

CREATIVE SECTOR TAX RELIEFS

ORCHESTRA TAX RELIEF

Background

Some orchestral concerts are eligible for orchestra tax relief. This relief can increase the amount of expenditure that is allowable as a deduction for tax purposes or, if the company makes a loss, can be surrendered for a payable tax credit. This can provide a subsidy towards the costs of producing an orchestral concert or, by election, an orchestra concert series.

At the Autumn Budget 2021, the government announced an increase in the rate of orchestra tax relief from 25% to 50% with effect from 27 October 2021 (Budget day). The rate is set to decrease to 35% from 1 April 2023 and again to 25% from 1 April 2024 onwards. At the same time, some changes were announced to clarify or amend some of the conditions for relief to ensure that it continues to meet the policy objectives. Those changes have effect for productions or series of productions where the production process starts on or after 1 April 2022.

Main features

- The relief applies to orchestral concerts, which are defined as concerts by an orchestra, ensemble, group or band consisting wholly or mainly of instrumentalists who are the primary focus of the concert. It may also apply to a series of orchestral concerts (see further below);
- To be eligible, at least 25% of the core expenditure of the orchestral concert must relate to goods or services provided from within the European Economic Area (EEA).
- The orchestra tax relief only applies to a UK company or an overseas company with a UK branch or tax presence. Partnerships and individuals cannot claim the relief.

Orchestral concert production companies

An orchestral concert production company (OCPC) is the company responsible for all aspects of producing the orchestral concert.

It must be actively engaged in the decision-making processes for the concert or concert series.

It must also make an effective creative, technical and artistic contribution to the production, and directly negotiate, contract and pay for rights, goods and

services in relation to the production. The OCPC can commission a third party to undertake some of these activities on its behalf. However, it cannot entirely relinquish its involvement in any of these activities.

There can be only one OCPC in relation to an orchestral concert.

Criteria for an orchestral concert to qualify

A qualifying orchestral concert production must be a concert by an orchestra, ensemble, group or band consisting wholly or mainly of instrumentalists who are the primary focus of the event.

There must be at least 12 instrumentalists and none of them, or only a minority, must be electronically or directly amplified.

The OCPC must intend that the concert should be performed 'live' before the paying public or for educational purposes. For productions where the production process starts on or after 1 April 2022, a concert is only considered to be for educational purposes if it is performed mainly or entirely for the purpose of educating the audience.

For productions where the production starts on or after 1 April 2022, concerts must be separately ticketed. Incidental items included in the ticket price, such as programmes or food to be consumed during the performance, do not prevent the concert from being considered as separately ticketed, as long as it is possible to apportion the ticket price between the performance and incidental items.

For productions where the production process starts on or after 1 April 2022, it must be intended that a significant proportion of earnings for the concert should come from those separately ticketed ticket sales.

Orchestra tax relief may also be claimed in respect of a qualifying orchestral concert series. This is available where the OCPC intends that all, or a high proportion of, the concerts should be performed live before the paying public or for educational purposes.

Exclusions

Concerts are excluded from the regime in the following circumstances:

- The concert consists of or includes a competition or



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contest;

- The main object of the OCPC's activities in relation to the concert is to make a broadcast or recording for release to the public, or for use as a soundtrack to a TV, radio, theatre, video game or similar production for broadcast, exhibition or release or for use in a film to be shown in a commercial cinema; and
- For productions where the production process starts on or after 1 April 2022, the concert is produced for training purposes.

Minimum EEA expenditure requirement

To be eligible for orchestra tax relief, not less than 25% of the core expenditure on the orchestral concert production must be EEA expenditure.

Expenditure on services is EEA expenditure if the services are carried out within the EEA. Expenditure on goods is EEA expenditure if they are purchased from an EEA supplier.

NOTE: Unlike some other creative sector reliefs, no cultural test applies to orchestra tax relief.

Types of qualifying expenditure

Core expenditure

The amount of orchestra tax relief is based on the core expenditure of the OCPC.

Core expenditure is expenditure incurred by the OCPC on producing an orchestral concert, or, by election, series of orchestral concerts (including pre-trading expenditure). It includes expenditure on travel to or from venues, other than the usual place of performance.

Core expenditure does not include costs which are not directly for the purpose of the concert, for instance on financing, marketing, storage or legal services. The costs of the actual performance are also not included, for instance payments made to musicians.

For productions where the production process starts on or after 1 April 2022, expenditure on teaching or training incurred by an educational establishment is not core expenditure unless it is incurred as part of a rehearsal or rehearsals.

Qualifying orchestral concert series

A production company for a qualifying orchestral concert series may make an election for the company's activities in relation to the whole series to be treated as a single trade, 'the separate orchestral trade'. The election must be made in writing specifying the concerts to be included in the election, and if necessary, whether any of the concerts are non-qualifying. The election is irreversible.

How is relief given?

The costs of the orchestral concert incurred by the OCPC will be deductible from the total income from the OCPC under the normal rules for calculating company profits and losses.

Enhanced tax deduction

The OCPC is eligible for an enhanced deduction, reducing tax payable or potentially creating or increasing a taxable loss. The value of the enhancement (the enhanced losses) is the lower of:

- 80% of total core expenditure; or
- 100% of the actual EEA core expenditure incurred.

Payable tax credit

The total losses can be used in one of two ways:

- The entire amount of the total losses can be set against the income of the OCPC;
- A proportion of the total losses up to a maximum amount, equal to the qualifying expenditure can be surrendered to HMRC for a payable tax credit (the "surrenderable loss").

The amount of the "surrenderable loss" for any accounting period is the lower of:

- The amount of the trading loss in the period (taking account of the additional deduction); and
- The enhanceable expenditure for that period (i.e. the lesser of core EEA expenditure or 80% of total core expenditure) less any amount surrendered in previous periods.

Payable Tax Credit Rates

Companies may surrender the whole or part of their "surrenderable losses" for a 25% payable tax credit. Up to €50 million of tax credits may be paid to any undertaking under EU State aid rules.

The rates of payable tax credit are as follows:

Accounting period beginning	Rate of payable tax credit
Prior to 27 October 2021	25%
27 October 2021 – 31 March 2023	50%
1 April 2023 – 31 March 2024	35%
1 April 2024 onwards	25%

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Where an accounting period straddles the date of a rate change (27 October 2021, 1 April 2023 or 1 April 2024), the company is treated as if it has two separate accounting periods falling before and after the relevant date. Profits of the two notional periods are apportioned on a just and reasonable basis.

Example – Orchestra tax relief for an OCPC

Below is an example to illustrate how a tax credit could be calculated for an orchestral concert production company. An OCPC produces an orchestral concert with total core expenditure of £5 million. This includes core EEA expenditure of £3 million. The production earns £6 million for the OCPC. The surrenderable loss is the lower of:

- The post-tax relief trading loss of £2 million (see calculation); and
- The core expenditure of £3 million.

Total income	£6m	
Total expenditure	£(5m)	
Pre-orchestra tax relief profit/ (loss)		£1m
EEA core expenditure	£(3m)	
Additional deduction available on core expenditure		£(3m)
Post-tax relief profit/(loss)		£(2m)

This OCPC can surrender any amount up to £2 million of losses. The amount of credit due based on a payable credit rate of 50% multiplied by the loss surrendered (assuming the maximum of £2 million is surrendered) is $50\% \times £2 \text{ million} = £1,000,000$.

How can Moore Kingston Smith assist me?

This document, together with our publications on the other creative sector tax reliefs, provide only a brief summary of the issues surrounding them. We would be pleased to discuss your particular circumstances and provide advice in relation to your eligibility for tax reliefs.