



HM Treasury

Orchestra tax relief: response to the consultation

March 2015



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1 Introduction

1.1 At Autumn Statement 2014, the Chancellor announced that the government would introduce tax relief for orchestras in recognition of their cultural value and artistic importance. This new tax relief aims to support Britain's orchestras so they may continue to perform for a wide range of audiences.

1.2 The government held a formal consultation on the design of the relief from 23 January 2015 until 5 March 2015. HM Treasury received and considered a total of 57 responses to the published consultation document. These included submissions from large and small orchestras in both the professional and amateur sectors. Respondents were based in many different parts of the country and specialised in a range of different styles and genres of orchestral music. Individuals, representative bodies and other organisations involved in the orchestral sector also provided responses to the consultation document.

1.3 During the consultation, government officials met with a large number of orchestras, stakeholders and representative bodies. These stakeholders provided valuable input into the development of the policy. The views expressed at these meetings have been incorporated into this summary of responses.

1.4 The government is grateful to all those who contributed to the consultation process. A list of respondent organisations is available in Annex A.

Summary of respondents' views

1.5 Respondents warmly welcomed the introduction of tax relief for orchestras. They told us that tax relief could make a significant difference to the resilience and creativity of their organisations. They predicted that tax relief would enable them to increase their time spent in rehearsal, their ability to invest in high-quality performances and their capacity to reach new audiences. Many respondents agreed that it was appropriate to design the relief in a similar way to the existing tax reliefs for theatre, high-end television, animation, video games and film.

1.6 This document covers areas where respondents had questions or proposed alternative ideas to those outlined in the consultation document. It sets out the key changes which the government will make on the basis of the consultation, along with an explanation for each of these. The three main changes relate to the definition of an 'orchestral performance,' the proposed exclusion of all pop and rock music and the provision of separate rates for touring and non-touring performances.

The definition of an 'orchestral performance'

1.7 Respondents highlighted that the requirement to have 14 players and four instrumental sections would prevent certain kinds of orchestras from claiming relief, such as chamber and string orchestras. To ensure that the full range of orchestras can benefit from tax relief, **the government has changed the definition so that the majority of performances must have at least 12 players from a minimum of one of the string, woodwind, percussion and brass sections.** The government wants a range of different orchestras to benefit under this new, more flexible definition.

The exclusion of pop and rock music

1.8 The consultation document stated that performances of pop and rock music would be excluded. Respondents raised concern that this exclusion would restrict the repertoire of some

orchestras. The exclusion of pop and rock music is important to ensure that the relief is well targeted, but to minimise the limitations on orchestras, **the government will take a more flexible approach to musical genres so that claims must exclude pop and rock from most performances in order to qualify.** It will be possible for orchestras to claim relief where occasional performances include pop and rock music.

The incentive to tour

1.9 The consultation document proposed that different rates of relief could be provided for touring and non-touring performances. However, respondents stated that there were significant variations in how different orchestras go about doing tours. There was no agreement on a single definition of a tour which would work for all or most of the orchestras in the UK. To ensure fairness between orchestras of all types, sizes, and touring habits, **the Chancellor announced at Budget 2015 that government will provide tax relief at a flat rate of 25% for all qualifying costs.**

Stages of the consultation

1.10 When the consultation document was published, officials were at stage 2 of the government tax consultation framework (determining the best option and developing a framework for implementation, including detailed policy design). The government will now enter stage 3 of the process (drafting legislation to effect the proposed change).

Next steps

1.11 This summary of responses confirms the government's approach based on the responses to the consultation. As a next step, the government will work with the sector to ensure orchestras are well-informed about the relief and are in a position to take advantage of it once it becomes available. Draft legislation will be published in autumn 2015. Tax relief will be available from 1 April 2016.

2 Summary of responses

2.1 This chapter summarises the key points and suggestions put forward by participants in the consultation. It explains the government's response and highlights any changes that will be made to the design of the policy.

Principles and criteria

2.2 The consultation document set out the criteria which the government proposed to use when evaluating proposals for orchestra tax relief.

