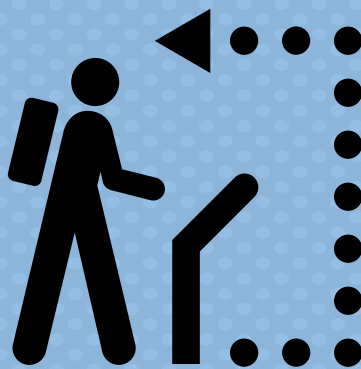


# BAM! Complete Guide to Withholding-Canada

by Robert Baird



#12

A guide to the 15% withholding  
for foreign artists

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## **Introduction**

**Withholding** is a payment on account of a non-resident's potential overall tax liability to Canada.

Every payer, including a non-resident payer, who makes a payment to a non-resident of Canada (individual(s) or businesses) for services provided in Canada, other than in the course of regular and continuous employment, must withhold and remit 15% of the gross amount paid. This is a requirement under the Canadian *Income Tax Act*. This withholding percentage applies to deposits, advances, commissions and settlements, as well.

The only alternative is for the non-resident to obtain a waiver, or a reduction in the withholding tax. If the payer has not obtained written notification from the Canada Revenue Agency (CRA), the required withholding tax is mandatory. Failure to deduct or remit the withholding tax may result in an assessment of the outstanding amount, plus interest and penalty against the payer.

Note also that it may not be economically feasible to take the time and trouble to file a waiver, or to pay a professional to have it done, depending upon the fees to be earned as a foreign artist in Canada. The prudent decision may be to accept the 15% withholding and then file a Canadian tax return the following year to claim a refund or utilize the Canadian withholding as a tax credit, if applicable, in your home country.

### **R-105 Waiver**

As noted above, a non-resident can apply for a waiver to waive or reduce the withholding tax. This waiver is usually referred to as a Regulation-105 or R-105 Waiver (based on subsection 105(1) of the Canadian Income Tax Act which authorizes the withholding process.) There are two types of waivers: treaty-based waivers which refer to tax treaties between Canada and other countries or income-expense waivers, based on submission of an income and expense statement.

### **R-102 Waiver**

Even if an R-105 Waiver application is successful, a non-resident may have to withhold on remuneration paid to other persons (such as sub-contractors and employees), either resident or non-resident, in respect of services provided in Canada or with respect to payments such as rental of equipment outside Canada for use in Canada. An R-102 Waiver Application can be filed in order to obtain a waiver or a reduction of this withholding tax. You can also file an R-102J Waiver Application

## Treaty-Based Waivers

A treaty-based waiver can be submitted by a non-resident of a country with whom Canada has a tax treaty. Canada has a number of [tax treaties](#) with other countries. This waiver is normally based on the absence of a fixed base or permanent establishment in Canada and a business profits exemption clause. Income must be paid to a non-resident corporation where the profits are not distributed to the artist. If the corporation is owned by the artist it is considered a “star corporation” and does not qualify. There are two ways to get a treaty-based waiver:

1. Where a corporation or other business entity has no permanent fixed establishment in Canada and qualifies for the Business Profits Exemption is a tax treaty with Canada;
2. Where a non-resident independent individual earns less than \$5,000 CAD for the current calendar year (including expenses reimbursed), unless the tax treaty specifies another amount. For example, a U.S artist can earn up to CAN\$15,000 tax-free; (Note that either a non-resident person’s presence in Canada must be less than 180 days for the current engagement or, if recurring, must be less than 240 days for the cumulative time in Canada as well.)

There are a number of exceptions where a waiver will not be allowed:

1. Residents of non-treaty countries who earn more than \$5,000 CAD in the calendar year;
2. Residents of countries whose treaty with Canada specifies a deemed permanent establishment;
3. U.S. resident individual artists earning in excess of CAN\$15,000 gross fees in Canada;
4. Non-resident artists, resident in a treaty country, other than the US;
5. Services of a repetitive nature where services performed by the non-resident person(s) are performed in the same or similar locations;
6. Limited Liability Corporations (LLC) in the U.S. unless treated as a corporation.

See [Guidelines for Treaty Based Waivers Involving Regulation 105 Withholding](#) for more information.

## Income-Expense Waivers

Waivers can also be obtained based on income and expenses. The income and expense waiver provides for net income being subjected to tax at graduated rates rather than the 15% withholding on gross revenue provided for in Regulation 105.

