
27 Tax relief for production of orchestral concerts

The Schedule contains provision about relief in respect of the production of orchestral concerts.

SCHEDULE TO CLAUSE 27

TAX RELIEF FOR PRODUCTION OF ORCHESTRAL CONCERTS

PART 1

AMENDMENT OF CTA 2009

1 After Part 15C of CTA 2009 insert –

“PART 15D

ORCHESTRA TAX RELIEF

CHAPTER 1

INTRODUCTION

Overview

1217P Overview

- (1) - This Part is about the production of orchestral concerts, and applies for corporation tax purposes.
- (2) - This Chapter explains what is meant by “orchestral concert” and how a company comes to be treated as the production company in relation to a concert.
- (3) - Chapter 2 is about the taxation of the activities of a production company and includes –
 - (a) - provision for the company’s activities in relation to its concert, or its concert series, to be treated as a separate trade, and
 - (b) - provision about the calculation of the profits and losses of that trade.
- (4) - Chapter 3 is about relief (called “orchestra tax relief”) which may be given to a production company in relation to its concert or concert series –
 - (a) - by way of additional deductions to be made in calculating the profits or losses of the company’s separate trade, or
 - (b) - by way of a payment (an “orchestra tax credit”) to be made on the company’s surrender of losses from that trade,and describes the conditions a company must meet to qualify for orchestra tax relief.

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- (5) Chapter 4 contains provision about the use of losses of the separate - trade (including provision about relief for terminal losses).
 - (6) - Chapter 5 provides –
 - (a) - for relief under Chapters 3 and 4 to be given on a provisional basis, and
 - (b) - for such relief to be withdrawn if it turns out that conditions that must be met for such relief to be given are not actually met.

Interpretation

1217PA “Orchestral concert”

- (1) - In this Part “orchestral concert” means a concert by an orchestra, ensemble, group or band consisting wholly or mainly of instrumentalists who are the primary focus of the concert.
- (2) - But a concert is not an orchestral concert if –
 - (a) - the main purpose, or one of the main purposes, of the concert is to advertise or promote any goods or services,
 - (b) - the concert is to consist of or include a competition or contest, or
 - (c) - the making of a relevant recording is the main object of the production company’s activities in relation to the concert.
- (3) - A recording of a concert is a “relevant recording” if the recording is made for the purpose of using it (or an edited version of it) in any of the following ways –
 - (a) - broadcast, at the time of the concert or later, to the general public;
 - (b) - release, at the time of the concert or later, to the paying public (by digital or other means);
 - (c) - use as a soundtrack (or part of a soundtrack) to a television, radio, theatre, video game or similar production for broadcast, exhibition or release to the general public;
 - (d) - use in a film (or part of a film) for exhibition to the paying public at the commercial cinema.
- (4) - In this section –
 - “broadcast” means broadcast by any means (including television, radio or the internet);
 - “film” has the same meaning as in Part 15 (see section 1181).

1217PB Production company

- (1) - A company is the production company in relation to a concert if the company (acting otherwise than in partnership) –
 - (a) - is responsible for putting on the concert from the start of the production process to the finish, including employing or engaging the performers,
 - (b) - is actively engaged in decision-making in relation to the concert,
 - (c) - makes an effective creative, technical and artistic contribution to the concert, and

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- (d) directly negotiates for, contracts for and pays for rights, - goods and services in relation to the concert.
 - (2) - No more than one company can be the production company in relation to a concert.
 - (3) - If more than one company meets the conditions in subsection (1) in relation to a concert, the company that is most directly engaged in the activities mentioned in that subsection is the production company.
 - (4) - If no company meets the conditions in subsection (1), there is no production company in relation to the concert.

CHAPTER 2

TAXATION OF ACTIVITIES OF PRODUCTION COMPANY

Separate orchestral trade

1217Q Separate orchestral trade

- (1) Subsection (2) applies to a company in relation to a concert if—
 - (a) - the company qualifies for orchestra tax relief in relation to the production of the concert (see section 1217RA(2)), and
 - (b) - the concert is not included in a concert series in relation to which the company has made an election under subsection (4).
- (2) - The company's activities in relation to the production of the concert are treated as a trade separate from any other activities of the company (including activities in relation to the production of any other concert).
- (3) - Subsections (4) and (5) apply to a company in relation to concerts in a series if the conditions in section 1217RA(4)(a), (b), (c) and (d) are met in relation to the company and the concert series.
- (4) - The company may, for the purposes of this Part, make an election in relation to the concert series. -
See section 1217QA for provision about making an election. -
- (5) - Where the company makes an election in relation to a concert series (and accordingly qualifies for orchestra tax relief in relation to the production of the series), the company's activities in relation to the production of the concert series are treated as a trade separate from any other activities of the company (including activities in relation to the production of any other concert).
- (6) - In this Part the separate trade mentioned in subsection (2) or (5) is called the "separate orchestral trade".
- (7) - If the separate orchestral trade relates to a single concert, the company is treated as beginning to carry on that trade—
 - (a) - at the beginning of the pre-performance stage of the concert,
or

-
- (b) if earlier, at the time of the first receipt by the company of any - income from the production of the concert.

