Tax liability insurance

Bespoke coverage for identified tax risks: addressing uncertainty and maintaining value

Liberty
Global Transaction Solutions™

Tax risks reflect the variety, complexity, and breadth of tax systems globally. Each risk that we insure is capable of legal and factual analysis and evaluation.

TLI policies help address uncertainty in both M&A and ongoing risk-management scenarios.

Outline of product

Every deal, reorganization, or significant business change will have tax consequences. Some of these consequences may be material and uncertain. Tax liability insurance (TLI) can be used to insure such known tax risks (in contrast to representations and warranties/warranty and indemnity (R&W/W&I) policies, which are designed to cover unknown risks).

How TLI can help

TLI is designed to meet our clients' needs in de-risking their balance sheets for identified tax issues by transferring the risk to insurers. The Liberty Global Transaction Solutions (GTS) TLI underwriting team focuses on the facts, tax analysis, and commercial context that shape and inform the risk in question, in order to provide bespoke cover for our clients.

TLI can and has been used in a wide range of scenarios (further more detailed examples of which can be found in the Appendix), including:

M&A

TLI is most often used to insure material tax risks identified in the context of M&A transactions, with insurance being obtained for purchasers, sellers (often backing an indemnity), or financing parties. Where such risks become a blocking point on a deal, TLI can provide an effective solution by, for example, removing the need for price chips, escrow amounts, or seller indemnities.

TLI is usually obtained as a stand-alone product, but may also be used in conjunction with a R&W/W&I policy where the identified risks have been excluded under that R&W/W&I policy.

Cash repatriation and reorganizations

Generally, TLI can cover potential tax consequences arising from reorganizations (often where clients seek certainty on the application of tax-neutral restructuring provisions) or cash repatriation (for example where there is uncertainty as to the proper cross-border treatment).

Fund wind-ups

In the context of liquidations or the winding up of fund structures, where entities cannot be liquidated or cash cannot be repatriated unless liquidators are satisfied there are no remaining liabilities, TLI can give directors/liquidators the necessary comfort to approve the repatriation/wind-up without having to wait for the statute of limitations to expire, thereby potentially increasing rates of return and decreasing ongoing structure maintenance costs.

Balance sheet and financial statement protection

Tax, finance, and risk functions are increasingly looking towards TLI to reduce material contingent tax exposures (e.g., open tax litigation or audits) which might otherwise impact the balance sheet, effective tax rate, regulatory capital, or cash flow positions, thereby adding direct value to investors. Indeed, more groups are now routinely exploring TLI as a matter of course for higher quantum tax risks which they are commercially unwilling to bear and where TLI could be the only viable solution.

Commitment:
one of the largest line sizes available with up to $200 M

Liberty Mutual Insurance Group industry rankings
As of December 31, 2021

A = Excellent
A.M. Best rating

A = Strong
Standard & Poor's rating

100 years
of financial strength and security

What tax risks can be insured?

TLI policies typically cover risks which have a lower probability of arising, but a high severity.

Risks covered under TLI policies will generally be historical, but TLI policies may also incept in tandem to an ongoing reorganization/transaction, or, occasionally, may cover a defined future position or cash flows, provided that it is possible to analyze and conclude on the legal and factual position at the time of inception.

TLI policies can cover any types of tax liability, including customs, duties, and impôts. While most risks covered are larger corporate income tax or capital gains tax risks, coverage for other taxes is common, such as value added tax (VAT) or sales taxes, availability of tax credits, or withholding taxes. Valuation and transfer pricing (TP) risks can also be insured in certain circumstances.

Although the precise coverage will depend on all relevant factors surrounding the risk, policies will generally cover: the tax liability itself, late payment interest, penalties, the costs of defending an assessment, and gross-up (where insurance proceeds are taxable). Payment of loss under the policy will generally be at the point in time where it is otherwise not possible to appeal an assessment without the tax being paid, or otherwise where it is impossible to defer or delay the tax payment.

