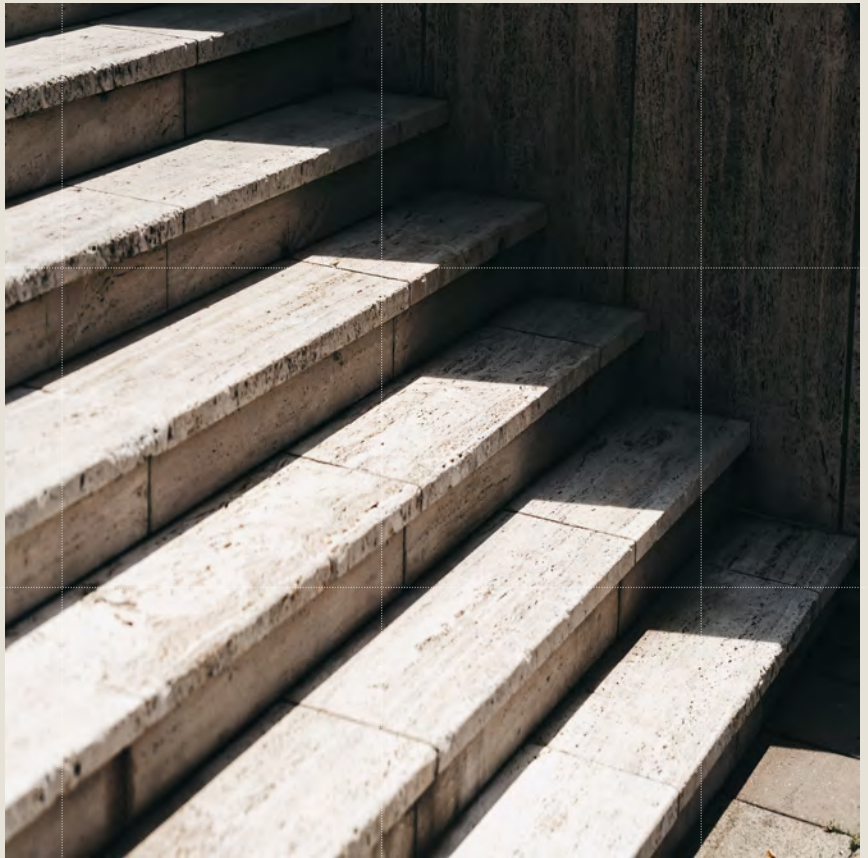




# French Tax Insurance





FRENCH TAX  
INSURANCE

## What is it and when can it be used?

A tax insurance policy compensates a taxpayer for a financial loss resulting from a successful tax reassessment.

Coverage can be offered in relation to an M&A transaction or on a standalone basis.

Coverage can be included in a separate tax policy or within a W&I policy, i.e. coverage can be offered for disclosed tax risks identified in due diligence reports which would normally be excluded.

## What is covered?

The actual tax losses, including any tax due if a compromise is reached with a tax authority.

Expenses incurred by the insured in engaging advisers to resolve the dispute (defence costs).

Interests due on the challenged tax amount.

Legally insurable fines or penalties.

Additional tax payable in case of a taxable pay-out under the policy (gross-up).

Advance tax payments, i.e. (pre-)payments or financial guarantees required by the French tax authorities before a final court decision is rendered.

## What are the benefits?

Removes deal blockers and price chips in the M&A process.

More favourable in scope, speed, price, and certainty in comparison to tax rulings.

Unlocks amounts in escrow for specific tax indemnities.

Eliminates liabilities prior to an IPO, carve-out, trade sale or as a general balance sheet clean up.

Allow for a holistic coverage complementing W&I coverage (in case of affirmative cover of disclosed tax risks).



## How does it work?

### 1 PRE- ASSESMENT & QUOTING STAGE

- Analysis of the insurability of the risk based on available documents (DD reports, tax memo etc.).
- If the risk is within our risk appetite, we will provide our non-binding insurance indication (NBI) detailing the main insurance features (pricing, scope, assumptions, exclusions etc.).

### 2 UNDERWRITING AND CLOSING

- Once appointed, we enter into an expense agreement covering our underwriting expenses (fees from external advisors).
- We then begin the underwriting process by requesting additional documents and perform an in-debt review of the risk to confirm the coverability of the risk.
- Simultaneously we negotiate the policy with the insured and broker.
- At the end of the underwriting process, we bind the policy based on our findings and negotiations.

### 3 CLAIM PROCESS

- When: as soon as reasonably practicable after the Insured obtains knowledge of any fact or circumstance which is reasonably expected to give rise to a tax loss covered under the policy.
- Contents: the tax claim should contain reasonable details explaining the nature of the tax audit / tax assessment (details on what is claimed by the tax authorities).
- Validity of the claim: Transact responds to the Insured or their broker typically within 30 days as to whether the claim is valid or not.
- Defense: We expect the insured to defend the risk before the tax authorities and take reasonable steps to limit the loss under the policy (duty to mitigate).
- Payment: If the claim is valid and finally determined, Transact's panel of insurers will pay the claim to Transact. Transact will in-turn make a single payment to the Insured. Payment is typically made within 30 days from acceptance of a valid claim.
- Disagreement: If the insured disagrees, it has a right to challenge a claim decision either in court or via arbitration.



