MARSH JLT SPECIALTY

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Tax insurance – A comprehensive and cost effective risk management solution

Tax insurance enables certain specific tax risks to be transferred to the insurance market. It can be used as a strategic risk management tool to facilitate merger and acquisition (M&A) transactions or for operational tax risks arising outside the deal context.

Marsh has extensive experience in helping clients manage all aspects of the insurance process and has a dedicated tax practice to advise on risk management options and help you secure comprehensive and cost effective insurance coverage for potential tax exposures.

Why purchase tax insurance?

Due to the complexity of tax laws and potential for differing interpretations on how they apply, there is inherent uncertainty as to whether a particular tax position may be challenged by a taxation or revenue authority. Since the tax implications, and resultant financial exposure, of an adverse finding can be significant, it may be difficult to allocate these risks between parties in an M&A transaction. In such situations, tax insurance can be used to allocate risks away from the transaction itself and obviate the need for remedial actions such as purchase price reductions or seeking a tax clearance, which may not be feasible when there are time constraints.

In addition to its use in M&A transactions, tax insurance can be obtained to cover specific tax positions a company has taken historically, in case they are reviewed by taxation authorities as part of the company's ongoing operations, or to cover tax risks associated with a group restructuring.

Tax insurance is most often used:

- To provide protection if a taxation authority challenges a historical tax position adopted by a target entity that is either assumed by the buyer or retained by the seller via an indemnity
- To ensure that a particular tax structure used in a transaction, including pre and post deal structuring, has its intended effect
- To provide protection when tax laws and related guidance on a specific tax issue are not clear, and the taxpayer involved is unwilling to accept the potential tax exposure.

The process and how Marsh can help

The placement of a tax insurance policy can be completed in as little as two to three weeks. Some polices may require more time, depending on the complexity of the exposures to be insured and the availability of relevant information.

Placement of a tax insurance policy begins with a discussion between a member of Marsh's tax insurance team and you and your advisers. Marsh will then seek terms and pricing from potential insurers and will negotiate policy coverage on your behalf to ensure that the proposed coverage structure is appropriate for your risk. An underwriting process will be undertaken by the selected insurer, throughout which Marsh will advise and guide you every step of the way.

In order to get the process started, we will advise you on the information needed by an insurer to determine the insurability of your tax position. This will generally include:

- Detailed description of the specific tax risk and calculation of the associated tax benefit or loss
- Proposed transaction structure (if applicable) and timeframe
- Details of external advisers involved, including lawyers and accountants
- A copy of the draft or final tax opinion or memo with analysis on the tax issue (if available).

Coverage, pricing and policy period

In addition to the quantum of the potential tax liability itself, a tax insurance policy will typically also cover penalties and interest, defence costs and tax gross-up.

While the premium for a policy depends on the specifics of the particular tax risk, in our experience the rate for insurable positions is typically between 3.5% and 7% of the limit of liability purchased.

The premium varies depending on a number of factors, including:

- The nature of the tax risk and related laws and legal precedent
- Jurisdiction(s) of the tax risk
- Strength of analysis on the issue
- Complexity of the arrangement(s) involved
- Amount of liability limit purchased.

The period of coverage will generally be between five and seven years, depending on the audit review period of the relevant taxation authority.

Examples of risks that can be insured

Tax insurance policies are used to provide coverage for a variety of risks, including:

- Revenue versus capital characterisation of gains and losses
- Capital gains tax rollover relief
- Availability of losses
- Withholding taxes and treaty relief
- Anti-avoidance rules
- Tax offsets including R&D and foreign income tax offsets
- Transfer pricing
- Stamp duty
- Employment taxes
- Debt / equity characterisation.

Why Marsh?

Marsh has a dedicated team specialising in advising clients on risk mitigation and tailored tax insurance solutions. Your Marsh adviser is equipped with the expertise to provide you with high-level access to local and global insurance markets and ensure that we deliver comprehensive and cost effective solutions to meet your needs.

For full details of the terms, conditions and limitations of the covers and before you decide whether this policy suits your needs or making any decision about whether to acquire the product, please refer to the specific policy wordings available from us on request.

For further information, please contact your local Marsh office or visit our website at marsh.com.au

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