

FINANCE MANAGERS MEETING

WEDNESDAY 18 MAY 2005, 11.30am – 4.00pm
GENERAL SCOTT ROOM, ROYAL ALBERT HALL
Chaired by Stephen Maddock, Chief Executive, City of Birmingham
Symphony Orchestra



R E P O R T

Stephen Maddock, City of Birmingham Symphony Orchestra welcomed everyone to the meeting and began the round room introductions

National Insurance Contributions

Philip Alfandary - *Assistant Solicitor, Charles Russell*

Philip ran through the specifics of the recent Inland Revenue special National Insurance Contribution rules for entertainers.

He explained that the scope of employers National Insurance contributions has been extended to entertainers who receive payment by *any element of salary*. The term *any element of salary* has been used to widen the net to include entertainers not previously captured by this.

The guidelines can be found on the ABO website:

http://www.abo.org.uk/event_smm_detail.php?type=Finance+Managers+Meeting

Following Philip's presentation there was some discussion of the exact nature of the salary terms.

Cathy Graham, *London Sinfonietta* queried whether back payments could be requested to which Philip confirmed that if payment had been made in breach of the previous regulations the Inland Revenue would have the right to go back up to 6 years, but in practise they were unlikely to do this. It has since been revealed that English National Ballet (a non-ABO member) has been made six years of back payments. pay

Stephen Maddock noted the "major London orchestras" exemption clause (see appendix for details), which lead to a general group discussion on the detail.

Anna Roe, *Orchestra of the Age of Enlightenment*, shared information regarding an upcoming National Insurance audit that they were to receive. Anna detailed a letter (copy attached *appendix 1*) and subsequent conversation she had with a member of staff at the Inland Revenue – specifically the possibility that, if they were to prove the orchestra was made up of shareholders; members of the company, or players selected from 'first call' lists, then they could be exempt of the legislations too.

The treatment of players from 'first call' – seen as 'extras' under this legislation, and therefore exempt was raised and more general discussion ensued, concluding that if the self governing and 'first call' rules proved true then changing the constitutions of orchestras could exempt them from legislation.

Cathy Graham asked what the Musicians Union's reaction had been to the agreement – to which Russell Jones, *Association of British Orchestras*, replied that there had been none as yet.

Russell Jones confirmed that he had arranged to meet the key official from the Inland Revenue on 31 May and invited others to join him. Richard Huxtable, RPO; Anna Rowe, OAE and Elaine Baines, CLS agreed to accompany him.

The general conclusion of the group was that the regulations (subject to practical implementation specifics) could have a very negative impact on chamber/freelance orchestras, who contracted players under terms of service and also damage contract orchestras through the employment of 'extras' to play.

Stephen Maddock concluded that there were two separate action threads to come out of the discussion:

1. Sharing of information on work regarding individual arguments, meaning precedent case law could be built up
2. Consideration for political lobbying due to unsuitability to the orchestral industry

ACTION: *ABO to discuss lobbying and other responses immediately after 31 May meeting*

21st Century Organisations – Sharing functions

Stephen Maddock opened the discussion referencing the recent DCMS ACE settlement, stressing that for funded organisations, if not for all, any opportunities for arts organisations to a/ save costs, and b/improve service by sharing back office functions, should be taken up. He gave the example of the City of Birmingham Symphony Orchestra moving their IT provision from an in-house IT manager to a Birmingham-wide arts IT company stressing that this had made a tremendous improvement to their IT services.

Cathy Graham spoke regarding the Kings Place development, which was to host a music hall, offices, a gallery, and educational spaces – running without subsidy. The London Sinfonietta and the Orchestra of the Age of Enlightenment are to move into shared offices here and are looking from scratch at ways they can save and share functions. Other examples such as The Sage Gateshead, Dartington Plus and the LSO utilising the Barbican's box office provision were discussed.

There was general agreement that prior to the next spending review in September 2006 there should be some examples of good practise in this area within the industry; and that in future this will most probably be a pre-requisite to receiving ACE grants.

Reference: <http://www.kings-place.co.uk>

Audits

There was a short discussion on audits during which the topic of SORP 2005 arose. Anna Roe informed the group that she had been to a haysmacintyre briefing on SORP that had been very helpful. It was requested that ABO run a briefing session on this for all members.

ACTION: *ABO to look into organising a briefing session on SORP 2005*

'VAT – Limiting the pain'

Graham Elliot - *haysmacintyre*

Graham spoke to the group about ways to limit the ways VAT affects their organisations. His presentation took two tacks:

1. Ways to remove VAT at source
2. Ways to claim back more VAT

A discussion followed instigated by Colm Crummey, *Ulster Orchestra*, regarding the VAT connected with owning a building. During this Stephen Maddock shared the arrangement that the City of Birmingham Symphony Orchestra had come to with their local council which resulted in receiving a lower grant, but not being charged for the use of the building.

