



ICAEW REPRESENTATION 29/16

TAX REPRESENTATION

Orchestra tax relief

ICAEW welcomes the opportunity to comment on [*draft clause 27 and its accompanying Schedule to Finance Bill 2016*](#) published by HM Treasury and HM Revenue & Customs on 9 December 2015 concerning the introduction of orchestra tax relief.

This response of 3 February 2016 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

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ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

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MAJOR POINTS

Key point summary

1. From a policy perspective, it is dissatisfying that the relief is just a corporation tax relief. Many groups that would otherwise qualify for orchestra tax relief, particularly in the light of the broader definition, would prefer to remain unincorporated. Any relief should be accessible to those paying income tax as well as corporation tax to avoid decisions to incorporate being made purely for tax reasons.
2. Given that it is intended that the relief will be available for qualifying expenditure incurred on or after 1 April 2016, an indication of when detailed guidance can be expected would be welcome, to provide greater clarity over some of the application of some of the definitions.

General comments

3. Despite a number of changes being made as a result of the consultation, we remain concerned that orchestras will be forced to alter their legal structure and composition to comply with tax rules, particularly as the relief is only available to those within the charge to corporation tax.
4. The ability to group a series of performances for the purposes of making a claim is a welcome simplification.
5. While 'just and reasonable' is mentioned in respect of s1217QB, CTA 2009 for the purposes of estimating income at the end of a period of account, s1217RB, CTA 2009 for the purposes of apportioning EEA and non-EEA expenditure, and draft clause 27(17) and (18), Finance Bill 2016 for the purposes of straddling periods, the draft legislation is silent on how to apportion expenditure that might be categorised as core expenditure or otherwise, depending upon the stage of the production. An example of this would be costs of performers. Rehearsal time would be core expenditure whereas performances would not. Confirmation that HMRC will accept that such costs should be apportioned on a just and reasonable basis would be welcome.
6. ICAEW has responded previously on this as [TAXREP 21/15](#).

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).