

L I V A | REMOVE RISK.  
CREATE CLARITY.



Tax Insurance

# Discover the power of LIVA

## M&A and Contingent Insurance Experts

LIVA is a market-leading, M&A and contingent insurance broker with specialist knowledge and experience placing M&A and contingent insurance products across all sectors.

We provide tailored and data-driven solutions for transactions and draw on our experience of over 4,000 deals ranging from EUR 5 million to EUR 12 billion in value for leading global advisors and investors ensuring the best client outcome.

LIVA is the dedicated M&A and contingent risk team of the ECCLESIA Group, one of the largest commercial insurance brokers. Together with our associated offices, we offer a full and global M&A and contingent insurance offering.

## Ecclesia



A team of more than **2,500** people



**60 locations** in 7 countries



Represented in **170 countries** through our ECCLESIA GLOBAL NETWORK



Gross Written Premium placed of **2.5 billion euros**



**40 %** healthcare and welfare sector



**60 %** commercial business



**3 MGAs** in Continental Europe



Ecclesia Re – **own Reinsurance Broker**



Ecclesia Credit, **four units one brand**



Capability for employee benefit programs **throughout Europe**

## What is Tax Insurance?

- A tax insurance policy (“**Tax Policy**”) transfers the risk of a potential tax liability from the taxpayer to the insurance market.
- The Tax Policy will indemnify the insured for losses that arise from a successful challenge by a tax authority to a position taken by the taxpayer.
- The Tax Policy will not only cover the tax itself, but usually any related (i) interest (ii) penalties (iii) defence costs and (iv) gross-up (where the policy proceeds are taxable). In addition, some underwriters will also cover advance tax payments.
- There are numerous **commercial drivers** for the use of tax insurance, but the overarching factor is the cost-effective provision of economic certainty.

## What type and size of tax risks are insurable?

- All forms of direct and indirect taxation in most jurisdictions can be covered by a Tax Policy.
- Historically, only legal interpretation risks were insured, but many underwriters will now insure fact-based/valuation risks (e.g. transfer pricing) given suitable supporting evidence.
- In most cases, the taxpayer will have received advice from external tax advisers supporting the technical basis for the tax position taken. However, this advice does not always need to be of a “should” level to be insurable.
- Tax liabilities of less than £1m and more than £100m have been insured in the market. For risks greater than £100m and up to £1bn, LIVA can assist building a “tower” of insurance through several underwriters.
- A Tax Policy will typically provide cover for at least 7 years.

## Benefits of Tax Insurance (M&A context)

- Tax insurance is widely used in an M&A context:
  - to facilitate deal negotiations where a tax risk has been identified as part of due diligence (and excluded from any W&I policy);
  - to avoid escrow arrangements, price chips and to allow a clean exit for the seller;
  - to credit enhance (or replace) a specific tax indemnity from the seller;
  - to give the buyer (and any relevant lenders) comfort as regards the target especially in a competitive auction process; and
  - to avoid the delay / uncertainty of seeking a tax ruling.
- Tax insurance can provide certainty in situations where the tax position is unclear due to:
  - differing technical interpretations of tax law;
  - lack of published guidance from tax authorities; and
  - uncertainty as to whether a tax authority will challenge a filing position and, if so, how aggressively.

## Benefits of Tax Insurance (non-M&A context)

- Tax insurance can also provide certainty and add value outside of an M&A transaction. For example, insurance can transfer the risk of a potential tax liability:
  - arising in the ordinary course of business where there is a commercial rationale for the insurance (e.g. in anticipation of a sale or listing or refinancing);
  - arising on cash repatriations or reorganisations;
  - arising on the wind-up of a fund, partnership or corporate structure;
  - that might otherwise lock up cash / liquidity; and
  - that might otherwise impact balance sheets and financial statements (and consequently regulatory capital metrics).
- Some underwriters are increasingly keen to insure tax positions that are under audit by a tax authority and even the subject of live litigation.
- Finally, certain insurers are willing to insure tax risks arising in the future on an ongoing basis.

