

11:30 – 12:00	Registration and coffee
12:00 – 13:00	Presentation Tax Insurance
	<i>1. Introduction and market update</i>
	<i>2. Background and value creation possibilities</i>
	<i>3. Case study and questions</i>
13:00 – 14:00	Lunch
14:00	Closing

Welcome

Tax Insurance

An opportunity to create value





ABOUT ACG
HOLLAND

2022



Driving
Middle-Market
Growth[®]

The Power of **ACG**[®]

UNLIMITED ACCESS
TO A DIVERSE
MEMBER COMMUNITY



THE COMPLETE GLOBAL DEALMAKING ECO-SYSTEM

Doing business is at the heart of ACG
75% of members report they do business with fellow members



- FOUNDED IN 2005, 165 MEMBERS

- HOSTS APPROX. 12 NETWORKING EVENTS PER YEAR (SERIOUS AS WELL AS FUN) INCLUDING:

- ANNUAL GROWTH AWARDS
- NEW YEAR DRINKS RECEPTION
- WOMEN'S EVENTS
- WINE TASTING EVENINGS

- ACCESS A GLOBAL NETWORK OF OVER 15,000 MEMBERS FROM ALL AREAS OF MID-MARKET M&A

Individual Membership | €300 + VAT

Corporate Membership | € 750 + VAT
3 named members

Sponsor - Gold | €1.000 + VAT
2 named member. - 1 seat on the Board

Sponsor - Platinum | €2.000 + VAT
5 named members – 1 seat on the Board

Sponsor - Platinum | €3.000 + VAT
10 named members – 1 seat on the Board

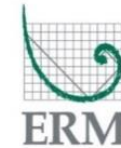
Diamond



Platinum



Gold



13 OCTOBER – Exit Readiness and the Quality of Technology and Management Information

(hosted by SIG and Bluefield)

8 NOVEMBER – RESTRUCTURING

(Hosted by Greenberg Traurig)

1 DECEMBER – WINE TASTING – MEMBERS ONLY

(hosted by Bolster Investment Partners & Atlas Fiscalisten)

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Speakers

Tax Insurance



The bigger picture

Why is Tax Insurance relevant?



The world of tax has arguably become more risky

BEPS, aggressive tax authorities (especially following COVID-19), campaigns against tax avoidance, ambiguous tax laws, changes in tax ruling practice.

Update on the Tax Insurance market

Risk appetite and pricing

Number of tax insurers has greatly expanded in the past years:

- In the European marketplace alone, we have in excess of 15 insurers interested in tax risks to varying degrees.
- More capital to deploy in relation to tax risks.
- In-house tax expertise greatly enhanced.

Due to the enhanced in-house tax expertise:

