Tax

Tax insurance covers specific tax exposures identified in the due diligence process, which may be challenged by a tax authority in the future.

It is designed to manage known and quantifiable, but uncertain, tax risks associated with corporate structures, transactional issues and other areas of tax uncertainty.

Each Tax policy is tailored to transfer the identified liability to the insurer and ring-fence the issue.

Benefits

- Provides certainty by transforming potential tax exposures into a quantified insurance cost, managing the allocation of pre-closing liabilities, or if no clear guidance from the tax authority or legal precedent is available
- Removes the need for an indemnity, escrow or price adjustment in a deal and resolves negotiation issues surrounding gravity and quantum of the exposure
- Protects both corporate and fund structures from tax liability, defence costs, interest, penalties and fines.

Areas Covered

- Stamp duty land tax
- Transfer pricing
- Residency
- Withholding tax
- Trading versus investment risk
- Debt for equity swaps
- Substantial shareholding exemption
- Corporate tax

Costs & Policy

- The policy is a non-renewable, one-off cost that can be arranged either pre or post transaction
- They are multiyear policies in line with the exposures being addressed; typically 7 years
- Premiums are calculated on the nature of the issue, the strength of the technical position and ability to defend it, as well as the jurisdiction. They typically range between 2-5% for UK and European exposures, however certain issues and/or territories, can increase up to 10%

> "Tax insurance can be a perfect deal facilitator; replacing indemnity or escrow arrangements which can sometimes cause a deal to collapse"

CASE STUDY

A European investment fund was purchasing a portfolio of warehouses in various locations across the UK and a number of potential tax liabilities were raised by due diligence.

The buyer was concerned about residence risk, as one of the major shareholders and directors of the target business had been dialling in to board meetings from multiple countries over a sustained period, which would affect the offshore residency status of the target.

As well as the residency exposure, another risk was raised that the target potentially faced a liability to corporation tax under the Transactions in UK land rules as the properties were being sold in under a five-year period – this could affect both the buyer and the seller.

Two insurance policies were issued: one to the buyer to cover the residency risk in the event that the tax authority in 4 countries raised a challenge and to cover both Transactions in Land risk and the risk the targets had historically traded in real estate rather than holding it as an investment.

A separate policy was issued to the seller to protect the seller against a challenge from HMRC under either Transactions in UK land or trading vs investment risk. The selling fund wanted to provide additional protection for their investors against unexpected tax charges, even though they believed it had always held the assets as investments.