1217QA Election for concert series

- (1) - An election under section 1217Q(4) must be made by the company by notice in writing to an officer of Her Majesty's Revenue and Customs before the date of the first concert in the series.
- (2) - An election has effect in relation to the orchestral concerts specified in it, and must also specify which of those concerts (if any) are not to be qualifying orchestral concerts (see section 1217RA(3)).
- (3) - An election –
- (a) - may have effect in relation to concerts in two or more accounting periods, and
 - (b) - is irrevocable.
- (4) - If the separate orchestral trade relates to a concert series, the company is treated as beginning to carry on that trade –
- (a) - at the beginning of the pre-performance stage of the first concert in the series, or
 - (b) - if earlier, at the time of the first receipt by the company of any income from the production of the concert series.

Profits and losses of separate orchestral trade

1217QB Calculation of profits or losses of separate orchestral trade

- (1) - This section applies for the purpose of calculating the profits or losses of the separate orchestral trade.
- (2) - For the first period of account during which the separate orchestral trade is carried on, the following are brought into account –
- (a) - as a debit, the costs of the production of the concert or concert series incurred to date;
 - (b) - as a credit, the proportion of the estimated total income from that production treated as earned at the end of that period.
- (3) - For subsequent periods of account the following are brought into account –
- (a) - as a debit, the difference between the amount (“C”) of the costs of the production of the concert or concert series incurred to date and the amount corresponding to C for the previous period, and
 - (b) - as a credit, the difference between the proportion (“PI”) of the estimated total income from that production treated as earned at the end of that period and the amount corresponding to PI for the previous period.
- (4) - The proportion of the estimated total income treated as earned at the end of a period of account is –

$$\frac{C}{T} \times I$$

where –

C is the total to date of costs incurred; -

T is the estimated total cost of the production of the concert or concert series;

I is the estimated total income from the production of the concert or concert series.

1217QC Income from the production

- (1) - References in this Chapter to income from a production of a concert or concert series are to any receipts by the company in connection with the production or exploitation of the concert or concert series.
- (2) - This includes –
 - (a) - receipts from the sale of tickets or of rights in the concert or concert series;
 - (b) - royalties or other payments for use of the concert or concert series;
 - (c) - payments for rights to produce merchandise;
 - (d) - receipts by the company by way of a profit share agreement.
- (3) - Receipts that (apart from this subsection) would be regarded as being of a capital nature are treated as being of a revenue nature.

1217QD Costs of the production

- (1) - References in this Chapter to the costs of a production of a concert or concert series are to expenditure incurred by the company on –
 - (a) - activities involved in developing and putting on the concert or concert series, or
 - (b) - activities with a view to exploiting the concert or concert series.
- (2) - This is subject to any provision of the Corporation Tax Acts prohibiting the making of a deduction, or restricting the extent to which a deduction is allowed, in calculating the profits of a trade.
- (3) - Expenditure which, apart from this subsection, would be regarded as being of a capital nature only because it is incurred on the creation of an asset (the concert or concert series) is treated as being of a revenue nature.

1217QE When costs are taken to be incurred

- (1) - For the purposes of this Chapter, the costs that have been incurred on a production of a concert or concert series at a given time do not include any amount that has not been paid unless it is the subject of an unconditional obligation to pay.
- (2) - Where an obligation to pay an amount is linked to income being earned from the production of the concert or concert series, the obligation is not treated as having become unconditional unless an appropriate amount of income is or has been brought into account under section 1217QB.
- (3) - In determining for the purposes of this Chapter the amount of costs incurred on a production of a concert or concert series at the end of a period of account, any amount that has not been paid 4 months after the end of that period is to be ignored.

1217QF Pre-trading expenditure

- (1) - This section applies if, before the company begins to carry on the separate orchestral trade, it incurs expenditure on activities falling within section 1217QD(1)(a).
- (2) - The expenditure may be treated as expenditure of the separate orchestral trade and as if incurred immediately after the company begins to carry on that trade.
- (3) - If expenditure so treated has previously been taken into account for other tax purposes, the company must amend any relevant company tax return accordingly.
- (4) - Any amendment or assessment necessary to give effect to subsection (3) may be made despite any limitation on the time within which an amendment or assessment may normally be made.

1217QG Estimates

Estimates for the purposes of section 1217QB must be made as at the balance sheet date for each period of account, on a just and reasonable basis taking into consideration all relevant circumstances.

CHAPTER 3

ORCHESTRA TAX RELIEF

Introduction

1217R Overview of orchestra tax relief

- (1) - Relief under this Chapter (“orchestra tax relief”) is given by way of—
 - (a) - additional deductions (see sections 1217RD to 1217RF), and
 - (b) - orchestra tax credits (see sections 1217RG to 1217RJ).
- (2) - See Schedule 18 to FA 1998 (in particular, Part 9D) for provision about the procedure for making claims for orchestra tax relief.

