

OTR2.2: Setting up a Production Company

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Updated June 2017 – addition of section 6 (Financial year) and section 7 (Bank accounts).

This guidance is part of the [OTR Part 2 toolkit – Setting up a production company](#). It focusses on how to set up a production company for the purposes of claiming OTR and what you need to be aware of. If you haven't already we suggest you read our general guidance [OTR Part 2 – Getting set up](#) before reading this document.

Other guidance available in this tool kit:

- 2.3 Template: Memorandum & Articles of Association (England, Wales and Scotland)
- 2.3(a) Template: Memorandum & Articles of Association (Northern Ireland)
- 2.4 Template: Declaration of Trust
- 2.5 Guidance: Completing form IN01

Legal templates created for Making Music by *Harbottle & Lewis* (England and Wales), *Edwards & Co. Solicitors, Belfast* (Northern Ireland), and *Brodies* (Scotland).

Definitions

Throughout this document when you see:

- **Parent organisation** – we mean your music group – your existing organisation, whatever structure that may have
- **Production company** - we mean the new company we recommend you set up to produce concerts for you parent organisation and claim OTR.

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1. How often?

Setting up a production company is something you only have to do once. Once it is set up you can use the production company to produce concerts and claim OTR in future years.

2. When should we do this?

As soon as possible: ***the production company needs to be in place before you spend any money on any aspect of the concert it is producing.***

The production company has to be responsible for producing the concert from start to finish. You cannot set up a production company now and claim for a concert which is already halfway through production, even if you only claim for the costs going forward. The production company will not have been responsible for producing the concert from the start and this would be considered tax avoidance.

This means you need to set up a production company as soon as possible in order to start benefitting from OTR 12 months down the line. ***It is the very first step you need to take.***

3. How?

It's fairly straight forward to set up a production company:

- Fill in form IN01 and post it to Companies House with your Memorandum & Articles of Association and a cheque for £40. We have notes to help you fill in this form correctly (OTR2.5).
- You can also register a company online, but only if you use the model Memorandum and Articles provided on the Companies House website. The cost is £12.
If you use our template Memorandum and Articles, you cannot register online. Nonetheless, we suggest you use our template as it is tailored to your needs.
- Groups in Northern Ireland can register at the local office of Companies House based in Belfast. You can either deliver it by hand or by post.

Once you have registered your company with Companies House you will need to register with HMRC for Corporation Tax. You must do this within 3 months of starting business. To register you will need a Unique Taxpayer Reference - which will be posted to you shortly after registering your company with Companies House. You can [register with HMRC online](#).

4. What are we setting up?

The best option, we have been advised, is to set up your production company as a ***Private Company Limited by Shares.***

We have a template Memorandum and Articles of Association available to member for free for exactly this (OTR2.3).

5. Shareholders and Directors

Your production company will need shareholders and directors – exactly how this will work and who they should be will depend on whether your parent organisation is incorporated or not.

If your parent organisation is an incorporated *body* (e.g. a charitable company or CIO):

- **Shareholder:** your parent organisation will be the sole owner and shareholder of the production company. This means the production company is a wholly owned trading subsidiary of your parent organisation.
- **Directors:** the directors will be individuals.
 - you need at least one but we recommend two
 - we also recommend the directors are committee members of your parent organisation
 - but that the directors for the production company are a minority of the committee members of the parent organisation. So if the parent organisation has 6 committee members 2 would be directors of the production company. If the committee was 8, then 3 could be directors.

If your parent organisation is unincorporated (e.g. an unincorporated association or trust)

- **Shareholders:** an unincorporated organisation cannot own a trading subsidiary – so the organisation will not be the shareholder. Instead the shareholders will be individuals, and we recommend the shareholders are also the directors.
- **Directors:** the directors will be individuals, too.
 - you need at least one but we recommend two
 - we recommend that the shareholders and the directors are the same people
 - and that they are also committee members of your parent organisation
 - but that the directors for the production company are a minority of the committee members of the parent organisation. So if the parent organisation has 6 committee members 2 would be directors of the production company. If the committee was 8, then 3 could be directors.

Declaration of Trust: for unincorporated organisations we also recommend that the directors of the production company complete a Declaration of Trust (OTR2.4). This establishes that the shareholders will act on behalf of your parent organisation.

Bear in mind when deciding who those directors should be:

The directors of the production company may have to complete and submit a **self-assessment tax return**. So if any of your committee already do this anyway, we suggest you consider them as directors for the production company, to minimise extra work (for them).

Can the production company have directors/shareholders who are not also on the committee of the parent organisation?

Yes, but we recommend these be a minority of directors.

The reason is that for the production company to claim OTR it needs to be the one making the decisions about the concert. If there is crossover in personnel between the two organisations then this will be easier to manage. If the directors are completely independent then they could in theory make their own decisions about the concert.

6. Financial year end date

As we have been around the country doing OTR events we have had some discussions about whether to align the financial year end dates of your production company and parent organisation.

Some treasurers may find it easier to manage the finances of two entities, and payments and loans between them, if the financial years run concurrently. On the other hand some treasurers may find it easier to keep the year end dates separately so you don't have to prepare and report on two sets of accounts at the same time.

Ultimately the treasurer has to decide how they want to manage the workflow and workload. If you do want to align year-end dates the simplest way will be to change the financial year of your newly formed production company – see below on how to do this.

What are the choices?

When you set up your company the default year-end date will be the last day of the month in which you registered the following year. And then the same date for every subsequent year.

So if you set up your company on 11 June 2017 your first year end date will be 30 June 2018 – and then every 30 June in the following years.

Once you have set up your company you can change the year end date by either shortening or extending (to a maximum of 18 months) your first accounting year.

