



September 2014

## **HM Treasury/HMRC: Tax-advantaged venture capital schemes: ensuring continued support for small and growing businesses**

### **About UK Music**

1. UK Music is the umbrella body representing the collective interests of the UK's commercial music industry, from songwriters and composers to artists and musicians, studio producers, music managers, music publishers, major and independent record labels, music licensing companies and the live music sector.
2. UK Music exists to represent the UK's commercial music sector, to drive economic growth and promote the benefits of music to British society. The members of UK Music are listed in an annex.

### **General**

3. UK Music welcomes the HM Treasury/HM Revenue and Customs consultation on "Tax-advantaged venture capital schemes: ensuring continued support for small and growing businesses".
4. The British music industry is at the heart of our creative economy and contributes significantly to UK culture and society. UK Music has recently published a report into the economic contribution of the sector. The report, *Measuring Music*, shows that the music industry contributed £3.8 billion to the UK economy in 2013, a 9% growth from 2012. The industry supports more than 110,000 jobs and its exports are worth £2.2 billion.<sup>1</sup>
5. The music industry is made up of Small and Medium Enterprises. According to CC Skills report "the Music Blueprint" 92% of businesses in the music sector employ fewer than ten people. Access to Finance, as continually supported by industry research, remains a key issue of concern across the music sector.

---

<sup>1</sup> <http://www.ukmusic.org/research/measuring-music/>

UK Music  
British Music House

26 Berners Street  
London, W1 3LR

T. 020 7306 4446  
F. 020 7306 4449  
E. [contact@ukmusic.org](mailto:contact@ukmusic.org)

[www.ukmusic.org](http://www.ukmusic.org)

6. In order to respond to this concern, we encourage a greater awareness of the financial schemes which are potentially available for music companies to benefit from. We have produced a guide on the UK Music website for existing and potential music companies and entrepreneurs to refer to.<sup>2</sup>
7. The creative industries, which music is part of, generated £71.4 billion to the UK economy in 2012. This is a 9.4% growth that surpasses the growth of any other UK industry sector. Music companies are ideally placed to contribute to continued growth to the UK economy as a whole.

### **SEIS, EIS and VCT**

8. There is evidence to indicate that tax-advantaged venture capital schemes, such as SEIS, EIS and VCT, are being taken up by music companies and are of benefit to the music industry.
9. However, as identified in the accompanying consultation document as part of this review (paragraphs 3.33 to 3.35) there is an issue about the schemes' rules around intangible assets and the receiving of royalties which creates problems for some parts of the music industry.
10. UK Music is therefore focusing its remarks in this response to the following questions as asked by HMRC/HM Treasury:-
  - *Question 21: Have the current rules relating to the creation of intangible assets facilitated investments?*
  - *Question 22: Are there cases where the current rules on qualifying shares have created barriers to investments being made? What changes to the rules could prevent these cases without creating opportunities for investors to benefit from tax relief on investments where they are protected against risk?*
11. The restrictions on intellectual property as part of these schemes, as set out in paragraph 3.34 of the consultation, were put in place initially as a result of a perception that IP is essentially a licensing business and as a result, low risk.
12. In practical terms the schemes rules are not likely to be a problem for a music company that can clearly demonstrate they are creating new recordings, but it would be a problem for a music company whose business model is based on owning or intending to acquire assets, such as a music publishing company, or a record company releasing previously existing 'catalogue' recordings. We look in more detail at how music publishing companies are affected below, but other music businesses may be affected by the same issues.
13. At the moment EIS/SEIS schemes are not available to companies who are "receiving royalties or licence fees (though if these arise from the exploitation of an intangible asset which the company itself has created, that is not an excluded activity)"<sup>3</sup>. This means that music companies who own or intend to acquire music publishing assets are generally excluded from this very attractive form of

<sup>2</sup> <http://www.ukmusic.org/policy/finance/uk-music-srlv-guide-to-finance/>

<sup>3</sup> <http://www.hmrc.gov.uk/eis/guidance.pdf> section 2.4 Trading Activities

financing. Unfortunately, we believe that music publishing's apparent exclusion from these schemes is based on a misunderstanding about the nature of its business.

14. At its most basic level, music publishers earn income from mechanical licence fees (from the sale of physical or digital product), performance fees (from broadcast & live performance) and synchronisation (the use of music in advertising, films, tv etc). A music publisher needs to have a royalty processing team and crucially in order to ensure that the catalogue is exploited fully, it will need to have a synchronisation team in place. Furthermore, in order to grow the future value of the catalogue they will need an A&R department to identify new songwriters who will contribute to the value and future earnings of the catalogue.
15. Similarly, a growing number of smaller/medium sized music publishers operate music businesses which span the full range of music industry services and might include a mix of artist management, record label, promotional activities, touring, merchandising as well as a music publishing catalogue.
16. The apparent exclusion of the ownership/acquisition of music publishing assets by the schemes also misunderstands the risk profile of the music publishing industry. For the most part anyone looking to invest in a music publishing asset will be looking to deliver an income stream from all of the songs in the catalogue and this requires a high level of expertise and investment.

