



HM Treasury

Theatre tax relief:

summary of responses

June 2014

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Correction made to page 14, Annex A, list of Respondents

Change:

Scottish Theatre

To:

The Federation of Scottish Theatre

July 2014



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1

Introduction

1.1 The Chancellor announced at Autumn Statement 2013 that the government will introduce a new tax relief for theatre productions. The UK is home to exciting and innovative theatre companies producing ground breaking productions and this new relief will recognise the unique cultural value that the theatre sector brings to the whole of the UK.

1.2 A consultation on the design of the new relief was published on 27 March and closed on 8 May 2014. The government received 63 responses to the consultation. These included responses from small, medium and large production companies, in both the commercial and not for profit sectors. Responses were also received from individuals, representative bodies and other bodies. During the consultation period officials met with a large number of representatives from across industry and held a number of roundtable discussions. Views from these meetings are also reflected in this response. The government is very grateful to all those who contributed to the consultation process. A list of respondent organisations is provided in Annex A.

Summary of respondents' views

1.3 The majority of respondents welcomed the introduction of the new theatre tax relief, stating that the relief would have a real benefit to the industry, both in London and across the country. It was highlighted that this support is likely to increase creative output, employment in the sector and performances in the regions outside London, where existing capacity is often under-utilised. Many respondents agreed that it was appropriate that the design of the relief was based on that of the other creative sector tax reliefs for film, animation, video games and high-end television. Responses also provided valuable contributions on the design of the relief and how it would work for the industry in practice.

1.4 The following key themes were made in the responses.

The requirement to perform in a licensed venue

1.5 It was raised by respondents that the requirement to perform in venues with a premises license may not be appropriate due to recent de-regulatory changes and non relevance for temporary or outdoor venues. Therefore, **the government has removed the requirement to be in a licensed venue.** To ensure that the relief remains targeted it will be required that there is an intention to run all, or a high proportion, of live performances to either paying members of the general public or for educational purposes.

The definition of touring

1.6 A number of responses highlighted that smaller companies would struggle to meet the proposed definition of touring, which required more performances per venue, or performances in a larger number of separate venues than smaller companies are usually able to meet in practice. **The requirement has therefore been changed so that a production can qualify as touring if there is an intention to perform at 6 or more premises (reduced from 12) or if presenting 14 performances in 2 or more premises.**

Charities and the charge to corporation tax

1.7 A large number of respondents raised concerns over how this approach would work for production companies, particularly smaller ones, with charitable status. Specifically points included the use of trading subsidiaries, the treatment of income, how the relief would interact with VAT and the potential administrative burden.

1.8 The government recognises that not for profit companies make up a valuable and substantial part of the theatre industry and should be able to benefit from the new tax relief without incurring significant burdens. The government has worked closely with the industry, including a number of theatre companies with charitable status in order to consider how the relief would work for those with charitable status.

1.9 Having worked through all specific concerns raised, the government is confident that this sector will be able to access the relief without significant additional administrative burdens. HMRC intends to publish comprehensive guidance on the new regime and will, with the help of industry representatives, embark on a programme to educate taxpayers and explain the new relief to both large and small businesses across the country.

Other forms of performing arts

1.10 A number of respondents highlighted that the definition of theatre proposed in the consultation may not cover the full range of performing arts including circus, orchestral or comedic performances. As mentioned above the government has removed the requirement to be in a licensed venue and this should open the relief to a wider range of performances such as those that take place in temporary or 'pop up' venues.

1.11 It is also important to note that, with the exception of the named exclusions, other types of performing art can benefit providing that those giving the performance can demonstrate that **they are wholly, or mainly, playing a role and that each performance is live, and the presentation of live performances is the main object, or one of the main objects of the theatre production company's activities.** The government believe that using this definition, which considers the nature of the performance, is more appropriate than listing types of performing arts.

Stages of consultation

1.12 The questions in the consultation document were primarily at stages 1 and 2 of the government tax consultation framework. The government has now entered stages 3 and 4 of the process; drafting legislation to effect the proposed changes and implementing and monitoring the change.

Next steps

1.13 Draft legislation has been published and will be included in report stage of Finance Bill 2014, where it will be subject to parliamentary scrutiny.

2

Summary of responses

2.1 This chapter summarises the key points and suggestions put forward by respondents to the questions set out in the consultation document, along with the government response and any changes to the policy design.

