

Aon Mergers and Acquisitions Group



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Tax Opinion Liability Insurance

“Tax Opinion Liability Insurance policies are designed to ring-fence any tax liabilities that may arise”

What is ‘Opinion Insurance’?

Opinion Insurance may be used to tackle a number of potential impediments to the conclusion of a merger, acquisition or associated deal. These can include pre-identified hurdles, such as the divergence of opinion over the potential outcome of an intellectual property issue. Opinion Insurance may cover licences, patents or parental guarantees. In practice, the real sticking point is often tax.

What is Tax Opinion Insurance?

Tax issues will form a significant part of many transactions and can remain an obstacle between the parties long after other potential ‘deal breakers’ have been resolved. The parties to the transaction may commit significant funds to obtaining expert accounting and legal opinion, but in some cases the results will still not provide the necessary comfort to allow the deal to proceed.

Later rulings against the tax treatment could have a serious impact on the purchaser and the availability of the expected tax attributes of the target company.

If favourable tax treatment is essential and there is insufficient time to obtain a ruling from the tax authorities (or if a buyer wants assurances about a tax position previously taken by a target), tax liability insurance can provide parties with the certainty needed to complete the deal. This eliminates the need for either party to bear the risk post-transaction.

Aon can place an insurance policy that provides insureds with protection against tax losses that arise in spite of a favourable tax opinion. The policy provides that if the Insured is the subject of an adverse tax ruling, the carrier indemnifies the Insured for the full amount of any insured tax loss sustained, plus specified ancillary expenses.

These policies are designed to ring-fence any tax liabilities that may arise. They support the tax opinion put forward by either the client’s legal or accounting experts so the maximum amount payable by the insured reflects that considered by the opinion.

These policies are not designed to address errors or omissions in the opinion but rather to cover the risk that the relevant tax authority does not consider the argument persuasive.

What does this insurance cover?

The policy is designed to cover the direct tax that may become due as a result of the transaction or restructure including interest and penalties. It will also include gross-ups to cover the taxable benefits of any insurance

proceeds. The purpose of the gross-up is to increase the claim payment so the insured’s net recovery will be equivalent to the tax benefit they would have received had favourable status been upheld. Defence costs will also be incorporated, ideally as a separate sub-limit.

Tax Opinion Liability policies insure the tax treatment of a particular transaction, going a step further than a legal opinion by essentially guaranteeing a favourable outcome for the taxpayer. The intention of the policy is to cover tax exposures of a business aspiration - not to facilitate tax avoidance, or to assist if the main drivers are changes in tax laws, rates or pure valuation issues.

A single policy is issued to reflect the statutory tax period in return for a one off premium. These policies are underwritten by several insurers.

Tax Opinion Insurance: When may it be required?

- Acquisitions or disposals that may unwind earlier favourable tax treatment
- Concerns over the availability of net operating losses as a result of change of ownership
- Corporate restructures
- High net worth individuals undertaking personal financial restructures
- Concerns as to whether debt will be treated as equity for tax purposes

In summary, what are the benefits of Tax Opinion Insurance?

- Can remove deal impediments and ensure successful closure of the deal.
- Allows a vendor to ring-fence liability and use proceeds of sale with a significantly reduced risk of repayments due to a future call on tax indemnities as part of the sale agreement.
- Enhances a company’s attraction for prospective purchasers.
- Price negotiation tool.
- Speeds up the process by providing the purchaser with the confidence to proceed with the deal, safe in the knowledge that the insurance is in place to back up the favourable tax opinion and remove the inheritance of any tax liabilities as a result of the acquisition.



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