### Income

The income to be reported on the waiver application includes the contracted amount to be paid for the services to be performed in Canada, including amounts reimbursed or paid on the non-

residents behalf. In addition, any other amount to be paid to the non-resident should be identified. For example, in the music industry, additional income could include amounts paid to the non-resident person for providing the sound and lighting equipment for performances, guarantee fees, bonuses, or additional amounts to be paid based on ticket sales. Unless otherwise stated, all income and expense amounts for purposes of the I&E waiver process are in Canadian dollars. In cases where a non-resident has previously provided services in Canada in the same calendar year, the income earned and any taxes paid in relation to those previous services will be included in the current income and expense waiver calculation to determine the total tax payable amount.

## **Expenses**

The CRA will consider the reasonableness of the expenses claimed and determine whether a reduction will be applied. Expenses Items such as capital cost allowances and depreciation are not to be included as a deduction or expense for these waiver purposes. The following is a list of some of the most common expenses that may be claimed on an application (provided each is supported by documentation):

1. Professional service fees (e.g., lawyers, accountants, managers, agents) The expense claimed must be related to the current contract fee for services in Canada. If services are engaged on a retainer or other basis, then a breakdown must be provided. Contracts and documents supporting calculations must also be provided.
2. Accommodations (hotels) Claims will be allowed for every night the person is in Canada in respect of a service contract. Nights outside of the service contract will not qualify for a claim. Claims for costs above the standard amounts may be made if supported by documentation.
3. Meals Claims may be made for each full day the person is in Canada in connection with a service contract.
4. Travel to Canada and between places in Canada (by airplane, bus, or train) The cost of travel by airplane, bus, or train, one-way from the last stop outside of Canada to the location in Canada where the services will commence may be claimed as an expense. This applies to situations where a non-resident leaves Canada after the provision of services and does not return directly to his/her home base. If a non-resident is returning directly to their home base after providing services in Canada then the full cost of the travel to and from Canada will be allowed as an expense.
5. Mileage for personally owned or rented vehicles used in Canada An expense may be claimed for mileage one-way from the last stop outside of Canada to the location in Canada where the services will begin when a personally owned or rented vehicle is used. This applies to situations where a non-resident leaves Canada after the provision of services and does not return directly to his/her

home base. The expense for the return mileage may be claimed when the non-resident returns directly to his/her home base after providing services in Canada.

6. Equipment rental other than vehicles (rented in or outside of Canada for use in Canada) Note: equipment rented outside of Canada for use inside Canada may be subject to Part XIII tax withholding. For example, the withholding tax would apply on the proportion of the rental payment that applies to the time that the equipment is used in Canada. The non-resident waiver applicant would be required to make this withholding, remit the tax according to the applicable tax rate, and report this amount to the CRA by filing an NR4 information slip.
7. Remuneration paid to other persons providing services in Canada (e.g., resident or non-resident employees, or sub-contractors) Expenses for fees paid to other sub-contractors, or salaries paid to employees may be deducted as an expense. Note: Fees paid to another non-resident sub-contractor for services provided in Canada are subject to the Regulation 105 withholding. Salaries paid to resident or non-resident employees are subject to the Regulation 102 withholding.
8. Expenses incurred and documented by a payer, which will be deducted from non-resident's fees Note: These expenses would not include transportation, accommodation, or meal expenses deducted by the payer.
9. Other expenses may be allowable based on a case-by-case review

## Applying for a Waiver

### 1. Determine Your Status

You can apply for a tax waiver as an individual, a group of individuals working together as an unincorporated group, a partnership, or a corporation (incorporated company or Limited Liability Company – LLC). In general, the non-resident identified on the contract as being paid will be subject to the 15% withholding.

### 2. Get a Canadian tax number

**Corporations:** A corporation needs a business number (BN) to complete an R105 Waiver Application. Submit an RC-1 Request for a Business Number with the waiver application:

[Form RC1, Request for a Business Number \(BN\).](#)

Note – you must include your Certificate of Incorporation or Articles of Incorporation with this form and complete sections A1 to A4, E and F.

