



Tax Liability Insurance

Tax Liability Insurance (TLI) helps with liabilities from current, pending and even historical investments, transactions and company reorganisations. It has become increasingly important given the greater scrutiny and robust enforcement by tax authorities across the world. Whether you are handling tax credits, tax risks arising from a merger or acquisition or simply general corporate tax affairs, TLI can help you manage risk and avoid potentially severe ramifications.

HOW CAN TLI HELP YOU?

Tax liability is a broad area. But if you're involved in a transaction, i.e. an accountant, lawyer or work for a private equity house, here are a few ways it can help:

- If your due diligence has identified a potential tax issue
- If you need to get a deal back on track by transferring and ring-fencing risk
- To manage perceived risk and encourage more buyers to enter an auction
- If you want to minimise the negotiating leverage of a potential buyer
- By providing more certainty on cross-border transactions
- If uncertain or complex tax legislation means neither party is able to conclude how it applies to a transaction
- To protect a liquidator against ongoing liabilities following the winding-up of a fund or trust

Before considering TLI, it's important to know what it will and will not cover:

What TLI covers

- Defence costs
- Applicable interest, fines, penalties and "gross up"
- Liability for up to 10 years
- In certain circumstances, retroactive change in law can be covered, as can seller's fraud on a buy-side policy
- Losses mirroring the specific tax exposure identified

Specifically in North America

- Tax neutral reorganisations
- REITs/real estate acquisition/sales
- Loss of 338(h)(10) election due to defective S Corp qualification
- Federal or state tax credits (renewable energy investment tax credits etc.)
- Fund liquidation
- Sales tax

Specifically in the UK/Europe

- Tax neutral reorganisations
- Availability of de-grouping relief
- Debt for equity tax relief
- Substantial shareholdings exemption (SSE)
- Residency risks
- Fund liquidation
- SDLT group relief
- Trading or investment
- VAT
- Withholding tax
- Real estate transfer tax
- REITS

WHAT'S NOT COVERED

Transactions that are notifiable under DOTAS, marketed tax avoidance schemes and tax risks already subject to challenge by the tax authorities will generally not be covered by TLI. Insurers tend to insure risks in jurisdictions where the tax system is developed and where the court system is reliable.

HOW MUCH WILL IT COST?

Premium rates will vary by case, however, as a general guide, they range between 2.5-10% of the limit being insured for the length of the policy (usually 7-10 years).

On top of the policy premium, you should also consider the following costs:

The retention

This is the amount of loss that the insured company will absorb before a claim can be brought under the policy. Usually this is limited to defence costs but it could be a material figure.

Underwriting fee

Underwriters will usually charge a fee in addition to the premium to cover the underwriting process.

Insurance premium tax

This is also paid on top of the premium with the percentage varying depending on your company location.

PARAGON WILL HELP WITH THE WHOLE PROCESS

From establishing the parameters of the tax risk to placing the policy to dealing with claims, Paragon will guide you through every step of the insurance process.

PARAGON: INDEPENDENCE IS EVERYTHING

We're an independently owned insurance broker, operating in the Lloyd's of London, Bermuda, European and International Specialty markets.

Our business is divided into teams who focus on complex risk management and risk transfer challenges within their specialist sector. This structure means we can provide a more personal, more professional service to your organisation than any other broker.

SPEAK DIRECTLY TO OUR TLI TEAM:

BRIAN HENDRY

Head of M&A

E bhendry@ paragonbrokers.com

T +44 (0) 20 7280 8276

M +44 (0) 7964 005 696

DEAN ANDREWS

Head of Tax

E dandrews@ paragonbrokers.com

T +44 (0) 20 7280 8254

M +44 (0) 7827 581 945

TAN PAWAR

Senior Vice President

E tpawar@ paragonbrokers.com

T +44 (0) 20 7280 8260

M +44 (0) 7814 594 526

SOPHIE WALLACE

Vice President

E swallace@ paragonbrokers.com

T +44 (0) 20 7280 8234

M +44 (0) 7583 155 584

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