

## Explanatory Note

### Clause 27 and Schedule: Tax relief for the production of orchestral concerts

#### Summary

1. This clause and Schedule introduces a relief from corporation tax for qualifying orchestral concerts.

#### Details of the clause and Schedule

2. The clause brings in a Schedule which:
  - Introduces a new relief for orchestral concerts;
  - Provides for the consequential amendments to other parts of the Taxes Acts as a result of the new relief;
  - Provides for the commencement of the new orchestra relief.

#### Schedule 1: Part 1: Amendment of CTA 2009

3. Subsection 1 introduces Part 15D to Corporation Tax Act 2009 (CTA 2009).

#### Chapter 1

4. Chapter 1 contains sections 1217P to 1217PB which set out the overview of the relief and interpretation of "orchestral concert" and "production company".
5. Section 1217PA defines what is meant by "orchestral concert":
  - A concert by an orchestra, ensemble, group or band must consist wholly or mainly of instrumentalists who are the primary focus of the concert. For example, the instrumentalists are not just a backing band for a singer. Instrumentalists are not singers.
  - A concert will not be an 'orchestral concert' so not eligible for relief if it falls within the criteria set out at 1217PA(2) to (4). For example if a concert's main purpose is to advertise goods and services it will not qualify for relief.
  - A concert will not qualify for relief where the main purpose or one of the main purposes is to advertise goods and services, or it includes a competition or

contest, or the primary purpose is to make a recording.

6. Section 1217PB sets out the general rule that governs whether a company is a production company in relation to a qualifying concert.
  - The company must be actively engaged in decision-making, be responsible for putting on the concert from the start of the production process to the finish, and directly negotiate for and pay for rights, goods and services in relation to the concert. It must also employ and engage the performers.
  - There can be only one production company in relation to a concert. Partnerships and co-productions are therefore not eligible for the relief.
  - If there is more than one company that meets the conditions of a production company then it is that company most directly engaged in the activities set out in 1217PB(1) that is the production company. However, if no company meets those conditions then there is no production company in relation to the concert.

## Chapter 2

7. Chapter 2 sets out the taxation of activities of the production company.
8. Section 1217Q sets out how a company may make a claim for the additional deduction. A company that makes a claim for relief must treat each qualifying concert as a separate trade. A company is treated as beginning to carry on the separate trade when the pre-performance stage begins or if earlier at the time of the first receipt by the company of any income from the production of the concert. Where a company makes an election in relation to a number of concerts in a series then that series is treated as a separate trade.
9. Section 1217QA sets out how a company may make an election for a concert series to be treated as a separate trade. The election must be in writing and is irrevocable once made. The election must also specify which of the concerts (if any) are not qualifying.
10. Section 1217QB sets out how the profits and losses of the separate orchestral trade are calculated for the first period of account and any subsequent periods.
11. Section 1217QC sets out what is income for the purposes of the calculation of the profits or losses of the separate orchestral trade. Income includes: receipts from the sale of tickets or of rights in the concert or concert series, royalties or other payments for use of other aspects of the concert or concert series, rights for merchandise and receipts by the company by way of any profit share agreements.
12. Section 1217QD sets out that for the purpose of the calculation of the profits or losses of the separate orchestral trade being the concert or the concert series. Costs incurred by the company will be those direct costs. Capital expenditure is treated as being of a revenue nature where it is on the creation of the concert or concert series.
13. Section 1217QE sets out the rules of when costs are taken to have been incurred for the purposes of the relief. For example that costs are incurred when they are represented in the state of completion of the work in progress or do not include any amount that has not been

paid unless it is the subject of an unconditional obligation to pay. Costs which remain unpaid by four months after the end of a period of account are ignored for that period.

14. Section 1217QF outlines the circumstances in which pre-trading expenditure, including expenditure on developing the concert or concert series before it was 'green-lit', may be treated as expenditure of the separate theatrical trade.
15. Section 1217QG provides that estimates at the balance sheet date for each period of account must be on a just and reasonable basis and must take into account all relevant circumstances.

