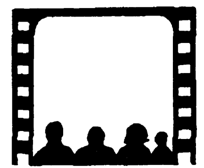


Will 10BA get the FLIC?

The federal government is exploring possible replacements to current tax concessions for film and TV program production, and the industry is ambivalent. Jock Given reports.

David Gonski's *Review of Commonwealth Assistance to the Film Industry,* published in February this year, recommended the replacement of current tax concession arrangements for encouraging investment in Australian film and TV production with 'FLICs' – Film Licensed Investment Companies.

It was a new idea to replace some old assistance mechanisms which Gonski felt were no longer working effectively.

The Coalition government, like the Fraser Government in the early eighties, had been attracted to the idea of encouraging more private finance into the industry through tax-based assistance, rather than through the funding of government agencies. This was a key area that Gonski was asked to examine.

Gonski criticised the existing tax concessions. He thought they were not attracting effective private investment into the industry. Despite 10BA having a lower level of concession than in the 1980s, when it acquired a bad name (see box), Gonski felt the investors who were being attracted were still primarily driven by the tax benefits.

He came up with FLICs as a replacement for 10BA and 10B. Gonski's FLICs would have been three companies licensed by government. Investors in these companies would receive a tax concession on their investments, say of 120 percent, up to a set maximum level. The three companies, for example, might each be able to raise $14 million per year, at a cost in foregone tax revenue of around $8 million, assuming investors would be on the top marginal tax rate. The total cost to government would not change from the currently estimated $24 million per year cost of 10BA. The companies would invest in a slate of films and TV programs.

The intended benefits to the industry were the establishment of a number of new investment 'doors' for producers and the attraction of new sources of private investment to these more structured, diversified investment vehicles. The benefits for government were that the cost of the tax concessions would be capped – a traditional concern of the financial departments.

The Industry Response

FLICs got a mixed response from the film industry.

SPAA welcomed it as an innovative approach to financing, a good idea worth giving a go, although it was concerned that the new scheme would only come at the cost of losing 10BA altogether.

Some, particularly younger, producers were anxious to retain even the limited capacity that 10BA gives them to raise non-subsidy finance.

But some producers responded as they had to the proposed replacement of the original 10BA with a 'Film Bank' in the mid-1980s. Shutting down the open-ended 10BA, which any producer could use, and replacing it with three FLICs, would close more doors than it would open. Some, particularly younger, producers were anxious to retain even the limited capacity that 10BA gives them to raise non-subsidy finance.

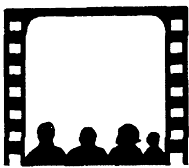
The government responded to key elements of the Gonski recommendations in the 1997/98 budget, announcing a further four-year commitment to the FFC but trimming the budgets of other agencies. It indicated it would be making a more complete response to other recommendations, such as FLICs and the future of Film Australia Pty Ltd, by the end of 1997.

The Government's Discussion Paper

The Discussion Paper released early in September identifies two other options proposed by industry as part of consultation since Gonski's report. These are a revolving fund for the cash-flowing of pre-sales, and the redirection of savings from abolishing concessional tax treatment into existing direct outlays programs, such as the FFC, the AFC or the SBS Independent and the Commercial TV Production Fund. (These last two, established under the previous government's Creative Nation cultural policy, currently face closure at the end of their existing funding commitments.) There does not appear to be substantial support for a federal pre-sales cash flow fund. Several state agencies have already established such arrangements.

There is considerable support for the redirection of any tax funds saved into outlays programs, but there is also a recognition of the strategic difficulty of arguing this case so soon after the government had reconsidered funding levels for its agencies.

After nearly a decade of apparent invisibility, 10BA appears to be again officially on the nose, because of its open-ended cost to government revenue and its lack of accountability as a support measure. No-one really knows what it achieves, because detailed data about it, unlike that from



the funding agencies, is subject to the secrecy provisions of the Tax Act.

So unless someone can come up with some compelling arguments to sustain 10BA, it is likely to struggle to survive. With supplements to existing direct outlays programs unlikely, for the industry it might be FLICs or nothing.