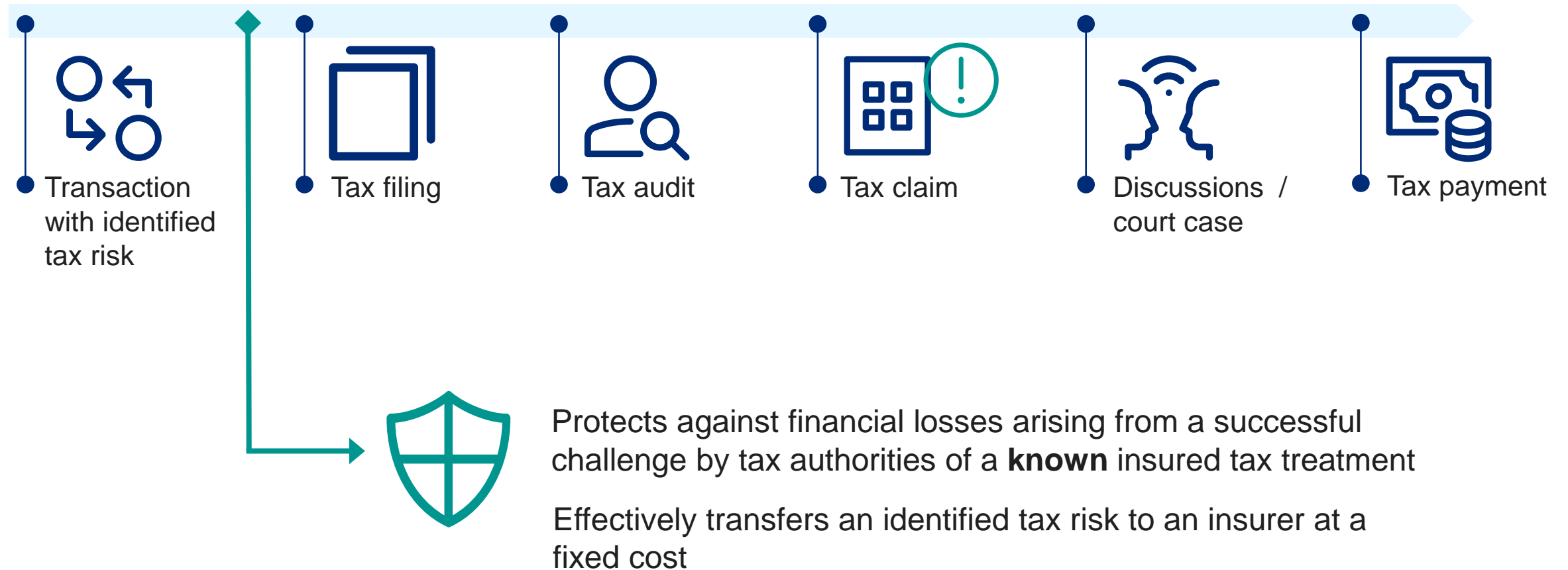
- Insurers have a better understanding of “more difficult” tax risks.
- Stronger relationships have been built with tax advisors around the globe.
- Easier to get comfortable with tax risks, with the result that we have seen an increase in risk appetite from insurers.
- Possible to insure tax issues under active investigation by tax authorities.

Due to a relatively large number of tax insurers competing to insure tax risks:

- Downward pressure on pricing.
- Larger focus on client service and service delivery, which can differentiate insurers.

What is Tax Insurance?

A way to deal with tax uncertainties in M&A transactions and more



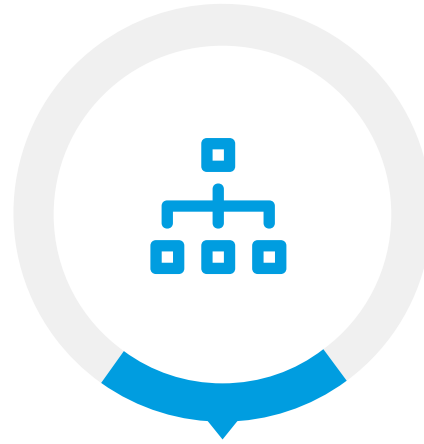
Sources for tax risks

Tax insurance can create value in the following circumstances



M&A transactions

- Known historical tax risks.
- Tax consequences of a change of ownership.



Corporate restructurings

- Corporate spin-offs or mergers.
- Alternative for a binding ruling.



Winding-up of fund structures

- Repatriation of profits.
- Clean exit.
- Latent tax liabilities.

Sources for tax risks

Tax insurance in M&A transactions



M&A transactions

- Known historical tax risks.
- Tax consequences of a change of ownership.

Possibilities to cover historical tax risks

- Purchase price reduction
- Escrow amount
- SPA: tax indemnities / warranties
- **Insurance**
 - W&I insurance
 - **Tax insurance**
- Tax ruling
- Take the risk
- Other

Criteria and pricing



Key Criteria

- Low probability coupled with high severity, e.g. a potential deal breaker if the exposure is definable and allows for due diligence and analysis.
- Underlying issue normally comprises established facts, but one could question the legal interpretation of the facts.
- Insurers are normally unlikely to take a view on the underlying factual circumstances, nor to evaluate too risky circumstances.
- A “should” level opinion preferable, tax memorandum may also be sufficient.
- Low or low to medium risks.



