ORCHESTRA TAX RELIEF (OTR)

TAX RELIEF FOR ORCHESTRAL CONCERTS

WHAT IS OTR?

OTR was introduced in April 2016 to encourage and support the creation of orchestral concerts. It can be claimed by companies that produce qualifying orchestral concerts.

OTR is processed through the Corporation Tax system and is available to incorporated companies, commercial and charitable, that produce qualifying orchestral concerts.

OTR grants qualifying productions an uplift of 80% of core costs as an additional deduction from profit, any losses arising from an OTR claim can be surrendered at a rate of 45% for a payable tax credit from HMRC.

NB: Charities, commonly exempt from Corporation Tax, are eligible to claim OTR and the payable tax credit if one is due.

HOW DOES OTR WORK?

OTR works by enhancing expenditure incurred in the production process and creates an additional deduction to be set against the profit or loss (or surplus or deficit in respect of charitable companies) of each concert.

For commercial companies the additional deduction reduces the profits assessable for Corporation Tax and, where it extends or creates a loss, allows that loss to be surrendered to HMRC for a payable tax credit.

For charitable companies the additional deduction reduces the surplus already exempt from Corporation Tax and, where it extends or creates a deficit or loss, allows this to be surrendered to HMRC for a payable tax credit.

Which expenditure qualifies for enhancement?

Expenditure qualifying for enhancement is called core expenditure and includes expenditure incurred on:

- ✓ producing the concert
- ✓ exceptional running costs, and
- ✓ closing the production.

For example, the instrumentalists', directors' and staff rehearsal time, instrument hire and payment for music rights.

Non-qualifying or non-core expenditure include costs relating to:

- x developing the production
- x non-producing activities and
- x the cost of the performance itself

Non-producing activities include, for instance, financing, marketing, legal services and storage.

Who qualifies?

Orchestral companies constituted as a:

- Company limited by shares
- Company limited by guarantee
- Charitable Incorporated Organisation
- Scottish Charitable Incorporated Organisation
- Community Interest Company

all fall under the Company Tax regime and, even if they do not currently file Company Tax Returns, can claim OTR if they produce qualifying orchestral concerts.

Unfortunately, if the company is an unincorporated association (UA) or a trust then they are currently unable to claim OTR.

If the UA or trust wishes to claim OTR then it must either set up a separate production company or alternatively, change its structure. One increasingly popular option is for a charitable UA to convert to a CIO or SCIO.

Election for a concert series

For the purposes of OTR, each concert is considered to be a separate trade. However, a company may elect to treat a series of concerts as a single concert. The election should be made prior to the first concert in the series, should specify all the concerts to be included - including those which do not qualify for the relief – and is irrevocable once made. The length of the election may stretch over more than one accounting period.

Which orchestral concerts qualify?

A company must fulfil several eligibility criteria before it can claim:

- the concert must have the instrumentalists as the main focus of the concert
- performances must be performed wholly or mainly by an orchestra, ensemble, group or band
- the concert must have at least 12 instrumentalists and the majority of the instruments must not be electronically amplified
- at least 10% of the core expenditure on the production must be spent in the UK
- it must be the Production Company responsible for the creative, technical and artistic decisions during the production phase and for the running and closing of the concerts.

The concert must also meet what is called the commercial purpose condition. That is that the production company intends that all or a high proportion of the live performances will be to either:

- paying members of the general public or
- provided for educational purposes.

How is OTR claimed?

OTR is claimed through the Company Tax system which means that claims must be made within a Company Tax Return or an amendment to a Company Tax Return. Claims must include computations in respect of all qualifying concerts and detail income received, as well as core and non-core expenditure, plus details of any apportionments used.

NB. The fact that a charitable company might not be registered with HMRC and has not been required to provide a tax return for an accounting period does not prevent that company from claiming OTR for that period.

A simple example to demonstrate the benefit of claiming OTR

	Without OTR		With OTR
Total Income	£100,000		£100,000
Total Core expenditure	£50,000		£50,000
Total Non-Core expenditure	£50,000		£50,000
Profit / (Loss)	£0		£0
Additional Deduction (estimated) 80% core costs			£40,000
Deemed Loss for tax credit purposes			£40,000
Surrendered for payable tax credit			£40,000
Tax credit	**45%**	=	**£18,000**

In this example, the company has turned a break-even position into a ‘loss’ of £40,000 by claiming OTR on 80% of £50,000 core costs. The ‘loss’ is surrendered to HMRC for a payable tax credit of £18,000.

Useful contacts:

HMRC's Creative Industries Unit: *creative.industries@hmrc.gsi.gov.uk*

Creative Tax Reliefs: *info@creativetaxreliefs.com*

The company

Creative Tax Reliefs Limited was started in 2017 by Graham Suggett, former Lead Tax Specialist with HMRC'S Creative Industries Unit and a specialist in Theatre Tax Relief.

If you would like specialist support with the process of claiming Theatre Tax Relief, have questions regarding the legislation or perhaps have encountered issues with your current claim then please do get in touch.

Email: *info@creativetaxreliefs.com*
Company website: *www.creativetaxreliefs.com*

Testimonials

"Graham has been extremely helpful in providing OTR advice when it came to tweaking the calculations of our claims. We have also had to call on his advice for several unusual situations, including making a TTR claim, and it gives us piece of mind to know we are proceeding within the guidelines. He is always quick to respond and happy to arrange a meeting if it's needed. He deals with our submissions to HMRC and we feel like we are in safe hands."
Fran Davies – Finance Manager of the London Symphony Orchestra

"Worth every penny". **Mary Nri, Finance Director of The Albany**

"NCO engaged Graham at the start of 2019 and has developed a wholly positive and ongoing relationship ever since. Not only has Graham increased our understanding of OTR and how it applies to NCO, he has taken all the stress and strain away from the process. His previous experience as a tax specialist at HMRC has proved invaluable as has his ability to explain the complexities to us in a way we can understand! I cannot recommend Graham more highly"
Sophie Lewis, Managing Director of the National Children's Orchestras of Great Britain