Companies qualifying for orchestra tax relief

1217RA Companies qualifying for orchestra tax relief

- (1) - Subsection (2) applies in the case of an orchestral concert which is not included in a concert series in relation to which an election has been made under section 1217Q(4).
- (2) - A company qualifies for orchestra tax relief in relation to the production of a concert if—
 - (a) - the concert is a qualifying orchestral concert,
 - (b) - the company is the production company in relation to the concert,
 - (c) - the company intends that the concert should be performed live—
 - (i) - before the paying public, or
 - (ii) - for educational purposes, and

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- (d) the EEA expenditure condition is met in relation to the concert (see section 1217RB).
- (3) - In this Part “qualifying orchestral concert” means an orchestral concert—
- (a) - in which the instrumentalists number at least 12, and
 - (b) - in which none of the musical instruments to be played, or a minority of those instruments, is electronically or directly amplified.
- (4) - A company qualifies for orchestra tax relief in relation to the production of a concert series if—
- (a) - the concert series is a qualifying orchestral concert series,
 - (b) - the company is the production company in relation to every concert in the series,
 - (c) - the company intends that all or a high proportion of the concerts in the series should be performed live—
 - (i) - before the paying public, or
 - (ii) - for educational purposes,
 - (d) - the EEA expenditure condition is met in relation to the series, and
 - (e) - the company has made an election under section 1217Q(4) in relation to the series.
- (5) - In this section “qualifying orchestral concert series” means two or more orchestral concerts, all or a high proportion of which are qualifying orchestral concerts.
- (6) - For the purposes of this section a concert is “live” if it is to an audience before whom the musicians are actually present.
- (7) - A concert is not regarded as performed for educational purposes if the production company is, or is associated with, a person who—
- (a) - has responsibility for the beneficiaries, or
 - (b) - is otherwise connected with the beneficiaries (for instance, by being their employer).
- (8) - For the purposes of subsection (7), a production company is associated with a person (“P”) if—
- (a) - P controls the production company, or
 - (b) - P is a company which is controlled by the production company or by a person who also controls the production company.
- (9) - In this section—
- “the beneficiaries” means persons for whose benefit the concert will or may be performed;
 - “control” has the same meaning as in Part 10 of CTA 2010 (see section 450 of that Act).
- (10) - There is further related provision in section 1217RK (tax avoidance arrangements).

1217RB The EEA expenditure condition

- (1) - The “EEA expenditure condition” is that at least 25% of the core expenditure on the production of the concert or concert series incurred by the company is EEA expenditure.
- (2) - In this Part “EEA expenditure” means expenditure on goods or services that are provided from within the European Economic Area.
- (3) - Any apportionment of expenditure as between EEA and non-EEA expenditure for the purposes of this Part is to be made on a just and reasonable basis.
- (4) - The Treasury may by regulations –
 - (a) - amend the percentage specified in subsection (1);
 - (b) - amend subsection (2).
- (5) - See also sections 1217T and 1217TA (which are about the giving of relief provisionally on the basis that the EEA expenditure condition will be met).

1217RC “Core expenditure”

- (1) - In this Part “core expenditure”, in relation to the production of a concert or concert series, means expenditure on the activities involved in producing the concert or concert series.
- (2) - The reference in subsection (1) to “expenditure on the activities involved in producing the concert or concert series” includes expenditure on travel to and from a venue other than the usual venue for concerts produced by the company.
- (3) - But that reference does not include –
 - (a) - expenditure on any matters not directly involved with putting on the concert or concerts (for instance, financing, marketing, legal services or storage),
 - (b) - speculative expenditure on activities not involved with putting on the concert or concerts, and
 - (c) - expenditure on the actual performance or performances (for instance, payments to musicians for their performances in the concert or concert series).

Additional deduction

1217RD Claim for additional deduction

- (1) - A company which qualifies for orchestra tax relief in relation to the production of a concert or concert series may claim an additional deduction in relation to the production.
- (2) - A claim under subsection (1) is made with respect to an accounting period.
- (3) - Where a company has made a claim, the company is entitled to make an additional deduction, in accordance with section 1217RE, in calculating the profit or loss of the separate orchestral trade for the accounting period concerned.

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- (4) Where the company tax return in which a claim is made is for an accounting period later than that in which the company begins to carry on the separate orchestral trade, the company must make any amendments of company tax returns for earlier periods that may be necessary.
 - (5) - Any amendment or assessment necessary to give effect to subsection (4) may be made despite any limitation on the time within which an amendment or assessment may normally be made.

1217RE Amount of additional deduction

- (1) - The amount of an additional deduction to which a company is entitled as a result of a claim under section 1217RD is calculated as follows.
- (2) - For the first period of account during which the separate orchestral trade is carried on, the amount of the additional deduction is E, where E is –
 - (a) - so much of the qualifying expenditure incurred to date as is EEA expenditure, or
 - (b) - if less, 80% of the total amount of qualifying expenditure incurred to date.
- (3) - For any period of account after the first, the amount of the additional deduction is –

$$E - P$$

where E is –

- (a) - so much of the qualifying expenditure incurred to date as is EEA expenditure, or
- (b) - if less, 80% of the total amount of qualifying expenditure incurred to date, and

P is the total amount of the additional deductions given for previous periods.

- (4) - The Treasury may by regulations amend the percentage specified in subsection (2) or (3).

