

Orchestra Tax Relief (OTR)

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.

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.

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. This is a decision for the orchestral company and HMRC has no issue with either option.

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 25% of the core expenditure on the production must be spent in the European Economic Area (EEA)
- 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.

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.

Where expenditure falls across the various phases of production then it will need to be apportioned on a just and reasonable basis.

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.

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.

Further guidance can be found at:

Original legislation: <http://www.legislation.gov.uk/ukpga/2016/24/schedule/8/enacted>

HMRC's TTR manual: <https://www.gov.uk/hmrc-internal-manuals/orchestra-tax-relief>

Useful contacts:

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

Creative Tax Reliefs: info@creativetaxreliefs.com

The new rates of relief:

In the Autumn 2021 budget it was announced that the rates of relief for Orchestra tax reliefs will be increased temporarily. For Orchestras the standard rate is 25% for all productions. This will increase to 50% from 27 October 2021 until 1 April 2023. From 1 April 2023 the rate will be 35%; before returning to the standard rates in April 2024.

To qualify for the higher rates of relief the production phase must have started on or after 27 October 2021. There is further guidance from HMRC about when production activity starts on our blog: [Production Phase - HMRC guidance](#)

A simple example to demonstrate the benefit of claiming OTR

	Without OTR		With OTR
Total Income	£100,000		£100,000
Total Expenditure	£100,000		£100,000
Profit / (Loss)	<u>Nil</u>		<u>Nil</u>
Additional Deduction (estimated)			£70,000
Deemed Loss for tax credit purposes			<u>£70,000</u>
Surrendered for payable tax credit			£70,000
Tax credit	@ 50%	=	<u><u>£35,000</u></u>

In this example, the company has turned a break-even position into a 'loss' of £70,000 by claiming OTR. The 'loss' is surrendered to HMRC for a payable tax credit of £30,000.

The author

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 Orchestra Tax Relief.

If you would like specialist support with the process of claiming Orchestra Tax Relief, have questions regarding the legislation or perhaps have encountered issues with your current claim then please do get in touch. Graham can be contacted via the following:

Email: graham.suggett@creativetaxreliefs.com
Telephone: 01204-528575 / 07900 028528
Company website: www.creativetaxreliefs.com

Testimonials

"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**

"I am so pleased and relieved that Graham got in touch with me about Theatre Tax Relief. So far, Graham has claimed nearly £100,000 in tax credit for us. This is not only an enormous benefit and can be ploughed back into the work that we do but it would have been extremely short-sighted of us not to be claiming the money that is due to us. Graham has made the whole process so simple and easy. I cannot recommend him highly enough". **Sarah Gobran, Co-Founder & Producer of The Guildford Shakespeare Company**

"It was a pleasure working with Graham on our claim for Film Tax Credit for 'Stuffed'. For independent creators working in Film and TV, the Tax Credit is a vital part of making your film a reality. Graham is an assured and calm voice in the often-intimidating world of tax. I'd highly recommend Graham to my colleagues working in Film and TV". **Carys Lewis, writer and director of the 2019 BAFTA Cymru Nominee short film Stuffed**

"I found Graham and Creative Tax Reliefs through a Google search as we had a client that was eligible for Theatre Tax Relief (TTR). I and a colleague had read through HMRC's guidance a number of times and felt confident that we understood how it worked, however, we had no experience in claiming TTR. It seemed a no-brainer to work with Graham because Graham, as a former Creative Tax Reliefs specialist with HMRC, knew how to prepare and present claims to HMRC, would be certain of the calculations, knew where the boundaries were and would achieve maximum benefit for the client. We prepared the accounts and submitted the CT600 as per usual with input from Graham whilst he liaised directly with HMRC's Creative Industries Unit in respect of the client's TTR claim. The client received their tax credit without issue and in an amount greater than expected. Our client was delighted as were we and we look forward to working with Graham going forward". **Ian Bragger, Partner at Harris & Co**

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