Box 2.A: Criteria for orchestra tax relief

- Effective
- Affordable
- Simple and straightforward to administer
- Sustainable
- Not open to abuse
- Compliant with EU law

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

2.3 In general, respondents who answered this question agreed that the criteria were appropriate. A number of respondents said that it would be particularly important for tax relief to be effective and simple and straightforward to administer, since many orchestras have limited access to accountancy advisors.

Government response

2.4 **These criteria will guide the further development of the policy.** It is important to note that the government carefully considers the administrative burden of tax policy on businesses. The government has worked closely with orchestras and their representatives to ensure that this relief is well-designed and works for the orchestral sector. For example, the option of grouping claims is intended to reduce the administrative burden of applying for relief.

The definition of an 'orchestral performance'

2.5 As stated in the consultation document, the government wants to find a definition of an 'orchestral performance' that is workable in legislation while being recognised in and appropriate for the orchestral sector. At the same time, the definition must target orchestras effectively and cannot be subject to abuse.

Question 2: Would adopting the definition outlined in the consultation document be an effective way of meeting the government's objectives?

Question 3: If the government were to adopt this definition, what combination of instruments should be specified for inclusion? Please provide information on instruments that are generally used in the majority of performances.

Question 4: Is there an alternative definition of an 'orchestral performance' that would more accurately reflect the full range of activity done by orchestras? If so, please provide details.

Question 5: Is the exclusion of certain genres of music the most appropriate way to ensure that the relief targets orchestras effectively? If not, what solutions do you propose to exclude non-orchestral performances from the relief?

2.6 The government received a wide range of views on the definition. Some respondents highlighted that the requirement to have 14 performers would limit the types of orchestras which would qualify for relief. Although most symphony orchestras would meet this threshold, a number of chamber and string orchestras would not.

2.7 The consultation document tested a definition whereby string, woodwind, brass and percussion instruments would need to be present in the majority of performances. Respondents highlighted that this would not cover the full range of orchestral performances, such as baroque pieces or those involving more modern instruments.

2.8 The consultation document stated that the new tax relief would need to target orchestras effectively. A specific exclusion of pop and rock music was proposed for this reason. Respondents told us that many orchestras include popular music in their repertoires, including film scores and covers of popular songs. They suggested that a blanket exclusion of pop and rock music would discourage them from performing these pieces.

2.9 Several respondents made a case for providing tax relief to other types of music which are outside the scope of orchestra tax relief. However, it is important to note that this policy aims to support orchestras in particular so they can continue to perform for a wide range of audiences.

Government response

2.10 The government has reduced the number of players so that **12 performers, rather than 14, must be present for most performances**. It will be possible for orchestras to occasionally perform with fewer than 12 players, as long as most of the performances included in a claim meet this threshold. By changing the definition, the government wants more orchestras to qualify for relief, including smaller ensembles.

2.11 The government has broadened the definition of an 'orchestral performance' so that **at least one of the string, woodwind, brass and percussion sections must be present at most performances**. By adopting a more flexible definition, the government wants a wider range of orchestras to qualify for relief, including a greater number of chamber and string orchestras.

2.12 The government will take a more flexible approach to musical genres. Orchestras will be able to claim relief where occasional performances include pop and rock music or film scores. However, claims must exclude pop and rock from **most of the performances** in order to qualify. This will ensure the relief meets the policy objective of supporting orchestras. Importantly, by helping to ensure the relief is well-targeted, this requirement has enabled the government to relax the definition of an 'orchestral performance' so that more orchestras can qualify for relief.

This new approach to musical genres will ensure that orchestras can benefit from tax relief while enjoying flexibility in their repertoires.

2.13 There will be an additional requirement that **an orchestra's players must be the primary focus of a performance**. Performances where the orchestra is not the main focus – for example, where it provides backing for another act – will not be eligible for relief. This requirement will help to ensure that the relief is well targeted.

