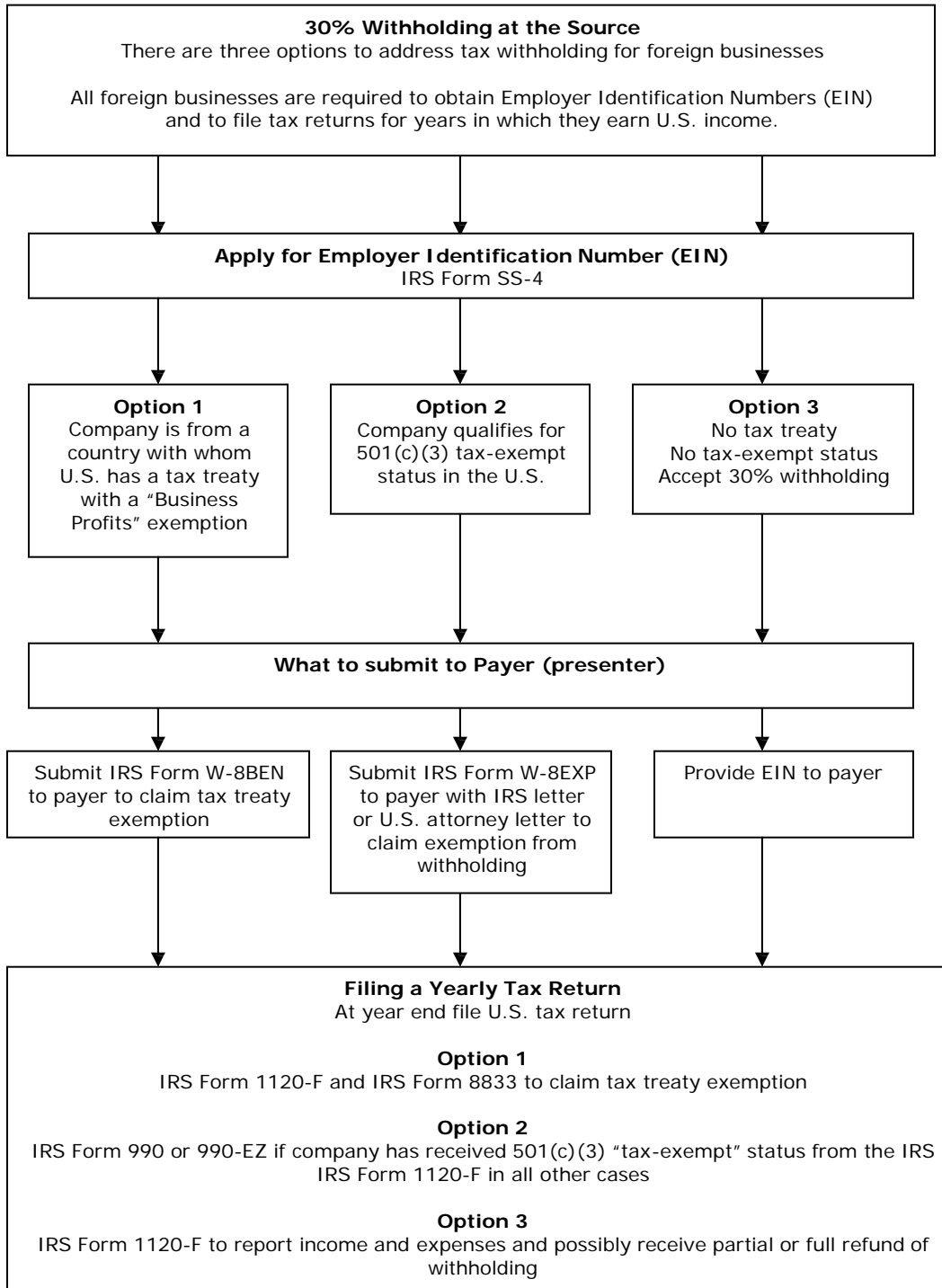


# U.S.A. Taxes for Foreign Artists – Businesses



## **U.S.A. Taxes for Foreign Artists – Businesses....the basics**

### **30% Withholding at the Source**

As with individuals, foreign businesses are also subject to the 30% withholding of gross fees. In order to qualify for an exemption to withholding as a business, one must be recognized as such by the IRS. A foreign performing arts group cannot simply set up a foreign or domestic corporation to qualify as a business for claiming a tax treaty exemption. The IRS looks at who is the beneficial owner of the income. The IRS looks at whether or not the performers in a group "participate in the profits" of the U.S. performances. For example, a Canadian musical ensemble is incorporated in Canada. The Canadian corporation pays all the tour expenses, and after all the expenses, the performers split whatever profit/loss is left over. In this case, the performers are "participating in the profits". If, on the other hand, the performers are paid a set fee or salary and the fee or salary are not affected by the profit/loss of the U.S. performances, the performers are not "participating in the profits", and the musical ensemble is treated as a "business" for U.S. tax purposes.

