



**RE**assurance.  
Insurance made simple

A guide to  
**Tax Insurance**

**RE**think  
your insurance needs

**RE**fresh  
your approach to insurance

**RE**define  
your standards

## Introduction

Throughout the CEE region there are many types of insurance that are frequently used in commercial M&A transactions that are considered to be transactional risk products. Insurance helps manage risk in transactions and can be as simple as overcoming a specific need or problem to transferring liability or the sophisticated structure of the deal between parties. Insurance provides clarity, simplicity and security.

In recent years the insurance market has grown and become more sophisticated. The rise of more specialist products for the M&A market means it can be a challenging landscape to navigate. There are more insurance companies and managing general agents offering insurance of different types. Increasingly, clients are turning to insurance brokers to find the right insurance for their transactions. An insurance broker has the market knowledge and relationships which can help the client to procure insurance.

At REassurance we are experts in finding insurance solutions for our clients. An unparalleled track record of understanding our clients' needs within the demanding market, our team has many years of experience in finding solutions for managing risks relating to the sector. Our team has broad experience in real estate and tax in the CEE region, which helps to facilitate the transaction process for the clients.

This guide is our introduction to explain the key concepts and benefits of tax insurance. If you have any questions or would like to know how insurance can help, please contact one of our experts.

## Product Information

Taxation is one of the most politicised areas of law and therefore frequently subject to change. This means that businesses and their advisors have the ever more complex job of keeping up to date with a vast amount of frequently changing rules. Tax insurance is a developing insurance market. The scope and availability of cover is evolving and there is multiple tax risk that can be covered by insurance. Just to name a few, it is possible to obtain cover for the tax, interest, penalties, defence costs and gross-up in the event the insurance proceeds were to be subject to tax.

In the CEE this is an area we are seeing an increase in demand as part of the transactional risk insurance process. This is driven by a number of factors, but primarily the delay of up to 6 months in getting a satisfactory response from the tax authorities.

Below we describe the key concepts and benefits of tax insurance.

### Cover

Tax liability insurance can reimburse an insured for taxes, interest, insurable penalties, and the costs of contesting or defending one or more covered tax positions. If due diligence has identified a potential tax issue it can often create a sticking point in negotiations. This could be because the parties cannot agree on the quantum or the profile of the risk, or the buyer simply won't accept exposure to an identified issue. A tax insurance policy can cover specific tax exposures identified in buyer's due diligence/ vendor due diligence which may be challenged by a tax authority in the future. Tax insurance may also cover not only tax risks identified within due diligence process, but also specific tax risks related to one-off transactions and restructurings (e.g., dividend, interest and royalties' payments, sale of shares in Polish company, in-kind contributions, mergers, demergers or share for share deals).

### Policy Period

Typically, the cover is granted for 60 to 84 months for tax risks.

### Retention

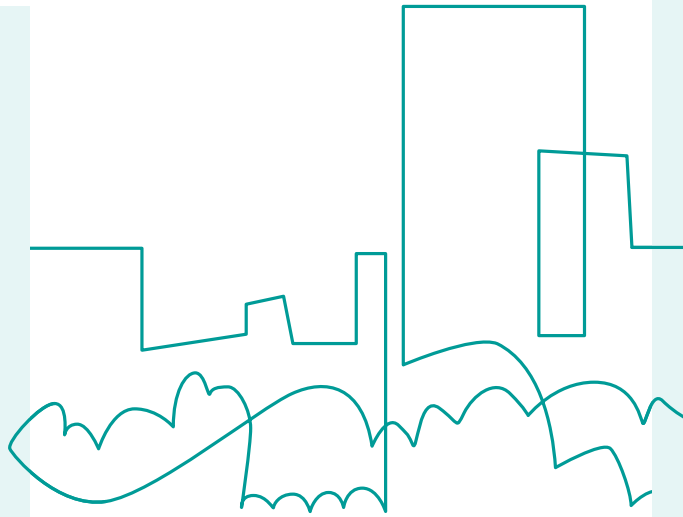
The insurer and insured will agree on the 'retention' (also known as an excess), which is the uninsured amount of the loss to be borne by the insured.

## Costs

The premium is a one-off cost payable after completion of the transaction and depends on the details surrounding the potential tax liability. Premium will range from 1.5% - 4%\* in the CEE. In addition, an underwriting fee of approx. EUR 15,000 - 25,000 for underwriting work will be charged. Depending on jurisdiction there may be Insurance Premium Tax (IPT) payable. IPT in Poland is currently NIL.

## Timing

Pricing terms and initial non-binding quotations can often be obtained within 48 – 72 hours and policies put in place within 10-14 days if necessary.



## Tax Risks

Examples of tax issues that are coverable by a tax policy include\*:

- VAT/CLAT reclassification (the risk that the sale of real estate is treated as a sale of an enterprise or organized part of an enterprise rather than a standalone asset);
- Withholding tax treatment of dividend, interest and royalties' payments (substance, beneficial owner status);
- Polish capital gain tax on sale of shares in certain Polish companies (RE clause);
- Certain cases of free of charge benefits received;
- Self-employed contractors being treated as employees for tax purposes;
- Intangible services (CIT and VAT risk);
- Documentation on export and intracommunity supply of goods (VAT risk);
- Residency risk (PE/FE);
- Reclassification of loan into equity;
- GAAR risk;
- B+R relief;
- Tax efficient corporate reorganisations (upstream and downstream mergers, demergers, in-kind contributions, share for share deals);
- 50% tax deductible costs;
- Risks related to Special Economic Zone;
- Effective Management risks;
- PRS VAT risks.

\*Subject to underwriting and case by case analysis

## The Benefits of Tax Insurance:

- Eliminates potential transaction delay or non-availability of advance rulings on identified tax matters;
- It helps manage the allocation of potential preclosing liabilities or if no clear guidance from the tax authority or legal precedent is available;
- Can enable a transaction to proceed which would otherwise falter;
- Can replace indemnities;
- Protects sellers proceeds against price reductions;
- Avoid lengthy escrow arrangements;
- Provides economic recourse to highly rated insurance institutions with excellent claims records;
- Complete solution as policy can cover tax liability, interest, penalties, defence costs and gross up;
- Some policies offer advance payment (up to policy limit) to cover a situation where a payment of tax is required in order to challenge a determination by the relevant tax authority;
- Offering a clean exit and the opportunity for sale proceeds to be distributed immediately on completion and removing the requirement for retention of sale proceeds.



## About REassurance

REassurance is an independent boutique insurance broker and advisor with a specific focus and specialisation within the real estate sector. An unparalleled track record of understanding our client needs within the real estate market, our team has many years of experience in finding solutions for managing risks relating to the sector. A long history in Central and Eastern Europe and further across wider Europe region, the REassurance senior team consists of leading individuals from the insurance and real estate sectors.

REassurance offers insurance solutions in respect of most aspects of real estate transactions. Whether it is a single asset acquisition, portfolio disposal or cross-border transaction we have experience with all requirements.

Our combined legal and insurance knowledge especially relating to the legal ownership or use of real estate and transaction risks allows us to fully understand our client needs and deliver to them the ideal solution that is appropriate and cost effective. We have particular knowledge of problems or concerns with the legal ownership or use of real estate, managing clean exits for the dissolution of funds, replacement of reps and warranties and security upon acquisition.

Our clients include lawyers, both international and local, institutional funds, private equity investors, real estate developers, finance teams, banks and lenders and with a wealth of knowledge which has been honed over many years first hand experience and direct transaction involvement we are able to support every scenario.

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## Contact Us



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