INTRODUCTION

Through buy-side tax insurance, the buyer obtains the level of protection it requires in relation to a known tax issue. Bids can be framed more competitively as the insured buyer does not require the seller to provide a specific indemnity or an escrow, maintaining the headline deal pricing (without the tax issue being “priced in”). Often before launching an auction process, sellers pre-arrange a tax insurance policy to be taken out in the name of the successful buyer or target, thus ‘ring fencing’ the known issue and isolating it from other deal negotiations.

Tax insurance and transaction products also provide a mechanism for sellers to insure their contingent liabilities under a share purchase agreement (SPA). Alternatively, the target company can take out the insurance itself before the sale process begins – ensuring that the issue never hits the negotiating table.

WHAT KIND OF RISKS CAN BE SUBJECT TO TAX INSURANCE?

- Permanent establishment and residency issues, trading risk
- Eligibility for double tax treaty benefits
- Withholding tax on interest, royalties, dividends
- Tax free reorganizations/demergers
- Participation exemption/substantial shareholding exemption/entrepreneur’s relief
- De-grouping charges
- Tax issues on debt restructurings
- Entity classification
- Tax treatment of earn out payments
- Net Operating Losses (NOL) carryforwards
- Validity of tax groupings/fiscal unities
- Thin capitalization/certain transfer pricing issues

TIMING

NBI-stage (indications regarding pricing and insurability of the warranties): 1-2 weeks

Risk assessment and W&I insurance placement: from 2 weeks

Total: 3-4 weeks

INSURABLE TAX RISKS AND EXPOSURES

- Increased tax burden due to tax reassessment
- Legal defence costs
- Tax surcharge
- Administrative penalties and associated costs
TAX RISKS AND EXPOSURES USUALLY UNINSURABLE

- Carried interest
- Politically sensitive exposures
- Very aggressive tax planning

COSTS

Subject to signed NDAs and based on a tax opinion, Aon will approach the insurance market to seek indicative terms, Non-Binding Indications (NBI), on a cost-free basis. Following these approaches, and giving consideration to their reputations and the competitive terms offered, you will, with Aon’s assistance, be able to select the insurer who is best positioned to provide a tax insurance in respect of the specific transaction. Prior to commencing into underwriting, the insurer requires a signed “Expense Agreement”. The costs is usually between EUR20K and EUR75K depending on the risk complexity and is usually waived if an insurance policy is finally placed.

Due to the complexity and the unique character of different tax exposures, every insurance policy is tailored to the specific risk – hence, the premium may vary between different types of tax exposures.

<table>
<thead>
<tr>
<th>STEP</th>
<th>COST</th>
<th>COMMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>NBI stage</td>
<td>Nil</td>
<td>Aon provides a report which summarizes the NBI’s and recommends an insurer which is best suited for the transaction</td>
</tr>
<tr>
<td>Insurer is engaged but no insurance is placed</td>
<td>EUR20K- EUR75K</td>
<td>Cost regards the insurer’s external legal fees – these are normally waived if a tax insurance is placed</td>
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<tr>
<td>If a tax insurance is placed</td>
<td>2.5% - 7% of insured limit</td>
<td>Type of risk and jurisdiction has a big impact on price. The price range is based on Nordic tax risk transactions</td>
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TAX INSURANCE QUICK FACTS

- Increased use of tax insurance over the last 2 years – Aon placed in excess of $2.7 billion in limits 2016
- More and more common that tax insurance is used in other contexts than M&A
- The amount of insurers is constantly increasing – today more than 10 active insurers in EMEA
- Quicker and smoother processes due to more professional underwriters and advisors

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