Pricing factors

- The strength of the advisor’s opinion / tax memo / DD on the point.
- The likelihood that the treatment will be challenged and the chances of a successful defense thereafter.
- The quantum of the liability.
- How aggressive the tax/legal position taken is.
- The motivation for looking at insurance.
- Jurisdictional considerations.
- Competition among insurers.

Tax Insurance policy



Tax Insurance policies are used to give protection against financial losses suffered in the event that the **known** insured tax treatment is successfully challenged by the tax authorities.



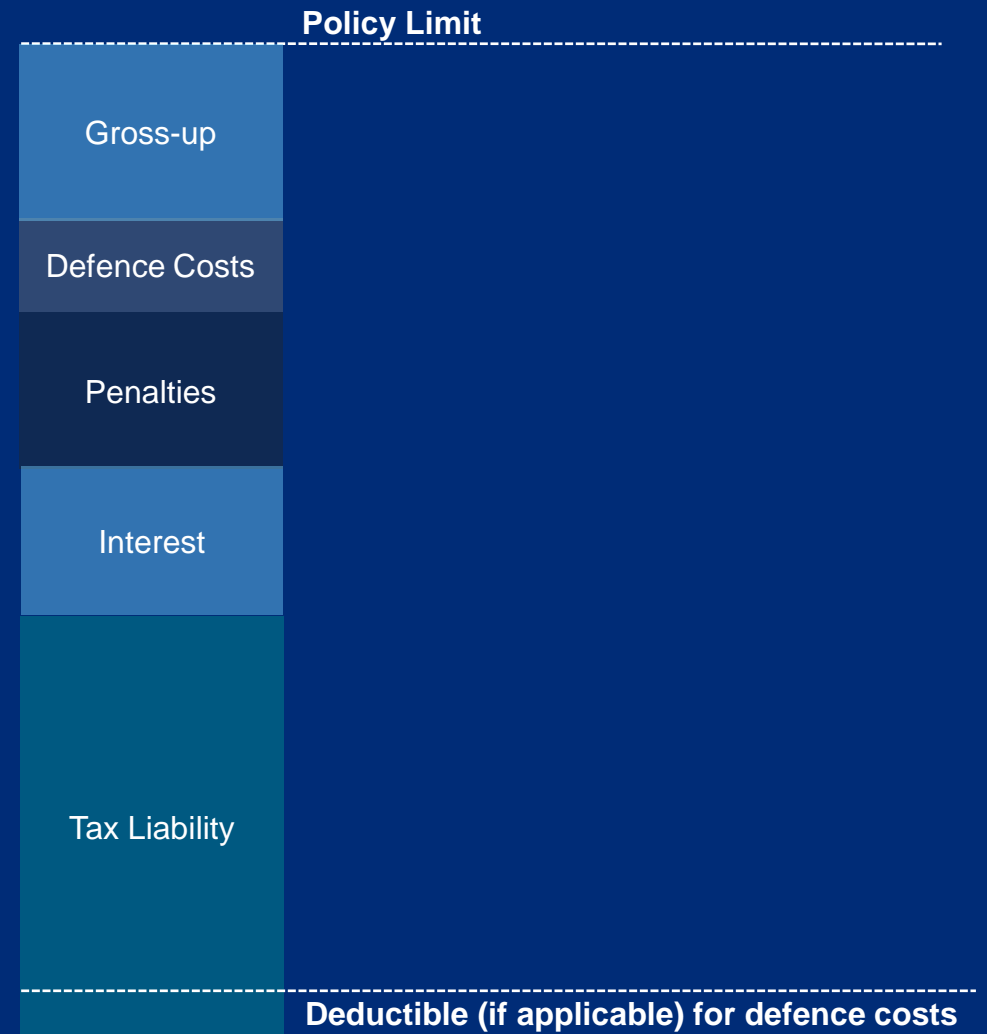
Duration of policy is typically 7 years, but can be up to 10 years.



