

Appetite Summary for Tax Risks

General principles on insurability of tax risks

The AIG M&A practice will generally consider underwriting a tax risk based on the following criteria:



Jurisdiction

We prefer to cover tax risks in jurisdictions that are politically stable, have a developed legal system and a tax authority or tribunal with a recognized, accepted route of appeal and a reputation for competence, probity, sophistication and fairness. We will also take into consideration whether the jurisdiction has GAAR (General Anti-Avoidance Rules) in place.



Type of risk

We prefer to insure contingent tax exposures that arise in connection with or as a result of a merger, acquisition, restructuring, recapitalization or similar transactions undertaken by a potential insured, or another type of transaction that demonstrates a clear business purpose other than to achieve a particular tax result.



Quality of advice and opinion

We require the insured to have obtained some legal advice or opinion from reputable lawyers or tax advisers. We will carefully review the advice to assess its merits and also identify any weaknesses or particular areas of concern.



Risk of challenge

We also assess the likelihood of challenge from a tax authority which may be based on political climate or a tax authority's propensity to challenge certain tax practices or target industries.

Examples

The following are examples of insurable tax risks:

The risk that a foreign subsidiary does not qualify as a "legal entity" under local corporate income tax rules.

The risk that the statutory tests relating to an exemption or specific tax treatment are not satisfied (e.g. availability of the Substantial Shareholding Exemption in the UK).

The risk that a transaction will result in the claw-back of a historic claim for stamp duty land tax group relief.

The risk of the validity, or recapture by a tax authority of tax credits claimed by an entity.

We tend to avoid tax risks which relate to questions of fact and which present factual interpretations and determinations in a tax context. For example, the risk of a secondary tax liability crystallising as a consequence of formerly being a member of a consolidated tax group where the proposed insured cannot confirm the fact that the other former members of the tax group have duly paid their taxes.

Disclaimer and Notices

This paper has been provided to the Broker Recipient for discussion and information purposes only in order to assess the Broker Recipient's (and its clients') appetite for the proposals discussed herein. We welcome any feedback or comments on the concepts explained in this paper. We refer to and notify you of the disclaimer section at the bottom of this document.



Bring on tomorrow®

www.aig.com