HaysMac

Creative Sector Tax Reliefs: Orchestra Tax Relief

Orchestra Tax Relief (OTR) is a relief for orchestral production companies that are responsible for qualifying orchestral concerts. It can be worth up to 40% in cash of certain types of expenditure. Not every concert is qualifying, but the following is a guide to help you identify whether OTR is relevant for your concert.

Who can claim?

The entity must be a 'going concern' within the charge to Corporation Tax, though this should not be confused with having a Corporation Tax liability, which is not necessary. We will refer to such an entity as a 'company' but please note, this does not mean you have to be registered with Companies House. We have helped many entities with more unusual constitutions to make a claim, so please contact us if you are unsure.

A company can claim OTR if it puts on a qualifying orchestral concert, being a concert which:

- Is performed wholly or mainly by instrumentalists who are the primary focus of the concert, in the form of:
  - Orchestra;
  - Ensemble;
  - Group; or
  - Band;
- Consists of a minimum of 12 instrumentalists
- Has all or most of the instruments not electronically amplified
- Is intended to be performed live for the paying public or for educational purposes.

Please note that each concert is treated as a separate trade, unless the company makes a valid election to HMRC to include more than one concert in a concert series.

At least 25% of the 'core expenditure' must relate to goods or services provided from within the UK or European Economic Area (EEA). From 1 April 2024, at least 10% of the 'core expenditure' must relate to activities in the UK.

'Core costs' are those incurred producing the concert but do not generally include costs incurred on the actual performance or speculative expenditure. Further information on these costs can be found below in the 'What can you claim?' section.

Your company must also:

- Be actively engaged in planning and decision-making
- Directly negotiate, contract and pay for rights, goods and services
- Be responsible for putting on the concert from start to finish, including either employing or engaging the performers.

However, there is some flexibility as HMRC guidance states that the company does not need to have direct responsibility for every aspect of these activities and third parties can undertake some of these activities as subcontractors. If multiple group companies are involved, we can help establish which one best meets the criteria to make the claim and/or how to structure the activities to make the most of the relief and minimise risks.

Who cannot claim?

Some of the more common reasons that a company may not be able to claim OTR for a concert include:

- The concerts are produced for training purposes (a recent change to the legislation).
- The main purpose, or one of the main purposes, is to advertise or promote any goods or services.
- The performances include a competition or contest.
- The main purpose, or one of the main purposes, of the concert is to make a relevant recording (rather than for live performances).

There are other more niche reasons why a concert might not be eligible for an OTR claim, so please do reach out to our team who would be happy to discuss these with you.

What can you claim?

In order to make a claim, you must first identify all of the income and expenditure of each concert. The expenditure then needs to be split into core costs and non-core costs. The starting point for this is to identify which phase of the concert the costs are incurred in.

There are four phases of a concert:

Development (non-core phase)

- This phase is the first phase before the 'green light' is given, when ideas are being developed but most of the expenditure is speculative.
- Only costs related to ideas included in the final concert can be claimed as core costs.
- Examples of qualifying core costs may be commissioning the initial work or hiring the conductor before the works have been confirmed.

Production (core phase)

- This is the phase after the green light has been given, but before the performances take place.
- Most of the creative work generally takes place in this phase, including rehearsal costs, venue costs and payment of the instrumentalists and conductor for rehearsal time.
- Most costs incurred in this phase are core costs, though there are some exceptions, such as finance costs, advertising costs and entertainment costs which are normally disallowed for Corporation Tax purposes.

Running (non-core phase)

- This is the period from the first paid performance to the final performance. Please note that claims will feature just one performance unless an election to include more than one concert in a concert series has been made.
- Running costs are deemed to be non-core costs, unless they are deemed to be costs to place the orchestra in a position to perform rather than the performance costs themselves.

Closing (core phase)

- This is the period after the final curtain.
- Some costs are core, such as vacating the venue and transport of items to storage (though storage costs themselves are not qualifying core costs).

Some costs are never core costs by their nature, even if they are incurred in a core phase. For example, advertising/marketing, storage costs and legal costs.

