



DID YOU KNOW?

Did you know that your client can get insurance policies to cover the tax risks that arise in your deals – even when there are no representations and warranties?

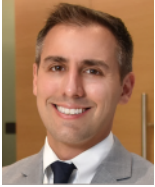
Clients are always seeking to minimize taxes. Sometimes, clients are presented with an opportunity to save a substantial amount of taxes by entering into a certain transaction or structuring a deal in a specific way. The rewards of these transactions (i.e., tax savings) are coupled with a greater risk that a taxing authority recasts the transaction in a manner that reduces or eliminates the tax treatment sought. Due to the prevalence of “facts and circumstances tests” and “anti-abuse rules” in the tax code, getting clients 100% certainty as to tax treatment is often impossible. Clients may find a deal intriguing, but hesitate to “pull the trigger” due to this uncertainty.

Tax insurance offers a way to remove the uncertainty by purchasing an insurance policy to cover the potential tax exposure at issue. This isn’t “representations and warranties insurance” – it can be used in any industry and whether or not there is a deal – just a few examples are below:

- Real Estate – Is your client worried that it’s 1031 Exchange isn’t exactly following the “safe harbors” in the Treasury regulations?
- REITs – Is your client selling a portfolio of properties such that the “prohibited transactions” safe harbors are no longer available?
- Venture Capital – Is your client worried that it may not be a “Qualified Small Business” eligible for 1202 stock benefits?
- Private Equity – Is your client worried that its deal structure won’t get the step-up in basis on which its return on investment depends?
- Non-Profit – Is your client worried that it’s awesome new product idea may bust its 501(c)(3) status?
- Environmental – Is your client seeking (or syndicating) tax credits?
- Lenders – worried your penny warrants will be considered debt when you want it to be equity (or vice versa)?

Bottom Line: Assessing the need for tax insurance and obtaining a policy can be quick and painless with the right support. The Taft tax team can help clients assess whether tax insurance makes sense, recommend brokers, review quotes, prepare the necessary memoranda for underwriters and negotiate policy terms. Tax insurance isn’t a panacea, but rather another arrow in the quiver to be used when the time is right. All attorneys should keep this option in mind when helping clients navigate higher risk transactions.

If you have any questions, please contact the author or one of Taft's Tax attorneys.



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If you're not failing every now and again, it's a sign you're not doing anything very innovative. – Woody Allen