LIVA

CONTINGENT RISK COVER
TAX LIABILITY INSURANCE

INDUSTRY EXPERTS

LIVA is a market-leading, specialist M&A and contingent risk insurance broker with offices in the UK and Europe. We draw on our experience of over 3,500 transactions for leading global advisors and investors, ensuring the best client outcome through tailored, data-driven solutions.

LIVA is part of the Ecclesia Group, one of the largest European commercial insurance brokers. Together with our associated offices, we provide a full and global M&A insurance and contingent risk offering.

TAX LIABILITY INSURANCE

Tax liability insurance (“**TLI**”) policies can be implemented either on:

(i) a standalone basis (for example, insuring tax risks related to the ability to use carry-forward trading losses (MCINOCOT) or concerned with tax liabilities arising due to internal restructurings); or

(ii) in the context of an M&A transaction (placed by the buyer, the seller or the target).

TLI policies are used in a variety of scenarios, including where:

- a company wishes to remove an identified tax risk from its balance sheet (i.e. a liability) and transfer the risk to an insurer, thereby enabling the company to deploy the earmarked capital elsewhere; and/or
- due diligence has identified a tax issue and the seller is unwilling to provide an escrow amount or provide a contractual indemnity relating to the risk; and/or
- the identified tax risk is excluded under the warranty and indemnity (“**W&I**”) policy.

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TLI FOR W&I EXCLUSIONS

As noted overleaf, TLI is often taken out in the context of an M&A transaction where the identified risk is excluded under the W&I policy.

Set out below are the standard tax-related exclusions under W&I policies and the potential TLI solution.

Risk	**Non-availability of Tax Assets**
TLI Solution	Where the buyer is able to identify key tax assets that it would like to obtain cover for, it is possible to obtain affirmative cover for such assets, subject to confirmation that: • the tax assets are *available* for use (and details around *how* the tax assets can be used – i.e. applied against profits from the same trade); and • the transaction has not adversely affected the relevant tax assets (i.e. 'the same business test' has been satisfied).

Risk	**Secondary Tax Liabilities**
TLI Solution	Where appropriate due diligence has been performed, it is possible to obtain a TLI policy covering secondary tax liabilities that arise following an exit from a fiscal unity or consolidated tax group.

Risk	**Transfer Pricing**
TLI Solution	Insurers can contemplate providing affirmative cover for issues relating to transfer pricing if a recently performed benchmarking study is available. Risks that insurers may consider insuring include transfer pricing adjustments being made to limit the deduction of paid finance expenses or amounts accrued on shareholder debt.

Risk	**Specific Exclusions**
TLI Solution	Where the due diligence carried out has identified a low to medium risk / high quantum tax issue (ideally supported by a third-party legal opinion), it is possible to obtain a specific TLI policy to cover the risk. This is particularly relevant where it is not possible to agree an escrow amount or a contractual indemnity for the risk, and can help prevent any erosion to the purchase price.

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