Main factors to be considered in assessing a tax risk for TLI

Jurisdiction
- Predictable tax authority approach
- Sufficient confidence in assessment and court appeals

Timing
- Ability for the insurer and advisers to conduct sufficient analysis in the time available

Commercial background
- Sound commercial rationale for the relevant structure
- Not aggressive or abusive tax structuring or avoidance

Capable of analysis
- Capable of rigorous legal and factual analysis
- Not a pure "detection" or "discovery" risk

Area of contention
- Established law and practice increases insurability.
- Risks which are areas of active focus, scrutiny, or frequent change are more challenging.

Level of analysis
- Clear demonstration of thorough analysis and consideration
- Existing ability to conclude on the level of the risk by client's advisers

Level of comfort
- Generally, a consensus that the risk is "low" or "should not" arise
- In certain circumstances (where the overall fact pattern is otherwise strong) "more likely than not" level of comfort may be acceptable

What makes a good submission?

- Clear description of the facts, structure diagrams, background, and motivations for insurance
- Clear legal and factual analysis from reputable tax advisers clearly setting out a level of comfort/ conclusion
- Details of the exact proposed insured risk and exposure calculations
- Proposed policy structure (e.g., buyer/ seller insured, policy length, particular deal and timing pressures)
- Copies of other materially relevant documents without which the risk can't be assessed

Key parts and structure of a TLI policy

1 Insured parties

This determines the potential beneficiary. It also impacts our ability to oversee the risk and therefore is a crucial consideration.

2 Insurer and structure

Larger risks often involve multiple insurers with one insurer leading a tower of insurers as primary insurer. Liberty GTS has extensive experience with leading such towers.

3 Policy period

This usually tracks the statute of limitations. A seven-year period is standard but can sometimes be increased to 10 years.

4 Limit and covered loss

This sets out the maximum quantum and types of loss covered (e.g., tax liability, defense or contest costs, interest and penalties, and gross-up).

5 Premium

This is the amount payable (plus taxes) to the insurer for the insurance cover. Many factors feed into this, including the level of perceived risk and the scope of the cover requested.

6 Underwriting fee

This is the amount payable in respect of external adviser costs incurred by the underwriters in analyzing the risk under a separate expense agreement which is separate from the policy.

7 Retention

This is assessed on a case-by-case basis depending on the nature of the risk, but is often limited to a portion of defense or contest costs.

8 Covered risk definition

This is the main clause which sets out the actual risk being insured and must be carefully considered and drafted.

9 Exclusions

As well as standard exclusions (e.g., for fraud) the policy may include bespoke exclusions (e.g., for areas which are within the insured's control).

10 Payment provisions

These set out at what point in time the insurer will be expected to pay loss. This will usually be when an appeal cannot be made without such payment, if required.

11 Conduct and participation rights

Standard to any insurance policy, the insurer will expect to be able to have a measure of control over the conduct of any risk which they are insuring, including with respect to its defense, appeal, or settlement.

12 Representations and undertakings

For a TLI policy, these are bespoke and will depend on the nature of the risk, but will usually involve the insured representing that there are no ongoing disputes in respect of the risk and that the factual information they have provided is accurate and complete.

13 Document list

This sets out the documents the insurer has reviewed and upon which it has based its assessment.

Although each policy follows a standard structure, Liberty GTS's tax team will draft a bespoke TLI policy

Market at a glance — geographical breadth

GTS Locations

Locations of risks insured and quoted

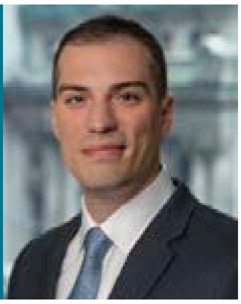
- Australia
- Belgium
- Canada
- Chile
- Czechia
- Denmark
- Finland
- France
- Germany
- Greece
- India
- Indonesia
- Ireland
- Italy
- Japan
- Luxembourg
- Malaysia
- Mexico
- New Zealand
- Netherlands
- Norway
- Philippines
- Poland
- Portugal
- Romania
- Singapore
- South Africa
- South Korea
- Spain
- Sweden
- Switzerland
- Taiwan
- U.K.
- U.S.