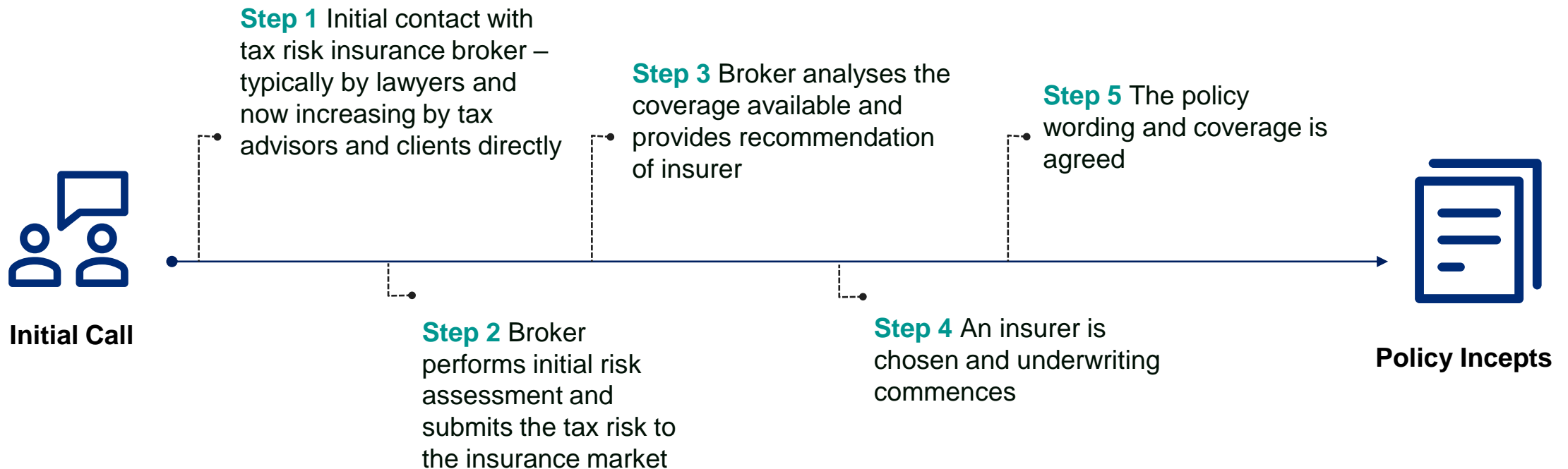
Legal risks with **low** probability but **high economic damage**. Common risks as from EUR 1m.



- Policy covers tax liability, interest, penalties, gross up, defence costs and advance tax payments
- Premium rates generally from 1% - 6% of the maximum loss (the limit)
- Retention often nil or limited to defence cost only.



