

Mergers & Acquisitions Insurance Group

Tax Liability Insurance

When there is uncertainty in the application of corporate tax laws or inadequate time for a taxpayer to obtain an advance tax ruling, corporations leave themselves and their balance sheets subject to future challenge by taxing authorities and vulnerable to potentially substantial tax liability.

Tax Liability Insurance from Chartis' Mergers & Acquisitions Insurance Group (the M&A Group) allows a taxpayer to reduce or eliminate the contingent tax exposure that arises when the underlying legal conclusions supporting the tax treatment of a transaction, investment or other activity is being reviewed by tax authorities.

Coverage Highlights

Highly customized coverage can address:

- › Federal, state, local or foreign tax exposure
- › Expenses of outside legal advisors or accountants needed to resolve disputes with tax authorities
- › Gross-up of taxes payable with respect to insurance proceeds
- › Interest and non-criminal fines or penalties related to any actual tax liability determined
- › Up to \$20 million in capacity is available for a single transaction, with larger limits available on a case-by-case basis
- › Pricing and retentions are structured on a case-by-case basis, based on the nature of the transaction, strength of the tax position, and structure of the insurance program
- › Policy period generally aligns with the applicable statute of limitations

Tax Liability Insurance at Work

A publicly-traded manufacturing company was negotiating to sell assets to a publicly-traded REIT. The parties structured a two-step transaction involving: (i) a tax-free spin-off of the manufacturing company's subsidiary holding the assets; and (ii) acquisition of this subsidiary by the REIT via a tax-free merger. The parties estimated the potential tax exposure to be \$1 billion if the IRS did not treat the transaction as a tax-free spin-off.

The parties were unable to secure a private letter ruling from the IRS regarding the tax-free treatment of the spin-off and refused to proceed with the transaction without an alternative to address the potential tax exposure. The parties made securing insurance to protect against 50% of the exposure a condition to closing the deal. The M&A Group structured and participated in a tax liability insurance program that put the deal back on track and enabled the transaction.

Expert Claim and Litigation Management

In the event of a claim, Chartis has a claims team dedicated to transactional insurance, including Tax Liability Insurance. These seasoned professionals specialize in disputes surrounding complex transactions and in processing customer claims in a professional and expedient manner.

Tax Liability Insurance is part of a suite of insurance products that the Chartis Mergers & Acquisitions Insurance Group offers for the spectrum of exposures inherent in mergers, acquisitions, divestitures and other transactions. Other products in the suite include Representations & Warranties Insurance, Contingent Liability Insurance, Litigation Buyout Insurance and Investment Banking Engagement Insurance.

To learn more about Tax Liability Insurance, please visit www.chartisinsurance.com, e-mail MAInsurance@chartisinsurance.com, or contact your insurance broker.

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