

U.S.A. Taxes for Foreign Artists - Individuals...the basics

30% Withholding at the Source
U.S. presenters are required to withhold 30% of gross fees unless there an exemption from withholding.
There are four options to address tax withholding.

In addition to the withholding at the source, all individual(s) are required to have or obtain a taxpayer identification number (either a SSN or ITIN) and to file tax returns for years in which they earn U.S. income.

Option 1
Obtain a Central Withholding Agreement (CWA)

Apply to the Internal Revenue Service (IRS) at least 45 days before first US engagement.
If applicable must be current, or get current, with US Tax returns – if you cannot you must use Option 2.

Option 2
Accept the 30% withholding

Option 3
Full Tax Treaty Exemption
** see note below **

Submit IRS Form 8233 to payer. Must have valid SSN or ITIN to claim exemption – if not must use Option 2.

Option 4
Employer / Employee Relationship

Standard employee withholding applies (generally 10% to 35%)

Applying for a Taxpayer Identification Number (SSN or ITIN)
A taxpayer identification number is needed for all related IRS withholding and taxation forms. While in the U.S. apply for a Social Security Number (SSN). If you are rejected for a SSN you must submit Form W-7 to request an Individual Taxpayer Identification Number (ITIN) with tax return.

Filing a Yearly Tax Return
At year end file U.S. tax return

Options 1 & 2
IRS Form 1040NR to report U.S. income and either Schedule C to deduct expenses or IRS Form 8833 if claiming a treaty based tax return exemption

Option 3
IRS Form 1040NR and Form 8233 to report U.S. income and claim full tax treaty exemption.

Option 4
There must be a tax treaty with the foreign country.
If so the employee files Form 1040NR and Form 8833 to claim the tax treaty.

*** Note ***
Option 3 exemption is currently limited to artists from the following countries:
Armenia, Azerbaijan, Belarus, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Poland, Russia, Tajikistan, Turkmenistan, and Uzbekistan

U.S.A. Taxes for Foreign Artists – Individuals...the basics

The information given here is of a broad nature and pertains to individual foreign artists (including members of ensembles) who are non-residents of the U.S. providing services as a “guest artist”. The objective is to familiarize you with key terms and provide basic knowledge of the withholding and taxation requirements for foreign artists working in the U.S..

It is important to note the difference between withholding and taxation. Withholding is the way in which the Internal Revenue Service (IRS) is assured of payment of any taxes due and taxation is the actual tax (if any) owed. If there is withholding, the artist may receive a refund when filing a tax return for that calendar year.

The withholding and taxation for a particular artist is dependent on his/her country of residence, the amount earned in the U.S. and whether the artist, for tax purposes, is considered an “individual” or a “business”. The following information pertains to individuals (including individual members of an ensemble).

See also the section: *U.S.A. Taxes for Foreign Artists – Businesses – The Basics*

30% Withholding at the Source

U.S. presenters, by law, are required to withhold 30% of the gross income being paid an artist at the source unless there is an exemption or reduction from withholding. This is the IRS’ way of being sure it collects any taxes that may be owed by foreign artists. There are four (4) options available to reduce or eliminate the withholding tax at the source.

Option 1. Obtain a Central Withholding Agreement (CWA)

For the majority of cases, this is the vehicle for individuals and individual members of ensembles. It is not for businesses. A CWA is a contract between the IRS, the artist and a designated withholding agent. The withholding agent may be the artist’s manager or agent, accountant, presenter or anyone who is independent of the artist and acceptable to the artist and the IRS. One should apply for the CWA at least 45 days prior to the first U.S. performance, sooner if possible. Required materials for a CWA request include:

- IRS Form 13930 – application for CWA (artist and withholding agent contact information)
- tour/performance budget: income and expense schedules and net
- performance contracts
- itinerary
- Either IRS Form 2848 (Power of Attorney) or IRS Form 8821 – Tax Information Authorization (authorization for the withholding agent to file a CWA on the individual’s behalf)

The IRS assigns an officer to the case who reviews the submitted materials and determines whether there is to be any withholding, and if so, the amount. The withholding agent must receive all tour/performance income, makes payments to the U.S. Treasury (if applicable) and files final report(s) to the IRS. While the withholding agent need not be U.S. based, he/she must have a U.S. bank account and be enrolled in the Electronic Federal Tax Payment System.

