

# Tax Indemnity Insurance.

## Insured solutions

Tax Indemnity Insurance is a specialist product designed to indemnify the insured for any additional tax that becomes due following a business sale or restructure.

At present, this insurance is most relevant in mergers and acquisitions where the parties are unable to satisfactorily allocate the tax risks between themselves.

This can result in deadlock so a key selling point of the product is its ability to facilitate the completion of transactions that might otherwise flounder.

This could apply, for example, if a vendor is not prepared to indemnify the purchaser against an unfavourable tax outcome.

By taking out Tax Indemnity Insurance, the insured effectively gains certainty in areas where there is uncertainty in the potential application of tax laws. Areas where Tax Indemnity Insurance may be invaluable are:

- Protecting against successor liability issues in an M&A (merger and acquisition) where the acquirer is concerned about a historic tax position taken by the target company or its consolidated tax group.
- Protecting a group's tax position after reorganisation - for example a hive down, demerger or disposal.
- Where there could be tax consequences from a change in ownership.
- Following intra-group transfers or reorganisations and the CGT consequences.
- Payroll tax issues in the UK resulting from equity participation by management in an MBO.
- Where parties do not wish to obtain prior tax authority clearance because of timing or confidentiality issues.

However, there are areas where this insurance is typically not available and these include:

- Promoter driven, repetitive or purely tax motivated transactions with no independent economic or commercial purpose.
- Insurance against legislative changes.
- Tax events in unstable political or legislative systems.

Tax Indemnity Insurance can be of significant value in the right circumstances and all potential cases follow the same step-by-step procedure to determine if Tax Indemnity Insurance can be used.

**Contact**

Abbey's experienced experts can make an initial assessment of feasibility based on a telephone conversation.

**Submission**

To obtain indicative terms we will need:

- An overview of the tax issue with details of the proposed transaction or restructuring scheme.
- Copies of any correspondence with the tax authorities about the issue.
- Copies of any relevant legal or accounting opinions.
- A copy, if applicable, of the Vendor's indemnity in a Purchase and Sale Agreement.

**Initial Indication**

When preliminary negotiations have been made with underwriters we will provide an indication of terms, including level of premium, the level of any excess and, if appropriate, insurer's due diligence costs.

**Underwriting due diligence**

Abbey Tax will review the information and prepare the risk assessment which will lead to definite terms being offered or not, as the case may be.

**Placement completion**

If you accept the terms, instructions will be given to complete the placement that will involve the production of policy wording. The premiums become payable when cover begins and finalised documentation is released.

**Capacity**

Capacity is currently in excess of £50 million of \*\*"tax risk".

\*\*"Tax risk" means the amount of additional tax that could become payable in the event of an adverse ruling or settlement of any dispute with the tax authorities and should include, where applicable, the cost of defending any litigation that may be involved.

**Premiums**

Premiums for Tax Indemnity Insurance will vary because every transaction raises unique issues and the insurance structure is determined case by case. The factors in setting premiums include:

- The nature of the transaction causing the tax issue.
- The taxpayer's particular facts, representations made and insurance limit required.
- Relative strength and legal basis of the tax position taken.
- The structure of the insurance programme.

If you have a potential case and would like to discuss it, please call 0345 223 2727 and ask to speak to our Tax Indemnity Insurance team or email [sales@abbeytax.co.uk](mailto:sales@abbeytax.co.uk) for more information.

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