**Individuals:** For each non-resident coming to Canada, you must fill out an application for an individual Canadian tax number (ITN):

[T1261- Application for a Canada Revenue Agency Individual Tax Number \(ITN\) for Non-Residents](#)

Submit the T1261 form(s) with the waiver application.

Note- you must attach a photocopy of the appropriate supporting document. The document must be current and verify your identity. Documents that are photocopied MUST be certified by local officials such as doctors, lawyers, teachers or officials in a federal department. Photocopies that have not been certified will not be accepted. A certified copy is a photocopy of a document, which is then duly signed with a notation that this is a true copy of the original and the person certifying must indicate his or her official title. The signature must be an original signature, not a copy.

### **3. Complete the R-105 Waiver Application**

Canada Revenue Agency (CRA) will accept treaty-based waiver applications from: United States artists providing services in Canada who will earn less than \$15,000 CDN for the year, including reimbursable expenses or expenses paid on their behalf and/or non-U.S. artists who will be providing services in Canada. They will accept income-expense waiver applications from any non-resident. Note that the non-resident or the non-resident's authorized representative can make the waiver application. An individual or a business can appoint an authorized representative:

[Authorizing a Representative - Individual](#)

[Authorizing a Representative - Business](#)

(Note these forms are updated annually – check for the latest version at [Revenue Canada Forms and Publications](#))

Complete and sign the Waiver Application Form: [R105 Waiver Application](#)

### **4. Attach Required Documentation**

#### **a. Contracts and sub-contracts**

- A signed and complete copy of the most current service contract documenting the parties to the agreement (names and addresses), the dates and place(s) of services, the amounts to be paid and to whom, the schedule of payments, an outline of the work to be done and by whom. The contract must include the conditions under which the contract can be either voided or extended by one or both parties.
- Full disclosure and signed, complete copies of all sub-contracts and rental agreements between the applicant and any other person providing services in Canada, either to the applicant or on behalf of the applicant. "Any other person" includes other self-employed resident or non-resident sub-contractors, or the applicant's resident or non-resident employees.
- Settlement sheets (if applicable) for previous services provided in Canada within the previous three calendar years.
- Agreements documenting future services to be provided in Canada.

**b. Personnel Summary**

Include a list of personnel coming to Canada, including:

Name, Address, Date of Birth, ITN (if they have one) or identification number from their country, the amount they are being paid including payments on their behalf or being reimbursed to them (airfare, hotel, meals, per diems, etc.). Indicate if personnel is an employee or a sub-contractor.

**c. Income-Expense Summary**

Provide a budget for the work in Canada, including all payments and expenses.

**5. Complete an R102-R or R102-J Waiver Application (if applicable)**

Employees resident in countries having a tax treaty with Canada that will exempt an employee's income from tax in Canada can apply for a waiver of withholding tax by completing and filing Form R102-R, *Regulation 102 Waiver Application*, with the Canada Revenue Agency (CRA).

A completed and signed [Form R102-R](#) must be submitted 30 days before either the start of the employment services in Canada or the initial payment for the employment services. [R-102 Waiver Application](#)

If you are a resident of:

- The United States and are expected to earn no more than CAN \$10,000; or
- another country that has a tax treaty with Canada and are expected to earn no more than CAN \$5,000;

you and your employer may be eligible to apply for a joint employer/employee Regulation 102 waiver on withholding using Form R102-J, *Regulation 102 Waiver Application – Joint Employer/Employee* instead. [R-102J Waiver Application](#)

**For more information:** [Treaty based waivers involving Regulation 102 withholding](#)

**6. Submitting the Waiver Application**

Send your waiver form and all required attachments by mail or courier to the [tax services office or international waivers centre of expertise](#) that serves the area where you will perform the services. A waiver application should be submitted no later than 45 days before the first performance or payment. (Advances, commissions, etc.), If you are performing in multiple Canadian location, then it is customary to send your application to the Revenue Canada office nearest to the location of the first performance on the tour, or alternatively to the [International and Ottawa Tax Services Office](#).



## **7. Response from Revenue Canada**

Revenue Canada will inform you of their decision on the waiver application. If the waiver is approved, then Revenue Canada will inform each payer directly and there will be reduced or no withholding. If the waiver is not approved then Revenue Canada will inform the payers that they must withhold 15% from the fee.