Principles and criteria for theatre tax relief

2.2 The consultation document set out the proposed criteria that the government would use to evaluate theatre tax relief.

Box 2.A: Criteria for theatre tax relief

- effectiveness
- affordability
- simple and straightforward to administer
- sustainable
- not open to abuse
- compliance with EU law

Question 1: Do you agree with the proposed criteria for assessing options to provide support to the theatre sector? Please provide any comments as appropriate.

2.3 Respondents who answered this question were generally in agreement that the criteria set out were appropriate. Some responses highlighted that the administrative burden that would be placed on those applying for the relief, particularly on charities and small companies, should also be a criteria for evaluation.

Government response

2.4 The government carefully considers the administrative burden of tax policy on businesses, and an assessment can be found in the published Tax Information and Impact Note.

2.5 The government worked closely with industry representatives to ensure that the design of the relief would be suitable for the not for profit sector. It is important to note that the government considered the impact of alternative options, but has concluded that any alternative would be likely to require a similar process to be undertaken by businesses (i.e. companies would need to track and record development expenditure linked to specific projects). On balance the Government believes that this model will benefit more companies, ensure consistency across the reliefs and provide the certainty of a payable tax credit.

Theatre tax relief

2.6 Chapter 3 of the consultation document set out the proposed design of theatre tax relief, including the definition of theatre, and of touring, the qualifying conditions and the qualifying expenditure.

Definition of theatre

2.7 The consultation document set out a proposed definition that was based on the definition of a performance of a play or dance found in the Licensing Act 2003. It was proposed that in addition to meeting this definition the premises used must hold a valid Premises Licence for Regulated Entertainment. Specific exclusions were also listed.

Question 2: Would adopting the definition of theatre production as outlined above be an effective way of meeting the government's objectives set out in Chapter 1?

Question 3: Is there an alternative definition of theatre that would more accurately reflect the full range of types of theatre being produced? If so, please provide details

Question 4: Is this the most appropriate way to exclude sexual entertainment? If not, what solutions do you propose to exclude this from the relief?

2.8 The majority of respondents were content that the definition based on the Licensing Act 2003 was suitable and agreed that sexual entertainment was appropriately excluded. In addition, a number of respondents raised concerns regarding the requirement to be in a licensed venue. Recent deregulatory changes to the Licensing Act 2003 mean that an authorisation is no longer required for the performance of a play which takes place between 8am and 11pm and for which the audience size does not exceed 500. It was therefore argued that this requirement would not be appropriate for smaller productions.

2.9 It was stated that this requirement would exclude performances in schools and other public places and that these can be highly valuable for educational purposes. It could also exclude more temporary venues such as 'pop up' theatres or outdoor performances. Circus productions were specifically mentioned by a large number of respondents, as a performing art which would fall outside of the scope of the relief due to the nature of traditional travelling circuses¹.

2.10 A number of respondents highlighted that this definition may not cover the full breadth of performing arts productions including orchestral, musical and comedic performances. Many asked for clarification on how types of performing acts not specifically mentioned might qualify.

Government response

2.11 **The government has removed the requirement to be in a licensed venue.** In order to ensure that the relief remains targeted but also that performances for educational purposes are supported, the relief will include a 'commercial purpose condition' which will require that there is an intention to run all, or a high proportion, of live performances to either paying members of the general public or for educational purposes.

2.12 It is important to note that, with the exception of the named exclusions, other types of performing art can benefit provided that those giving the performance can demonstrate that **they**

¹ A draft Legislative Reform Order to remove barriers to entertainment being put on in schools, village halls, hospitals and other public places, as well as lifting a licensing burden on traditional travelling circuses, is due to be laid in Parliament shortly.

are wholly, or mainly, playing a role and that each performance is live, and the presentation of live performances is the main object, or one of the main objects of the theatre production company's activities. The government believe that using this definition, which considers the nature of the performance, is more appropriate than listing types of performing arts. In cases where further clarity may be required companies should seek professional advice or contact HMRC.

2.13 The new definition and exclusions are summarised in Box 2.B.

Box 2.B: Definition of theatre for the purposes of theatre tax relief and exclusions

'Theatrical production' means dramatic production or a ballet (and any ballet is also a theatrical production, whether or not it is also a dramatic production).

