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Simplifying and Modernizing International Taxation

Brief to the Standing Committee on Finance

Pre-Budget Consultations in Advance of the 2018 Budget

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“When a company goes on tour, the work evolves with each performance. And when they come back, you can really see that the piece has changed. That tells us something about the value of touring art and having cultural exchanges. That’s what I find the most beautiful in what I do.”

Menno Plukker, touring agent who brought to international fame Canadian artists such as Robert Lepage, Louise Lecavalier and Crystal Pite, CAPACOA @ CINARS, November 2016

Executive Summary

The Canadian non-resident taxation regime is particularly cumbersome and ineffective in the performing arts. It interferes with the regular business activities of Canadian performing arts organization and impedes their productivity.

The Performing Arts Tax Working Group, an ad hoc coalition representing all major performing arts organizations and festivals in Canada, is bringing forward nine recommendations to simplify and to modernize the non-resident taxation process.

CAPACOA Submissions

In addition to this pre-budget brief, submitted on behalf of the Performing Arts Tax Working Group, CAPACOA also participated in the development of another pre-budget brief with the Canadian Arts Coalition. For the sake of brevity, the Canadian Arts Coalition's five recommendations are not reiterated in this submission. CAPACOA nonetheless wishes to express its support to each of the Canadian Arts Coalition's recommendations.

Simplifying and Modernizing International Taxation

Background

Canadian performing arts organizations present annually more than 80,000 touring performances, roughly 30% of which are from non-resident (i.e. foreign) artists and companies (referred to as "artists" in this brief).ⁱ

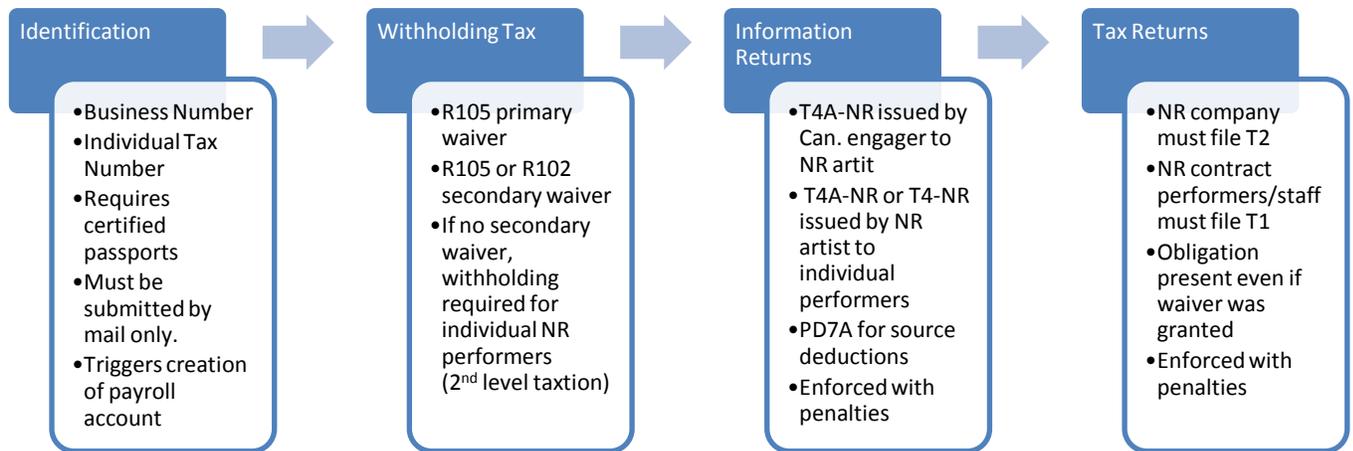
Every time a Canadian performing arts organization contracts a non-resident artist, intricate international taxation laws (Part XIII of the *Income Tax Act*) and regulations (R105, R102) apply. This regime is very complex and was decried in 2008 by the *Advisory Panel on Canada's System of International Taxation*ⁱⁱ, as well as by various associations such as the Tax Executive Institute and the Canadian Institute of Chartered Accountants during the 2012 Pre-Budget Consultation.

Since then, no improvement has been made; to the contrary. Efforts to streamline non-resident taxation have in fact resulted in an increase in standards for compliance and in excessive administrative measures: a large number of withholding waivers are being denied for failing to meet the increased standards, waiver processing times have increased, non-resident artists do not understand the difference between the withholding tax and the final tax liability, and a growing number of non-resident artists are assessed penalties for not filing information or tax returns (even in instances where no tax is owed). Non-resident taxation for the performing arts is now so complex and cumbersome that Canadian arts organizations must either provide thorough guidance to non-resident artists throughout the process

or else refer them to private consultancies, whose fees are ultimately passed on to the Canadian engagers by the non-residents artists. In the face of these challenges, some non-resident artists no longer accept to tour in Canada, while others occasionally decide to cancel their engagement upon realizing that the costs of complying with taxation are greater than the profits they can hope to derive from their tour. According to an economic model developed by the Performing Arts Tax Working Group, it is estimated that the cost of compliance could be up to 10 times greater than the potential tax revenues for the Canada Revenue Agency.ⁱⁱⁱ

This situation has a direct and significant impact on the productivity of Canadian performing arts organizations.

The Non-Resident Taxation Cycle



An infographic was developed by the Working Group to explain this cycle to non-resident artists. It is available in [English](#) and [French](#).

A “Special” Treatment for Artists

International taxation is particularly stringent in the performing arts, because non-resident artists are subject to special rules. International tax treaties state that artists need to pay income tax in the country of performance, regardless of the general protections against double taxation for businesses, self-employed persons or employees (this is known as the Artistes and Sportspersons Article, generally “Article 17”, in the OECD Model Tax Treaty). This means that a non-resident artist/company is subject to withholding by the Canadian engager on their primary payments, and must also withhold tax on payments they make to individual non-resident performers. It also means that they can’t benefit from the administrative relief provided to non-resident corporations as part of the employer certification program.