1217RF “Qualifying expenditure”

- (1) - In this Chapter “qualifying expenditure”, in relation to the production of a concert or concert series, means core expenditure (see section 1217RC) on the production that –
 - (a) - falls to be taken into account under sections 1217QB to 1217QG in calculating the profit or loss of the separate orchestral trade for tax purposes, and
 - (b) - is not expenditure which is otherwise relievable.
- (2) - For the purposes of this section expenditure is otherwise relievable if it is expenditure in respect of which (assuming a claim were made) the company would be entitled to –
 - (a) - film tax relief under Chapter 3 of Part 15,
 - (b) - television tax relief under Chapter 3 of Part 15A,
 - (c) - video games tax relief under Chapter 3 of Part 15B,

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- (d) an additional deduction under Part 15C (theatrical - productions), or
 - (e) - a theatre tax credit under Part 15C.

Orchestra tax credits

1217RG Orchestra tax credit claimable if company has surrenderable loss

- (1) - A company which qualifies for orchestra tax relief in relation to the production of a concert or concert series may claim an orchestra tax credit in relation to the production for an accounting period in which the company has a surrenderable loss.
- (2) - Section 1217RH sets out how to calculate the amount of any surrenderable loss that the company has in the accounting period.
- (3) - A company making a claim may surrender the whole or part of its surrenderable loss in the accounting period.
- (4) - The amount of the orchestra tax credit to which a company making a claim is entitled for the accounting period is 25% of the amount of the loss surrendered.
- (5) - The company's available loss for the accounting period (see section 1217RH(2)) is reduced by the amount surrendered.

1217RH Amount of surrenderable loss

- (1) The company's surrenderable loss in the accounting period is –
 - (a) - the company's available loss for the period in the separate orchestral trade (see subsections (2) and (3)), or
 - (b) - if less, the available qualifying expenditure for the period (see subsections (4) and (5)).
- (2) - The company's available loss for an accounting period is –

$$L + RUL$$

where –

L is the amount of the company's loss for the period in the separate orchestral trade, and

RUL is the amount of any relevant unused loss of the company (see subsection (3)).

- (3) - The "relevant unused loss" of a company is so much of any available loss of the company for the previous accounting period as has not been –
 - (a) - surrendered under section 1217RG, or
 - (b) - carried forward under section 45 of CTA 2010 and set against profits of the separate orchestral trade.
- (4) - For the first period of account during which the separate orchestral trade is carried on, the available qualifying expenditure is the amount that is E for that period for the purposes of section 1217RE(2).

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- (5) For any period of account after the first, the available qualifying - expenditure is –

$$E - S$$

where –

E is the amount that is E for that period for the purposes of section 1217RE(3), and

S is the total amount previously surrendered under section 1217RG.

- (6) - If a period of account of the separate orchestral trade does not coincide with an accounting period, any necessary apportionments are to be made by reference to the number of days in the periods concerned.

1217RI Payment in respect of orchestra tax credit

- (1) - If a company –
- (a) - is entitled to an orchestra tax credit for an accounting period, and
 - (b) - makes a claim,
- the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") must pay the amount of the credit to the company.
- (2) - An amount payable in respect of –
- (a) - an orchestra tax credit, or
 - (b) - interest on an orchestra tax credit under section 826 of ICTA,
- may be applied in discharging any liability of the company to pay corporation tax.
- To the extent that it is so applied the Commissioners' liability under subsection (1) is discharged.
- (3) - If the company's company tax return for the accounting period is enquired into by the Commissioners, no payment in respect of an orchestra tax credit for that period need be made before the Commissioners' enquiries are completed (see paragraph 32 of Schedule 18 to FA 1998).
- In those circumstances the Commissioners may make a payment on a provisional basis of such amount as they consider appropriate.
- (4) - No payment need be made in respect of an orchestra tax credit for an accounting period before the company has paid to the Commissioners any amount that it is required to pay for payment periods ending in that accounting period –
- (a) - under PAYE regulations,
 - (b) - under section 966 of ITA 2007 (visiting performers), or
 - (c) - in respect of Class 1 national insurance contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 or Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (5) - A payment in respect of an orchestra tax credit is not income of the company for any tax purpose.

1217RJ Limit on State aid

In accordance with Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market, the total amount of orchestra tax credits payable under section 1217RI in the case of any undertaking is not to exceed 50 million euros per year.

Anti-avoidance etc

1217RK Tax avoidance arrangements

- (1) - A company does not qualify for orchestra tax relief in relation to the production of a concert or concert series if there are any tax avoidance arrangements relating to the production.
- (2) - Arrangements are “tax avoidance arrangements” if their main purpose, or one of their main purposes, is the obtaining of a tax advantage.
- (3) - In this section –
 - “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable;
 - “tax advantage” has the meaning given by section 1139 of CTA 2010.

1217RL Transactions not entered into for genuine commercial reasons

- (1) - A transaction is to be ignored for the purpose of determining orchestra tax relief so far as the transaction is attributable to arrangements (other than tax avoidance arrangements) entered into otherwise than for genuine commercial reasons.
- (2) - In this section “arrangements” and “tax avoidance arrangements” have the same meaning as in section 1217RK.

CHAPTER 4

LOSSES OF SEPARATE ORCHESTRAL TRADE

1217S Application of sections 1217SA to 1217SC

- (1) - Sections 1217SA to 1217SC apply to a company which is treated under section 1217Q(2) or (5) as carrying on a separate trade in relation to the production of a concert or concert series.
- (2) - In those sections –
 - (a) - “the completion period” means the accounting period in which the company ceases to carry on the separate orchestral trade;
 - (b) - “loss relief” includes any means by which a loss might be used to reduce the amount in respect of which a company, or any other person, is chargeable to tax.