'Dramatic production' means a production of a play, opera, musical, or other dramatic piece (whether or not involving improvisation) in relation to which the following conditions are met –

- the actors, singers, dancers or other performers are to give their performances wholly or mainly through the playing of roles,
- each performance in the proposed run of performances is to be live, and
- the presentation of live performances is the main object, or one of the main objects, of the company's activities in relation to the production.

"Dramatic piece" may also include, for example, a show that is to be performed by a circus.

For the purposes of this section a performance is 'live' if it is to an audience before whom the performers are actually present.

Productions not regarded as theatrical where-

- the main purpose, or one of the main purposes, for which it is made is to advertise or promote any goods or services,
- the performances are to consist of or include a competition or contest,
- a wild animal is to be used in any performance,
- the production is of a sexual nature (as set out in Box 2.C) or
- the making of a relevant recording is the main object, or one of the main objects, of the company's activities in relation to the production.

2.14 The government has also simplified the definition of sexual entertainment to make it applicable across devolved administrations and other non-UK jurisdictions. The new definition is summarised in box 2.C below.

Box 2.C: The definition of sexual nature for the purposes of theatre tax relief.

A performance is considered of a sexual nature for the purposes of theatre tax relief if the nature of the content is such that, ignoring financial gain, it would be reasonable to assume the content is included solely or principally for the purpose of sexually stimulating any member of the audience (whether by verbal or other means).

Definition of touring

2.15 The consultation document set out the proposed definition of touring as an intention to present at least 14 performances in two or more premises or performances in at least 12 different premises.

Question 5: Is there an alternative definition of 'touring' that would more accurately reflect the nature of these types of productions? If so, please provide suggestions.

2.16 The enhanced rate for touring was received positively by most respondents and it was stated that this would be valuable for bringing more productions to areas that are currently under utilised. A number of respondents stated that the definition would not be appropriate for smaller companies who often would not do as many as 14 performances in each venue of a tour, or perform in 12 different premises. In addition a few respondents suggested that touring should be defined by performing in different geographical locations.

Government response

2.17 The definition of touring has been changed to the intention to present performances in **at least 6 separate premises** (reduced from 12). The alternative way to qualify as touring (intention to present at least 14 performances in at least 2 separate premises) remains unchanged. The government considered alternative definitions of touring, including the use of geographical restrictions, and believes that the revised definition provides a simple and effective way to support the range of types and sizes of tours that take place.

2.18 It is also important to note that as there are no geographical restrictions to the definition, international premises may also qualify. The government hopes that this will encourage companies to showcase the UK's talent around the world.

Eligible production companies

2.19 The consultation document set out that only companies within the charge of UK corporation tax will be able to qualify for the relief.

Question 6: Would the requirement to be incorporated affect current funding or subsidies that are received by some theatre companies? If so, please explain in what way.

2.20 A number of respondents raised concerns that the need to be incorporated would not work for charities and specifically raised questions around the treatment of income, the use of trading subsidiaries, working in co-productions and the administrative burdens that will be associated with claiming the relief.

Government response

2.21 The government recognises that not for profit companies are a highly important and substantial sector in the industry and should be able to benefit from the new tax relief without incurring significant administrative burdens. The government would like to reassure respondents that the need to be subject to corporation tax will not exclude charities from the relief. The government has worked closely with the industry, including a number of theatre companies with charitable status in order to consider the how the relief would work for the group.

2.22 Having worked through all specific concerns raised, the government is confident that this sector will be able to access the relief without significant additional administrative burdens.

HMRC intends to publish comprehensive guidance on the new regime and will, with the help of industry representatives embark on a programme to educate taxpayers and explain the new relief to both large and small businesses across the country.

2.23 Those with charitable status may also be interested in the government's new Social Investment Tax Relief, which encourages individuals to invest in social enterprises. More information can be found on the following link:

<https://www.gov.uk/government/publications/social-investment-tax-relief-factsheet>

Qualifying core expenditure

2.24 The consultation document set out the types of expenditure which could qualify for relief and the types excluded.

Question 7: Which costs are integral to the production process itself and should therefore be eligible for relief? Please explain your choices.

Question 8: Do the production periods accurately reflect theatre production in practice? If not, please explain and provide alternative suggestions.

Question 9: Are there alternative rules that would be simpler or more effective to ensure that speculative expenditure and ongoing running costs do not qualify for relief?

