed using a “Small Business Lens”, as per the *Red Tape Reduction Action Plan*, we may be able to identify new efficiencies over the course of the process.

It should be noted that similar industry-specific guidelines and approaches exist at Citizenship and Immigration Canada, in regards to work permits requirements for foreign performing artists (R186(g) of the *Immigration and Refugee Protection Regulations*), and also at the CRA, for the Film Industry, specifically in regards to the administration of R105.

2 – Exempt Deposits from Withholding

It is a common practice in the live performance industry for the agent representing the contracted artist or company to require that a deposit be paid at the time of signing the engagement contract. Deposits are commonly paid as a security for the performance of the contract rather than for actual services rendered in Canada. In fact, it is not uncommon for a deposit to be paid a year before the actual services are rendered. This creates situations where a non-resident artist or company may be required to file a Canadian tax return in a fiscal year where no services have been rendered in Canada. Requiring withholding on such deposits effectively deprives the non-resident artist or company of the opportunity to apply a waiver, since the deposit is to be paid before a waiver can even be filed. Finally, these deposits usually do not exceed 50% of the total fees to be paid. This makes it possible for Canadian payers to withhold the full 15% on the final payment. We consequently believe that withholding on performing arts deposits is unnecessary and should be exempted.

3 – Streamline and Centralize the Application Process by Using Electronic Means of Submission and Communication

In its last Pre-budget Report, the Standing Committee on Finance recommended: “In addition to its focus on reducing regulation, the government should direct efforts to modernization, such as reducing the use of paper and utilizing the benefits of technology and digital solutions.” Yet, at the present time, R105, T1261, and RC1 forms and support documentation must be filled in paper form – and at different mailing addresses. Some welcome changes were piloted in the Montreal Office late last spring, by which some forms can be emailed (R-105) and all original forms can be mailed to the regional office. Moreover, applicants do not receive any acknowledgement of receipt and they consequently do not have any reference number with which they can trace the progress of their applications. We believe that a single-window online service for electronic submission of all forms and supporting documentation, including scanned documents in place of certified documents, would resolve all of these issues. It would also expedite the reception, treatment and response processes – resulting in much faster service standards.

4 – Increase and Index Waiver Threshold

Under the current regulation, if a performing artist from a treaty-protected country (other than the USA) earns less than \$5,000 in one calendar year including expenses paid on his/her behalf, then a waiver will be granted on earnings for services rendered. This exemption threshold was introduced three decades ago in order to reduce the incidence of second-level withholding tax (withholding of a non-resident corporation and of its non-resident employees) and to avoid double taxation (taxation of the same revenue by two countries). This threshold has never been revised for inflation, and the vast majority of non-resident artists who do any touring in Canada find themselves in situations where their earnings may easily exceed \$5,000. As a consequence, second-level withholding is becoming the norm and we have little guarantee that double taxation isn't happening. One could also argue that such a low threshold represents higher administrative expenses than potential lost revenues. This is why we recommend that this threshold be significantly increased and that it then be indexed on a regular basis to account for inflation. An increase to \$15,000, as an example, would match the exemption threshold currently in place for performing artists from the USA and this would simplify the R105 waiver guidelines.

Report prepared by:

Frédéric Julien

Project manager

Canadian Arts Presenting Association / Association canadienne des organismes artistiques (CAPACOA)

On behalf of the Performing Arts Tax Working Group

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