OTR2.6: Running a production company

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This guidance is part of the OTR Part 2 toolkit – Running a production company and focusses on the ongoing requirements of running a concert production company for the purposes of claiming OTR.

Other guidance available in this toolkit:

- 2.7 Template: Agreement Parent Organisation & Production Company (England and Wales)
- 2.7a Template: Agreement Parent Organisation & Production Company (Northern Ireland)
- 2.7b Template: Agreement Parent Organisation & Production Company (Scotland)
- 2.8 Guidance: Notes to accompany the agreement (England, Wales and Northern Ireland)
- 2.8a Guidance: Notes to accompany the agreement (Scotland)
- 2.9 Guidance: Making an election to HMRC
- 2.10 Sample: Timeline for an OTR year
- 2.11 Template: Transfer of Stock

Legal templates created for Making Music by Harbottle & Lewis (England and Wales), Edwards and Company (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. Managing the relationship between the parent organisation and the production company

If you have got this far you will understand that you are setting up a production company to produce your concerts and claim OTR for your parent organisation (music group).

A key factor therefore is the contractual agreement between the parent organisation and the production company to produce your concerts. There are three factors to consider here:

1. Commissioning concert production: the parent organisation commissions the production company to produce the concert(s). We have a template contract to do this.

2. Making an Election to HMRC: the production company can elect to group its concerts together as one 'trade' (as HMRC call it). This means it can claim OTR for all those concerts in one go – rather than having to claim for each one separately.
3. The production company claims the OTR

We suggest you align the Election and the commissioning contract with the financial year of the production company:
- All concerts that take place within the production company's financial year should be included on the commissioning contract between the parent organisation and the production company.
- Those concerts should also be elected as a one 'trade' to HMRC.

A. Commissioning the production company to produce your concerts

We have a ***template contract*** (OTR2.7) to establish this arrangement – together with some specific guidance notes on how to use it (OTR2.8).

The contract between the parent organisation and the production company works on the following basis:
- The expected budget and other details for each concert are set out in the contract
- The parent organisation commissions the production company to produce the concert(s)
- The parent organisation agrees to pay the production company a commission fee equal to the total actual costs of the commissioned concerts, less the amount of OTR.
  Example: if the concerts cost £5,000 and the OTR claim is £800, then the parent organisation only pays £4,200 for the concert production.
- Any income related to the concert (e.g. ticket sales) goes to the parent organisation, not to the production company.
- The production company's only two sources of income are: the commissioning fee from the parent organisation and the OTR payment.

Adjusting the concert budget after the contract is signed: the terms of our template contract allow for the final concert budget to be adjusted in line with the actual concert costs.

Cash flow: OTR is paid retrospectively, so you will be wondering where the money is coming from in the first instance for the production company to pay for the venue, the conductor etc..

The agreement spells out that the parent organisation is responsible for the cash flow of the production company, and this could be achieved in a number of ways.
One way of doing this is:

- Once the concert budgets are set for the year the parent organisation agrees to extend an interest free loan of up to £5,000 (for example) to the production company to cover the costs for one or several concerts within that year.
  Note: the loan does not have to be disbursed in one payment. You can agree a loan up to a certain amount and disburse it in smaller payments throughout the year.
- At the end of the year, the production company surrenders a loss for producing the concerts to HMRC, anticipating OTR of £800
- HMRC agrees and pays OTR of £800 to the production company
- The production company invoices the parent organisation for a fee of £4,200.
- The production company retains £4,200 of the original £5,000 loan to cover its fee and repays £800 to the parent organisation– which it can do because it has received that amount from HMRC as the OTR payment.

Other ways of managing the cash flow of the production company could be:

- Paying a portion of the fee due to the production company as an advance payment of the commissioning fee
- The production company obtaining a bank overdraft
- A combination of the above

Legal aspects:

- Once the Board/committee of the parent organisation has agreed the ***contract***, someone responsible for the parent organisation (e.g. a trustee/committee member) needs to sign it, as well as someone from the production company. Obviously that should not be the same person - something to bear in mind if the production company directors and the committee of the parent organisation overlap.
- The members of the parent organisation's governing body should also check their governing document to ensure they comply with its requirements in terms of how such an Agreement can be executed and by whom. For example, an unincorporated association is likely to have different requirements for execution of a contract from a company limited by guarantee. Some unincorporated association constitutions may require two people from the committee to sign an agreement to bind the organisation and a resolution of the management committee may be required to give this authorisation.
- The ***loan*** (or alternative arrangements as suggested above, involving the parent organisation) of the cash to produce the concerts to the production company at the start of the process should also be agreed and minuted in a meeting of the committee/Board of the parent organisation.

