



TAX

USING TAX INSURANCE IN M&A

Tax insurance has moved from niche to normal in M&A. This paper explains when and how it is used to resolve deal-critical tax risks.



USING TAX INSURANCE IN M&A

Tax issues are a common source of friction in M&A transactions - not because the analysis is weak, but because residual uncertainty remains even after good advice. Where that uncertainty starts to affect price, structure or timing, parties are increasingly looking for ways to allocate risk without derailing the deal.

Tax insurance has become one of the most practical tools available to achieve that. Tax policies are competitively priced, with the all in cost of covering a tax risk starting at around £90,000 (total cost of insurance - see worked examples below), and can be underwritten in short time scales to solve deal critical issues.

HOW TAX INSURANCE HELPS CLOSE DEALS



Reduces or removes seller liability

Tax insurance can cap or eliminate seller tax indemnity exposure. This is particularly valuable where sellers are seeking a clean exit or lack covenant strength to support long-term liabilities.



Replaces escrows and holdbacks

Rather than tying up purchase price, buyers can rely on insurance to protect against a tax risk. This can accelerate deal timetables and improve seller outcomes.



Bridges valuation gaps

Where buyer and seller disagree on the financial impact of a tax risk, insurance can bridge the gap - providing protection for the buyer without eroding headline price.



Supports competitive processes

In auctions, an insured solution can make a bid more attractive by simplifying the risk profile and reducing post-completion complexity. We have even seen Seller pre-wrap tax issues and then present the insured matter to bidders as a resolved item.



WHEN TO CONSIDER TAX INSURANCE

Tax insurance should be considered when:

- ▶ due diligence identifies a material tax risk;
- ▶ a seller wants to limit or remove tax indemnities;
- ▶ cross-border or structural uncertainty exists;
- ▶ valuation is impacted by tax exposure;
- ▶ an escrow or holdback would otherwise be required;
- ▶ pre-sale restructuring has taken place; or
- ▶ complex or bespoke tax planning is involved

Early consideration is advantageous the earlier the issue is flagged, the more options are available. However, we can still deal with issues on short notice if the deal demands it.

COMMON TAX ISSUES WHERE INSURANCE IS USED

Historic Tax Positions

Where a company has taken a tax position in prior years that could be challenged, exposure can span multiple periods and involve significant sums. Rather than holding back consideration or relying on long-tail indemnities, tax insurance can be used to transfer that risk.

Pre-Sale Restructurings

Sellers often undertake restructurings ahead of a sale for commercial or tax reasons. These steps can introduce uncertainty, particularly where HMRC interpretation is not settled. Insurance can give buyers comfort that the restructuring will not crystallise unexpected liabilities post-completion.

Cross-Border Transactions

Multi-jurisdictional deals frequently involve differing interpretations by tax authorities. Even where advice is robust, uncertainty can remain. Tax insurance can provide certainty where alignment across jurisdictions is difficult to achieve.

Deal Structuring

The most commercially attractive structure is not always the lowest-risk tax option. Rather than compromising on structure, tax insurance can be used to protect the preferred approach.



NON-M&A CONTINGENT TAX RISKS

While commonly associated with transactions, tax insurance is increasingly used outside an M&A context. Examples include:

- ▶ historic tax positions with a live or anticipated HMRC challenge;
- ▶ post-transaction reorganisations or refinancings;
- ▶ uncertain tax treatments affecting balance sheet certainty; and
- ▶ situations where dividend or capital planning depends on a particular tax outcome.

In these scenarios, insurance can provide certainty and unlock commercial decisions without waiting for statutory clearance or extended engagement with tax authorities.

PRACTICAL POINTS

Timing

Underwriting typically takes 2 weeks and runs alongside the transaction timetable. Early engagement allows the process to be managed without disrupting deal momentum. We have, however, dealt with numerous policies under time pressure near signing and have placed fully underwritten tax policies in as little as 5 to 7 working days.

Process

Insurers will expect to see tax due diligence and any relevant tax opinions (but formal barrister's opinions are by no means a pre-requisite to getting insurance). Insurers will ask questions and may want calls with advisers to help get more understanding of the risk profile. The process is collaborative and focused on understanding risk, not re-doing the advice.

Cost

Costs include the premium, underwriting fees, brokerage and insurance premium tax. Premiums typically range from 1–6% of the insured amount and are inclusive of brokerage. While minimum premiums apply across the market, insurance is often materially cheaper than alternatives such as price reductions, escrows or aborted transactions.

Coverage

Policies can be structured to cover specific identified risks or broader tax warranties. Scope is flexible and tailored to the transaction or issue.



KEY TAKEAWAY

Tax insurance is no longer unusual or exotic. It has become a standard and increasingly expected part of the adviser toolkit whenever material tax risk arises — not only in M&A transactions, but also in a wide range of standalone and post-transaction scenarios.

By way of illustration, assuming a low-risk item priced at 1.5%, an underwriting fee of c. £15,000, minimum broker fee of £20,000 and UK IPT at 12%, the following are indicative costs:

- ▶ £500k exposure – total cost c. £90,000
- ▶ £2m exposure – total cost c. £90,000
- ▶ £5m exposure – total cost c. £109,000
- ▶ £10m exposure – total cost c. £183,000
- ▶ £20m exposure – total cost c. £356,000
- ▶ £50m exposure – total cost c. £860,000

As the market has matured, policies are now well understood by buyers, sellers and advisers alike, competitively priced, and capable of being deployed quickly to address deal-critical issues.

Where tax uncertainty is creating friction, delaying decision-making, impacting valuation or forcing compromises on structure, tax insurance can often provide a clean and highly commercial solution. Rather than allowing residual risk to distort outcomes or derail a transaction, insurance enables parties to allocate that risk efficiently and move forward with confidence.

Early engagement is key. Exploring insurance solutions at an early stage can materially expand the range of options available and help preserve deal momentum, although solutions can still be delivered under tight timelines where required. There is no cost or commitment to exploring whether insurance may be appropriate, and doing so early can often prevent issues from escalating later in the process.

For further discussion or to explore how tax insurance may assist on a particular transaction or situation, please contact our tax team led by **Mat Bond** at mat.bond@wiispa.com or **+44 (0)7710 208615**.

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