### Chapter 3

16. Section 1217RA provides for how a company qualifies for relief.
  - A company must be the production company in relation to the concert and intends that the concert must be performed live before paying members of the general public, in other words the musicians must be present before the audience. However, a concert may qualify if it is for genuine educational purposes (stating in a company's articles that it is set up for educational purposes is not sufficient evidence) and the production company is not associated, connected with, or has responsibility for, the beneficiaries of the concert.
  - There must be a minimum European Economic Area (EEA) expenditure (see 1217RB).
  - There must be a qualifying orchestral concert where the number of instrumentalists is at least 12 and none of those instruments played, or a minority, is electronically or directly amplified. Directly amplified instruments are those which are individually amplified rather than the use of separate, external microphones being used to pick up the overall sound of the concert generally.
17. Section 1217RB sets out the minimum EEA expenditure required by the company to qualify for the relief. At least 25 per cent of the qualifying core expenditure (see 1217RB) must be on goods or services that are provided from within the EEA.
18. Section 1217RC provides that core expenditure means expenditure on the activities directly involved in producing the concert or concert series, such as rehearsal costs. Core expenditure will not include indirect expenditure such as marketing the concert or concert series, financing, associated finance costs, legal fees, accountancy fees or storage of instruments. Costs incurred on the actual performance of the concert and each individual concert within the concert series, for example payments to musicians for their actual performances in the concert or concert series will not be eligible core expenditure. Development expenditure that precedes production will not be eligible if the production does not get 'green lit', in other words the production has permission and approval to proceed, (see also new section 1217QE for when costs are taken to have been incurred). The intention is to separate speculative expenditure from expenditure undertaken in the knowledge that the decision has been taken to go ahead with the production.

19. Section 1217RD sets out how a company may claim for the additional deduction. A company that makes a claim for relief must treat each qualifying concert or concert series as a separate trade. Claims are made in respect of an accounting period.
20. Section 1217RE provides that a company may claim an additional deduction based on its qualifying expenditure. For the first period of account in which the separate orchestral trade is carried on, the additional deduction is the lesser of the amount of qualifying expenditure which is EEA expenditure, or 80 % of the total amount of qualifying expenditure. For subsequent periods of account, the amount of additional deduction is the lesser of the amount of qualifying expenditure which is EEA expenditure or 80 per cent of the total amount of qualifying expenditure minus any additional deductions given for previous periods.
21. Section 1217RF defines “qualifying expenditure” and also provides that where relief has been given for other creative reliefs that expenditure is excluded, for example, film tax relief, television tax relief, video games tax relief or theatre tax relief.
22. Section 1217RF(1) also sets out that expenditure which is not otherwise relievable under other parts of the tax code, for example on entertainment, is not qualifying core expenditure. Furthermore where claims have been made on expenditure relating to the other creative reliefs (film, television, etc.) is not eligible for relief. This prevents a company claiming relief for the same expenditure under different regimes.
23. Section 1217RG provides that where a company qualifies for orchestra tax relief and has a surrenderable loss then that company may claim an orchestra tax credit for the period. The whole or part of the loss may be surrendered.
24. Section 1217RH defines a surrenderable loss and a relevant unused loss, and sets out how the available loss and any loss carried forward are to be calculated.
25. Section 1217RI provides that where a company is entitled to an orchestra tax credit for a period, and it claims that credit, the Commissioners for Her Majesty’s Revenue and Customs will pay the credit to the company. However where there are any other outstanding liabilities of the company (such as outstanding corporation tax, VAT or PAYE) then the credit is first applied against those outstanding liabilities. If the company's tax return is enquired into the no payment of the credit needs to be made before enquiries are complete.
26. Section 1217RJ sets out that for State aid purposes the total amount of any orchestra tax credits for each undertaking must not exceed 50 million Euros per year. “Undertaking” must be interpreted within the context of the General Block Exemption Regulation.
27. Section 1217RK sets out that a company does not qualify for relief where the main or one of the main purposes of the arrangements to claim the tax credit or otherwise benefit from the relief to obtain a tax advantage.
28. Section 1217RL sets out that where a transaction is attributable to arrangements entered into otherwise for genuine commercial reasons to inflate the amount of a claim then that transaction is disregarded when computing the additional deduction.