1217SA Restriction on use of losses before completion period

- (1) - Subsection (2) applies if a loss is made by the company in the separate orchestral trade in an accounting period preceding the completion period.
- (2) - The loss is not available for loss relief, except to the extent that the loss may be carried forward under section 45 of CTA 2010 to be set against profits of the separate orchestral trade in a subsequent period.

1217SB Use of losses in the completion period

- (1) - Subsection (2) applies if a loss made in the separate orchestral trade is carried forward under section 45 of CTA 2010 to the completion period.
- (2) - So much (if any) of the loss as is not attributable to orchestra tax relief (see subsection (4)) may be treated for the purposes of loss relief as if it were a loss made in the completion period.
- (3) - If a loss is made in the separate orchestral trade in the completion period, the amount of the loss that may be –
 - (a) - deducted from total profits of the same or an earlier period under section 37 of CTA 2010, or
 - (b) - surrendered as group relief under Part 5 of that Act, is restricted to the amount (if any) that is not attributable to orchestra tax relief (see subsection (4)).
- (4) - The amount of a loss in any period that is attributable to orchestra tax relief is found by –
 - (a) - calculating what the amount of the loss would have been if there had been no additional deduction under Chapter 3 in that or any earlier period, and
 - (b) - deducting that amount from the total amount of the loss.
- (5) - This section does not apply to loss surrendered, or treated as carried forward, under section 1217SC (terminal losses).

1217SC Terminal losses

- (1) - This section applies if –
 - (a) - the company ceases to carry on the separate orchestral trade, and
 - (b) - if the company had not ceased to carry on that trade, it could have carried forward an amount under section 45 of CTA 2010 to be set against profits of that trade in a later period (“the terminal loss”).

Below in this section the company is referred to as “company A” and the separate orchestral trade is referred to as “trade 1”.

- (2) - If company A –
 - (a) - is treated under section 1217Q(2) or (5) as carrying on a separate trade in relation to the production of another concert or concert series (“trade 2”), and
 - (b) - is carrying on trade 2 when it ceases to carry on trade 1,

company A may (on making a claim) make an election under subsection (3). -

- (3) - The election is to have the terminal loss (or a part of it) treated as if it were a loss brought forward under section 45 of CTA 2010 to be set against the profits of trade 2 of the first accounting period beginning after the cessation and so on.
- (4) - Subsection (5) applies if –
 - (a) - another company (“company B”) is treated under section 1217Q(2) or (5) as carrying on a separate trade (“company B’s trade”) in relation to the production of another concert or concert series,
 - (b) - company B is carrying on that trade when company A ceases to carry on trade 1, and
 - (c) - company B is in the same group as company A for the purposes of Part 5 of CTA 2010 (group relief).
- (5) - Company A may surrender the loss (or a part of it) to company B.
- (6) - On the making of a claim by company B the amount surrendered is treated as if it were a loss brought forward by company B under section 45 of CTA 2010 to be set against the profits of company B’s trade of the first accounting period beginning after the cessation and so on.
- (7) - The Treasury may by regulations make administrative provision in relation to the surrender of a loss under subsection (5) and the resulting claim under subsection (6).
- (8) - “Administrative provision” means provision corresponding, subject to such adaptations or other modifications as appear to the Treasury to be appropriate, to that made by Part 8 of Schedule 18 to FA 1998 (company tax returns: claims for group relief).

CHAPTER 5

PROVISIONAL ENTITLEMENT TO RELIEF

1217T Provisional entitlement to relief

- (1) - In relation to a company and the production of a concert or concert series, “interim accounting period” means any accounting period that –
 - (a) - is one in which the company carries on a separate orchestral trade, and
 - (b) - precedes the accounting period in which it ceases to do so.
- (2) - A company is not entitled to orchestra tax relief for an interim accounting period unless –
 - (a) - its company tax return for the period states the amount of planned core expenditure on the production of the concert or concert series that is EEA expenditure (see section 1217RB(2)), and
 - (b) - that amount is such as to indicate that the EEA expenditure condition (see section 1217RB) will be met in relation to the production.

If those requirements are met, the company is provisionally treated in relation to that period as if the EEA expenditure condition were met.

1217TA Clawback of provisional relief

- (1) - If a statement is made under section 1217T(2) but it subsequently appears that the EEA expenditure condition will not be met on the company's ceasing to carry on the separate orchestral trade, the company –
 - (a) - is not entitled to orchestra tax relief for any period for which its entitlement depended on such a statement, and
 - (b) - must amend accordingly its company tax return for any such period.
- (2) - When a company ceases to carry on the separate orchestral trade, the company's company tax return for the period in which that cessation occurs must –
 - (a) - state that the company has ceased to carry on the separate orchestral trade, and
 - (b) - be accompanied by a final statement of the amount of the core expenditure on the production of the concert or concert series that is EEA expenditure.
- (3) - If that statement shows that the EEA expenditure condition is not met –
 - (a) - the company is not entitled to orchestra tax relief or to relief under section 1217SC (transfer of terminal losses) for any period, and
 - (b) - must amend accordingly its company tax return for any period for which such relief was claimed.
- (4) - Any amendment or assessment necessary to give effect to this section may be made despite any limitation on the time within which an amendment or assessment may normally be made.

