



MERGERS AND ACQUISITIONS (M&A)

TAX INSURANCE

Tax insurance allows AssuredPartners' clients to protect against the risk of an adverse tax ruling that may impact the value of a transaction, a tax equity position or earnings. It is widely used in M&A where there is debate between buyer and seller over indemnification in respect of a tax uncertainty. By transferring the tax risk to a third-party insurer, the deal teams can move ahead with the transaction, having taken a key point of negotiation off the table. Tax insurance can also be used in other contexts, such as corporate reorganisations, financing and refinancing structures and fund wind-ups or distributions.

Tax insurance protects against differing interpretations of tax law. Historically insurers would only offer cover for the "opinion" risk, where buyer and seller had differing views on the tax event in question. Insurers would review the available advice, consult with their own advisors and then consider the terms and price of coverage. Whilst this is still the key focus of underwriting, insurers are increasingly willing to consider other risk factors such as the likelihood of discovery by the tax authorities and the expected valuation of the potential liability. Insurance has become a far more sophisticated and flexible solution to M&A tax risk.

WHAT IS COVERED BY THE POLICY?

▶ The tax due

▶ Defence costs

▶ Interest and Penalties

▶ Any gross-up amounts on tax borne on the insurance proceeds

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Examples of tax issues that AssuredPartners can insure include, but are not limited to:

- De-grouping relief following restructurings
- VAT risks
- Applicability of transfer taxes (UK SDLT and German RETT as examples)
- Tax treaty issues (beneficial ownership/substance risks as an example)
- Substantial shareholder exemption/participation exemption
- Withholding tax on interest/royalties/dividends
- Permanent establishment and residency issues, trading risk
- Employment related share ownership and options
- Certain transfer pricing risks
- The continued availability of carried forward losses

PROCESS AND COSTS

Premiums vary based on the specific risk to be insured but can range from 1% to 7% of the expected maximum tax liability (the amount of insurance required).

Tax underwriters will typically give a sense of insurability and potential premiums before incurring costs, often within 1-2 days. The speed of the response from insurers depends on the presentation of the risk, which AssuredPartners will manage.

In order to convert the initial view to a more formal proposal, insurers will require a commitment to cover the necessary professional fees of their advisers (typically £15,000 - £35,000). They will then carry out a more detailed underwriting analysis which typically takes two weeks (or shorter if required).

This review requires the disclosure (on a non-reliance basis) to the insurer of all the information and advice available that may affect the insurer's view of the risk. The process is quick enough to run alongside a warranty and indemnity insurance placement and when managed well, will not delay the transaction timetable.

GROWTH OF THE MARKET

Tax insurance is an established and growing subset of the wider M&A insurance market. Tax insurers typically have capacity of between £20m and £50m (per deal) which can be combined to reach total insured limits of £750m+. AssuredPartners has access to all tax insurers and there is scope to insure tax liabilities in numerous international jurisdictions.

TAX INSURANCE WITH ASSUREDPARTNERS

We have extensive experience broking tax insurance policies for private equity firms, real estate funds, management teams, advisors and corporates. You can be completely confident that you will have the right advice at the right time with access to the best solutions in the market for your individual transaction, wherever it may be.

Our clients trust us to make the process of arranging tax insurance as uncomplicated and efficient for them as possible. They expect full confidence in the policy cover, insurer selection, timing and end-result.

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