

## Theatre Tax Relief Arts Council response

### Criteria for theatre tax relief

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

We agree with the proposed criteria. We welcome the first criterion of 'Effectiveness' and hope that the proposed scheme will encourage companies to develop, produce and tour new and innovative work which will attract audiences across the UK.

### Theatre tax relief

Question 2: Would adopting the definition of theatre production as outlined be an effective way of meeting the government's objectives set out in Chapter 1?

For simplicity, we support the idea of adopting an existing definition and we believe that this goes some way to defining 'theatre for the purposes of tax relief'.

We believe that this definition would include 'plays, musicals, dance, ballet and opera' as outlined in Box 3A of the consultation. We recognise that the definition does not cover the entire breadth of what the Arts Council might define as 'performing arts productions' and that some companies may not be able to take advantage of the scheme

We note that the definition relates to the 'performance' of work rather than the 'production' of work which we believe should be the driver in developing the scheme (as it is with the film tax relief). We would therefore suggest clarification and a rationale regarding the requirement for 'the premises' to hold a valid Premises Licence for Regulated Entertainment. This is because

- 1) We have previously welcomed the Government's recent actions to deregulate some cultural premises, including those where plays or dance are being performed to audiences of 500 or less. We would not want these venues to be excluded from this scheme. Nor would we want a return to an onerous licensing regime.
- 2) The requirement to hold a license would mean that work being presented in prisons, schools and other public places could be excluded from the scheme.

We would also like clarification as to the status of venues that hold Temporary Events Notices in relation to the proposed scheme. Some companies perform in temporary spaces such as outdoor performances at festivals. We suggest that they should be included in the definition.

Question 3: Is there an alternative definition of theatre that would more accurately reflect the full range of types of theatre being produced? If so, please provide details

We are unaware of an existing definition that would be more accurate but do recognise that the proposed one will exclude some performing arts productions.

**Question 4:** Is this the most appropriate way to exclude sexual entertainment? If not, what solutions do you propose to exclude this from the relief?

No comment

**Question 5:** Is there an alternative definition of 'touring' that would more accurately reflect the nature of these types of productions? If so, please provide suggestions.

The definition of touring used by Arts Council England is to tour to 3 or more venues. This is a simpler definition which is recognised by the subsidised performing arts sector.

If the proposed definition outlined in the proposal is adopted, then we would recommend amending it to the below to avoid any ambiguity:

*The "intention to tour" will need to be demonstrated by evidence of plans to present **a total of at least 14 performances in across** two or more different licensed premises or performances in at least 12 or more different licensed premises.*

We believe however that 12 venues is quite a high number to qualify as a tour. Whilst we understand the rationale to encourage organisations to extend the reach of their tours, particularly outside London, we recognise that it would be a challenging number for some productions. We would recommend lowering this to six or more premises.

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

Arts Council England funding is open to a range of types of organisations, and our funding programmes for organisations generally require that organisations are properly constituted.

**Question 7:** Which costs are integral to the production process itself and should therefore be eligible for relief? Please explain your choices.

Those currently working in production companies would be best placed to advise on this point. However, the following costs should also be included as production costs and subject to the relief:

- Costs relating to the development of outreach and education programmes associated with productions.

- Costs related to making productions more accessible such as audio description, captioning, BSL signing and relaxed performances (performances for people with a learning disability, Down's Syndrome, Autism Spectrum Condition or sensory and communication disorders).

**Question 8:** Do the production periods accurately reflect theatre production in practice? If not, please explain and provide alternative suggestions.

The proposed periods accurately reflect the production process.

**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?

No response

**Question 10:** Does the requirement to be incorporated and operate separate trades within the company cause significant administrative burdens for theatre producers? Please explain in what way.

The majority of theatre companies that receive funding from Arts Council England are charities. It would be useful to have clarification that a charity constituted as a company limited by guarantee would be able to claim the tax relief, on the basis that it is technically within the charge of UK corporation tax (even if it is exempt from paying it).

If this were not the case, and companies were required to set up trading arms, then there could be a significant administrative burden for some (especially for smaller companies who do not have finance or general management staff) which may deter some from accessing the scheme.

In addition, we echo the questions raised in the response submitted by Society of London Theatre (SOLT) and UK Theatre (UKT). They identified that there may be issues from a charity law perspective regarding the basis of the transfer of funds from the parent charity to the subsidiary company, in order to finance the production activity. Also the further issue of whether having produced the production, the subsidiary company is then required to run the production or could transfer it back to the parent charity. The ability to transfer back to the parent company may enable a company to benefit from the VAT Cultural Exemption. Otherwise the lack of availability of the Exemption resulting from the use of a subsidiary company could negate the benefit of the relief.

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

No response

## **Other issues**

**Question 12:** Are there any issues with applying the rules proposed above in order to prevent aid intensity from exceeding 100%? If so, please explain.

We do not believe there are any issues.

**Question 13:** Are there any issues for the theatre industry in applying the same process as FTR to make claims under the new tax relief?

We do not know of any issues

**Question 14:** Do respondents think that this is an acceptable time scale to exclude unpaid costs?

Those working directly in theatre production would be able to give the best advice on this point.

**Question 15:** Can respondents suggest ways to prevent abuse of the new tax relief to ensure that it remain effective?

As with any new scheme, we would welcome a light touch review after the scheme has been in place for a few years to ensure that it is still fit for purpose and achieving its stated aims.

**Question 16:** Are there specific areas in addition to those mentioned, that create the opportunity for abuse?

We do not believe so.

## **Tax impact assessment**

**Question 17:** Do you have any comments or evidence to further support the impacts identified, particularly our assessment of the impact of these proposals on administrative burdens?

We would welcome clarity on the issues raised in Question 10.

It is possible that for some (particularly the not for profit, charitable and smaller organisations) the administrative burden outweighs the impact of any benefit the scheme may offer.

We would welcome a review of the scheme in due course to understand how well it is achieving its objectives, especially regarding the 'effectiveness' criteria.

Finally, we have welcomed the opportunity to assist HM Treasury and HM Revenue and Customs during the early consultation process for this initiative. We think that the scheme has the potential to significantly aid the production of 'theatre' in the UK, develop further the skill base, and aid the distribution of work outside London and other major metropolitan centres.