## How much will the tax insurance cost?

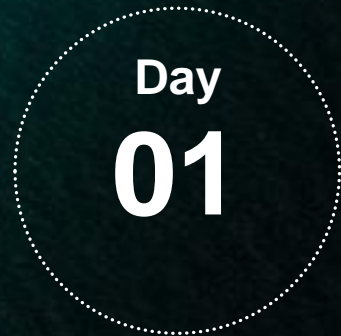
- The cost of the Tax Policy is determined by a number of factors including, inter alia, (i) the nature of the underlying tax risk (ii) the jurisdiction of the relevant tax authority (iii) the robustness of the technical tax position and (iv) the practical ability to defend the position (e.g. the factual evidence available).
- A one-off premium is payable to the underwriter at inception of the Tax Policy. The premium expressed as a percentage of the limit of the Tax Policy is known as the rate on line (“ROL”).
- Currently, the ROL for specific tax risks is typically around **1%-5%** in the UK and Europe, but can be higher depending upon the underlying risk.
- The cost of tax insurance is currently at a historic low, mainly due to the increased number of experienced tax underwriters in the market and the consequent competitive tension.

## Why LIVA?

- LIVA will work closely with the client to deliver the optimal bespoke tax insurance solution.
- LIVA will utilise their specialist knowledge of tax and the insurance market to guide the client through all stages of process.
- If multiple underwriters offer insurance terms, LIVA will assist the client in choosing the most suitable underwriter for that risk.
- LIVA will anticipate and pre-empt potential issues that may otherwise delay the inception of the Tax Policy (and consequently delay the execution of any related transaction relying on the Tax Policy).
- Unlike many other brokers, LIVA’s team is comprised exclusively of senior individuals with many years’ experience in top law firms and in the insurance broking market.

# Placement Process

## MARKETING PHASE



### CALL BETWEEN CLIENT AND LIVA

Call to ensure LIVA is aligned with the client's requirements.

LIVA signs NDA (if required) and receives relevant fact pattern and tax opinions (if available at that stage). Targeted insurers also sign up to the NDA.



### ANALYSIS OF TAX RISK DOCUMENTS

Detailed review of the information and preparing our submission pack which is sent to insurers.

Review of documentation to ensure the tax risk and key cover items are captured in our insurer submission pack.



### PROVIDE MARKET FEEDBACK REPORT

LIVA "Market Feedback Report" summarises the key items associated with each insurer's proposed coverage.

LIVA uses competitive tension between insurers to ensure we obtain the best price and cover at the outset.



### DISCUSS REPORT AND SELECT AN INSURER

Discussion on report to ascertain most appropriate choice of insurer for the project.

Refine any particular points of importance to the client and then select an insurer to proceed into underwriting.

# Placement Process

## UNDERWRITING PHASE



### COMMENCE UNDERWRITING & BUILD EXCESS

Provide all relevant information and sign insurer expense agreement.

LIVA provides documentation to insurers. Draft policy form is provided and negotiated by LIVA in the background. Excess layers are arranged (if required).



### INSURER QUESTIONS

The insurer will review the required documentation and provide any follow-up questions.

The client will respond to any questions and any follow-ups will be dealt with during a call between the insurer/(s), the client and its advisers, and LIVA.



### INSURER CALL

A call between the insurer, the client and its advisers, and LIVA.

The call is a collaborative call where the insurer seeks to finalise the coverage position and discuss any follow-ups / finalise the policy.



### FINALISE POLICY

Following the insurer call, LIVA negotiate and finalise the policy.

LIVA will negotiate the policy (and any excess policies) using its market knowledge on behalf of the client.

# Contacts



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Ainsley joined LIVA as Head of Tax in 2023 and has over 20 years' experience in tax across numerous asset classes, transaction types and jurisdictions. Ainsley trained and worked as tax lawyer at Linklaters for 9 years, before moving to a front office structuring role at Morgan Stanley, where he was an Executive Director. Prior to joining LIVA, Ainsley has been advising and structuring in the hedge fund, asset management and ESG spaces.

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