2.25 Many respondents stated that this appropriately reflected the production process and costs incurred. Some respondents were concerned that speculative development costs may be excluded. Some also asked that more indirect costs such as marketing and financing costs should be covered, and that costs in the running and closing stages be included.

Government response

2.26 Speculative development costs are eligible for relief as long as the production reaches the stage when it can demonstrate a serious intention for the production to be staged. Some examples of this would be a venue being booked, creative staff being contracted or tickets going on sale. HMRC will set out more detail in guidance.

2.27 As with the other creative industry tax reliefs, it is only those costs **directly incurred** on making the production that are allowable. This means that indirect costs such as legal fees, accountancy fees, marketing and storage, which may still be allowable as tax deductions when computing profits of a trade, will not be used to compute the additional deduction and any tax credit.

2.28 It is important to note that the Government wants to incentivise those making theatrical productions as it does for the other creative industry reliefs of film, high-end television, animation and video games. The bulk of the costs for theatre incur during the 'production' stage and this has been recognised in the design of the relief. Direct costs incurred in closing the production will also be allowable and costs during the running stage (i.e. after the first paid public performance) will qualify if there has been a substantial set design or recasting.

Separate trades

2.29 The consultation set out the need to use the separate trades, whereby the profits and losses are calculated separately for each production within a company

Question 10: Does the requirement to be incorporated and operate separate trades within the company cause significant administrative burdens for theatre producers? Please explain in what way.

Question 11: Are there any other specific design points which need to be addressed?

2.30 A number of respondents commented that this would create an additional administration burden that could be particularly difficult for charities and smaller companies.

Government response

2.31 The government carefully considers the administrative burden of tax policy on businesses, and our assessment can be found in the published Tax Information and Impact Note.

2.32 It is important to note that the government considered the impact of alternative options, but has concluded that any alternative would be likely to require a similar process to be undertaken by businesses (i.e. companies would need to track and record development expenditure linked to specific projects). On balance the Government believes that this model will benefit more companies, ensure consistency across the reliefs and provide the certainty of a payable tax credit.

Other issues

2.33 The 'other issues' chapter of the consultation document, included questions on State aid, the proposed claims process, the treatment of unpaid costs and anti-abuse measures.

State aid

2.34 The consultation document set out that the relief is intended to fall under the revised General Block Exemption Regulation (GBER) rules. Under these rules the maximum aid intensity should not exceed 100% of eligible costs.

Question 12: Are there any issues with applying the rules proposed above in order to prevent aid intensity from exceeding 100%? If so, please explain.

2.35 Many respondents stated that they did not foresee any issue with an aid intensity limit of 100%, however a number highlighted a potential concern and the need for more clarity and guidance on this issue.

Government response

2.36 The government has concluded that it is appropriate to proceed under the GBER rules. At the time of publication of the consultation document, the new GBER rules were in draft. The final version can now be found at http://ec.europa.eu/competition/state_aid/reform/gber_final_en.pdf. Since the draft, the following relevant updates have been made:

- **The total cost of the relief cannot exceed EUR 150 million per annum.** While the estimated forecast cost of the relief is significantly below this, the government will closely monitor the take up of the relief in order to ensure this rule is met.
- **If the aid for a production does not exceed EUR 1 million, the maximum amount of aid may be set at 80% of eligible costs.** The current design offers a rate of relief of up to 25%, which is applied to 80% of qualifying expenditure. This ensures that this rule is always met.
- **If the aid for a production does exceed EUR 1 million, the aid amount cannot exceed the operating losses and a reasonable profit over the relevant period.** Given the focus on supporting only development costs, it is highly unlikely that this rule would not be met. To the extent that the aid does exceed the operating losses and a reasonable profit, then the excess may be clawed back.

Claims Process

Question 13: Are there any issues for the theatre industry in applying the same process as FTR to make claims under the new tax relief?

2.37 The majority of the responses thought that the current claims system for film tax relief was straightforward and appropriate. It was requested that claims could be made at an earlier point in the cycle for cash flow purposes. In addition responses emphasised clarity and certainty was required to streamline the claims procedure and wanted guidance available for what could be claimed as core expenditure.

Government response

2.38 HMRC will administer the new tax relief in line with the current administration of the other creative sector tax reliefs. As with the other reliefs a claim to the relief is required to be made in a company tax return, and so be aligned with company accounting dates.