A discussion on cultural exemption then followed during which it was agreed that it would be useful to have a list of orchestras and venues/festivals and whether they were paying VAT or culturally exempt.

Graham's presentation handout is attached as *appendix 2*

ACTION: *ABO to investigate whether listing of organisations and cultural exemption status is possible*

ABO learning

Alison Ottaway, *Association of British Orchestras*, talked through ABO learning; current and future training provisions. At present training is provided in the guise of 'Where do I Start?', Brass Tacks and the ABO Mentoring scheme. This was mostly at entry level – and previous audit meetings with members highlighted that training was the number 1 issue. It was communicated that the ABO Board had discussed a Management Development Academy programme – this would be 5/6 days over the course of 6 months. The days would use the same trainer and the group would be constant over the period. Members were requested to send suggestions on format or curriculum to the ABO.

OPAS – potential user group meeting

Alison Ottaway explained that the Artistic Planners' meeting had raised the subject of OPAS (Orchestral Planning and Administration System) with the suggestion of a user group meeting. There was general agreement that this would be useful and would work best with a mixed representation of different functions. It was also suggested that this would be best utilised if it included a session for potential users.

ACTION *ABO to investigate possibility of OPAS user group meeting*

Listen Up! 2006

Alison Ottaway reported that 'Listen Up!' was to be repeated in the calendar month of October 2006, but that subject to funding *Musicians on Call* would be repeated in 2005.

ABO Diamond Jubilee

Alison Ottaway reported that 2007 saw the 60th anniversary of the founding of the ABO. It was proposed that the celebrations would concentrate on members and their work in the last sixty years as opposed to marking a trade association's birthday which was of less interest. Ideas were requested.

AOB

RPI/CPI

Stephen Maddock raised the question; 'what is inflation?' referencing the significant difference between RPI and CPI and highlighting the fact that the government is quoting CPI, therefore the next funding round is likely to use CPI as a base instead of RPI. He cautioned that if members are continuing to be tied into expectation of RPI increases there will likely to be some big shortfalls.

There was agreement that this should be monitored and that the sector should have common solidarity of reasoning when using CPI figures for salary increases. It was noted that the next MU agreement should use CPI not RPI figures.

Bank Holiday allowances

Stephen Maddock asked members present how they handled apportioning bank holiday rights to part time workers/job sharers. Those who had experience with this confirmed that a pro rata of these days was the fairest option.

Working Time Directive

The bank holiday discussion lead onto a groups discussion on the working time directive including the recent changes, which are primarily the loss of the opt out clause and the 48 hour week being averaged over a year (instead of the current 17 week period). Stephen Maddock shared with the group that he thought it likely that there was a fairly pressing need for this to be monitored as future stress claims were likely. There was some discussion on how this could be done, with the sharing of good practise welcomed. It was agreed that self-monitoring timesheets, although not ideal, was currently the best option.

Travel Insurance

Andrew Minns, Bournemouth Symphony Orchestra, raised the issue of travel insurance following a recent insurer cover refusal on certain individuals in the orchestra on a tour to Spain. No-one else has any experience of this happening, although Cathy Graham did mention an issue with what she believed was insurance not covering foreign nationals. Again no one else in the group has experienced this.

Noise

There was a general discussion over the subject of noise and how member organisations were progressing.

MU Touring agreement

Simon Neal, *The Sixteen and The Symphony of Harmony and Invention*, raised concerns over the draught MU Touring agreement. Alison Ottaway confirmed that this had been discussed at length during the Concert and Orchestra Managers' meeting with strong feedback received. It was stressed that the document was not an ABO generated document but a first draught attempt by the MU. Alison explained the feeling that came out of the Concert and Orchestra Managers' meeting – that a database of per diem information held by the ABO would be useful and it was agreed that this would be a helpful tool for membership.

ACTION: *Members to let ABO know per diem rates for foreign travel*

Date of next meeting: Thursday 17th November 2005



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Date 8 April 2005
Our Ref 923/COMP3/951/O22/PGR
Your Ref

Dear Sir

Review of PAYE expenses payments, benefits in kind & National Insurance contributions

This office is responsible for reviewing employers and contractors in your area to ensure compliance with regulations governing:-

- PAYE, National Insurance contributions, tax credits, statutory sick and maternity pay, and student loan deductions.
- completion of annual Returns of expenses payments and benefits in kind for employees and directors (form P11D and P9D); and
- the construction industry scheme.

I intend to visit your company premises to conduct such a review, pursuant to Regulation 87(1) of the Income Tax (Pay As You Earn) Regulations 2003 (Statutory Instrument 2682 of 2003), and paragraph 26 of Part III to Schedule 4 to the Social Security (Contributions) Regulations 1004 of 2001.

I will need to speak to the person(s) responsible for the operation of your payroll system and completion of forms P9D/P11D. It would also be helpful if I could speak to the director or senior executive responsible for the company's financial controls.