## **Additional requirements for services rendered in Quebec**

Additional withholding of 9% of payments made is required by the Province of Quebec for services rendered in that province. As with the waiver applications above, you can apply for a waiver or a reduction in the 9% withholding tax. If you are an individual or an unincorporated group you can apply using [Quebec Form TP-1016](#). If you are a corporation, company association or non-profit you can apply using [Quebec Form CO-1016](#). Forms should be submitted 30 days before the first performance or payment. A payer not withholding the required 9% will be deemed to owe the tax withholding amount plus a 15% penalty. A person that makes payments to a person not resident in Canada must file a [Quebec RL-1 Slip](#).

## **Withholding, Remitting and Reporting Withholding Amounts**

If the payer has not obtained written notification from the Canada Revenue Agency (CRA), the required withholding tax is mandatory. Failure to deduct or remit an amount under Regulation 105 may result in an assessment of the outstanding amount, plus interest and penalty. Withholding taxes are to be remitted by the 15th of the month following the month in which the amounts were deducted or withheld.

All payers, resident or non-resident, must report to the CRA the payments to non-resident persons for services provided in Canada.

- These payments are to be reported on a [T4A-NR slip](#). This slip is to be completed and issued by the payer(s), regardless of the amount paid or the taxes withheld.
- All T4A-NR slips must be sent to the CRA by the payer together with a [T4A-NR Summary](#), by the last day of February of the year following the year in which the income was paid. Give the non-resident recipient a copy of this slip by the same date.

**For more information:**

**[Non-Resident Tax Withholding, Remitting and Reporting](#)**

**[T4A-NR – Payments to Non-Residents for Services Provided in Canada](#)**

## Tax Filing Requirements

Non-residents who have carried on business in Canada must file a Canadian income tax return to calculate their tax liability, to get a refund of any excess amounts that were withheld, or simply to confirm that they do not have any tax liability. Even in instances of unsuccessful waiver applications, the non-resident individuals or corporations are still expected to file a Canadian tax income return. Failing to file a return will result in penalties and will prevent the non-resident individuals or corporations from applying for waivers in the future. If a waiver was provided in a previous year and a return has not been filed for that year then, prior to any subsequent waiver being issued, the tax returns must be up-to-date.

1. For individuals, a [T1 – General – Income Tax and Benefit Return](#) for the province or territory where the individual earned the income must be filed by April 30 of the following year, or by June 15 of the following year if the individual is carrying on business in Canada. In either case, if the individual has a balance owing for the year, it must be paid on or before April 30 of the following year.
2. For a corporation, a [T2 Corporation Income Tax Return](#) must be filed within six months after the end of each tax year. The tax year of a corporation is its fiscal period.
3. For partnerships, each member of the partnership must file the appropriate income tax return (either T1 or T2) within the required time.

Send the returns to the following address:

International and Ottawa Tax Services Office

**Office/Courier address:**

2204 Walkley Road

Ottawa ON K1A 1A8 CANADA

**Mailing address:**

Post Office Box 9769, Station T

Ottawa ON K1G 3Y4 CANADA

[Additional information for non-resident individuals](#)