CHAPTER 6

INTERPRETATION

1217U Interpretation

In this Part –

- “company tax return” has the same meaning as in Schedule 18 to FA 1998 (see paragraph 3(1) of that Schedule);
- “core expenditure” has the meaning given by section 1217RC;
- “costs”, in relation to a concert or concert series, has the meaning given by section 1217QD;
- “EEA expenditure” has the meaning given by section 1217RB(2);
- “EEA expenditure condition” has the meaning given by section 1217RB;
- “income”, in relation to a concert or concert series, has the meaning given by section 1217QC;

“orchestra tax relief” is to be read in accordance with Chapter 3 -
(see in particular section 1217R(1));
“orchestral concert” has the meaning given by section 1217PA;
“production -company” has the meaning given by section
1217PB;
“qualifying expenditure” has the meaning given by section
1217RF;
“qualifying orchestral concert” has the meaning given by
section 1217RA(3);
“qualifying orchestral concert series” has the meaning given by
section 1217RA(5);
the “separate orchestral trade” is to be read in accordance with
section 1217Q.”

PART 2

CONSEQUENTIAL AMENDMENTS

ICTA

- 2 (1) -Section 826 of the Income and Corporation Taxes Act 1988 (interest on tax overpaid) is amended as follows.
- (2) -In subsection (1), after paragraph (fc) insert –
“(fd) - a payment of orchestra tax credit falls to be made to a company; or”.
- (3) -In subsection (3C), for “or theatre tax credit” substitute “, theatre tax credit or orchestra tax credit”.
- (4) -In subsection (8A) –
 - (a) - in paragraph (a), for “or (fc)” substitute “, (fc) or (fd)”, and
 - (b) - in paragraph (b)(ii), after “theatre tax credit” insert “or orchestra tax credit”.
- (5) -In subsection (8BA), after “theatre tax credit” (in both places) insert “or orchestra tax credit”.

FA 1998

- 3 - Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.
- 4 - In paragraph 10 (other claims and elections to be included in return), in sub-paragraph (4), for “or 15C” substitute “, 15C or 15D”.
- 5 (1) -Paragraph 52 (recovery of excessive repayments etc) is amended as follows.
- (2) -In sub-paragraph (2), after paragraph (bg) insert –
“(bh) orchestra tax credit under Part 15D of that Act,”.
- (3) -In sub-paragraph (5) –
 - (a) - after paragraph (ai) insert –
“(aj) - an amount of orchestra tax credit paid to a company for an accounting period,” and
 - (b) in the words after paragraph (b), after “(ai)” insert “, (aj)”.

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- 6 In Part 9D (certain claims for tax relief) –
- (a) in the heading, for “or 15C” substitute “, 15C or 15D”, and
 - (b) in paragraph 83S (introduction), after sub-paragraph (e) insert –
“(f) orchestra tax relief.”

CAA 2001

- 7 - In Schedule A1 to CAA 2001 (first-year tax credits), in paragraph 11(4), omit the “and” at the end of paragraph (e) and after paragraph (f) insert “, and
(g) - Chapter 3 of Part 15D of that Act (orchestra tax credits).”

FA 2007

- 8 - In Schedule 24 to FA 2007 (penalties for errors), in paragraph 28(fa) (meaning of “corporation tax credit”), omit the “or” at the end of paragraph (ivc) and after that paragraph insert –
“(ivd) an orchestra tax credit under Chapter 3 of Part 15D of that Act, or”.

CTA 2009

- 9 - In Part 8 of CTA 2009 (intangible fixed assets), in Chapter 10 (excluded assets), after section 808C insert –

“808D Assets representing expenditure incurred in course of separate orchestral trade

- (1) - This Part does not apply to an intangible fixed asset held by an orchestral concert production company so far as the asset represents expenditure on an orchestral concert or orchestral concert series that is treated under Part 15D as expenditure of a separate trade (see particularly sections 1217Q and 1217QF).
 - (2) - In this section –
 - “orchestral concert” has the same meaning as in Part 15D (see section 1217PA);
 - “orchestral concert production company” means a company which, for the purposes of that Part, is the production company in relation to a concert (see section 1217PB).”
- 10 In section 1310 of CTA 2009 (orders and regulations), in subsection (4), after paragraph (em) insert –
“(en) section 1217RB (EEA expenditure condition),
(eo) section 1217RE (amount of additional deduction),”.
- 11 - In Schedule 4 to CTA 2009 (index of defined expressions), insert at the appropriate places –

“company tax return (in Part 15D) -	section 1217U”
“core expenditure (in Part 15D) -	section 1217RC”
“costs, in relation to a concert or concert series (in Part 15D)	section 1217QD”

“EEA expenditure (in Part 15D)	section 1217RB(2)”
“EEA expenditure condition (in Part 15D)	section 1217RB”
“income, in relation to a concert or concert series (in Part 15D)	section 1217QC”
“orchestra tax relief (in Part 15D)	section 1217R(1)”
“orchestral concert (in Part 15D)	section 1217PA”
“production company (in Part 15D)	section 1217PB”
“qualifying expenditure (in Part 15D)	section 1217RF”
“qualifying orchestral concert (in Part 15D)	section 1217RA(3)”
“qualifying orchestral concert series (in Part 15D)	section 1217RA(5)”
“separate orchestral trade (in Part 15D)	section 1217Q”.