## Chapter 4

29. Section 1217S sets out the application of the new section 1217SA to 1217SC.

30. Section 1217SA provides that losses made before the completion period of a separate trade are only available to be carried forward to be set against the profits of the separate orchestral trade.
31. Section 1217SB provides for how losses are to be treated in the completion period.
32. Section 1217SC provides for how terminal losses are to be treated and the circumstances in which terminal losses can be transferred.

## Chapter 5

33. Section 1217T sets out the conditions for claiming provisional relief, such as, a company is not entitled to relief in an interim accounting period unless it includes, in its company tax return for the period a statement of the planned amount of EEA expenditure and that amount of expenditure meets the condition in 1217RB.
34. Section 1217TA allows for the claw-back of provisional relief where it subsequently appears the EEA condition will not be met. It sets out what a company must do if it no longer qualifies for relief and also what to do when it ceases to carry on the orchestral trade.

## Chapter 6

35. Section 1217U sets out the interpretation of certain expressions within Part 15D.

## Part 2: Consequential amendments

36. Paragraph 2 sets out consequential amendments to ICTA
37. Paragraphs 3 to 6 set out the consequential amendments to FA1998 to accommodate orchestra tax relief
38. Paragraph 7 sets out an amendment to CAA2001
39. Paragraph 8 sets out an amendment to FA2007.
40. Paragraphs 9 to 11 set out the necessary amendments to CTA 2009
41. Paragraph 12 sets out amendments to FA 2009.
42. Paragraph 13 to 14 sets out the amendments to CTA 2010 in respect of the Northern Ireland rate.

## Part 3: Commencement

43. Paragraphs 16 to 17 set out that all amendments made by the Schedule have effect in relation to accounting periods beginning on or after 1 April 2016. Where an accounting period straddles the 1 April date the profits of a trade are to be apportioned between a deemed accounting period ending on 31 March 2016 and one commencing on 1 April 2016 on a just and reasonable basis.
44. Paragraph 7 sets out the separate commencement provisions in respect of the Corporation Tax (Northern Ireland) Act 2015.

## Background note

45. The new tax relief for orchestral production will allow qualifying companies engaged in the production of concerts to claim an additional deduction in computing their taxable profits and where that additional deduction results in a loss, to surrender those losses for a payable tax credit.
46. Both the additional deduction and the payable credit are calculated on the basis of EEA core expenditure up to a maximum of 80% of the total core expenditure by the qualifying company. The additional deduction is 100% of qualifying core expenditure and the payable tax credit is 25% of losses surrendered.
47. The credit is based on the company's qualifying expenditure on the production of a qualifying orchestral concert. This expenditure must be on activities directly involved in producing the concert, such as rehearsal costs. Qualifying expenditure will not include indirect costs such as financing, marketing and accountancy and legal fees.
48. At least 25% of the qualifying expenditure must be on goods or services that are provided for from within the EEA.
49. Concerts whose main purpose, or one of the main purposes, is to advertise goods and services, including a competition or the primary purpose is to make a recording will not qualify for relief.
50. The new relief is part of the government's support to the creative sector and aims to promote British culture in a sustainable way.
51. If you have any questions or comments about this legislation please contact Kerry Pope on 03000 585 740 (email: [kerry.pope@hmrc.gsi.gov.uk](mailto:kerry.pope@hmrc.gsi.gov.uk)) or Des Ryan on 03000 585895 (email: [des.ryan@hmrc.gsi.gov.uk](mailto:des.ryan@hmrc.gsi.gov.uk)).