### **Case Studies**

17. In producing a response to this consultation we have received testimonies from music publishing companies on their experiences of the schemes.
18. Some music publishers have had past success in applying for EIS schemes (particularly those who are creating new intellectual property - for example in the creation of film scores). These companies have worked with HMRC in establishing these EIS schemes and have noted that the process of advance assurance from HMRC has been very helpful.
19. In other cases, music publishers have reported difficulties in trying to establish new EIS entities. One music publisher reported problems with the language regarding the creation of value in music publishing assets, and a misunderstanding of the investment process and risk profile of establishing new music publishing assets. The company would be grateful to have clarity on the principles from HMRC and how they judge existing royalty streams against income from the "development" of the IP.
20. A different issue for other companies who provided evidence to us relates to them being required to split their businesses into separate legal entities (and thus separating out the music publishing activities) in order to be EIS investible.
21. Splitting a company incurs an extra layer of costs and in these cases delayed the launch of the business. It also meant that the investors who were attracted to the music publishing business no longer had that exposure.

## Solutions

22. We acknowledge that each application is assessed on a case by case basis and it would be possible for businesses to access finance under these schemes if they can successfully demonstrate they have created the whole or greater part of the value of the intangible asset.
23. However, we are concerned that applications from certain parts of the music sector are not progressing due to inaccurate assumptions from advisers and assessors that the nature of some businesses will mean an application cannot progress further.
24. According to the guidance on these schemes, HMRC takes “substantial receiving royalties” to mean 20% of the company’s activities but we believe that there is a strong argument to create a clearer framework to constitute what “substantial” might include. We would be willing to work with HMRC/HMT to facilitate test cases that could be used as exemplars to the industry.
25. Furthermore, UK Music would be willing to facilitate workshops to enable a greater understanding for financial advisers and scheme administrators about the music industry and the nature of the rights it is engaged with.
26. We accept that it is difficult for an assessor to make a judgment on the value of IP, yet for music applications to progress further, the guidance needs to be clear that:-
- If the purpose of an application is to develop an act or a creator then this should be encouraged.
  - Applicants need to make it clear that they are doing new things and are not relying on existing assets.
  - Applications are not excluded solely on grounds of being royalty income.
  - Consideration should be given as to whether the whole (or greater value) is being created by the company applying under a scheme.
  - Legislation does not establish what “substantially receiving royalties” is in relation to an application.
27. Such a change to the guidance would be of great benefit for the financial advisers, scheme administrators and applicant companies when dealing with applications from music.
28. We greatly appreciate the need to keep the schemes flexible and do not believe that the further clarity we seek in the guidance would compromise such flexibility.

## Annex

UK Music's membership comprises of:-

- AIM – Association of Independent Music - representing over 850 small and medium sized independent music companies
- BASCA - British Academy of Songwriters, Composers and Authors – with over 2,000 members, BASCA is the professional association for music writers and exists to support and protect the artistic, professional, commercial and copyright interests of songwriters, lyricists and composers of all genres of music and to celebrate and encourage excellence in British music writing
- BPI - the trade body of the recorded music industry representing 3 major record labels and over 300 independent record labels.
- MMF - Music Managers Forum - representing 425 managers throughout the music Industry
- MPG - Music Producers Guild - representing and promoting the interests of all those involved in the production of recorded music – including producers, engineers, mixers, re-mixers, programmers and mastering engineers
- MPA - Music Publishers Association - with 260 major and independent music publishers in membership, representing close to 4,000 catalogues across all genres of music
- Musicians' Union representing 30,000 musicians
- PPL is the music licensing company which works on behalf of over 90,000 record companies and performers to license recorded music played in public (at pubs, nightclubs, restaurants, shops, offices and many other business types) and broadcast (TV and radio) in the UK.
- *PRS for Music* is responsible for the collective licensing of rights in the musical works of 100,000 composers, songwriters and publishers and an international repertoire of 10 million songs
- UK Live Music Group, representing the main trade associations and representative bodies of the live music sector

For more information please contact Tom Kiehl, Director of Government and Public Affairs, UK Music on [tom.kiehl@ukmusic.org](mailto:tom.kiehl@ukmusic.org) or 020 7306 4465.