Tax Investigations

Film Schemes - A cast of thousands ?

Sarah Colledge examines the mis-selling of tax investments schemes, specifically film partnerships and explores the avenues available to investors.

Film partnerships were originally introduced by the Government to encourage British film production in order to stimulate the UK film industry and generate revenue for the UK economy. Typically an LLP would be established and each investor would become a partner, in the LLP. The acquisition of the rights by the investors is typically funded in two ways:

1. A capital contribution by the investors (often 10%)
2. A loan taken out by the investors (representing the remaining 90%)

The LLP would then obtain rights to films to enable them to lease the films back to the production company for a defined period bringing in substantial revenue for the partners and in addition creating allowances to offset against the individuals tax liability. As a result the schemes quickly became popular especially amongst high earning individuals including the sporting fraternity and celebrities.

Whilst correctly regulated schemes could see an individual receive reduced tax liabilities through a valid capital investment, many have found the rewards of the schemes came with a far heavier price, The tax reliefs that the scheme benefited from were open to HMRC scrutiny and uncertainty with HMRC looking to close down schemes they class as aggressive.

So what can investors do to recoup funds?

With many investors reaping the rewards of the schemes at their inception an unexpected tax enquiry and an Advanced Payment Notice came as an unwelcome surprise. Many investors are now facing severe financial distress having to respond to accelerated payment notices and fighting off a bankruptcy petition whilst trying to find legal support to assess the strength of a claim against their financial advisors.

Embarrassment and the risk of negative PR only further hinder the battles ahead. Cases such as "Eclipse 35" leave little hope and unfortunately the investors remain under pressure and ignorance is simply not bliss.

So what options are open to investors?

For some a discussion with HMRC in order to agree a time to pay arrangement can solve the problem, but for many this will prove fruitless as the funds are simply not available to pay the outstanding tax. In these cases Individual Voluntary Arrangements (a contract with creditors to repay a level of debt with the balance being written off) or even Bankruptcy may be the only option open to investors.

But, what happens to the Partnership Investment. This is overlooked by many an investor struggling to deal with the aftermath of a film scheme that has turned ugly. Many forget, or simply don't know what they invested in and what assets remain in the Partnership.

> "Film schemes quickly became popular amoungst the sporting fraternity"

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So, what's left in the partnership?

- The sales revenue received from the exploitation of the film, and the potential right to control to whom and where films are sold to maximise revenue.
- Subject to the wording of the sale and leaseback agreement, the Intellectual Property Rights in the films-which could be substantial if the film is a hit and sequels are anticipated.

Our specialist investigation team have been investigating partnership investments for the last 15 years through different insolvency processes.

But why involve another professional ?

There could be substantial recoveries to be made not only through the sale of the film assets but also as a result of a review of the partnerships' affairs. Liquidators and Administrators ('Office Holders') not only have the power to trade a business and realise assets but also the power to investigate how the business was managed with a view to realising potential recoveries. The legislative avenues open to office holders often mean that we are in position to obtain information and documentation from third parties quickly and efficiently as opposed to protracted legal actions and discovery proceedings.

Sarah Colledge
Head of Tax Investigations

Case Study: Insurance backed film finance company with a slate of 32 films

In excess of $100m was invested in a company which produced 32 films over a 4 year period. Unfortunately due to an unrelated legal dispute the company remained in administration for 10 years.

The tax investigations team generated sales in excess of $5m which was returned to the investors.

Case Study: Creditors agreement for high profile TV personality

Moorfields were instructed by a high profile celebrity to assist with their personal financial affairs.

Moorfields successfully reached an agreement with the largest creditor and avoided any negative PR for this international high profile personality

Case Study: Sale and leaseback partnership consisting of 4 films

A smaller partnership consisting of 5 partners. The partnership invested in 4 films.

The tax investigations team traced the assets including the location of the collection account. Sold the revenue stream to a third party making a sizeable recovery .

If you would like to discuss how Moorfields can assist you or your clients with film partnership schemes, please contact: **Sarah Colledge: 020 7186 1167**

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