Apportioning costs between phases

Sometimes there are costs that are incurred in both the production and the running phases. Such costs can be apportioned between the two phases in a fair and reasonable manner. We have experience in this area and have helped our clients identify further core costs, whilst reducing the risk associated with an HMRC enquiry from such calculations.

Apportioning overheads

Another area where we can help is by identifying a way to apportion administrative costs, such as rent, business rates, IT costs and staff costs. We have a wealth of experience in creating a robust methodology for these calculations, as well as reviewing and updating calculations for clients who already have an apportionment method in place. Our assistance will help ensure the calculations are relevant, appropriate for the company, reflect the latest legislation and can withstand an HMRC enquiry.

The additional deduction

Once the income, and core/non-core expenditure has been identified, the OTR calculation provides an additional deduction (based on the core costs) to reduce the 'profits' or to increase the loss. This calculation will either reduce the amount of Corporation Tax the company pays to HMRC (if it normally pays tax) or will contribute towards repayable tax credits (cash).

The additional deduction is the lower of:

- 80% of total core expenditure; or
- The amount of core expenditure on goods or services that are provided from the UK (changed from activities in the UK or EEA from 1 April 2024)

If the production calculation results in a loss after the additional deduction, some, or all, of this loss can be surrendered for a repayable tax credit. This can be the case even if the company is a charity that does not normally pay Corporation Tax.

OTR credit rates

Since 27 October 2021, the rate for surrendering losses has been 50% for all concerts. Since the additional deduction is 80% of the core expenditure, this means that the tax credit available can be up to 40% of the core costs.

However, the above current rates are temporarily uplifted, with slightly reduced rates of 45% being introduced for expenditure incurred from 1 April 2025. As above, this gives rise to a tax credit of up to 36% of core expenditure.

Example

During 2023, a production company, Symphony Ltd, produced two concerts in the summer season, and did not elect for them to be in a concert series. The first concert generated box office income of £50,000 and total expenditure of £75,000, of which £70,000 related to UK core expenditure. The second concert generated box office income of £60,000 and expenditure of £55,000, of which £50,000 related to UK core costs.

	First concert		Second concert		Concert series	
Total income		£50,000		60,000		£110,000
Total expenditure		(£75,000)		(55,000)		(£130,000)
Pre-OTR profits/loses		(£25,000)		5,000		(£20,000)
Core expenditure (All UK)	(£70,000)		(50,000)		(£120,000)	
Addition deduction (80% x core)		(£56,000)		(40,000)		(£96,000)
Post-OTR losses		(£81,000)		(35,000)		(£116,000)
Losses surrendered for tax credits	£56,000		35,000		£96,000	
Total tax credit (50%)		**28,000**		**17,500**		**48,000**

First concert

Symphony Ltd can surrender the full £56,000 additional deduction, in relation to the first concert, for a tax credit. This is because the concert was already loss making before the additional deduction was included. Therefore, the related tax credit is £56,000 x 50% = £28,000, which is 40% of the initial £70,000 core costs.

Second concert

Symphony Ltd can surrender £35,000 of the additional deduction, in relation to the second concert, as it has been capped by the actual tax losses available. Therefore, its tax credit is £17,500. This is 31.5% of the core expenditure, less that the 40% shown above, due to the £5,000 initial profit.

However, please note that it has also reduced the taxable profits from the trade of the second concert of £5,000 that initially arose in this trade, so there could also be a further tax saving of up to 25% x £5,000 = £1,250 (depending on Symphony Ltd's other taxable activities). This could therefore bring the total tax saving up to £18,750 in this case.

Combining the concerts in a concert series

If Symphony Ltd had made the concert series election to include both concerts as one series, the pre-OTR loss would have been £20,000. The additional deduction of £96,000 could then have been surrendered in full, allowing a maximum claim of £48,000 for both concerts combined. This is 40% of the total core costs of £120,000 for both concerts combined.

How to make a claim

Our Not for Profit tax team are experienced at assisting companies with submitting OTR claims via the submission of the company's tax return, alongside a full written report and the new additional information form (AIF) which must accompany all claims submitted to HMRC after 1 April 2024.

If you think that your concert could qualify for OTR, or you would like more information about tax reliefs within the creative sector, please get in touch with your usual HaysMac contact, or Alice Palmer, Senior Tax Manager, using the details below.

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