2.39 HMRC intends to publish comprehensive guidance on the new regime and will embark on a programme to educate taxpayers. The government believes that guidance and a programme of education will enable the majority of customers to confidently self-assess and complete their claims for relief.

Treatment of unpaid costs

2.40 The consultation document proposed that any amount of costs incurred but unpaid within four months of the end of a period of account will not qualify for the tax relief.

Question 14: Do respondents think that this is an acceptable time scale to exclude unpaid costs?

2.41 Many responses stated that this time frame was acceptable and reasonable. However a number called for a longer time period.

Government response

2.42 The Government proposes to keep the rule consistent with the other creative sector tax reliefs. It is important to note that any costs paid outside this period will be eligible for claims if paid in later accounting periods.

Anti-abuse measures

Question 15: Can respondents suggest ways to prevent abuse of the new tax relief to ensure that it remains effective?

Question 16: Are there specific areas in addition to those mentioned, that create the opportunity for abuse?

2.43 It was recognised by respondents that the model of the film tax relief minimises opportunities for abuse. A small number of responses suggested ways to prevent abuse. These included the need for clear guidance on what makes up speculative, pre-production, running and closing costs and monitoring the scheme over time. One respondent recommended a General Anti-Abuse Rule (GAAR) be included in the legislation so that evidence of any abuse can be acted upon. Other opportunities for abuse were again only highlighted by a few and included invoicing running costs as pre-production costs.

Government response

2.44 The Government considers that effective anti-avoidance rules are critical to the long term success and stability of theatre tax relief. The Government will include rules similar to those applied under the film tax relief to prevent artificial inflation of claims. In addition, there will be a general anti avoidance rule based on the GAAR, denying relief where there are any tax avoidance arrangements relating to the production. HMRC will continue to monitor for abuse once the regime has been introduced.

Tax impact assessment

Question 17: Do you have any comments or evidence to further support the impacts identified, particularly our assessment of the impact of these proposals on administrative burdens?

Most respondents had no specific comments on the impact assessment. However, as mentioned throughout a number of respondents raised concerns about the administrative burdens. The government's response to this has been covered earlier in paragraphs 2.31 and 2.32



List of respondents

Respondent organisations

Arts Council of England
Arts Council Wales
Association of British Orchestra
Battersea Art Centre
Birmingham Repertory Theatre
Box Clever Theatre
Bristol Old Vic
Cameron Mackintosh Ltd
Cheek by Jowl Theatre Company
Chichester Festival Theatre
Chartered Institute of Taxation
Dr Haze Circus of Horror
Circus Ltd - John Lawson Entertainments
Circus Starr
Circus World Entertainments
Clywd Theatre Cymru
Concert Promoters Association
Creative Guild
Deloitte
English Touring Opera
Equity
Gate Theatre
Gifford Circus
Shakespeare's Globe Theatre
Glyndebourne Productions Ltd
Grant Thornton
Halle Concerts Society
Happy Promotions Ltd
Headlong Theatre Company
Incidental Colman Ltd
Independent Street Arts Network
Independent Theatre Council
Kingston Smith LLP
Liverpool Everyman Theatre
Mayor of London, Greater London Authority
Mid Wales Opera
Music Publishers Association
Music Theatre Wales
National Centre for Circus Arts
National Theatre
National Theatre Wales
NoFitState Circus
Northamptonshire Arts Management Trust
Northern Stage, Newcastle upon Tyne
Northumberland Theatre
Nottingham Playhouse
Nyman Libson Paul
Opera & Music Theatre Forum
Pentabus Rural Theatre Company
PwC
Rose Theatre Kingston
Royal Exchange Manchester

Royal Opera House
Royal Shakespeare Company
Sadler's Wells
Sean Egan Consultants Ltd on behalf of the
Association of Circus Proprietors.
The Federation of Scottish Theatre
Sheffield Theatres
Society of London Theatre & UK Theatre
Association
Southbank Centre
Stage Entertainment UK Ltd
Stockton on Tees Borough Council
The Association of Independent Showmen
The Flying Music Group Ltd
The Europeans Events Corporation Ltd
The Gandey Organisation Ltd
The Octagon Bolton
The Production Shed
The Royal Edinburgh Military Tattoo
Theatre Royal, Plymouth
Welsh National Opera & Opera North
West Yorkshire Playhouse

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