

ACQUINEX

Tax Liability *Insurance*

PART OF THE UNDERWRITING COLLECTIVE

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What is Tax insurance?

Tax insurance is a specialist insurance policy designed to remove an identified tax risk from a deal or structure. Tax law is inherently open to interpretation and two tax lawyers can have very different views on the application of tax legislation to any given facts. Tax insurance can help bridge this gap.

Insurers do not provide cover for non-payment of tax which is actually due. Instead, the client must always have a filing position that the tax is not payable - in such cases the policy insures the risk of the tax authority challenging this filing position (i.e. taking an opposing position to the client's interpretation of the law). The policy then covers any tax, interest and penalties which are found to ultimately be payable as well as the costs of defending any tax authority challenge through the relevant court system.

Acquinex generally require any insured tax position to be defended once assessed - to the extent that any tax must be paid in order to carry out any such defence, the policy should cover this as part of the insured "Loss".



Uses of Tax Insurance

Historically, when buyers were unwilling to inherit the liability risk of a tax filing position, it would lead to an escrow or simple price reduction in M&A deals this can now be avoided by using Tax insurance as an alternate way of mitigating this historic risk.

Further, buyers often seek forward looking cover for what was originally a historic tax risk - i.e. buyers can insure the risk of both the past position being challenged but also lock in the future position.

For example...

- Real estate taxes payable on historic transfers of properties within a group where relief for such transfers may be open to interpretation;
- The use of self-employed contractors who could be challenged by the tax authority to be employees for tax purposes
- Withholding taxes payable on previous payments of interest or dividends within the group (typically a European tax issue).

Beyond the Deal

Tax insurance is not just applicable to M&A deals. Day to day operational risks can be insured without an underlying transaction, particularly in the case of VAT risks, as well as funds seeking tax insurance to gain certainty on future withholding tax treatment of distributions or to enable a winding up of a fund without residual tax liability.

Key Benefits



Keeps deals *on track*

Prevents tax issues identified in due diligence from delaying or derailing a transaction on either the buy side or sell side.



Operational *certainty*

Provides ongoing certainty to the business in question – for instance, VAT treatment of certain food products.



Stronger positions in negotiations

Sellers can prevent tax concerns being used to drive down price or tying up their capital through escrows.

Buyers can address a specific tax issue without insisting on price reductions, escrow or additional seller protection.



Greater certainty on *complex* tax positions

Provides clarity where there is limited precedent or guidance on local tax rules, or where outcomes could vary widely.

A quicker, confidential alternative to seeking a tax authority clearance which may not be granted and which therefore leaves the position uncertain.



Supports restructurings

Helps remove tax uncertainty around reorganisations.

Enables funds or liquidators to release proceeds without waiting for limitation periods to expire.



Complementary to W&I

W&I responds to unknown tax issues arising from breaches of warranty or tax covenants.

Tax insurance focuses on known, specific tax risks. Together, they provide comprehensive tax risk transfer for both known and unknown exposures.

Premiums

Tax insurance is written for a one off premium, payable upfront for the life of the policy.

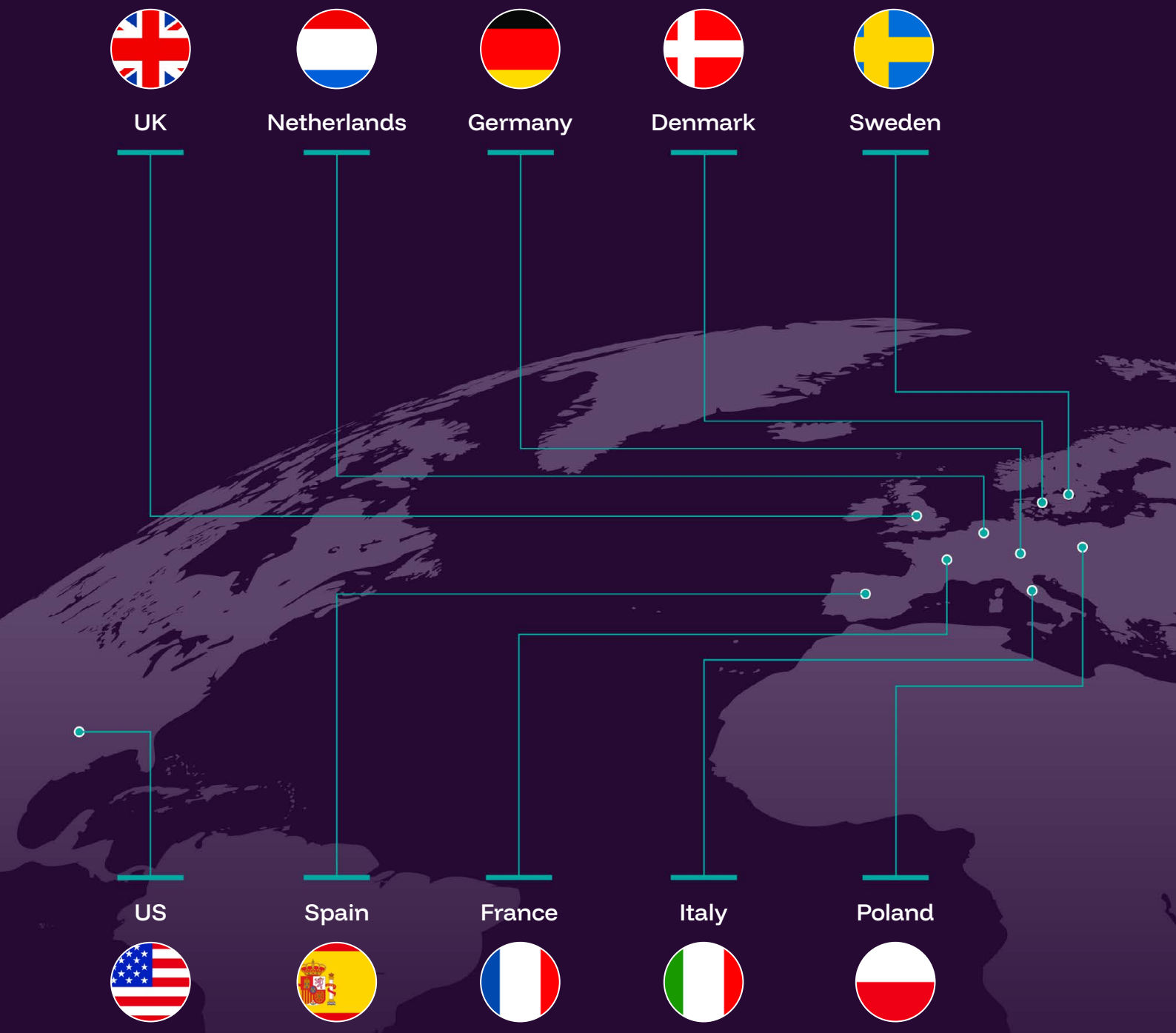
Pricing reflects:

- The size of the limit
- The nature of the underlying tax risk
- The strength of the tax technical position of the client that is being insured



Our Offices

We have local underwriting teams servicing W&I insurance solutions across the UK, Europe & the US:



Acquinex Team



Will Egan

Head of Tax

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Quick and commercial solutions

"Our Acquinex tax insurance team comprises experienced tax lawyers, litigators and accountants who will work with you to insure identified tax risks. Whilst each policy is bespoke, the Acquinex team are known for providing quick and commercial solutions to tax risks in a streamlined way.

Will Egan, Head of Tax

Speak to one of our *specialists* today

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