## Case studies

### 3% TAX RISKS

#### ISSUE

- The French 3% tax applies to companies owning directly or indirectly a real estate asset in France. Companies can however be exempted from it if they properly file the yearly 3% tax returns.
- In many real estate deals, risks are identified where shareholders subject to this tax wrongly file their 3% tax returns.
- Mistakes are often made concerning the identity of the shareholders, their exact shareholding percentage in the property chain, or the value of the underlying real estate assets.
- In case of wrongly filed tax returns, a penalty amounting to 3% of the value of the total real estate portfolio can be applied.

#### INSURABLE TAX EVENT

Any liability to the French 3% Tax.

#### ACTIONS TO BE CARRIED OUT DURING UNDERWRITING

We will usually require corrected 3% tax returns to be prepared and put under an escrow agreement along with the supporting documentation before closing.  
This escrow agreement will allow the insured to have all the documentation at hand in case of future tax audit.

#### COST STRUCTURE

Premium rate (ROL) between 1.50% and 2.5% of the risk amount.

Underwriting fees in addition to the premium between EUR 10k - EUR 20k (depending on the risk amount and difficulty of the situation).



# Case studies

## IFU AND DAS2 FORMS RISKS

### ISSUE

- Companies distributing interest, dividends and paying fees (such as advisors fees) must file IFU and DAS2 forms to properly report each of these distributions and payments.
- Failure to properly report these amounts may entail a fine amounting to 50% of the non-declared amounts.
- In practice, the compliance with these forms is rarely entirely met (missing amounts are often identified during due diligences).

### INSURABLE TAX EVENT

Any liability arising out of a non-compliance with IFU and DAS2 forms.

### ACTIONS TO BE CARRIED OUT DURING UNDERWRITING

We will verify the identity of the beneficiaries of the interest, dividends and fees and confirm that they properly paid their taxes on these interest, dividends and fees or these amounts are exempted.  
We will also review the IFU DAS 2 forms already filed, the balance sheet and P&L of the distributing entities and the tax returns of the beneficiaries.

### COST STRUCTURE

Premium rate (ROL) between 1.5% and 2.25% of the risk amount.

Underwriting fees between EUR 7k - EUR 14k (depending on the risk amount and difficulty of the situation).



# Case studies

## VAT RISK REGARDING RENT-FREE PERIODS

### ISSUE

- In many real estate deals, rents reductions or rent free periods are granted to the benefit of lessees.
- These discounts can become subject to VAT if French Tax Authorities consider that they remunerate a service benefiting the lessor (for instance, if the rent-free period is granted in consideration of a longer notice period applicable to the lessee).

### INSURABLE TAX EVENT

Any liability to VAT in relation to rent-free periods.

### ACTIONS TO BE CARRIED OUT DURING UNDERWRITING

We will review the relevant lease agreements to verify that the rent-free periods have not been explicitly granted in consideration of a particular service.

### COST STRUCTURE

Premium rate (ROL) between 1.75% and 2.2% of the risk amount.

Underwriting fees between EUR 7k - EUR 14k (depending on the risk amount and difficulty of the situation).



# Case studies

## MISSING VAT ELECTION LETTERS ON LEASES

ISSUE

- VAT option letters for rents are often missing during due diligence processes.
- This results into risks of challenge of the VAT treatment applied to the corresponding leases (denial of the VAT recoverability of the lessor).

INSURABLE  
TAX EVENT

Any liability to VAT arising as a result of missing VAT options.

ACTIONS TO BE  
CARRIED OUT DURING  
UNDERWRITING

We will verify that the lessor and lessee have acted as if they were subject to VAT.

COST STRUCTURE

Premium rate (ROL) between 1.75% and 2.0% of the risk amount.

Underwriting fees between EUR 7k - EUR 10k.



## Case studies

### MANAGEMENT PACKAGE

#### ISSUE

- Management package may benefit from a favorable tax and social security regime if certain requirements are met.
- The French tax Authorities might re-qualify the management package as employment income.
- In particular, there is a risk that (i) the management package is treated as non-qualified plan, or (ii) the management package is a qualified plan but (a) the exit gain is treated as employment income, or (b) the taxable basis for the 20% contribution is challenged due to a deferral of the vesting period.

#### INSURABLE TAX EVENT

Any liability to social contributions arising out of the grant of the free shares.

#### ACTIONS TO BE CARRIED OUT DURING UNDERWRITING

We will verify that the share plan governing the Free Shares has been designed in accordance with article L. 225-197-1 and s. of the French Code de Commerce.

#### COST STRUCTURE

Premium rate (ROL) between 2.0% and 2.4% of the risk amount.

Underwriting fees between EUR 15k - EUR 25k.



## Contact



**Staffan Bos**

Head of Tax Insurance

[staffan.bos@transactriskpartners.com](mailto:staffan.bos@transactriskpartners.com)

+31 (0) 6 41 85 18 78



**Francois Piquet**

Head of M&A France

[francois.piquet@transactriskpartners.com](mailto:francois.piquet@transactriskpartners.com)

+33 (0) 6 29 60 46 35



**Anna Cavallo**

Senior Tax Underwriter

[anna.cavallo@transactriskpartners.com](mailto:anna.cavallo@transactriskpartners.com)

+31 (0) 6 18 68 61 97