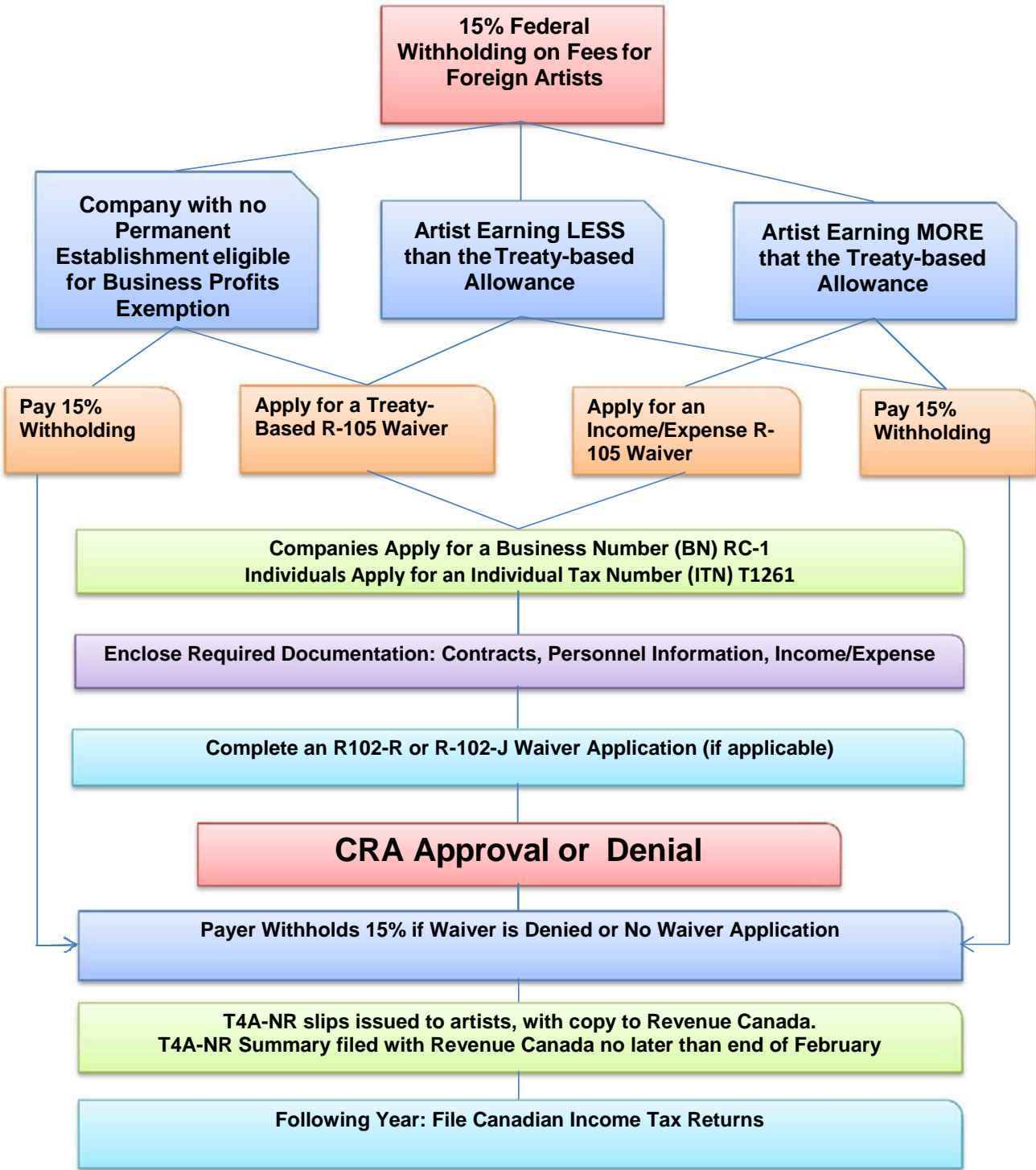
[Additional information for non-resident corporations](#)

Note that, if you have withholding assessed, and/or you pay additional taxes in Canada, you may be able to get a credit in the U.S for the tax you paid in Canada. The Tax Treaty between Canada and the U.S. allows you to use the T4A-NR tax slip to obtain a credit against your U.S. income, which may or may not be beneficial to you in terms of your United States tax situation.

### **More Information on Withholding:**

[Required Withholding from Amounts Paid to Non-Residents Providing Services in Canada](#)

# Summary Chart of Canadian withholding for Non-Resident Artists



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Robert Baird, President of Baird Artists Management, is now available for consultation and advice regarding Canadian and U.S. regulations and information for performers, agents/managers and performing arts venues. Mr. Baird has been in the performing arts for over fifty years and has had distinguished careers in education, publishing and musical theatre. He served on the Board of Directors (2008-2010) and was President (2011-2013) of the North American Performing Arts Managers and Agents (NAPAMA). He was Treasurer and Vice-President of Festivals and Events Ontario (FEO) and served on that Board on various committees (2010-2013). Mr. Baird received the Arts Northwest Coyote Award and the Performing Arts Exchange Mary Beth Treen Award in 2012. He is Chair of Team Agent Network (TAN) and APAP Showcase Coordinator.

Robert is a regular columnist in *International Musician: The Official Journal of the American Federation of Musicians of the United States and Canada* (Circulation 100,000+ Monthly) where he writes a monthly column entitled "Crossing Borders". The column focuses on what artists need to know to get into Canada or the United States. He also writes a monthly column entitled "Artist Manager's Toolkit" for *International Arts Manager*, based in London, England.

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