INNOVATIONS IN TAX

- Tax in a digital era
- The rise of data
- Will a robot take my job?
- The impact of Making Tax Digital
- Taxologists wanted

Tolley® Tax intelligence from LexisNexis®

In association with:

Avalara

CBO SEARCH TAX & TAX TECHNOLOGY

TAX SYSTEMS

ABGi accelerating innovation UK

Brockwell

ACCOUNTANCYMANAGER PRACTICE MANAGEMENT SOFTWARE TO AUTOMATE YOUR ADMIN

pwc

Introducing: Brockwell Capital

Your service, how it works, value to end user

Brockwell Capital ('Brockwell') provides bespoke transactional risk insurance solutions, with a particular focus on tax liability insurance and warranty and indemnity ('W&I') insurance.

In a mergers and acquisitions ('M&A') context, W&I insurance has become commonplace, while tax liability insurance is rapidly growing in popularity. Fundamentally, W&I covers unknown risks in respect of the warranties and tax covenants given in the sale documents relating to an M&A transaction and (crucially) identified risks are excluded from cover (the principle generally being that unknown risks are covered). Notwithstanding that tax identified risks are typically excluded from a W&I policy, Brockwell's in-house tax underwriting expertise does allow us to consider offering cover for identified tax risks on a case-by-case basis.

Conversely, tax liability insurance offers protection for a taxpayer (or another party, e.g. one that is secondarily or jointly liable) against loss arising from a particular tax event. For example, a taxpayer may treat certain supplies as standard-rated for VAT purposes. However, a third party adviser might identify a risk that HMRC could challenge the supplies as zero-rated such that related input VAT has wrongly been recovered. In this scenario, a tax liability insurance policy could be sought to give the taxpayer comfort that, even where HMRC does challenge the VAT treatment of supplies, it will not suffer a loss. As the precise cover is defined in each policy, tax liability insurance policies can be drafted to offer protection in in a multitude of scenarios (e.g. M&A, reorganisations, mitigating historic risks, assets purchases, liquidations, etc).

The loss that is covered by a tax liability insurance policy is flexible, but typically comprises:

1. the tax payable (in the example above, the input VAT),
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/or
4. any tax suffered by the insured on the insurance proceeds received ('gross-up').

Another important feature of tax liability insurance is that cover can be provided for where a tax authority requires payment on account. For example, certain jurisdictions require an advanced tax payment or guarantee prior to a taxpayer commencing a tax assessment dispute and in the UK an accelerated payment notice requires payment prior to appeal or settlement. This feature of tax liability insurance can prevent cashflow issues or the need to provide for the assessment in a taxpayer's accounts.

The purpose of tax liability insurance is to protect against differing interpretations of tax law and in essence it is a tool that provides tax treatment certainty in order to facilitate activities by both corporates and individuals. It can also be used as a risk management tool by boards, investment committees, asset managers, finance providers, etc. For example, tax liability insurance can be used:

- to give peace of mind in relation to a historic tax position;
- as part of M&A risk management (e.g. where a tax risk is discovered in due diligence, a buyer can use insurance as an alternative to a price adjustment, escrow, indemnity or other contractual protection, whereas a seller can use insurance to stand behind, and so derisk, an indemnity);
- to allow investment funds to be wound-up and proceeds returned to investors or, similarly, to provide an liquidator/administrator with the comfort required to release proceeds;
- to remove uncertainty from a restructuring or reorganisation;
- to provide a quicker and confidential alternative to a tax authority clearance (or provide the comfort of a clearance if this is not available);
- to mitigate a risk and allow for favourable financing terms;
- to provide more financial cover than a counterparty is willing/able to offer or to increase covenant strength and manage recoverability risk (Lloyd's syndicates are all rated A by AM Best or A+ by Standard and Poor's and Fitch); or
- to reduce uncertain accounting tax positions or tax expenses.

- Brockwell has in-house tax expertise with experience acting for both taxpayers and insurers.
- We have a global risk appetite and are supported internationally by a network of top-tier advisers.
- We do not have restrictions regarding which taxes we can insure.
- We offer cover for both individuals and corporates.
- Most risks can be covered within our maximum liability limit (currently GBP 40m or equivalent).
- Our underwriters have individual authority, allowing for agile responses to demanding timelines.
- Depending on the risk, cover can be wrapped into a W&I policy in an M&A context.

Company information

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Pricing information:

Each premium is bespoke to the risk in hand.
The typical premium range is between 2% and 8 % of the total limit of liability covered.