



Global FINEX - Mergers and Acquisitions
Tax liability insurance –
protecting your balance sheet

Understanding tax risk and insurance issues

Uncertainty of tax liabilities

Tax issues impact on commercial negotiations and investments. When a position needs to be taken on complex and uncertain tax matters which could result in the assessment of significant taxes, interest and penalties if successfully challenged by a tax authority, it can create a balance sheet and reporting issue for the taxpayer.

Complex tax issues can arise from:

- Merger & Acquisition (M&A) transactions, both historical and prospective tax risks which cannot be commercially resolved between buyer and seller
- Corporate restructuring
- Winding up of fund structures and the repatriation of profits
- Balance sheet engineering

The tax insurance solution

Tax risks can be a roadblock to completing M&A transactions and maximising value from an investment.

Shifting the potential financial impact of a tax risk from the business to the insurer can help close a transaction and tactically improve the position of the buyer or seller by providing commercial certainty on the balance sheet.

Tax risks can be insured in two ways – under a Warranty and Indemnity (W&I) policy, generally for unknown risks as part of an M&A transaction, or through Specific Tax insurance for known risks.

Who we work with:

Corporate Clients, Funds & Institutional Investors, Law Firms, Corporate Finance and members of the International deal advisory community

What do you get:

- Insight, experience and engagement from a global team of tax specialists who will work with you to create a commercial solution to your tax issue



What tax risks are insurable?

For a tax risk to be insurable, the following criteria usually needs to be satisfied:

1. The tax risk relates to a single issue
2. There is a legal/tax opinion or tax Due Diligence (DD) available that supports the position taken
3. The tax risk has not already been finally determined by a tax authority

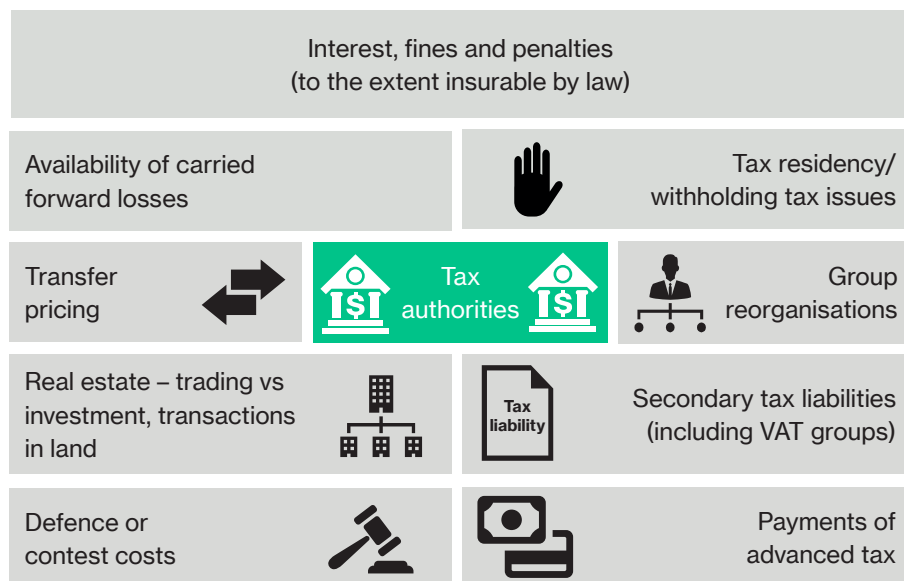
Insurance policies typically cover:

- Tax due to tax authorities
- Defence or contest costs
- Payments of advanced tax
- Interest, fines and penalties (to the extent insurable by law)

2021 Tax insurance market features

- 10+ insurers creating a competitive environment
- Up to \$180m capacity from a single insurer and \$600m syndicated
- Pricing typically between 1% and 5.5% of the limits of tax cover purchased
- Policy period can be up to 10 years
- One off premium payment
- Covers tax risks arising in countries with stable legal systems throughout the world

Examples of insurable tax risks include:



Case study – carried forwards tax losses



Client challenge: Our client was looking to acquire a company with significant carried forward ring fenced corporation tax losses (c.\$400m). The client wanted to ensure the risk that the carried forward losses in the company could not be utilised post acquisition. The losses represented a significant amount of the value being attributed to the target group and the certainty of its utilisation was key to obtaining investment approval.



Our solution: We adopted a global insurance placement strategy, due to the size of the liability, approaching insurers in London, Europe, Asia and the US. Detailed discussions and negotiations were held with each insurer to create a bespoke insurance solution via a tower of insurers covering the specific tax liability.

WTW Tax Liability team

Our Tax team are an intrinsic part of WTW Transactional Risks (TR) who advised on over 1,600 (W&I, Tax and Contingent risks) policies Globally in 2020.

We bring commercial risk expertise and an in-depth understanding of tax law and accounting principles to help our clients achieve their Corporate investment and tax planning objectives. Our bespoke advice can help you mitigate the “risk” from your tax exposures on M&A transactions, investment structures and overall tax planning globally.

Tax risks insurance is more than a placement process, our experienced advisory team assimilate the relevant data, anticipate insurers’ requests on key areas, creating the best available solutions and working closely with the client’s other advisers through the deal process.

The WTW TR team are specialists in cross border deals where we provide W&I, Tax and Contingent insurance solutions globally; providing local knowledge on each transaction.

WTW global M&A practice

A market leading team of 150+ M&A practitioners, many of whom are qualified in either Corporate Law, Tax and Accountancy principles or insurance, working together to help our clients navigate M&A transactions safely. We draw on the full resources of WTW to bring Sector expertise, analytics, risk evaluation and insurance placement (where required) to each transaction, in other words delivering the firm and focusing on our client’s strategic objectives on a deal-by-deal basis.

We help solve complex risk issues, regularly working to tight deal timeframes. Our transaction related advice and insurance knowledge is valued by our clients, who often use this tactically buy-side and sell-side to enable a successful outcome to an acquisition or divestment.



Contacts

For more Information regarding our M&A services please contact one of the representatives listed below.



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