

Value of Tax Liability Insurance for Complex Transactions

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The complexity of tax legislation creates uncertainty for taxpayers. Legislation and accompanying guidance can often lack clarity when applied to complex transactions, while some matters may depend on the vagaries of judicial (or tax authority) interpretation. With tax compliance firmly in the spotlight, taxpayers seeking certainty can utilize tax liability insurance as a useful tool to help reduce exposure to a specific, identified tax risk.

Tax liability insurance is a product that allows the taxpayer to obtain cover for a potential tax liability. Tax insurance can be underwritten for a variety of transactions, whether in a mergers & acquisitions context and when no third parties are involved, such as group reorganizations or fund wind-up transactions. Insurance can help lessen financial exposure, as well as minimize valuable management time that may otherwise be tasked with resolving a tax issue arising on the transaction.

Tax liability insurance is a flexible protection mechanism that can cover a wide variety of risks for corporates, funds, liquidators and individuals. Insurers generally consider risks to be considered “low” or “low to medium” to be insurable. Insurance can be used to cover both technical legal uncertainty and risks, which may depend more heavily on establishing the relevant facts. Insurers may be able to obtain comfort on more fact-based risks either when the salient facts have been established through due diligence or when they are represented by the insured in the “representations letter,” which is generally issued alongside the policy.



Some examples of risks that have been covered by tax liability insurance include the application of withholding taxes to payments, the reclassification of transactions and payments, cross-border restructuring, entity classification, employment tax issues, residency for tax purposes, and the application of land transfer taxes to transactions. It would not be possible to insure marketed tax avoidance schemes, and issues in litigation or subject to challenges by tax authorities. The policy will generally cover the tax liability itself, along with the potential interest and civil penalties incurred, and defense costs.

Tax policies have now been written in a large number of jurisdictions. The majority of these are in Europe and North America, along with some Asia-Pacific jurisdictions.

The value of tax liability insurance is that coverage can help facilitate transactions and, equally important, provide a level of comfort for the tax paying entities.

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