

# Benchmarking Insurance

## What is benchmarking insurance?

Brockwell's benchmarking insurance offers protection against losses suffered where the arm's length pricing of a transaction that is supported by a benchmarking study is challenged by a tax authority.

It is fundamental that a benchmarking study has been prepared and the purpose of benchmarking insurance is to support the pricing range proposed by a study. That is, benchmarking insurance cannot be used as an alternative to a benchmarking study, but it can offer commercial certainty alongside such a study.

If a tax authority asserts that the arm's length price is different to amounts paid or accrued, then benchmarking insurance will offer cover for tax arising as a result of the difference between the price charged and what is arm's length.

The precise loss that is covered by a benchmarking policy is flexible, but can include:

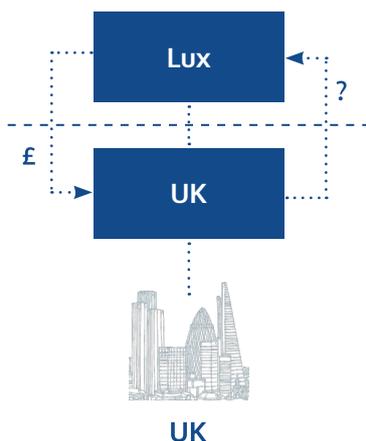
1. the tax payable,
2. penalties and interest payable to the tax authority,
3. the costs of dealing with a tax authority enquiry, dispute or litigation ('defence costs'), and
4. any tax suffered by the insured on the insurance proceeds received ('gross-up').

Cover can also be provided for where a tax authority requires payment on account. This feature of benchmarking insurance can prevent cashflow issues or the need for a taxpayer to provide for the assessment in its financial accounts.

## Requests for Insurance

In order to consider offering terms for benchmarking insurance, as well as information regarding what cover is sought (e.g. limit of liability and policy period), we require:

1. a copy of the relevant benchmarking study,
2. details of the relevant transaction (e.g. how is it documented?), and
3. confirmation of what transfer pricing documentation is available.



## What will Brockwell insure?

In broad terms, the following hallmarks are indicative that we can offer benchmarking insurance:

- the relevant jurisdiction applies the OECD's transfer pricing guidelines and upholds the rule of law,
- the benchmarking study has applied the correct methodology and applied that methodology to a suitable data set (and it is clear what data was discarded and why),
- how the relevant transaction is priced is not especially subjective (e.g. intangibles),
- the transaction is not a vehicle for artificially extracting profits to a low (or no) tax jurisdiction, and
- insurance is not being sought as an alternative to typical prudent behaviour (e.g. instead of maintaining transfer pricing documentation).

Benchmarking insurance is only available for genuine commercial arrangements. Cover is not available for intentional tax avoidance/evasion or marketed schemes.

## About us

Brockwell is a managing general agent which is appointed to source, underwrite, negotiate and execute insurance contracts on behalf of certain Lloyd's of London (Lloyd's) syndicates.

Our tax team combines both legal and accounting expertise, together with excellent experience of providing cross-border transaction insurance solutions. We typically respond to requests for insurance within 48 hours and underwrite most risks within two weeks. Brockwell has a global network of top-tier transfer pricing counsel.

We have authority to insure tax risks up to a limit of GBP 40m (or its local equivalent), EUR 45m or USD 50m with no minimum limit of liability in any jurisdiction (other than the United States) for a period of up to seven years.

As our risk capital is provided by Lloyd's syndicates, the credit underpinning our policies is rated A by AM Best or A+ by Standard and Poors and Fitch.

More information about Brockwell is available on our [website](#)

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