### **Apply for Employer Identification Number (EIN)**

An Employee Identification Number (EIN) is required for all related IRS withholding and taxation forms. To obtain an EIN, the foreign company completes and files IRS Form SS-4. The form may be submitted to the IRS by fax or mail – the option of filing online is only available to U.S. businesses. It is relatively quick and simple and the EIN is usually received in a few days. A foreign company may also apply for an EIN by telephone. An individual who has signing authority for the company should complete Form SS-4 before calling the IRS. Once on the phone with the IRS, the company will fax in the completed form, and the IRS agent will go over the form while on the phone and assign an EIN on the spot.

### **Option 1. Business Profits exemption**

Most, though not all, U.S. tax treaties include a "business profits" provision that exempts money paid to a foreign business from U.S. tax. If the foreign performing arts company is considered a business by the IRS, and the company has no "fixed base" in the U.S. then the entire amount paid is exempt from withholding.

Note that although payments to the foreign company may be tax-exempt, the foreign company is still required to withhold U.S. taxes on its payments to its performers as employees or as independent contractors. For example, if payments to a Canadian theatre company for its U.S. performances are exempt from U.S. tax pursuant to the U.S./Canada tax treaty, the theatre company nonetheless is required to withhold U.S. taxes from its payments to its actors. Withholding from U.S. payments to employees applies at graduated rates (10%-35%) as determined by specific IRS tables and procedures, rather than the 30% withholding.

### **Option 2. Company qualifies for 501(c)(3) tax-exempt status in the U.S.**

If a foreign organization has "tax-exempt" status in its own country, it does not automatically qualify the business for the same status in the U.S.. There are two ways to qualify:

1. The organization applies for and receives from the IRS a determination letter that their organization qualifies for 501(c)(3) status in the U.S.
2. The organization obtains a letter from a U.S. attorney certifying that the group would qualify for 501(c)(3) status with the IRS if they applied. Only a U.S. attorney can provide this letter.

Most foreign tax-exempt organizations will qualify for a "Business Profits" exemption if from a country with whom the U.S. has a tax treaty.

As with Option 1, the foreign company is still required to withhold U.S. taxes on its payments to its performers as employees or as independent contractors.

### **Option 3. No tax treaty, no tax-exempt status - accept 30% withholding**

If the foreign organization comes from a country that has no tax treaty with the U.S., nor has tax-exempt status, the organization must accept the 30% withholding. Amounts paid may be partially or fully refunded following the filing of the year's tax return.

## **What to submit to Payer (presenter)**

### Option 1

Submit IRS Form W-8BEN to the payer to claim tax treaty exemption. The form is completed by the foreign business and submitted to the U.S. payer or U.S. manager – anyone who is making payment to the foreign business. Form W-8BEN is not submitted to the IRS. The form is retained by the presenter, and is presented to the IRS only in the event that the IRS questions the presenter as to why taxes were not withheld at time of payment.

### Option 2

Submit IRS Form W-8EXP to the payer with IRS determination letter or U.S. attorney letter to claim exemption from withholding. Form W-8EXP is not submitted to the IRS. The form is retained by the presenter, and is presented to the IRS only in the event that the IRS questions the presenter as to why taxes were not withheld at time of payment.

### Option 3

Provide payer with EIN number. Payer will remit 30% withholding to the IRS.

## **Filing a Yearly Tax Return**

All businesses earning income in the U.S., regardless of tax treaties, are required to file year end tax returns. For foreign companies with no office or place of business in the U.S., IRS Form 1120-F is due on the 15<sup>th</sup> day of the sixth month following the end of the company's tax year. IRS Form 990 is due on the 15<sup>th</sup> day of the fifth month following the end of the company's accounting year.

### Option 1

File IRS Form 1120-F and IRS Form 8833 to claim tax treaty exemption

### Option 2

File IRS Form 990 or 990-EZ if company has received 501(c)(3) "tax-exempt" status from the IRS.  
File IRS Form 1120-F in all other cases.

### Option 3

File IRS Form 1120-F to report income and expenses and possibly receive partial or full refund of withholding

web links:

How to apply for an EIN: <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/How-to-Apply-for-an-EIN>

For all other forms go to: <http://apps.irs.gov/app/picklist/list/formsPublications.html> and enter the Form name in the Find box