I am enclosing a booklet which outlines the code of practice governing such reviews. It explains the purpose and the manner in which reviews are conducted and I recommend that you read this booklet prior to my visit. Pages 7 and 8 of the booklet set out the business records which I will need to inspect.

Information is available in large print, audio tape and Braille formats.
Type Talk service prefix number - 18001

Area Director: Chris Barker



If you operate a computerised account or payroll system I will also need to see:

- a printout of the "parameter" report outlining the various types of taxable and non-taxable payments processed by your payroll system, together with a printout of settings of the rates of pay, tax and NIC being used;
- printouts of monthly payroll runs for 2004-2005 and 2005-2006 (that is the equivalent of deduction working sheets P11 and copy payslips);
- a printout of the accounting codes;
- printouts of relevant trial balance reports, which I will specify in due course.

Will you please telephone me shortly to arrange a mutually suitable time for my visit.

Please note that this is not an enquiry under Income Tax Self Assessment or Corporation Tax Self Assessment.

Yours faithfully



Paul Reynolds
Employer Compliance Officer

Enc

Appendix 2

VAT: Limiting the Pain(!)

Reducing VAT on costs

Why do it? Because many orchestras are now exempt for cultural services and cannot recover all VAT incurred. It becomes important to reduce that VAT.

Two ways of looking at this:

1. Reduce actual VAT charged on the cost
2. Work out a method of reclaiming more

Removing VAT at Source

1. If some players are registered voluntarily for VAT (because the orchestra used to be able to reclaim the VAT in any case, and it gave the player a small VAT claim on costs), investigate if they can de-register from VAT.
2. Employed musicians don't charge VAT, whereas they might if they were self employed.
3. Seek rehearsal venues that have not "opted to tax".
4. Check whether concert publicity mailings can be free of VAT (under the printed matter package test).
5. Charity advertising is zero rated; remember to claim this.
6. Overseas soloists and conductors.... Does this work?
7. Royal Mail deliver VAT free, but private carriers do not.

Reclaiming More VAT

1. Investigate direct attribution to taxable supplies (e.g. costs of producing programme are wholly related to taxable zero rated supplies.)
2. Try to avoid single purchases which would have to be attributed solely to exempt supplies (although it is as yet debatable what such costs would be --- Mayflower case)
3. Consider allocating most if not all costs to apportionable category rather than fully non-recoverable on basis that they have some relationship with taxable supplies. For example, if you sell programmes, advertising, and ice creams, then it can be argued that costs of putting on performance are linked with those supplies as well as the cultural supplies. Customs disputes this (Mayflower case), and we have yet to see who wins the point. But consider other taxable supplies to which costs might be related, such as sales of in house CDs of live performances.
4. Look at your apportionment cost driver. It need not be based on ratio of turnover (though that will often be the best). It could relate to an allocation via activity based costing, relative direct costs, and even the number of people involved in either class of activity.

'Right of Admission'

How limited is the exemption's restriction to a "right of admission"? Customs seems to think that this right has to be extended to a grant of the right by the precise organisation that provides the performance. Hence, if you sell tickets in a block to another party, and that party sells on to the customer, Customs says that both your supply, and that of the distributor is standard rated. This does not seem naturally justifiable under the Vat system in general.

Also, where is the vires for the restriction of exemption to actual admission rights in the EU 6th Directive? The restriction appears to be absent from that document.

Would there be an advantage to your organisation if jobs in which you were hired to perform (rather

than granting admission yourself) were exempt? Is it worth thinking of taking this point forward with Customs?

Repayment Returns

Do you normally receive repayments of VAT? If so, would it help cash flow if you went on to monthly returns?

Do you have two separately registered companies? Can you put them on a different VAT quarter end, to improve VAT cash flow planning on inter-company charges?

Do you turn over sufficiently little to qualify for Cash Accounting or Annual Accounting?

Changes in interpreting “a business”

One prerequisite for VAT applying to your turnover is that you are carrying on “a business”. Until recently any charge made for any service (even if the charges do not cover costs) was regarded as being a business in all circumstances. But the case of *St Paul’s Community Project* has cast doubt on this. The High Court seems to have said that a transaction carried out as part of a charity’s primary purposes is not necessarily a business.

But St Paul’s is a local “social” charity (a children’s play group). Can the same point be made of orchestras? There must be some doubt, but the current judgement leaves the possibility open. But Customs would not accept this (they have said it only relates to play groups).

If it did work the advantage would be that supplies which were part of the charitable objects would not carry VAT. The effects should be similar to being culturally exempt.

Obviously, for those organisations that wish to be taxable (to reclaim input tax) such an approach is unwelcome to say the least. And can the principle be applied only to those that want it? In theory, no. There has to be consistency.

Prepared by Graham Elliott of haysmacintyre, 18 May 2005.

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