B. Ma*king* an Election

To make an Election to HMRC your production company must inform HMRC in writing (email is fine) that it 'elects' to treat all concerts in a series (i.e. all concerts due to happen in the production company's financial year) as one 'trade'.

At the end of its financial year, the production company then has to submit only one OTR claim, rather than one for each concert.

The concerts elected to be in a series should reflect those listed in the contract you draw up between the parent organisation and the production company.

Some things to be aware of

- Once you have made an Election ***it cannot be changed***. However, if one of the concerts is cancelled, for whatever reason, that is not a problem. But you cannot add a concert to an Election at a later stage. However, you can claim for that concert as a separate 'trade' if you wish.

- The Election must be ***in the name of the production company (not the parent organisation).***
- An Election must be made ***before the date of the first concert in the series*** (i.e. it doesn't need to be made when you actually start *organising* the concert, but don't forget to do it in time!)
- An Election must ***include details for each concert****:* namely date and venue; see also OTR2.9
- You will get a response from the ***Creative Industries Unit of HMRC acknowledging receipt*** of the Election. That response is just an acknowledgment and does not mean they approve the Election in any way. The Election is reviewed only at the point of making the OTR claim.

2. Accounting requirements

Any limited company has statutory accounting requirements that dictate what accounting records they need to keep. This varies depending on the type and size of the company.

We anticipate that most of our groups' production companies will qualify as micro-entities, which means the reporting requirements are less than for other companies. Your company will be a micro-entity if it has any 2 of the following:

- a turnover of £632,000 or less
- £316,000 or less on its balance sheet
- 10 employees or less

Micro-entities can:

- prepare simpler accounts that meet statutory minimum requirements
- send only your balance sheet with less information to Companies House
- benefit from audit exemptions

Audit: unless the Mem and Arts specifically require an audit (our template Mem & Arts do not require an audit) a micro-entity can claim an audit exemption.

3. Reporting requirements

There are annual reporting requirements with Companies House and HMRC.

Companies House:

- File accounts with Companies House (the reporting requirements for micro entities are fairly low). This must be done within 9 months of your financial year end date. if you use our OTR service we will do this for you.
- Submit a Confirmation statement (annual return) to Companies House – this is just confirming that the details Companies House have listed for you are up to date It is simple to do and costs £13.

Audit: unless the Mem and Arts specifically require an audit (our temple Mem & Arts do not require an audit) a micro-entity can claim an audit exemption.

HMRC:

- Submit a Company Tax return to HMRC – if you use our OTR submission service we will do this for you - this has to be done within 12 months of your financial year end date (but if you want your OTR payment sooner, then do it asap!)
- You must still send statutory accounts to HMRC as part if your Company Tax Return

4. How Making Music can help with accounting and reporting

Our OTR claim service includes:

- A template spreadsheet for producing your year-end accounts. It is based on our Accrual accounting spreadsheet but has extra worksheets and formulas to produce a balance sheet, profit and loss statement and concert costs breakdown (for the OTR claim). This will help you produce accounts.
- At the end of your financial year, we will help with the OTR calculation and check your accounts
- We will file accounts with Companies House on your behalf.
- We will compile and submit a Company Tax return (including your OTR claim) to HMRC on your behalf.

The service cost is:

- 12% of the OTR payment you receive from HMRC.
- That 12% figure will include VAT.
- There is a minimum fee of £175
- There is no maximum fee, but we are happy to negotiate a fee cap for large OTR claims.

Example:

- You get £6,000 from HMRC. 12% of £6,000 = £720. Our fee is £720
- You get £2,500 from HMRC. 12% of £2,500 = £300. Our fee is £300
- You get £1,200 from HMRC. 12% of £1,200 = £144. Our fee is £175
  (all prices include VAT).

We will not be providing this service for organisations with an income above £100k as they will be able to engage an accountancy firm to do this work for them or have appropriately qualified finance staff to produce such accounts. Our service is geared towards smaller organisations with straightforward accounts.

We anticipate that most parent organisations with income under £100k will need this service as the cost of buying and maintaining the specialist software for OTR submissions is high.

5. Keeping Records, ad hoc reporting requirements and share transfer

Keeping records: you must keep up to date records of:

- Directors
- Shareholders
- Company secretaries (if you have one)
- Persons with significant control or relevant legal entities

A simple company register with these details on will be fine.

Ad hoc reporting requirements: if the directors change at any point you must inform Companies House within two weeks. You can do this online and it is free.

Share transfer: if you change your shareholders for any reason then you need to complete a Stock transfer form - we have a template available for this (OTR2.11).

You do not need to inform Companies House of a change in shareholder at the time of the change – you can inform them in your annual Confirmation statement.

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.