FLICs: what's in it?

Legislation to establish the trial of a new film investment incentive scheme was introduced into parliament on May 14. Nick Herd, executive director of SPAA, asks what it will mean for the production industry

Legislation concerning the Film Licensed Investment Companies, or FLICs, has been referred to the Senate Standing Committee on the Environment, Recreation, Communications and the Arts. There is no confirmed deadline for the inquiry yet but it is mooted that the committee has to report back in August 1998.

The genesis of the Film Licensed Investment Companies, or FLICs, concept was the report by David Gonski on Commonwealth film assistance measures. Commissioned by the federal government, the report's recommendations were released at the start of 1997.

In the report, Gonski overwhelmingly supported direct funding as the most appropriate form of government assistance to the industry but found that it was still necessary to attract private investment through tax concessions. He recommended that existing tax concession arrangements cease and be replaced by the FLIC scheme.

Gonski's original proposal was that the FLICs be awarded licences by the government to raise concessional capital for a range of "qualifying" Australian films - features, mini-series, telemovies and documentaries. Investors would be able to claim a tax concession for investment in the company, rather than in the individual film.

Gonski proposed that the concessional rate be at least 120 per cent (which he thought was viable because of the risky nature of the investment) and that Capital Gains Tax (CGT) paid on the sale of FLIC shares be the cost of shares minus the tax concession.

This made the FLIC a more attractive proposition than the concessions available under 10BA and 10B. But to avoid the problems of the '80s tax-funded films, the FLICs would provide a mechanism for investment in a "slate" of production and provide government with a capped and transparent level of revenue.

In September 1997 there was a flurry of consultation from DCA on the possible replacements for the existing tax concession, including the way in which the FLIC scheme should be set up. Should it be funded by direct outlays? If it was to be tax based should the concession be at 100 per cent or 120 per cent? Should the money be given to the Film Finance Corporation? Or should the whole thing be dropped and 10BA be left in place?

Government proposal

The government solution is essentially a compromise: a two-year pilot scheme set to run from July 1, 1998 with 10BA remaining at least until the pilot's completion.

The Film Licensed Investment Company Bill establishes a scheme for the operation of one or more FLICs. Under the scheme a company applies to the Minister for Communications, the Information Economy and the Arts for a "concessional capital licence". A company is eligible to apply for the licence if it is a new corporation which has its head office in Australia, is registered as a corporation under the Corporations Law, and all its directors are Australian.

The minister issues the licence having taken advice from a Selection Advisory Panel comprising persons with expertise in production and distribution of films and in banking and finance. The minister decides how many licences he will issue and how much concessional capital each licensee will be entitled to raise.

Each licence will run from the day the minister issues it until June 30, 2000. During that time shareholders who invest in a FLIC are able to obtain a 100 per cent tax deduction for the money they invest, as long as the money is then invested in qualifying Australian films.

All the concessional capital allocated to a licensee must be raised in the licence period and the total amount raised by all licensees is not to exceed $40 million. But investment by the FLICs in qualifying films may continue until June 30, 2001. All concessional capital must be invested in the films, except a small amount approved by the minister may be deducted to cover administration.

Qualifying Australian films are as defined at present in the Income Tax Assessment Act and they must also possess a 10BA certificate. Investment in such films is to be in production for the purpose of becoming a first owner of the copyright; or if the FLIC invested in production then it may also invest in marketing and distribution of the film.

An investor in a FLIC can only claim a deduction for the investment in the year in which the share is issued. The deduction is subject to "clawback" if the FLIC breaches a licence condition and the minister removes the concessional status of the shares.

At the time shares are sold the cost base for Capital Gains Treatment is zero, meaning the investor would pay CGT

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on first dollar returns. This would mean that an investor would be taxed on capital gains even though none had been made and any tax advantage for investment would be a tax deferral.

Tax losses cannot be transferred to or from a FLIC and the FLIC itself cannot make a claim for deductions on the expenditure of concessional capital.

The FLIC licenses are subject to a range of restrictions on foreign and individual ownership as well as to conditions about borrowing and capital raising. In addition, each FLIC must provide the minister with a report every six months and the Commissioner of Taxation with a report every year.

The production industry sees two problems with the scheme as proposed. First, the concessional arrangements offered are the same as that for 10BA. Even the opportunity to invest in a slate of films is possible under 10BA. Thus there is virtually nothing new offered to investors, except the probability of much closer government scrutiny of their investment.

As a result, SPAA (the Screen Producers Association of Australia) and other industry groups are highly sceptical that the FLIC scheme will be sufficiently attractive to investors.

Second, the legislative and administrative process of implementing FLICs means it is unlikely that the pilot will be running much before the middle of 1999, assuming that anyone wants to invest in it.

So, in a year when the government has reduced its direct outlays to production investment by $15 million, it seems that there is not much hope that the FLIC scheme will attract sufficient private investment to compensate for the loss.

Nick Herd

From The Archives

Aussat eyes off Tasman and Pay TV

Three Aussat customers - the ABC, Bond Media and AAP - are positioned to provide Trans-Tasman services before Aussat's brand new satellites are up in the skies. Direct broadcast pay TV is also on the horizon.

On June 28, Aussat contracted to purchase two new satellites from the General Motors company, Hughes Communications International. The Aussat satellites should be in orbit by 1992-93 and are designed to satisfy both Australian and NZ broadcasting and communications companies.

The Hughes offer to manufacture and launch the spacecraft for the bargain-basement price of $350 million has stunned critics and fired debate overseas. The clue to the price lies with the People's Republic of China (PRC) which has offered to provide the launch at a price that undercuts its U.S. and European competition.

The different U.S. agencies are now engaged in a fierce debate on the way the Hughes deal will impact on technology transfer, trade and national security. Europe has also entered the fray through the Coordinating Committee for Export Control (COCOM) which must approve technology transfer to the PRC.

If Hughes is not allowed to use the PRC's Long March rockets, Aussat faces the prospect of borrowing another $200 million for a western launch. Together with $90 million Aussat must spend to upgrade its ground facilities, this could lift Aussat B's overall cost to a massive $645 million.

Network tycoons create Australian clones

Australia's reliance on cheap U.S. product to fill TV schedules is underscored by a series of deals negotiated over the past six months. Virtually every program produced by the major U.S. studios and networks is promised to an Australian network.

The new TV tycoons have outlaid millions of dollars on exclusive contracts and partnerships with U.S. studios to guarantee a supply of drama product.
Since early this year:
- Frank Lowy's Network 10 has struck an exclusive 10-year deal with MCA/Universal;
- Alan Bond's Network Nine has tied up Columbia Pictures and Warner Bros;
- Chris Skase's Network Seven has secured a three-year contract with MGM/UA.

Paramount appears to be the only studio without an exclusive agreement.
The MCA International, B.V. and Network 10 agreement entitles MCA to acquire 10 per cent of Northern Star's capital at $2.50 a share any time within five years. MCA and Northern Star also plan to explore joint TV productions with an "Australian content" for the international market.
Network Nine's agreement with TriStar Pictures transferred to Columbia Pictures earlier this year. Details of the Warner Bros deal are not public. Bond Media also retains rights to the Thorn EMI Screen Entertainment library of 2,000 titles.

Skase has signed a three-year agreement with MGM/UA for a reported sum of $20 million a year.

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