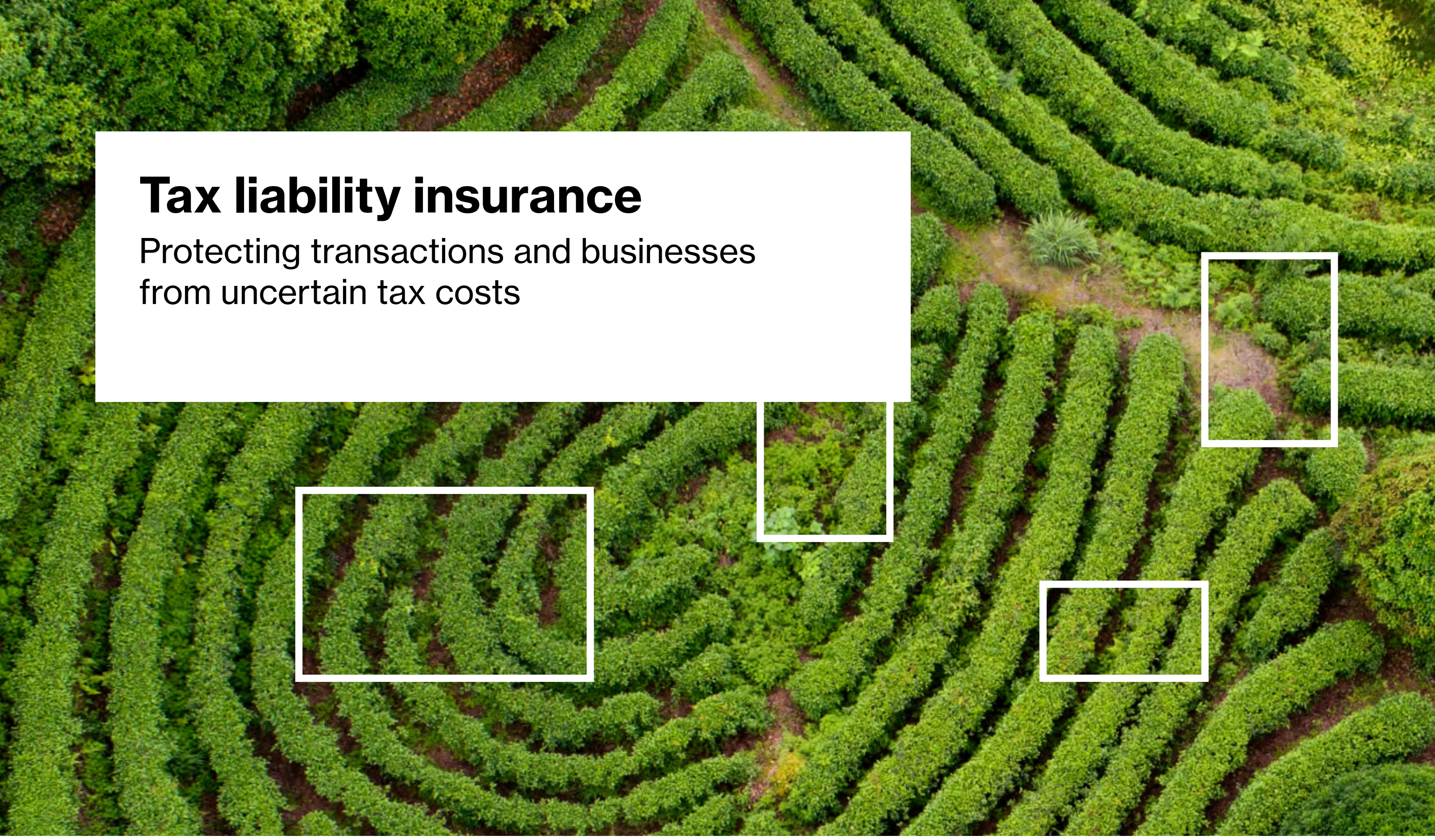
Tax liability insurance

Protecting transactions and businesses from uncertain tax costs



Complex taxation laws, together with increased activity and scrutiny by taxation authorities, creates tax risks and uncertainty for businesses, including those undergoing Mergers & Acquisitions (M&A) transactions. A tailored and comprehensive tax liability insurance policy can be a strategic and cost effective way to manage this uncertainty by transferring potential tax risks to an insurer's balance sheet, without delaying any M&A transaction or the operations of a business.