The budget submitted with the CWA application must show all projected income and expenses for the proposed tour or performance and the net to each individual(s). The IRS has become very strict with what it considers income and acceptable expenses. Income, aside from performance fees, may include projections on merchandizing, U.S. royalties from any source and complimentary tickets (unless for press). If per diems are paid to the artist(s), only 50% of the allowable per diems is allowed as an expense; the rest is considered income to the artist. A final accounting showing all actual income and expense must be sent to the IRS following the tour. Acceptable tour-related expenses include travel (or pro rata share if the U.S. performance dates are part of a larger tour), hotel, agency commissions, merchandizing costs (manufacture, shipping, royalties), administrative expenses (postage, phone), support personnel salaries, and visa fees.

If at the time of filing the CWA request additional performances have taken place during the same calendar year, information concerning these additional performances should be forwarded to the IRS, including the date, venue and fee for each performance, and whether or not any federal taxes were withheld.

If the CWA is granted, the withholding agent will receive the final CWA that the withholding agent and artist(s) must sign. The signed CWA is then sent to the IRS for final execution. The withholding agent will then send the fully executed CWA(s) to each presenter.

If touring the U.S. for the first time individuals and individual members of ensembles need not have a taxpayer identification number to apply for the CWA. However, while in the U.S. they must apply for a taxpayer identification number. Refer to Applying for a Taxpayer Identification Number (SSN or ITIN)

Individuals and individual members of ensembles who have toured the U.S. in the past must be current, or get current, on past federal tax returns before a CWA will be granted. In order to file a tax return the individual(s) must have a taxpayer identification number. Refer to Filing of Yearly Tax Return

Option 2. Accept the 30% Withholding

If, for whatever reason, an individual or individual members of an ensemble cannot become current with their yearly U.S. tax returns and, hence, cannot apply for a Central Withholding Agreement, the individual(s) will have to accept the 30% withholding.

While in the U.S. the individual(s) must apply for a taxpayer identification number. At the end of the year the individual(s) will file a tax return and, pending the net, will likely receive a partial or full refund on the 30% that was withheld.

Refer to:

Applying for a Taxpayer Identification Number (SSN or ITIN)
Filing of Yearly Tax Return

Option 3. Full Tax Treaty Exemption

The U.S. has tax treaties with approximately 66 foreign countries. These can be downloaded from the IRS website. If the country in which you reside has a tax treaty with the U.S., do not assume you are exempt from withholding, or taxation. There are only a very few treaties that exempt a foreign artist from withholding regardless of the amount the artist earns in the U.S.. And, even with these treaties, there may be other requirements, such as the artist not having a "fixed base" in the U.S., or being in the U.S. for a limited amount of time during the calendar year.

Option 3 is currently limited to artists from the following countries: Armenia, Azerbaijan, Belarus, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Moldova, Poland, Russia, Tajikistan, Turkmenistan, and Uzbekistan. If an individual(s) is from any of these countries they are exempt from all withholding and taxation. However, the individual(s) must have a valid taxpayer identification number to claim a treaty exemption. If they cannot obtain a valid number, they must accept Option 2. If the individual(s) does have a U.S. taxpayer identification number the individual(s) submits IRS Form 8233 to the U.S. presenter(s) (or whoever the U.S. payer is). Each U.S. payer must complete Part IV of the form and send to the IRS within 5 days of receipt. The exemption from withholding is effective beginning 10 days after the form is mailed to the IRS. Therefore, it is important to file these in a timely manner, well before first payment is to be made. Form 8233 is valid for the calendar year in which it is completed.

Many tax treaties place a cap on how much an artist may earn in another country before taxes are due in that country. For instance a Canadian artist can earn up to \$15,000.00 in a calendar year in the U.S. before any U.S. taxes are due. One dollar over that amount and the Canadian individual is subject to U.S. tax on the \$15,001.00. However, this income cap before taxation does not automatically exempt the individual(s) from withholding and a CWA must be applied for.

One must study each treaty carefully to determine if the foreign artist's income is subject to taxation, and, hence, subject to withholding. When studying a treaty, look for provisions concerning artists / entertainers specifically or, if no such provision exists in the treaty, "Independent Personal Services".