2.14 The new definition and exclusions are summarised in the box below.

Box 2.B: Definition of an 'orchestral performance' for the purposes of tax relief

In order to qualify, orchestras must meet the following criteria:

- most performances in a claim must include at least 12 players
- these players must play instruments from at least one of the following four sections: string, woodwind, brass and percussion
- the players in the orchestra must be the primary focus of each performance
- playing to paying members of the general public must be the main object, or one of the main objects, of each performance
- each performance must be live, where the players are actually present before their audience
- the presentation of orchestral performances must be the main object, or one of the main objects, of the orchestral production company's activities in relation to each performance

Performances will not qualify where:

- most performances in a claim for tax relief are of pop or rock music
- performances consist of or include a competition or contest
- the main purpose, or one of the main purposes, of a performance is to advertise or promote any goods or services
- the making of a relevant recording or broadcast is the main object, or one of the main objects, of the performance

Eligible production companies

2.15 As the consultation document stated, tax relief will take the form of a deduction for corporation tax purposes, which can be surrendered for a payable tax credit, for example in cases where an orchestral production company makes a loss. Tax relief will only be available to companies that are within the charge to UK corporation tax and are directly involved in the development of an orchestra's performances.

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

Question 7: Are there any other difficulties which might arise from the requirement to be incorporated that the government should take into account?

2.16 A number of respondents highlighted that many orchestras are structured as charities or volunteer organisations. There was concern that these orchestras would be excluded from the relief or could be disadvantaged by the requirement to incorporate.

Government response

2.17 The government would like to reassure respondents that **charitable companies will not be excluded from this relief even if they do not pay corporation tax**. The government recognises that non-profit organisations are an integral part of the orchestral sector and believes that these organisations should be able to benefit from this policy.

2.18 The government has worked closely with stakeholders, including a number of orchestras with charitable status, to ensure that tax relief is well-designed for the non-profit sector. One example of this is the option to group together claims, which is meant to accommodate how orchestras do business and to reduce the administrative costs of claiming relief.

2.19 Having worked through all the specific concerns which were raised during the consultation, the government is confident that non-profit orchestras would be able to access tax relief without incurring substantial additional administrative burdens.

Qualifying 'core' expenditure

2.20 In order to qualify for relief, expenditure must be directly incurred in the creation and development of an orchestral performance and must be integral to the creative process.

Question 8: Which costs are integral to the creative process itself and should therefore be eligible for relief? Please explain your choices.

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?

2.21 Respondents thought it was appropriate to cover costs which are integral to the creation and development of performances. Some welcomed the specific inclusion of the costs of commissioning new musical work. A number of respondents suggested that the government should also cover performance costs and noted that it could be challenging to draw a distinction between rehearsal and performance costs. Several orchestras listed specific costs which they said should be within the scope of the relief.

Government response

2.22 The government will support the main costs of creating an orchestral performance, but the costs of performing will not be eligible for relief. This is in line with other creative sector tax reliefs, which target support on development and production rather than performance or promotion. Excluding performance costs has enabled the government to offer relief at a rate of

25% which will provide a similar level of generosity as the other creative sector tax reliefs. The eligible costs will include, but are not limited to, the cost of commissioning and/or hiring musical work, rehearsal costs (such as venue hire, instrument hire and artist fees) and travel and subsistence costs ahead of a performance. In cases where costs overlap between a rehearsal and a performance, it may be possible to apportion these based on the amount of time spent doing each activity.

The claims process

2.23 The consultation document stated that orchestras could treat all qualifying performances in a defined season as a single trade with a single claim for tax relief.

Question 10: Would the option of grouping together all performances in each accounting period be an attractive option for orchestras? If not, please explain why.

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

2.24 Respondents were very positive about grouping claims, stating that this would significantly reduce their administrative burdens and would make the relief more attractive. Some highlighted that they would like to group claims over a relatively short time period as opposed to by accounting periods. Others said that grouping claims would be an attractive option but requested that it not be made mandatory, since orchestras often have different accounting capabilities.

