

Financial Services Group

Tax insurance

The uncertainty surrounding known tax issues can be an obstacle when involved in a transaction, or in ongoing strategic planning. Tax insurance can crystallise these exposures and facilitate a deal when neither party would have been willing to bear the risk

The success of many corporate transactions can hinge on a specific tax outcome, whether it relates to a past matter or to a future restructuring. An unfavourable ruling could have a serious impact on the purchaser and the availability of the expected tax attributes of the target company. Tax insurance can provide certainty in these situations.

Insurance solution

A tax policy can remove a specific concern from a transaction that might otherwise be a deal breaker. These types of issues frequently emerge during sale preparations and can block a deal when the seller is not prepared to indemnify the buyer against an unfavourable outcome, and the buyer is not prepared to take on the long-term liability.

Alternatively, the target company could take out a policy immediately prior to sale so the benefit of the policy passes with it on sale to the buyer. This is appropriate when no indemnity is given and the buyer wishes to have control of the protection against such a tax liability.

The party with the primary tax liability usually buys the policy. It might have that liability due to an indemnity given contractually (possibly in the sale documentation). Penalty interest (but not penalties) and gross-up costs can be included subject to specific negotiation. A policy with a single premium is usually placed for up to six years (or whatever is the applicable statutory limitation period).

Timing and coverage

It is helpful for us to be approached once a tax issue has been identified and evaluated, preferably with opinions from appropriate professionals, whether accountants or lawyers.

A policy covers the costs of the actual tax liability materialising, plus interest and defence costs. It is not designed to cover the errors and omissions of the advisers who might have been responsible for the tax planning or its implementation.

Next steps

Tax insurance is always tailored to suit the specific issue involved. To discuss how insurance could be used on a specific deal, or for more information, please get in touch with a member of the Aon team.

For more information,
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