Remedying the Situation in Nine Recommendations

The Performing Arts Tax Working Group, a collective of arts organizations, was assembled in March 2014 to examine ways to achieve greater efficiency and better risk management in the administration of taxation of non-resident artists.

Since then, the Working Group developed nine specific recommendations to simplify and modernize non-resident taxation at the administrative, legislative and treaty level.

Five recommendations address pre-performance activities (the waiver process):

- 1 – Develop Performing Arts Specific Guidelines
- 2 – Exempt Deposits from Withholding
- 3 – Streamline and Simplify the Individual Tax Number (ITN) Process
- 4 – Streamline and Centralize the Application Process by Using Electronic Means of Submission and Communication
- 5 – Increase and Index the *De Minimis* Threshold for Waivers

Three recommendations address post-performance activities (information return and tax return processes):

- 6 – Introduce an Information Return Exemption Program Modeled on the Non-Resident Employer Certification Program
- 7 – Adopt a Phased-In Approach in the Enforcement of Penalties for late filing of T4A-NR, T4-NR, T1, and T2 Returns of Non-Residents
- 8 – Introduce a *De Minimis* Exemption to the Tax Return Obligation

One recommendation offers overarching considerations at the treaty level:

- 9 – Integrate Exclusions from the Commentary on Article 17 of the 2014 OECD Model Tax Convention into Canada's Tax Treaties

Some of these recommendations, such as “exempt deposits from withholding” or “streamline and simplify the ITN process” would only require administrative changes and could be implemented fairly quickly. Others, such as “using electronic means of submission” require the development of a secure technological infrastructure but, regardless of the costs that it entails, it is no longer possible to justify the exclusive reliance on hard copy forms in 2017.

The recommendations pertaining to pre-performance activities do not represent any cost at all in terms of lost tax revenues: these recommendations require changes to administrative processes ahead of the

determination of a tax liability. The costs of recommendations pertaining to information returns and tax returns have not been estimated yet, because of the lack of access to Canada Revenue Agency data.

These recommendations are presented in details in a distinct [recommendation brief](#).^{iv}

Bringing Everyone at the Table

Even though these recommendations have been shared with the government on multiple occasions since March 2015, no progress has been made to date with regards to any of the nine recommendations.

Representatives of the Canada Revenue Agency (waiver officers only) have joined the Working Group in March 2016, and have since attended a few meetings of the group. However, more parties need to be brought into the discussion: CRA units responsible for other parts of the non-resident taxation process, treaty units at both CRA and Finance Canada, and the Finance Canada unit responsible for the *Income Tax Act*. There also needs to be a clear political signal, including from the Standing Committee on Finance, that simplifying non-resident taxation is a necessity and a priority.

It will soon be 10 years since the *Advisory Panel on Canada's System of International Taxation*. It is about time we truly streamline Canada's international taxation regime.

We sincerely hope that the Standing Committee on Finance can add its voice to the dozens of arts organizations and associations who recommend a simplification and a modernization of non-resident taxation in the performing arts. Moreover, we would welcome the opportunity to provide further information and examples during the Standing Committee on Finance's hearings.

About The Performing Arts Tax Working Group and CAPACOA

The Performing Arts Tax Working Group is a collective of 25 performing arts organizations and associations representing more than 1,000 live performance stakeholders in Canada, including all major festivals and presenters in the country. It was assembled in 2014 to examine ways to achieve greater efficiency and better risk management in the administration of taxation of non-resident entertainers. CAPACOA serves as a facilitator for the group.

The complete list of Working Group members can be found here:

<http://capacoa.ca/en/key-issues/taxation/working-group>

The Canadian Arts Presenting Association/l'Association canadienne des organismes artistiques (CAPACOA) serves the performing arts touring and presenting community through its commitment to integrate the performing arts into the lives of all Canadians. CAPACOA represents 130 professional for-profit and not-for-profit presenters, festivals, presenter networks, artistic companies, agents, managers and other stakeholders working across the presenting and touring sector in Canada. Collectively, our network members represent nearly 2000 professional and volunteer organizations, associations and companies.

According to Statistics Canada, the live performance domain served by CAPACOA has a GDP of \$2.5 billion and provides employment to 55,000 Canadians.^v

ⁱ CAPACOA, [Trends Among Recipients of the Canada Arts Presentation Fund, 2003-2012, 2015](#).

ⁱⁱ “Canada’s rules for international taxation are some of the most complex provisions of the Income Tax Act. Complying with these rules imposes a significant burden not only on Canadian businesses investing abroad and foreign investors doing business in Canada, but also on the CRA, which is responsible for administering the entire Act, including Canada’s international tax rules. Given the nature of cross-border transactions and the sophistication of modern businesses, some complexity is inevitable. Even still, every effort should be made to minimize the compliance burden imposed on taxpayers in the international arena.”
[Enhancing Canada’s International Tax Advantage: A Consultation Paper Issued by the Advisory Panel on Canada’s System of International Taxation, April 2008](#).

ⁱⁱⁱ CAPACOA, [“Non-Resident Taxation: Costs of Compliance Outweigh Tax Revenues”](#), April 7, 2017.

^{iv} The latest iteration of the recommendation brief was published on [December 13, 2016](#), and can be downloaded at: http://capacoa.ca/documents/services/advocacy/161209_Workinggroup_recommendations_v3.pdf

^v Statistics Canada, [Provincial and Territorial Culture Indicators, 2016](#).