The FLICs Models

The Government's Discussion Paper raises several issues about the structure and activities of FLICs:

Form of support: The subsidy available to the licensed companies could be by way of tax concession or direct outlay from the federal budget to the FLIC. The latter has been used in the UK with its new system of three Arts Council-assisted franchisees receiving 93 million pounds to lever an estimated 460 million pounds of production over the next six years.

Former FFC chief executive John Morris says he's 'dead scared' of the idea of an outlays-FLIC. This kind of decentralisation of funding support would be 'the beginning of the end for central funding bodies,' he says.

If the subsidy was through tax concessions for investments in the FLICs, there is disagreement on the level needed. John Morris says he's 'astonished to see in the Discussion Paper a serious proposal at 100 percent'. Producer Matt Carroll agrees: 'You won't get money at 100 percent. It's naive and stupid'. FFC Chief Executive Catriona Hughes describes the view that 10BA at its current 100 percent level can provide growth opportunities as 'amazing optimism'.

Ownership: Gonski envisaged licensed companies which would deal with independent producers, financial institutions and distributors/sales agents (the 'commissioning agent model'). The paper canvasses three other models: integrating distributors into the management of the FLICs (the 'commissioning and distribution agent model'); integrating producers into the management of the FLIC (the 'producer model'); and integrating producers and distributors into the management of the FLIC (the 'integrated producer and distribution model'). Each of these options has been criticised for reducing or eliminating the value of FLICs as 'new doors' for producers to bring projects for finance. The involvement of distributors might make it easier to raise private finance, but would make FLICs more like existing funding mechanisms.

The paper also canvasses issues about corporate structure, the detailed activities of the FLICs and the criteria for selection of the successful licensees. While Gonski recommended three such companies, some in the industry are arguing for more, smaller companies. Others argue that this will increase administrative costs and reduce the size, creative diversity and commercial attractiveness of each company's production slate.

Matt Carroll sees FLICs as a significant opportunity. 'I see them as a little studio, not as a little FFC,' he says. 'I'd like to put together an adventurous slate and keep it going after the licence period had ended.'

Catriona Hughes says the important thing is to work out what the industry needs to be producing and design any changes in the assistance arrangements to fill the gaps. She argues that the big problem at the moment is that, with $48 million a year, the FFC can't afford to finance big budget films. 'There is only limited step-up opportunity,' she says, once a film maker has succeeded with a small-medium budget film, without going off-shore (for example, P.J. Hogan's Hollywood film *My Best Friend's Wedding,* which followed his success with *Muriel's Wedding*).

Some see FLICs as a taking some pressure away from the FFC in funding small and medium budget features freeing up some of its resources to direct towards larger projects.

One argument against the focus on attracting more private finance into production through new forms of tax concession is that it is addressing the wrong entities. One of the most important structural changes in the Australian production industry over the past ten years has been the success of companies such as Southern Star, Beyond International, Village Roadshow and the Becker Group in raising funds in recent years through the stock market for their integrated production and sales/distribution operations.

The Current Rules

There are two existing tax concessions. The first, under Division 10BA of the Income Tax Assessment Act, is the remnant of the scheme which was the major source of federal assistance to the industry through most of the 1980s. It was introduced by the Fraser Government when the cost of effectively supporting the industry outgrew the budgets governments were likely to provide to the Australian Film Commission and the state agencies.

Early on, the concession was very generous. Investors got a tax deduction of 150 percent of the value of their investment in a qualifying film (Australian features, miniseries, telemovies and documentaries) and a tax exemption on 50 percent of the revenue earned. Those figures were wound back to 133/33 percent and 120/20 percent and to the current levels, 100/0 percent, in 1988 when the Australian Film Finance Corporation was established.

At these levels, the concession provided by the scheme allows investors to deduct the value of their investment immediately, rather than over the effective life of the asset (the copyright), which would be the position in the absence of the concession.

The second concession, under Division 10B of the Income Tax Assessment Act, allows investors in films other than qualifying Australian films to deduct the value of their investment over two years.