Tax Insurance process and timeline



Usually 1-3 weeks from kick-off to signed policy

Claims

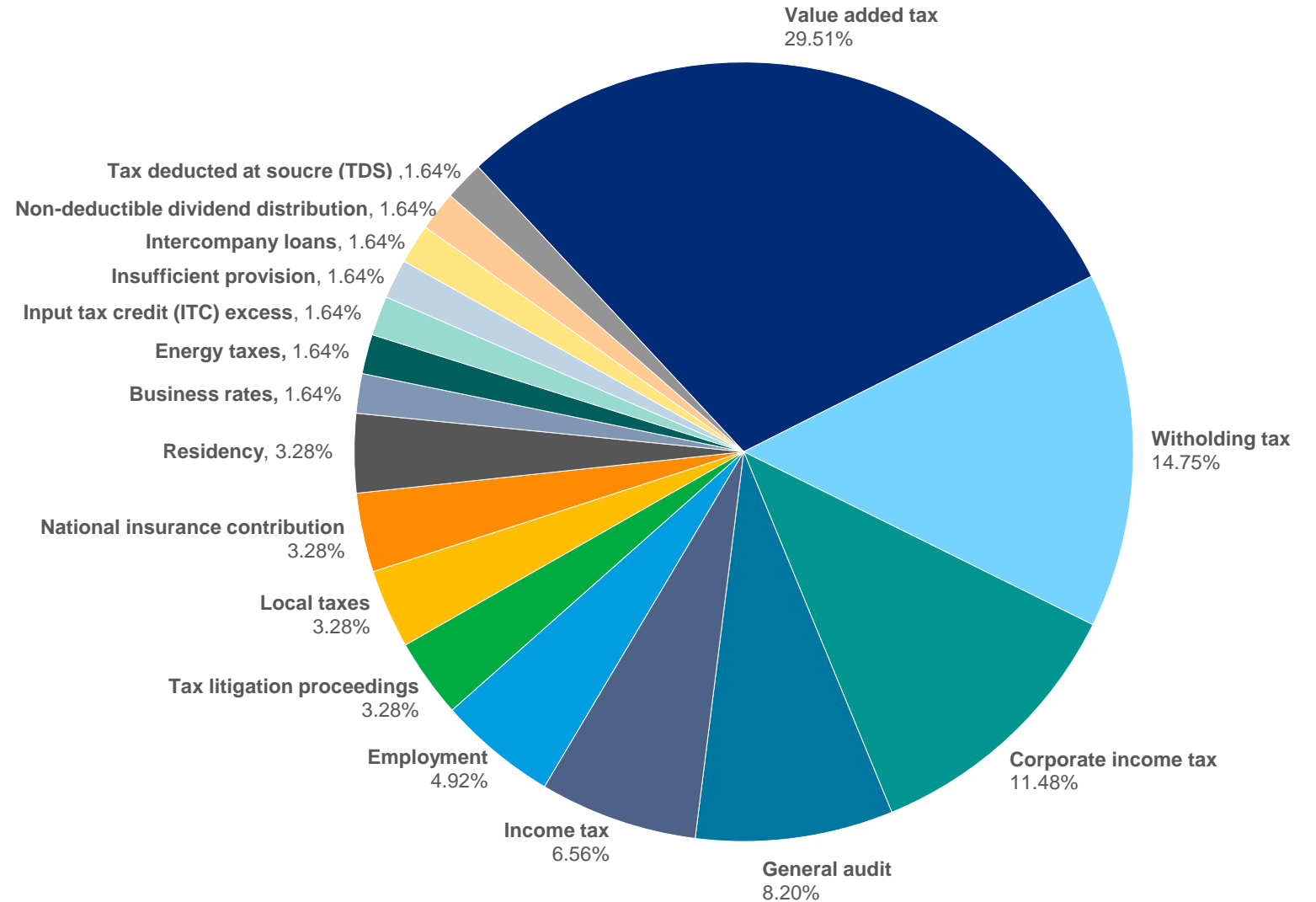
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Tax W&I Claims

c.20%

of claims under **W&I** policies relate to breaches of tax warranties or are a claim under the tax indemnity/covenant.

