



Jennifer Haslett
Balance of Competences Review: Taxation
HM Treasury, 1 Horse Guards Road
London
SW1A 2HQ

22nd February 2013

Dear Jennifer,

We are writing to you in response to the HM Treasury call for evidence on Taxation as part of the Government's review of the balance of competences between the United Kingdom and the European Union.

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.

UK Music exists to represent the UK's commercial music sector in order to help drive economic growth and to promote the benefits of music on British society. The members of UK Music are listed as an annex.

UK Music welcomes the UK Government's Balance of Competences review between the UK and the European Union. We value the opportunity to provide an analysis of what the UK's membership of the EU means for the UK national interest and how that might impact on our sector. We would like to focus this initial submission on the issues of copyright and withholding tax (ie tax withheld at source), and in particular in response to question 5¹ of HM Treasury's call for evidence.

The European Union and Copyright

Intellectual property is the economic framework which underpins the music industry and other British creative industries. Copyright is the currency of that framework. Every song or recording made by a creator or artist can be licensed for value in the UK and globally, therefore generating a substantial positive balance of export income for the UK from copyright licensing. It provides an incentive to industry to invest in new creative content.

UK membership of the European Union provides a fundamental basis for copyright industries such as music. Copyright law is harmonised in several areas

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¹ Q5. How might the UK benefit from the EU taking more action on taxation? p. 27

by EU Directives under EU competence. Changes made at an EU level on copyright, such as the 1993 Term of Protection Directive, as well as the soon to be implemented 2011 Term Directive, demonstrate how changes made to copyright within the European Union can have a positive impact on UK creators such as composers, songwriters and musicians, as well as the wider industry.

Respect for international copyright obligations, such as the Berne Convention, is imbedded within the membership of the European Union. UK Music relies on certainty offered by the European copyright framework. Our industry is one of the few sectors which can deliver improved rates of growth, exports and quality employment. We ask Government to support a harmonised copyright framework which will allow us to do all those things.

Withholding Tax

There is limited EU competence for tax. Yet, the operation of national tax systems directly impacts the flow of royalties from EU territories, across borders back to the UK.

Withholding tax is tax withheld at source. When claiming tax relief or exemption for foreign income in the form of royalties, individual creators and music industry companies and collecting societies are directed to HMRC to claim relief or exemption either by filling in a claim form from the relevant country's tax authority or to apply for a certificate of residence.

The process incurs compliance costs and delays, complex administration necessary to deal with different tax rules by different member states and exposure to double taxation if appropriate tax treaties are not in place.

The international success of UK music industry, which generates £3.8 billion for the economy, and its strength as one of the three net exporters of music in the world, means that the problem for the UK is more acute than for other Member States.

The UK bears a loss in terms of revenue left abroad as well as a compliance cost.

The UK and Sweden are the only territories in Europe which are at risk of a net loss of tax revenues when comparing tax withheld by other states on income remitted to the UK compared to tax withheld on income remitted by the UK to other member states for music royalties.

The UK's commercial music sector is largely made up of individual creators and small and medium enterprises. The delays and complexity connected to the withholding tax procedures is extremely damaging to businesses with small or limited cash flows.

The lack of harmonised processes for administering withholding tax also increases the complexity and cost of cross border licensing, to the detriment of UK's successful creative industries. Some competency does exist at a European level within the Interest and Royalties Directive, the latest amended version of which is



now with the Council of Ministers. But even this is limited and applies only to cross border transactions between "associated companies" which therefore only benefits major multi-national companies and a small number of music companies exporting from the UK. Further, the definition of royalties does not specifically include music.

The Government should consider the distortion and/or restriction of trade between EU territories with regard to taxation on performers. The cost of doing this is sometimes more than the tax due to be repaid. The cost for small developing acts to appoint professional advisers when visiting another territory is disproportionate to the income that will be received. This could be reformed via the consideration of a de minimis fee across EU Member States under which no tax is withheld, which is consistent with the approach of HMRC's Foreign Entertainers Unit. The approach of the UK Government in this regard is not reciprocated however as UK artists, musicians and bands are effectively being discriminated against by various EU Member States.

To address the problem of 'triangulation', (the conflict between multi-lateral copyright licences and bi-lateral tax treaties), we recommend that the UK leads a process of coordination with other Member States to get much greater visibility to how each Member State will apply tax rules to cross border transactions.

The scope could cover the application of tax rules, encouraging transparency, streamlining processes, and the issuing of appropriate guidelines in order to address further problems associated with withholding tax where competency does not exist. This guidance should be made available in all EU Member States, with advice on how to claim back overpaid amounts. These guides should also be available in all EU languages and easily accessible in a single information portal. This could have the benefit of enabling automation and self service, as well as reducing admin and bureaucratic delays.

UK Music would happily sit with officials to help draft a UK template for such guidance.

As outlined initially in this response, there is benefit to the UK music industry where competency exists at a European level, such as harmonisation of intellectual property, development of the single market and the digital agenda.

This benefit could be greatly enhanced by simpler and less cumbersome cross border withholding tax practices.

We look to the Government to give this issue priority in their continued discussions with European institutions and Member States.

Yours sincerely,

A handwritten signature in dark ink that reads "Jo Dipple".

Jo Dipple, CEO
UK Music



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
- The BPI representing over 440 record company members
- 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, on behalf of 50,000 performers and 6,500 record companies, licences the use of recorded music in the UK
- *PRS for Music* is responsible for the collective licensing of rights in the musical works of 92,000 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