FA 2009

- 12 - In Schedule 54A to FA 2009 (which is prospectively inserted by F(No. 3)A 2010 and contains provision about the recovery of certain amounts of interest paid by HMRC), in paragraph 2 –
- (a) - in sub-paragraph (2), omit the “or” at the end of paragraph (g) and after paragraph (h) insert “, or
 - (i) - a payment of orchestra tax credit under Chapter 3 of Part 15D of CTA 2009 for an accounting period.”;
 - (b) - in sub-paragraph (4), for “(h)” substitute “(i)”.

CTA 2010

- 13 - In Part 8B of CTA 2010 (trading profits taxable at Northern Ireland rate), in section 357H(7) (introduction), after “Chapter 14 for provision about theatrical productions;” insert “Chapter 14A for provision about orchestra tax relief;”.
- 14 - In Part 8B of CTA 2010, after section 357UI insert –

“CHAPTER 14A

ORCHESTRA TAX RELIEF

Introductory

357UJ Introduction and interpretation

- (1) - This Chapter makes provision about the operation of Part 15D of CTA 2009 (orchestra tax relief) in relation to expenditure incurred by a company in an accounting period in which it is a Northern Ireland company.
- (2) - In this Chapter –
 - (a) - “Northern Ireland expenditure” means expenditure incurred in a trade to the extent that the expenditure forms part of the

-
- Northern Ireland profits or Northern Ireland losses of the -
trade;
- (b) - the “separate orchestral trade” has the same meaning as in Part 15D of CTA 2009 (see section 1217Q(6) of that Act);
 - (c) - “qualifying expenditure” has the same meaning as in Chapter 3 of that Part (see section 1217RF of that Act).
- (3) - References in Part 15D of CTA 2009 to “orchestra tax relief” include relief under this Chapter.

Orchestra tax relief

357UK Northern Ireland additional deduction

- (1) - In this Chapter “a Northern Ireland additional deduction” means so much of a deduction under section 1217RD of CTA 2009 (claim for additional deduction) as is calculated by reference to qualifying expenditure that is Northern Ireland expenditure.
- (2) - A Northern Ireland additional deduction forms part of the Northern Ireland profits or Northern Ireland losses of the separate orchestral trade.

357UL Northern Ireland supplementary deduction

- (1) - This section applies where –
 - (a) - a company is entitled under section 1217RD of CTA 2009 to an additional deduction in calculating the profit or loss of the separate orchestral trade in an accounting period,
 - (b) - the company is a Northern Ireland company in the period,
 - (c) - the additional deduction is wholly or partly a Northern Ireland additional deduction, and
 - (d) - any of the following conditions is met –
 - (i) - the company does not have a surrenderable loss in the accounting period;
 - (ii) - the company has a surrenderable loss in the accounting period, but does not make a claim under section 1217RG of CTA 2009 (orchestra tax credit claimable if company has surrenderable loss) for the period;
 - (iii) - the company has a surrenderable loss in the accounting period and makes a claim under that section for the period, but the amount of Northern Ireland losses surrendered on the claim is less than the Northern Ireland additional deduction.
- (2) - The company is entitled to make another deduction (“a Northern Ireland supplementary deduction”) in respect of qualifying expenditure.
- (3) - See section 357UM for provision about the amount of the Northern Ireland supplementary deduction.
- (4) - The Northern Ireland supplementary deduction –
 - (a) - is made in calculating the profit or loss of the separate orchestral trade, and

(b) forms part of the Northern Ireland profits or Northern Ireland losses of the separate orchestral trade.

(5) - In this section “surrenderable loss” has the meaning given by section 1217RH of CTA 2009.

357UM Northern Ireland supplementary deduction: amount

(1) - This section contains provision for the purposes of section 357UL(2) about the amount of the Northern Ireland supplementary deduction.

(2) - If the accounting period falls within only one financial year, the amount of the Northern Ireland supplementary deduction is –

$$(A - B) \times \left(\frac{(MR - NIR)}{NIR} \right)$$

where –

A is the amount of the Northern Ireland additional deduction brought into account in the accounting period;

B is the amount of Northern Ireland losses surrendered in any claim under section 1217RG of CTA 2009 for the accounting period;

MR is the main rate for the financial year;

NIR is the Northern Ireland rate for the financial year.

(3) - If the accounting period falls within more than one financial year, the amount of the Northern Ireland supplementary deduction is determined by taking the following steps.

Step 1

Calculate, for each financial year, the amount that would be the Northern Ireland supplementary deduction for the accounting period if it fell within only that financial year (see subsection (2)).

Step 2

Multiply each amount calculated under step 1 by the proportion of the accounting period that falls within the financial year for which it is calculated.

Step 3

Add together each amount found under step 2.

357UN Orchestra tax credit: Northern Ireland supplementary deduction ignored

For the purpose of determining the available loss of a company under section 1217RH of CTA 2009 (amount of surrenderable loss) for any accounting period, any Northern Ireland supplementary deduction made by the company in the period (and any Northern Ireland supplementary deduction made in any previous accounting period) is to be ignored.