Tax Warranty Breaches - Type of Tax



*Claims data available to Marsh for the period 2009-2021

Case Study



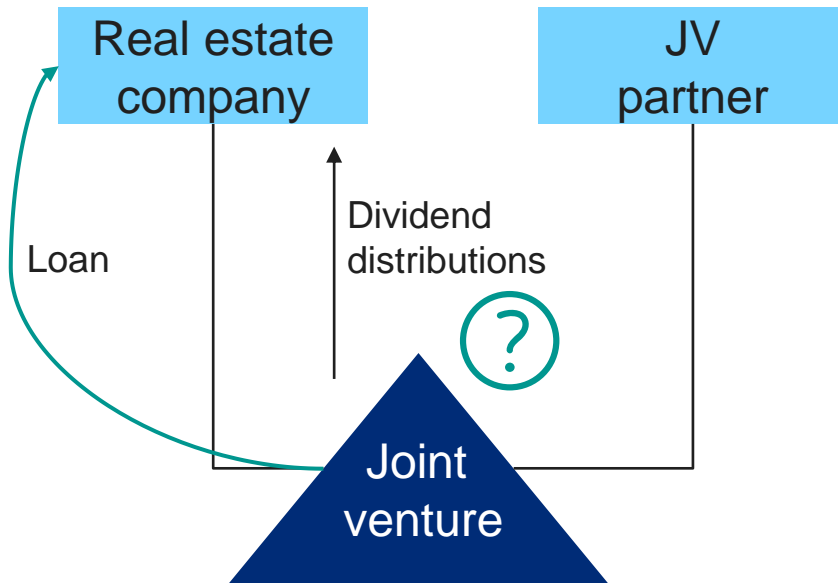
Paid claim

- A private equity fund notified a tax claim following receipt of a challenge from the Dutch tax authorities.
- The authorities were challenging the deductibility of interest on shareholder debt on the grounds of thin capitalisation.
- Tax authority behaved poorly requesting information over a 12 month period.
- Icen worked with the existing advisors from the original deal to agree a strategy to settlement discussions.
- Icen negotiated a settlement which included one uninsured year which delighted the client.
- Settled the claim very promptly following conclusion of the settlement negotiations.

Case studies

3

1 JV buy out



Background

- A Real estate company would like to terminate its joint venture relationship and will buy the shares from its JV partner.
- The insured will finance the buy-out with a short-term loan from the JV company.
- The JV company will likely distribute a dividend the next year and the loan will be repaid by settlement against the dividend receivable.

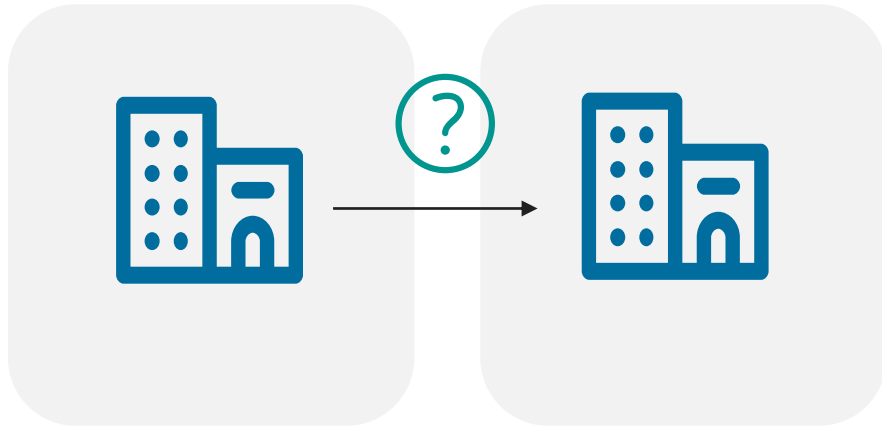
Issue

- It is not possible to obtain a ruling for this structure.
- The insured would like to have certainty on not to have a potential requalification as a distribution of equity and that it should not trigger any Dutch dividend withholding tax.

Solution

- The insurance policy was issued within a week and the transaction could take place before year-end.

2 Business restructuring



Background

A large business wanted to carry out a restructuring of its business and to move its headquarters from one territory to another.

