

Orchestra Tax Relief

Orchestra Tax Relief (OTR) came into effect on 1 April 2016 to provide a tax break for production companies engaged in qualifying orchestra concerts. The relief is designed to recognise the unique cultural value these performances bring to the UK and encourage greater and more diverse productions.

OTR provides companies with either a reduction in their corporation tax liability or a repayable credit.

An orchestra concert is one in which the instrumentalists are the main focus of the concert and includes performances which are performed wholly or mainly by instrumentalists in an:

- Orchestra
- Ensemble
- Group
- Band

To be a **qualifying production**, the production must meet three conditions:

- The concert must have at least 12 instrumentalists and the majority of the instruments are not electronically or directly amplified;
- The production company must run the live performances either for paying members of the public or for educational purposes;
- At least 25% of the core expenditure on the production must be spent in the European Economic Area (EEA).

If the production includes a competition, or if the main purpose of the concert is to record it or advertise goods or services, it will not be regarded as a qualifying concert for OTR purposes.

Who can make a claim?

Any company (charitable or not) that meets the definition of a production company can claim OTR. A production company is one that produces, runs and closes the production, is engaged in decision-making and makes creative, technical and artistic contribution to the concert. The production company can either be a commercial or charitable company. Although the majority of income in charitable companies is exempt from tax they are still with the charge to corporation tax so can take advantage of OTR.

Co-productions

Only one company in a co-production can meet the definition of a production company and therefore claim the OTR. The parties will need to decide which entity meets the conditions; only costs incurred by the 'production company' can be included in the claim.

What costs can be included in the claim?

A qualifying production has four phases:

- Development: the time before a production is given the go-ahead or green light;
- Production: the rehearsals;
- Running: the live performances;
- Closing: taking down the set and shutting down the performance.

Costs in the production and closing phases of the production will qualify for an enhanced deduction. For example, the instrumentalist's, director's and staff time during rehearsals; payment for music rights; room and instrument hire; and travel and subsistence to and from a venue which is not the regular residence of the orchestra.

Some costs in the development phase may be reclassified as production costs once the production has been given the go-ahead.

The legislation specifically excludes costs for marketing, financing, storage and legal fees.

In calculating the OTR, each concert must be treated as a separate trade. However, you can elect to treat a number of concerts as one series, meaning each series will be treated as a separate trade. An election should detail all the concerts to be included, as well as those concerts performed by the production company which do not qualify for OTR. You must make an election prior to the first concert in the series taking place. The first stage of the calculation is to work out the profit or loss on the production.

Income

For the purposes of calculating the profit or loss on the separate trade, income should include:

- Box office income;
- Payments for rights to produce merchandise;
- Income from profit share agreements;
- Royalties.

Amount of relief

The additional relief available is the lower of 80% of the qualifying core expenditure and the expenditure which is incurred within the EEA. The amount which can then be surrendered to HMRC as a repayable credit is then the lower of 80% of the qualifying core expenditure and the adjusted loss. The rates of repayment are 25% for all qualifying productions.

Example one: loss making production

A charitable company puts on a production 'Winter Symphony'. Expected income from the production is £100,000 (made up of ticket sales of £90,000, royalties income of £4,000 and related merchandise income of £6,000).

The cost of the production is £125,000 (of which £80,000 is core expenditure i.e. only qualifying costs during the producing phase).

Stage one: calculate profit or loss or the separate trade

Income: proportion of estimated total income as earned at end of period	£100,000
Less: costs of orchestra production to date	(£125,000)
	(£25,000)

Stage two: calculate enhancement

Enhancement is the lower of:

Qualifying expenditure which is EEA	£80,000	
80% of total qualifying expenditure to date (80% x £80,000)	£64,000	(£64,000)
		(£89,000)

Stage three: calculate repayable credit

Surrender the lower of:

Enhanced loss	(£89,000)	
Enhanced expenditure	(£64,000)	
Repayable tax credit	(£64,000) x 25%	(£16,000)

Repayment from HMRC should be £16,000 for this production.

Example two: profitable production

If all the information in example one remains the same, except the income is £170,000, the calculation would be as follows:

Stage one: calculate profit or loss or the separate trade

Income: proportion of estimated total income as earned at end of period	£170,000
Less: costs of orchestra production to date	(£125,000)
	£45,000

Stage two: calculate enhancement

Enhancement is the lower of:

Qualifying expenditure which is EEA	£80,000	
80% of total qualifying expenditure to date (80% x £80,000)	£64,000	(£64,000)
		(£19,000)

Stage three: calculate repayable credit

Surrender the lower of:

Enhanced loss	(£19,000)	
Enhanced expenditure	(£64,000)	
Repayable tax credit	(£19,000) x 25%	(£4,750)

Repayment from HMRC should be £4,750 for this production.

How do you make a claim?

The OTR claim must be submitted to HMRC as part of the company tax return. This may involve charitable companies, which have not previously had to file a tax return, completing a company tax return with charitable pages.

Further information can be found within HMRC's guidance at:
<https://www.gov.uk/hmrc-internal-manuals/orchestra-tax-relief>.

If you would like to discuss Orchestra Tax Relief in more detail please contact Kirsty Murray or Catriona MacLeod.

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