Tax liability insurance should be a key consideration for tax risks arising during any part of the business, investment or fund life cycle including, prior to and in conjunction with implementing any M&A transaction, investment or fund structure, or business restructure.

Why tax liability insurance?

In a M&A transaction context, tax liability insurance can be used as a solution:

- By a seller or target in anticipation of a sale to address a known tax risk and to facilitate a more streamlined sale process.
- By a buyer in the bidding process to make its bid more competitive.
- To cover a known tax risk that is excluded by a Warranty & Indemnity insurance policy.

In managing business operational risks, tax liability insurance can provide businesses with increased certainty and protection on historical tax risks that may come under scrutiny or focus by tax authorities, particularly when tax laws or guidance on tax matters may not be clear.

Tax liability insurance can also help reduce tax exposure created by a structure used in a transaction or business restructure.

Examples of insurable risks

Tax liability insurance can be taken out to provide coverage for a wide range of tax risks. Common examples include:

- Revenue/capital characterisation of gains and losses
- Debt/equity classification
- Availability of tax losses
- CGT rollover relief
- Tax consolidation (including exit gains, tax cost setting considerations)
- Secondary tax liabilities
- Source of income
- Tax offsets (R&D, foreign income tax offsets)
- Withholding tax and treaty relief
- Tax residency
- Taxation of financial arrangements
- Part IVA
- Transfer pricing
- Indirect taxes (stamp duty, employment taxes, GST, land tax)

Tax liability insurance – a snapshot

Coverage

In the event of a challenge, a tax liability insurance policy will generally cover:

- The tax liability arising from the insured tax risk
- Interest and penalties
- Defence costs, and
- Tax gross-up.

Pricing

The premium for a tax liability insurance policy will be dependent on the:

- Strength of the taxpayer's position
- Likelihood of a challenge by a tax authority
- Taxes and jurisdictions implicated
- Limit of coverage purchased
- The insured's self-insured retention
- Availability and scope of legal precedent and support in favour of the taxpayer's position.

In WTW's experience, premiums generally range between 2% to 6% of the policy limit purchased.

Policy period

The tax liability insurance policy coverage period will generally be seven years (from taking out the policy), providing a level of certainty for most tax positions which may remain open to challenge by taxation authorities as a result of the relevant statutory review period still in force.

The process

1 Identification and understanding of risk

- WTW will facilitate in depth discussions with you and/or your tax and legal advisers to gain an understanding of the tax risk at hand including as to its potential insurability. WTW would generally recommend a legal or tax opinion be prepared prior to approaching insurers.

2 Go-to market

- WTW will analyse the risk and prepare an underwriting submission detailing the tax risk requiring insurance. The submission is used to approach the tax insurance market. WTW can approach insurers on a 'no-names' basis, if required.

3 Pricing

- Based on the underwriting submission, insurers will present their non-binding terms.

4 Selecting an insurer and placement

- WTW will consider the non-binding terms secured and using our extensive knowledge of the insurance market (including our overall assessment of execution risk), WTW will recommend and work with you to select a preferred insurer to underwrite the risk.

5 Underwriting process

- The preferred insurer will undertake a streamlined due diligence process that will generally involve a more in-depth review of the tax and legal advice relating to the tax risk, a review of underlying supporting documentation, and a Q&A session with your advisors.

6 Policy negotiation and placement

- WTW will work with your legal and tax advisors to assist with securing a tax liability insurance policy that is appropriate and robust in coverage and within required time frames.

Why Willis Towers Watson?

WTW has an extensive and in-depth knowledge of the insurance industry and will help you with every step of the process.

Our dedicated Australasian tax practice works closely with you and your legal and tax advisers to understand the tax risks present in your business or transaction and develop a tailored and comprehensive tax liability insurance solution appropriate for your needs.

We are a global firm with global reach to the insurance market. WTW understands that decision makers are often faced with tax risks from outside Australasia. We work and collaborate closely with our dedicated tax practices based around the world, to coordinate tax coverage and identify the best solution for your needs.

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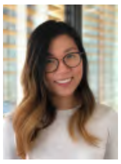

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About Willis Towers Watson

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