INTERNATIONAL FILM CO-PRODUCTIONS

Breaking New Ground?

Very few feature films or television programs are made in Australia as co-productions. The lack of international film co-productions has largely been due to the availability of finance under Division 10BA of the Income Tax Assessment Act for the programs conforming with the Australian content requirements of the Australian Broadcasting Tribunal. Further, the government statutory film bodies responsible for investment in film production had discouraged international film co-productions or co-production treaties largely because of a desire to develop an indigenous film and television production industry.

The development of the Australia film and television production industry has lead to a greater degree of sophistication in the way films are packaged, financed, produced and distributed.

The increased sophistication of the film industry in Australia combined with a growing concern about the restrictiveness of the Australian content requirement in Division 10BA has led producers to negotiate for international co-productions in part as a higher stage of development in the industry.

Options for Co-Productions

There are essentially two options available for a co-production, one being government regulated co-production under the Australian Film Commission ("AFC") and the other being free market co-production.

AFC International Co-Production Policies

In November 1985 the AFC announced its international co-productions policy which is essentially designed to allow investors to claim Division 10BA taxation deductions for investment in qualifying international co-production films.

The legal basis for the AFC co-productions policy is to be found in s3 (1) (c) of the Australian Film Commission Act, s124ZAA(1)(b) and s124K(1)(b) of the Income Tax Assessment Act.

All three provisions are essentially designed to allow for international co-productions based on agreements or arrangements between governments and/or agreements or arrangements between statutory authorities of governments. If the government of Australia, or an authority of the government of Australia enters into an arrangement or an agreement with a foreign government or authority to produce an "eligible" film (as defined in Division 10BA) the relevant minister shall provide a Provisional Certificate and, as the case may be, a Final Certificate stating that the film is a qualifying Australian film for the purposes of Division 10BA of the Income Tax Assessment Act.

The AFC has elected a "one off" approach to film co-productions, with the key assessment criteria for the AFC being; quality of the project, subject matter, extent of Australian participation, background and expertise of the overseas parties, source of production moneys, and the scope for international distribution.

The AFC has established a very complex and dense system of qualification and approval for projects which at times requires considerable negotiations over certain grey areas.

To obtain support of the industrial unions and associations involved in film and television production an arrangement was entered into among the various industrial groups whereby the AFC would essentially bind its acceptance of programs and design agreements to the terms and conditions of the industrial arrangement.

The industrial arrangement requires, inter alia, "that there be a balance of majority Australian creative participation and financial equity over the life of the programme". Other requirements include that Australian creative equity is commensurate with Australia financial equity. All these terms have not yet been defined in a way which provides certainty to the co-producers.

Where the composer is Australian, the musicians engaged shall be Australian and the recording facilities shall be located in Australia. Further, all crew and cast members working in Australia must be fully financial members of the relevant Australian union or association.

Once the producer has met the various requirements of the industrial agreement, plus satisfied the various policy objectives of the AFC, he or she must then negotiate with the foreign authority and foreign co-producers in relation to their international requirments and policy objectives.

This procedure is complex, and requires considerable attention to detail. The rewards at the end of the day however should be considerable given that Australian investors should qualify for Division 10BA deductions in the film. One would also expect that the film's access to international markets would be enhanced and thus introduce the potential for some "blue sky" returns.

Free Market Option for International Co-Production

Free market co-productions are less dependent on formal structure and approval mechanisms of industry and government bodies than formal treaty co-productions. These co-productions are normally multiple party deals or arrangements using a wide variety of financing techniques more akin to what we now understand as standard practice for larger budget film productions.

International co-financing ventures may take advantage of Government tax incentives, below the line co-financing arrangements, direct Government subsidies, barters for distribution markets, currency based and exchange based deals, discounting of various banking facilities and other such mechanisms.

The project is generally packaged on the basis of a relationship between the subject matter and territory, but certainly not the nexus which is usually required in formal co-productions or treaty productions.

1. Canada

For example, Telefilm Canada, together with the Canadian Government Film Development Fund and CTC (Government owned network) are able to make use of direct investment secured against taxation incentives to Canadian investors at 100% over 2 years. Co-ventures of this nature may require twining of Canadian based film and Australian based film for the co-venture.

2. Norway

In Norway investors are entitled up to 100% capital write-off from investment in films provided the film has obtained a guaranteed minimum return against the negative cost of production of the film of up to 40%.

3. New Zealand

New Zealand tax incentives are based

on a 45% capital write-off of the entire moneys expended in relation to the film whether direct or not and may include, expenditure on prints, marketing and advertising. New Zealand has previously provided a limited amount of money to Australian projects on the basis of expenditure upon items not attractive to investors in Australia.

4. United Kingdom

Although the Eady Scheme is no longer available in the United Kingdom, the "Business Expansion Scheme" has been retained such that an investment of up to £40,000 per tax payer per year may be tax deductible.

5. Other Territories

Various other countries have capacity for direct investment in film projects or can provide other indirect assistance for film projects on the basis that they are to be made, produced or in part involve sub-territories which offer such incentives.

Exchange rate, or currency deals may be available in certain territories where the value of the currency in the territory which undertakes the filming or the part production of the film is such that it is advantageous to bring foreign currency into the territory. Currency deals, combined with direct subsidy and tax incentives, enable the promoter to package the projects larely without direct government intervention.

Conclusion

Although no films have yet been financed or even packaged under the AFC's co-production policy hopefully eligibility of tax deductions under Division 10BA in relation to co-productions will become available as both producers and administrators become more familiar with international financing, production, and administrative requirements in relation to co-production film making.

Michael Frankel

NEWS

GOVERNMENT ABORIGINAL BROADCASTING COMMUNICATIONS POLICY

In late November the Minister for Aboriginal Affairs, Mr Clyde Holding, and the Minister for Communications, Mr Michael Duffy, gave details of the Government's decisions on the recommendations contained in "Out of the Silent Land", the report prepared by the task force on Aboriginal and Islander broadcasting and communications.

The major points contained in those decisions were:

- a study into the feasibility of providing satellite reception facilities to Aboriginal communities would be made;
- appropriate measures for Aboriginals to manage the programming of broadcasts to their communities would be developed;
- there would be encouragement of Aboriginal production of radio and television programs; and
- the accelerated expansion of telephone services.

The Ministers noted that the Government:

(i) was looking to the ABC to increase its involvement with Aboriginal broadcasting;

(ii) had endorsed the development of independent Aboriginal broadcasting associations at Alice Springs, Darwin, Townsville, Thursday Island and in the Kimberleys.

The Government also noted that:

(i) the Central Australian Aboriginal Media Association in Alice Springs had been granted funds to enable it to develop its Aboriginal video television capacity; and

(ii) high frequency inland radio services would begin in the Northern

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