

Template Production Agreement - Notes

The Production Agreement (the Agreement) is designed for use by an organisation, which may be a limited company or an unincorporated association (the Organisation) which is commissioning a company which it owns or controls (the Production Company) to be the production company and produce an orchestral concert or concerts (the Concert) so that the Production Company is able to claim a payable tax credit (the Relief) pursuant to Part 15D of the Corporation Tax Act 2009 (the Act).

For these purposes an orchestral concert is as defined in section 1217PA of the Act:

A concert by an orchestra, ensemble, group or band consisting wholly or mainly of instrumentalists who are the primary focus of the concert.

A concert is not regarded as 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, or one of the main objects, of the production company's activities in relation to the concert.

In addition, section 1217RA(3) of the Act sets out the following requirements for a 'qualifying orchestral concert':

- (a) the instrumentalists must number at least 12; and
- (b) none of the musical instruments to be played, or a minority of those instruments, is electronically or directly amplified.

The intention is that the majority of live orchestral concerts which are given before the paying public will qualify for the Relief, but if there is any doubt as to whether your intended concert qualifies you should seek further advice.

The Agreement assumes the following:

- That the core qualification requirements for the Relief are met (e.g. that there is a qualifying orchestra concert, at least 25% of expenditure on the concert will be incurred in the European Economic Area and that the concert will be given before the paying public within the requirements of section 1217RA(2)(c) of the Act).
- That the Production Company is a private limited company.
- That if the Organisation is a company, the Production Company is wholly owned by the Organisation or if the Organisation is an unincorporated association, the Production Company is controlled by the Organisation.
- That if the Organisation is registered for VAT, the Organisation and the Production Company are in the same VAT group.
- That the Production Company will not receive any income connected with the concert, other than the Relief.

- That for a concert series, the Production Company has made an election in writing to HM Revenue & Customs prior to the first concert in the series under section 1217Q(4) of the Act.

In summary, the Agreement operates as follows:

1. It provides for the Parent to commission the Production Company to produce the Concert. The Parent agrees to pay a commissioning fee to the Production Company equal to the cost of the Concert (i.e. the costs of putting on the Concert from the start of the production process to the finish) less the value of the Relief. This is based on an initial budget for the Concert and then subsequently adjusted to reflect actual expenditure.
2. The Parent retains all receipts from ticket sales or of any other nature for the Concert.
3. Decision making in respect of the Concert rests with the Production Company.

It is important that the Agreement is correctly completed and signed as follows:

- The Agreement needs to be dated on the date it is signed. This needs to be prior to the beginning of the pre-performance stage of the Concert (i.e. once it is confirmed and prior to the start of rehearsals).
- The details of both parties need to be added to the Concert Information section.
- Details of the Concert need to be added to the Concert Information section. The Ensemble Details should make it clear that there are at least 12 instrumentalists and that none or a minority of those instruments is electronically or directly amplified.
- The concert budget needs to be added to the Concert Information section. This should include a breakdown of all expenditure in respect of the Concert.
- The Agreement needs to be signed by an authorised signatory of both parties on the last page. This can be the same person but it would be better to have different signatories if possible.
- Please note it is possible for signatories to print out and sign a copy ('counterpart') of the Agreement without signing the same piece of paper; however, the Agreement then only becomes valid when all the required signatories' copies come together in one place and form one record.
- Where the Parent is a charity, the decision by the Parent to enter into the Agreement should be formally minuted and should be made by trustees of the charity who are not also officers of the Production Company and in accordance with the charity's governing documents.

Where any of the requirements of these notes are not met advice should be sought before using the Agreement.

This Agreement does not assess the value of the Relief which the Production Company will receive. This is based on the level of qualifying expenditure incurred in connection with the Concert.