Government response

2.25 The government will provide the option of grouping together claims. To minimise the administrative cost of applying for relief and to provide orchestras with greater flexibility, the government proposes that production companies will have a choice between:

- making a separate claim for each performance during an accounting period, or
- electing in advance to treat a specified group of performances as a single claim for an accounting period

The incentive to tour

2.26 The consultation document proposed a higher rate of relief for tours to encourage orchestras to play for a range of audiences. It tested a definition of a tour whereby orchestras would need to demonstrate evidence of plans to perform in at least three different venues in a period of two weeks.

Question 12: Is there an alternative definition of touring that would more accurately reflect the nature of these types of performances? If so, please provide suggestions.

2.27 Respondents expressed a range of views on the definition of a tour. A number of orchestras told us the definition was appropriate. However, other orchestras did not believe that their touring pattern would fit with the proposed definition. We were told that many orchestras normally do one-off performances in a single city before returning to their home base, as opposed to the longer pattern of touring suggested by the government's definition.

2.28 Concerns were raised about the administrative burden of applying for relief for two different types of performances. In order to claim the higher rate for touring, orchestras would need to run their touring and non-touring performances as separate trades, keeping distinct records for each one and filing two separate tax returns. A number of orchestras were concerned that this would impose a significant administrative burden which could discourage them from applying for relief.

Government response

2.29 Since most orchestras are involved in touring, **the government will provide tax relief at a flat rate of 25% to all qualifying performances.** This will ensure fairness between orchestras which have different approaches to touring. It will also help to minimise the administrative burden of applying for relief.

State aid, claiming tax relief from HMRC and openness to abuse

2.30 The consultation document made a series of proposals about State aid and the process of claiming relief from HMRC. Respondents generally did not raise concerns with the proposals.

2.31 The consultation document also set out the government's strategy to prevent abuse. In general, respondents said the strategy appeared robust and did not identify any additional opportunities for abuse.

2.32 One respondent questioned whether the anti-abuse strategy was sufficiently robust to prevent the kind of avoidance opportunities which were presented by the old film tax relief. The government will not stand the abuse of tax reliefs and HMRC will robustly challenge anyone who tries to use them for tax avoidance. It is nevertheless important to distinguish between the old film tax relief system and the current one, which was introduced in 2007. There has been no reported avoidance activity with the new film tax relief, which was specifically designed to engineer out the types of avoidance seen in the old film regimes. In addition, anti-avoidance legislation has been passed to prevent abuse from taking place. The strategy outlined in the consultation document builds on this proven strategy for preventing abuse.

2.33 The government is grateful for stakeholders' feedback and has concluded that **it is appropriate to proceed with the proposals outlined during the consultation.**

A List of respondents

Academy of Ancient Music
Arts Council England
Association of Accounting Technicians
Association of British Orchestras
Aurora Orchestra
Bambridge Accountants
BDO
Bournemouth Symphony Orchestra
Bushey Symphony Orchestra
Chichester Symphony Orchestra
City of Birmingham Symphony Orchestra
City of London Sinfonia
Elizabeth Whiteley Accountancy Limited
English Symphony Orchestra
The Hallé Orchestra
Institute of Chartered Accountants in England and Wales
Incorporated Society of Musicians
London Philharmonic Orchestra
London Sinfonietta
Making Music
Monteverdi Choir & Orchestra
Musicians' Union
Nyman Libson Paul Chartered Accountants
Oare String Orchestra
Opera North
Orchestra of St John's
Orchestra of the Age of Enlightenment
Orchestra of the Swan
Orchestras Live
Philharmonia Orchestra

Royal Liverpool Philharmonic Society

Royal Northern Sinfonia at Sage Gateshead

Royal Philharmonic Orchestra

Royal Scottish National Orchestra

Sage

Scottish Chamber Orchestra

Scottish Ensemble

Serious

Sinfonia Viva

Smith & Williamson

Southbank Sinfonia

UK Music

Warwickshire Symphony Orchestra

Waveney Sinfonia Musical Society

Responses were also received from 13 individuals

HM Treasury contacts

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