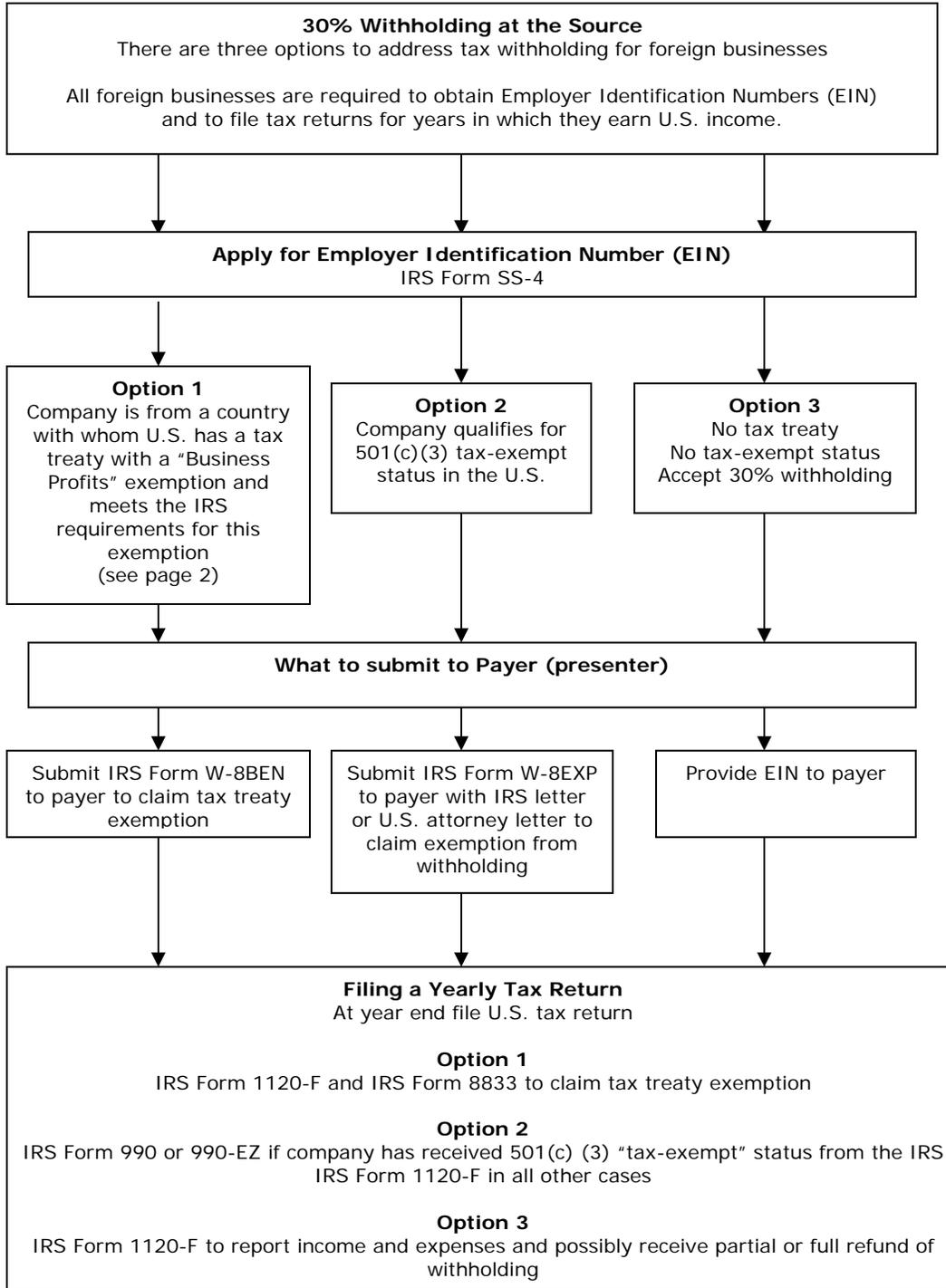


U.S.A. Taxes for Foreign Artists – Businesses



Taking the Business Profits Exemption & Filing a W-8BEN with presenters

The Form W-8BEN (for which the foreign company needs an EIN number) is used to claim exemption from the 30% withholding based on a “business profits” exemption of a tax treaty. This assuming the tax treaty with that particular country includes a “business profits” exemption article.

Many presenters accept a Form W-8BEN without knowing whether the foreign company indeed qualifies. Just because a foreign company incorporates, does not, in the eyes of the IRS, automatically entitle them to claim the “business profits” exemption of a tax treaty. The main issue is the employer/employee relationship, and the IRS has it's own guidelines for determining this relationship.

If the performers and/or crew are independent contractors - then you cannot claim the "business profits" exemption and the fees are subject to 30% withholding. In this case a Central Withholding Agreement must be filed to avoid the 30% withholding. In addition, if a company's principles include any of the artists or crew, the IRS will not accept the “business profits” exemption.

The IRS looks at the company to determine if the artist(s) “participates in the profit/loss” of a performance or tour. In determining whether the person providing service is an employee or an independent contractor, all information that provides evidence of the degree of control and independence must be considered.

Determining Whether the Individuals Providing Services are Employees or Independent Contractors

Before you can determine how to treat payments you make for services, you must first know the business relationship that exists between you and the person performing the services. The person performing the services may be -

- An [independent contractor](#)
- An [employee](#) (common-law employee)
- A [statutory employee](#)
- A [statutory nonemployee](#)

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Common Law Rules

Facts that provide evidence of the degree of control and independence fall into three categories:

1. [Behavioral](#): Does the company control or have the right to control what the worker does and how the worker does his or her job?
2. [Financial](#): Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)
3. [Type of Relationship](#): Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no “magic” or set number of factors that “makes” the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another.

The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.