Issue

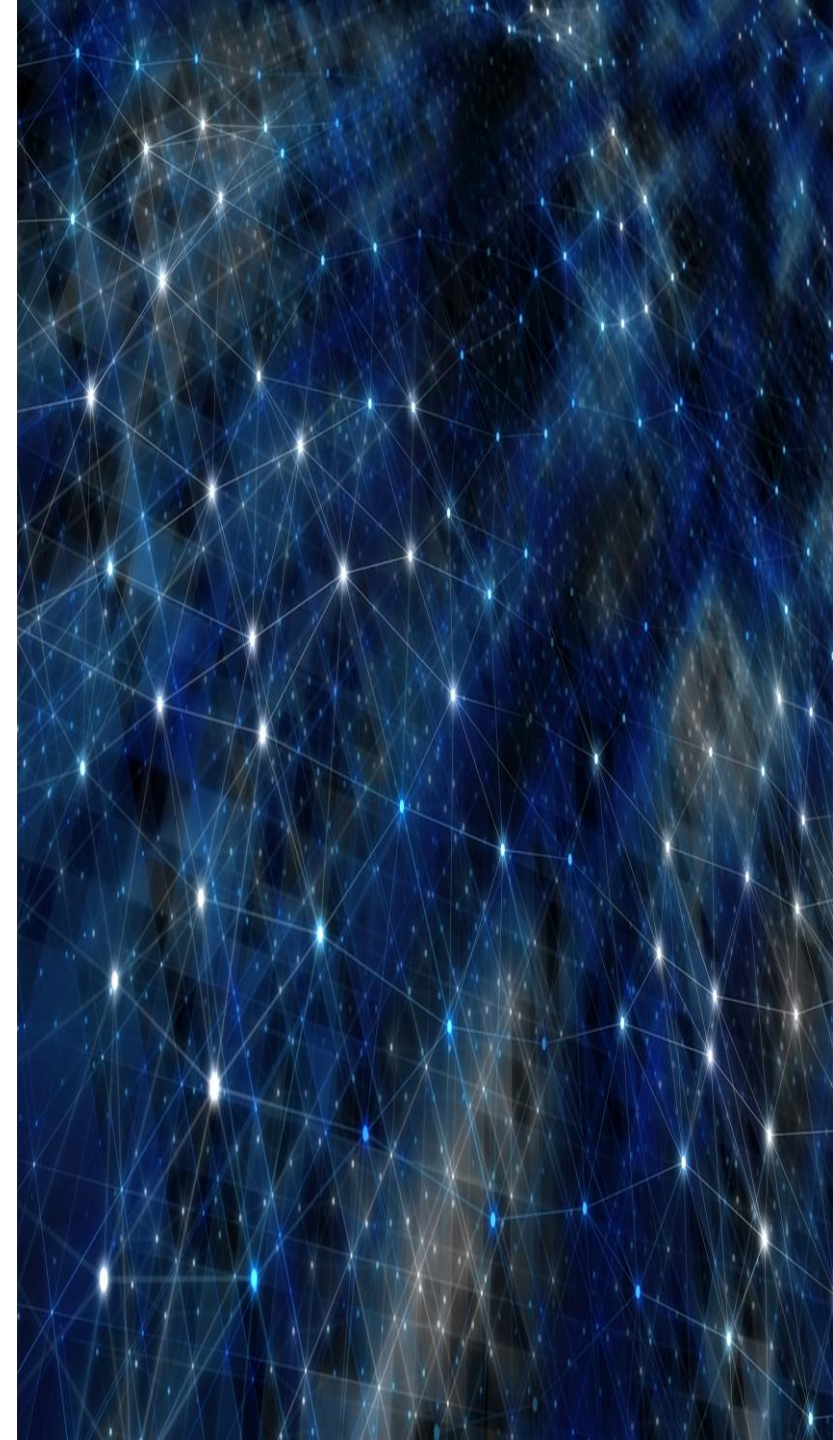
- Certain tax risks were identified in relation to the restructuring; while the risks were felt to be low, the quantum if assessed would be severe.
- There was also a potential impending change of law which may have had an impact and the business wanted absolute certainty of tax position.

Solution

- Icen led an insurance program where we committed EUR 100m of insurance capital.
- The policy enabled the restructuring to be carried out which was of immense commercial importance to the business and its owners.

Examples of tax risks that can be insured

- Withholding taxes
- Value Added Tax (VAT) / Goods and Services Tax risks
- General anti-avoidance rules
- Transfer pricing matters
- Availability of treaty benefits
- Indirect transfer taxes (e.g. in relation to indirect disposals of companies holding properties)
- Characterization of income (e.g. long or short term capital gains tax)
- Availability of tax losses
- Stamp duty
- Debt-versus-equity characterization
- Applicability of transfer taxes
- Permanent establishment risks
- Employment taxes (including social security contributions)



Questions?