



International tax alert

Regulation 105 withholding – a new simplified process

June 12, 2018

On June 5, 2018, the Canada Revenue Agency (CRA) took what is hoped to represent the first in a series of steps toward alleviating some of the compliance burden that arises when non-residents provide services in Canada. More specifically, the CRA has announced a new simplified process for obtaining a waiver from Regulation 105 withholding requirements on amounts paid to self-employed, unincorporated, non-resident artists and athletes who earn gross revenue of no more than CAN\$15,000 in a calendar year from services performed in Canada. The most significant change under the simplified process is that artists and athletes who meet the requisite criteria will be able to provide their waiver to the payer without ever having

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to interact with the CRA, thereby substantially expediting the waiver process. While limited in scope, this measure is a welcome development, as it represents a practical solution to a common problem faced by non-resident service providers, and also reflects a willingness on the part of the CRA to work with taxpayers to eliminate compliance burden while mitigating risk for the government.

Background – Regulation 105

Section 105 of the Income Tax Regulations requires a person who pays a fee, commission or other amount to a non-resident (other than remuneration paid to an employee) in respect of services rendered in Canada, to withhold 15% of the payment, essentially as an instalment that can be applied against the service provider's ultimate Canadian tax liability, if any. Notwithstanding the fact that such income may ultimately be exempt from Canadian taxation by virtue of a tax treaty, or may ultimately be subject to tax that is substantially less than the amount withheld at source, the non-resident must nevertheless incur the cost and administrative effort associated with the filing of a tax return in order to obtain a refund of the excess withholdings. While it is possible to apply for a waiver which exempts the payer from being required to withhold in the first place, the existing application process is a cumbersome and time consuming one that requires the service provider to provide detailed information to the CRA well in advance with no guarantee that the waiver will be granted.

These requirements apply to all types of services provided by non-residents in Canada, including, for example, a foreign performer on a world tour with stops in Canada.

The simplified process

The simplified process, while limited in application, is relatively straightforward and streamlined. A self-employed non-resident artist or athlete earning fees for services in Canada and who reasonably expects to earn in total no more than CAN\$15,000 in gross revenue (including reimbursements of expenses) for the calendar year, is eligible for either a reduction in the amount of tax withheld, or a complete exemption from Regulation 105 withholdings, depending on his or her country of residence. Likewise, the payer, when provided with a completed waiver application by the service provider, is automatically exempted from the requirement to withhold the full 15% tax that would otherwise normally apply. Neither the service provider nor the payer is required to interact with the CRA under the simplified process.

For individuals who are resident in the United States, the process is as follows:

- The individual must provide the payer with a completed waiver application (Form R105-S, *Simplified Waiver Application*), thereby providing the payer with basic information about the service provider's identity and anticipated Canadian-source gross revenue;

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- No tax will be withheld by the payer, since Article XVI of the Canada – US treaty provides an exemption from Canadian taxation for artists and athletes whose gross receipts from activities in Canada do not exceed CAN \$15,000 during a given calendar year;
- The individual will report the Canadian source income on his/her US tax return and no Canadian income tax return will be required to be filed unless the individual has other sources of Canadian income and/or the CRA has requested that the individual file a tax return.

Individuals who are resident in other countries are required, even under the simplified process, to provide the payer with additional information for a waiver application to be considered valid and complete, and the process is as follows:

- The individual must provide the payer with a waiver application that includes all of the same information that US residents are required to provide, as well as a computation of anticipated net income from services to be provided in Canada, reflecting both revenues and certain types of permitted expenses;
- The payer will withhold tax in an amount equal to 23% of the projected net income, and remit the tax to the CRA on the service provider's behalf;
- If the individual wishes to obtain a refund of the taxes, based on a treaty position or additional deductible expenses, he or she will be required to file an income tax return. Once again, a Canadian tax return may also be required if the non-resident has other sources of income in Canada, or where a request to file is issued by the CRA.

The payer's obligations in the case of both US and other non-resident service providers also include:

- Reviewing the waiver application provided by the service provider to ensure completeness, completing section 2 of the application, and retaining the completed application for up to six years;
- Providing the non-resident with a tax slip (T4A-NR) by February 28 of the following year that reports the income earned in Canada as well as amounts withheld, if any.

Looking ahead

In 2016, the CRA introduced a certification process for employers of non-resident individuals performing services in Canada in an attempt to ease the administrative burden for employers and employees imposed under Regulation 102. With the announcement of the simplified process for self-employed artists and athletes, the CRA has taken the first step in providing similar relief in the Regulation 105 context. It is hoped that this limited initiative will eventually lead to an expansion of eligibility for the simplified process to non-resident providers of other types of services in Canada.

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