Losses of separate orchestral trade

357UO Restriction on use of losses before completion period

- (1) - Section 1217SA of CTA 2009 (restriction on use of losses before completion period) has effect subject as follows.
- (2) - The reference in subsection (1) of that section to a loss made in the separate orchestral trade in an accounting period preceding the completion period is, if the company is a Northern Ireland company in that period, a reference to—
 - (a) - any Northern Ireland losses of the trade of the period, or
 - (b) - any mainstream losses of the trade of the period;and references to losses in subsection (2) of that section are to be read accordingly.
- (3) - Subsection (4) applies if a Northern Ireland company has, in an accounting period preceding the completion period—
 - (a) - both Northern Ireland losses of the trade and mainstream profits of the trade, or
 - (b) - both mainstream losses of the trade and Northern Ireland profits of the trade.
- (4) - The company may make a claim under section 37 (relief for trade losses against total profits) for relief for the losses mentioned in subsection (3)(a) or (b).
- (5) - But relief on such a claim is available only—
 - (a) - in the case of a claim for relief for Northern Ireland losses, against mainstream profits of the trade of the same period;
 - (b) - in the case of a claim for relief for mainstream losses, against Northern Ireland profits of the trade of the same period.
- (6) - In this section “the completion period” has the same meaning as in section 1217SA of CTA 2009 (see section 1217S(2) of that Act).

357UP Use of losses in the completion period

- (1) - Section 1217SB of CTA 2009 (use of losses in the completion period) has effect subject as follows.
- (2) - The reference in subsection (1) of that section to a loss made in the separate orchestral trade is, in relation to a loss made in a period in which the company is a Northern Ireland company, a reference to—
 - (a) - any Northern Ireland losses of the trade of the period, or
 - (b) - any mainstream losses of the trade of the period;and references to losses in subsections (2) and (4) of that section are to be read accordingly.
- (3) - The references in subsection (3) of that section to a loss made in the separate orchestral trade in the completion period are, where the company is a Northern Ireland company in the period, references to—
 - (a) - any Northern Ireland losses of the trade of the period, or
 - (b) - any mainstream losses of the trade of the period;and references to losses in subsection (4) of that section are to be read accordingly.

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- (4) - Subsection (4) of that section has effect, in relation to Northern Ireland losses, as if the reference to an additional deduction under Chapter 3 of Part 15D of CTA 2009 included a reference to a Northern Ireland supplementary deduction under this Chapter.

357UQ Terminal losses

- (1) - Section 1217SC of CTA 2009 (terminal losses) has effect subject as follows.
- (2) - Where—
- (a) - a company makes an election under subsection (3) of that section (election to treat terminal loss as loss brought forward of different trade) in relation to all or part of a terminal loss, and
- (b) - the terminal loss is a Northern Ireland loss, that subsection has effect as if the reference in it to a loss brought forward were to a Northern Ireland loss brought forward.
- (3) - Where—
- (a) - a company makes a claim under subsection (6) of that section (claim to treat terminal loss as loss brought forward by different company) in relation to part or all of a terminal loss, and
- (b) - the terminal loss is a Northern Ireland loss, that subsection has effect as if the reference in it to a loss brought forward were to a Northern Ireland loss brought forward.”
- 15 (1) -Schedule 4 to CTA 2010 (index of defined expressions) is amended as follows.
- (2) In the entry for “Northern Ireland expenditure”—
- (a) - for “14” substitute “14A”, and
- (b) - for “and 357U(2)” substitute “, 357U(2) and 357UJ(2)”.
- (3) Insert at the appropriate places—

“qualifying expenditure (in Chapter 14A of Part section 357UJ(2)” - 8B) -

“the separate orchestral trade (in Chapter 14A of section 357UJ(2)” . - Part 8B) -

PART 3

COMMENCEMENT

- 16 - Any power to make regulations conferred on the Treasury by virtue of this Schedule comes into force on the day on which this Act is passed.
- 17 (1) -The amendments made by the following provisions of this Schedule have effect in relation to accounting periods beginning on or after 1 April 2016—
- (a) - Part 1, and
- (b) - in Part 2, paragraphs 2 to 12.

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- (2) -Sub-paragraph (3) applies where a company has an accounting period beginning before 1 April 2016 and ending on or after that date (“the straddling period”).
- (3) -For the purposes of Part 15D of CTA 2009 –
- (a) - so much of the straddling period as falls before 1 April 2016, and so much of that period as falls on or after that date, are separate accounting periods, and
 - (b) - any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of a trade for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.
- 18 (1) -The amendments made by paragraphs 13 to 15 of this Schedule have effect in relation to accounting periods beginning on or after the first day of the financial year appointed by the Treasury by regulations under section 5(3) of the Corporation Tax (Northern Ireland) Act 2015 (“the commencement day”).
- (2) -Sub-paragraph (3) applies where a company has an accounting period beginning before the commencement day and ending on or after that day (“the straddling period”).
- (3) -For the purposes of Chapter 14A of CTA 2010 –
- (a) - so much of the straddling period as falls before the commencement day, and so much of that period as falls on or after that day, are separate accounting periods, and
 - (b) - any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of a trade for the straddling period are apportioned to the two separate accounting periods on such basis as is just and reasonable.