Refer to:

Applying for a Taxpayer Identification Number (SSN or ITIN)
Filing of Yearly Tax Return

Web links:

Tax Treaties: <http://www.irs.gov/Businesses/International-Businesses/United-States-Income-Tax-Treaties---A-to-Z>
Form 8233: <http://apps.irs.gov/app/picklist/list/formsPublications.html> (enter 8233 in the Find box)

Option 4. Employer / Employee Relationship

If an individual is an *employee* of a company (*employer*) the *employer* is required to withhold U.S. employment tax at graduated rates (10%-35%) as determined by specific IRS tables and procedures, rather than the 30% withholding.

Determining whether or not an individual is an *employee* or an *independent contractor* is a very fact-specific analysis that will vary from situation to situation. The IRS website includes a discussion of the factors to be considered in determining if an individual is an employee or an independent contractor, which may be found here: Independent Contractor (Self-Employed) or Employee?

As a general rule, individuals performing as "guest artists" are not considered employees, and an organization will not therefore be exempt from the NRA Withholding requirement under this category.

Refer to:

Applying for a Taxpayer Identification Number (SSN or ITIN)
Filing of Yearly Tax Return

web links:

Independent Contractor (Self-Employed) or Employee?: <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-%28Self-Employed%29-or-Employee%3F>

Applying for a Taxpayer Identification Number (SSN or ITIN)

A taxpayer identification number is required for all related IRS withholding and taxation forms.

The type of taxpayer identification number obtained is dependent on whether the artist is considered an "individual" or a "business". A foreign artist or group cannot simply set up a foreign or U.S. based company to claim a business tax treaty exemption. The Internal Revenue Service (IRS) looks at whether or not the artist or individuals in a group "participates in the profits" of the U.S. performances. For example - say a musical group from Quebec creates a corporation. They tour the U.S. and all tour related expenses are paid by the company and the net profit is then split between the individuals. These individuals have "participated in the profits". If, however, the musicians do not own the corporation and are paid a salary and said salary is not contingent on whether there is a profit or loss, the performers are treated as a business for tax purposes.

Individuals:

For individual artists and members of an ensemble (even if employees of a "business"), one needs to obtain either a Social Security Number (SSN) or an Individual Taxpayer Identification Number (ITIN). An individual cannot obtain an ITIN until the individual has applied for and been denied an SSN.

An individual is now required to present him or herself to a Social Security Administration (SSA) office (located in most USA towns and cities) and apply for a Social Security Number (SSN). However, the individual must be in the USA for at least 10 days prior to applying, and must have at least 14 days left on their I-94 Arrival/Departure cards. If the artist will not be in the USA for those 14 days – they should provide a US address where the card, or rejection letter, can be mailed.

To apply for a SSN the individual(s) must complete Form SS-5 and apply in person at a Social Security Administration (SSA) office in the U.S. Anyone with an "O" or "P" work visa is eligible for a SSN.

Only if the individual is denied a SSN can they then apply to the IRS for an Individual Tax ID Number (ITIN). This is done by filing a W-7 application for an ITIN number when filing tax return for the year. The rejection letter from the SSA must accompany the W-7 application – the IRS will not issue an ITIN without the SSA rejection letter. In addition, the W-7 must include:

- a copy of the passport that is certified by the government agency that issued it
- or 2 of the following - these documents must also be certified by the government agency that issued them:
- a current national ID card (that includes the individual's name, address, photograph, date of birth and expiration date)
 - a foreign voter registration card
 - a civil birth certificate

Once obtained, a SSN or ITIN lasts indefinitely.

web link:

Form SS-5: <http://www.ssa.gov/ssnumber/ss5.htm>

Filing of Yearly Tax Return

All individuals earning income in the U.S., regardless of tax treaties, are required to file year end tax returns. Tax returns for non-resident individuals (independent contractors) are due June 15 each year for the preceding year.

The following tax forms are to be used for Options 1-4:

Options 1 & 2

Form 1040-NR to report U.S. income and either Schedule C to deduct expenses or Form 8833 (enter 8833 in the Find box) to claim a treaty based tax return exemption, if one exists. If the country the individual is from does not have a tax treaty with the U.S., the individual will file a Schedule C. If the artist is eligible for a tax treaty exemption, the individual will file Form 8833 to claim the exemption on income earned.

Option 3

Form 1040-NR and Form 8833 to report U.S. income and claim tax treaty exemption.

Option 4

There must be a tax treaty with the foreign country. If so the employee files Form 1040-NR and Form 8833 to claim the tax treaty.

Web links:

for all IRS forms go to: <http://apps.irs.gov/app/picklist/list/formsInstructions.html> and enter the form name in the Find box