RYAN SPECIALTY | TRANSACTIONAL RISK

Tax Liability Insurance (International)

Tax liability insurance (TLI) is a bespoke product that can be used wherever there is an uncertainty of tax treatment. Generally, a tax policy is a non-renewable, single premium product with the premium being paid upon commencement of the policy. Each tax policy is structured as a single aggregate limit with no reinstatements. Whilst recognizing and employing this familiar model, the Ryan Transactional Risk tax team works with brokers and insureds to provide an innovative solution to specific risks and has a wide mandate in structuring policies, so the future of tax risk insurance at Ryan Transactional Risk is a more flexible proposition.

Reason for Tax Liability Insurance

Ryan Transactional Risk focuses on tax issues arising within the context of wider M&A transactions and corporate tax issues. Much like W&I insurance, the driver for the transaction parties seeking a tax policy will be one of risk allocation.

For a tax risk where the tax issue resides within the target company, insurance may be sought where the seller is unable or unwilling to provide the buyer with a contractual indemnity offering the level of recourse required to give the buyer comfort with respect to the identified contingent tax issue. In the absence of the transaction, the seller would retain the contingent liability. However, the buyer may be unwilling to accept the risk of the contingent tax issue crystallising and so the parties look to the insurance market in order to underwrite the risk.

Alternatively, if the contingent tax issue arises as a result of the proposed transaction structure, the buyer may be unwilling to assume this risk as a successful challenge from the local taxation authority could have a serious negative impact on the economics of the transaction or even the future viability of the new group post-completion. Again, in such circumstances, the buyer may want to allocate this contingent tax issue to the insurance market so as to achieve economic certainty on this issue.

A tax policy may also be used in situations not linked to a wider M&A transaction such as a reorganisation, withholding tax issues or any area where there is uncertainty of tax treatment.

Coverage

Each tax policy is bespoke and is tailored to fit around the specific tax issue being insured. Due to the individual nature of the risk being insured, it is not possible to simply have a set of terms and conditions, insurance schedule and a series of endorsements to form the final policy.

A tax policy provides coverage to the insured against the risk that a local tax authority successfully challenges a specific tax position taken by the insured, and as a result of such successful challenge, tax becomes payable. A tax policy will pay loss if all the loss triggers set out in the policy are satisfied, and it will only respond to cover the specific tax events (and associated costs such as additional interest on any penalties payable) expressly set out in the policy itself.

The policy will often have a small escrow or retention in respect of defence costs. The policy period will typically mirror the general statutory enquiry window applicable to the risk and will often require a policy period of 7 years from inception of the risk. A tax policy is a claims–made policy.

Should you wish to reach the Ryan Transactional Risk team, please email us at **info@ryantrs.com** or contact our office at the information found below:

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Examples of tax issues that can be covered by a tax policy

Common examples of tax risks that generally fit with the underwriting appetite of Ryan Transactional Risk are listed below:

- Trading vs. Investment
- Transactions in Land
- Residency Risks
- Tax efficient corporate reorganisations
- Tax efficient corporate mergers
- Risk of reclassification of the tax treatment of an asset sale
- Preservation of a specific accounting treatment embedded within a target company
- Application of European participation exemptions
- Withholding tax treatment
- Transfer tax issues

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