Tax Indemnity Insurance

Given the inherent complexity and ambiguity of certain tax laws, taxpayers sometimes face financial exposure from a tax authority's ability to successfully challenge underlying legal conclusions that originally formed the basis of a tax position. This can result in significant liabilities years after the original tax filing.

Chubb's Tax Indemnity Insurance[1] is designed to address this financial uncertainty. It enables taxpayers to reduce or eliminate a known contingent tax exposure resulting from the tax treatment of a past transaction, investment or other legitimate business activity.

Features

Chubb's Tax Indemnity Insurance may be purchased by either the buyer or seller involved in an M&A transaction where a known tax exposure has been identified during the due diligence process of the transaction. Chubb's policy reimburses a taxpayer for financial losses resulting from additional taxes, interest and penalties. In certain instances, the coverage "grosses up" the taxpayer for the amount of tax owed on its receipt of tax indemnity insurance proceeds. Often the policy also covers defense costs associated with defending the underlying tax position in the event of a legal challenge by the tax authorities.

Common examples of uncertain tax positions that may be eligible for Chubb's Tax Indemnity Insurance coverage include:

- Meeting certain requirements to qualify for tax-free reorganization status under Section 368
- Meeting certain requirements to qualify for Section 355 tax-free spinoff status
- Validity of Section 338(h)(10) elections to treat certain stock sales as asset sales for tax purposes

1 Chubb Group does not underwrite any insurance product covering taxes, interest or penalties that may be incurred with respect to any "reportable transaction" within the meaning of Treasury Regulation section 1.6011-4(b).

- Determination of certain S-Corporation issues
- Qualification of taxable gain on the sale of an investment as capital versus ordinary

Benefits

- Facilitates smoother deal negotiations during an M&A transaction, as the parties do not need to agree on the allocation of a target's certain known potential pre-closing tax liabilities that were disclosed or identified during the due diligence process.
- Defines, quantifies and caps the financial exposure for particular tax risks whether in the transactional context or within a taxpayer's operational framework.
- Avoids the need for seller indemnities and/or escrows for known historic tax exposures, thereby facilitating the seller's clean exit from specific businesses.
- Offers certainty where tax authorities refuse to provide advance rulings to taxpayers on certain identified tax matters, or where an advance ruling will not be obtained in the timeframe necessary to close a transaction.

Exclusions

Chubb's Tax Indemnity Insurance is not available to cover:

- Listed tax shelters or similarly abusive transactions
- Repetitive or promoter-driven transactions
- Transactions that do have an independent economic business purposes (with tax considerations being secondary to that independent purpose)
- Fraud, criminal fines or penalties
- Transactions or tax issues already undergoing an audit or in litigation with tax authorities

Contact Us

For more information on Tax Indemnity insurance, visit www.chubb.com, or email us at transactionalrisk@chubb.com.

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