So if your parent organisations year end date is more than 6 months after your production company's year-end date you would have to shorten your production company initial account period to align the year-end dates.

Production company year-end	Parent year end	Options
30 June 2018	31 March 2018	<ul style="list-style-type: none"> • Shorten to March 2018 (9 month initial period) • You could not extend to March 2019 as this would give you a 21 month initial period.
30 June 2018	30 Sep 2017	<ul style="list-style-type: none"> • You could: <ul style="list-style-type: none"> ○ shorten to 30 Sep 2017 (3 month initial period) ○ extend to 30 Sep 2018 (15 month initial period)

If you have a choice of shortening or extending it is up to you to decide which to do. Extending will obviously mean waiting longer for your first OTR payment. But then again if you have a very short initial period it may be that there is little to claim for anyway. A decent rule of thumb is to extend if shortening will mean your initial accounting period would be less than 6 months.

How do I change the date?

Once you have decided what to do making the change is quite simple. You can do it online through your Companies House account (which you can set up once registered) or by completing a paper form. The information you have to supply is minimal - it is basically the company details, current year end dates and new ones. You can [find out more and access the online and paper forms here.](#)

7. Bank Accounts

To claim OTR your production company will need to have a separate bank account from your parent organisation. Setting up a bank account can be difficult – but if you have found it a long winded process in the past for your charity you may find it a bit easier for a private company.

A good place to start is with your existing bank – as you have an account with them it might be easier to keep all accounts in the same place and if you have a good relationship with your local branch that may help too.

Parent organisation is incorporated: in this instance the production company is a fully owned subsidiary of the parent; you may find that you can set up a new account under the same group of accounts – although you need to make sure the new account is in the name of the production company rather than that of the parent.

Parent organisation unincorporated: as the Production Company is not owned by the parent it is unlikely an account for your production company will come under the same group of accounts. But it is still worth speaking with your existing bank as it may make life easier to only have one bank.

What to look for in a business account

Speaking with your existing bank is a good starting point – but business accounts tend to come with charges attached. All high street banks have accounts for small businesses so it is also worth shopping around and looking at what is on offer. Some things to consider:

- **Monthly fees;** most business accounts have them starting from about £5/month and upwards.
- **Introductory offers:** there are quite a few introductory offers which give free banking. Time periods vary from 6 to 25 months. At the time of writing (June 2017) Clydesdale and Yorkshire Bank both have 25 month offers. Most offers come with conditions – turnover being under a certain amount or you can't go overdrawn, for example. The limits seem to be high enough that it should not impact our groups. Of course the monthly fee after the offer period has finished also has to be taken into account.
- **Annual fee:** some banks have an annual fee – which tends to work out at broadly the same price as paying monthly.
- **Transaction fees:** Some accounts offer no monthly or annual fee but do charge for transactions. Tide (an online bank - see below) for example have no monthly fee but charge 20p/transaction (in or out) and £1 per cash withdrawal. This could work out cheaper than a monthly/annual fee - but is also obviously not a fixed cost.
- **Overdraft:** most come with overdraft facilities. At the time of writing (June 2017) Nat West and RBS offer a £500 free overdraft. If you would prefer for your parent not to loan money the Production Company then this could be a good option for cash flow. However there are fees for overdrafts over £500 and generally a parent loan will be the cheaper option for cash flow.
- **Online banks (not online banking):** online banks are becoming increasingly popular. Tide, Cashplus and Metro are some examples. They can be cheaper than some high street banks but have the disadvantage of not having a local branch and someone to talk to in person. It is worth doing some research on customer service before going for an online bank.
- **Online banking:** all accounts offer this now and it is very convenient - one thing to ask/be aware of is how multiple logins work. Can each director have their own login or is it one shared login for the whole company? How easy is it to change login details or cancel someone's login?
- **Debit card:** unlike many charity/association accounts, business accounts tend to come with debit cards which often makes life easier – as with online logins beware of how many cards you can have.
- **Credit Cards:** some accounts come with credit card offers attached – as with overdrafts this could be useful when it comes to cash flow – but requires more careful management.

- **Changing details:** you may have to change the signatories for the account semi-regularly. It is a good idea to ask about how this works before signing up for an account - it may not be a deal breaker but worth knowing how complicated the process is.

The above are the key things to consider when looking for an account. Banks do obviously change their account packages and special offers from time to time - so it is worth looking round to see what will suit you best. [Money Supermarket](#) collects many of the main banks together in one place and there are other comparison websites available.

Don't forget that you'll have to consider your anticipated annual bank account charges when you are working through your budgets to ascertain if Orchestra Tax Relief will be worthwhile

8. Some things to be aware of:

- The **production company accounts have to be accrual accounts**. This will allow you to recognise income and expenditure when the service is received rather than when the payment is made or received.

Example:

- your financial year runs from 1 September to 31 August
- in July you pay a deposit on a venue for a concert in October (the following financial year)
- Accrual accounting will mean this payment is accounted for in the following financial year when the cost is actually incurred – i.e. when you receive the services/good you are paying for.

If the accounts you are producing for your *parent organisation* at the moment are cash accounts, you can carry on or you might find it easier to switch the parent organisation to accrual accounts too.

- **Notify Making Music when you have set up a production company**, so that we can tell MMIS – your Making Music insurance will then be valid for the activities of the production company as well.

Disclaimer:

We hope you find this Making Music resource useful. If you have any comments or suggestions about the guidance, please [contact us](#). Whilst every effort is made to ensure that the content of this guidance is accurate and up to date, Making Music do not warrant, nor accept any liability or responsibility for the completeness or accuracy of the content, or for any loss which may arise from reliance on the information contained in it.