A team dedicated to your needs

Working with Liberty GTS, you have access to the expertise of tax underwriters across multiple jurisdictions who, unlike other teams within the industry, work as a global team whose sole focus is TLI. Wherever your risk arises, we're uniquely structured to assess it, with the local legal knowledge and deal experience required to evaluate and underwrite your risk. Our underwriters bring a full complement of skills and experience that includes international tax, tax disputes, and M&A expertise. With backgrounds in the Big 4 and law firms, as well as in-house and experience in both common law and civil law systems, we are able to deliver TLI policies on a broad spectrum and complexity of transactions and also pride ourselves on our high-caliber expertise and outstanding service.

Your team

Americas



Michael Saitta

Americas – Head of Tax, Americas
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Michael is Head of Tax, Americas in the Liberty GTS tax insurance team, based in our New York office. Michael provides bespoke coverage for a broad range of tax matters across the US, Canada, and Latin America, and is responsible for leading Liberty's Tax liability product in the region. Prior to focusing on the Tax liability product, Michael was an underwriter on the Liberty GTS Representations & Warranties team. Before joining Liberty GTS, Michael worked at PwC, where he oversaw tax due diligence and provided tax structuring advice for private equity and corporate clients on variety of M&A and internal transactions. Michael holds a JD from Brooklyn Law School, with a concentration in business law, and is admitted to practice in New York.

APAC

Kaihui Chong

APAC – Senior Tax Underwriter
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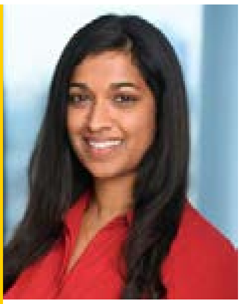
Kaihui is a senior underwriter based in Singapore. Kaihui's focus is on tax risks arising across the Asia Pacific region, including those arising in an M&A context and other specific transactional tax risks. Prior to joining Liberty GTS, Kaihui was with PwC Singapore, specialising in Financial Services Tax. She has a focus on international tax advisory and broad experience advising on areas such as the various tax aspects of mergers and acquisitions and corporate reorganisations. Kaihui is a member of the Institute of Singapore Chartered Accountants.

EMEA



Sonia Isaac

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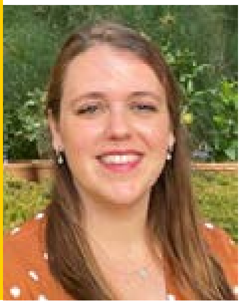
Sonia is a senior tax underwriter in the Liberty GTS's tax insurance team, based in London. She previously worked in PwC Australia's corporate tax team before taking an in-house tax role with a multinational gold mining company in Australia, where she provided support in relation to corporate tax and transfer pricing compliance and advisory, as well as various tax controversy matters. Since moving to the U.K. in 2017, Sonia has assisted leading the M&A tax workstreams on a range of corporate and mid-market private equity transactions, most recently as an associate director in Deloitte's M&A tax practice. Sonia is a member of the Institute of Chartered Accountants of Australia and New Zealand and is admitted to practice law in the state of Western Australia.



Pilar Baron Allue

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Pilar is an underwriter in Liberty GTS's tax insurance team, based in London. She has broad experience in complex international tax matters, mergers and acquisitions, reorganizations, and other cross-border transactions and flows. Prior to joining Liberty GTS, Pilar was a senior manager with KPMG, specializing in providing U.S. tax due diligence and structuring advice. She was previously an associate with Cuatrecasas in Spain, where she was in the tax and tax litigation departments. Pilar holds a Master of Laws from New York University and is a Fulbright scholar. She is admitted to the practice of law in Spain and New York, U.S.

Capacity and claims handling

We are able to deploy limits, in the right circumstances, of up to USD $200M on tax policies. As well as the advantage of being able to purchase a large limit from a single insurer, our clients benefit from our dedicated team of claims counsel that specializes in dealing with complex M&A claims, including those on tax policies.

This is part of our commitment to offering a first-class service across all aspects of our business. We recognize that offering an exemplary, in-house claims service adds value throughout the lifecycle of our relationships with our clients, from prior to inception of the policy, to the point of a claim and beyond.

Simon Radcliffe

Head of GTS Claims

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Simon joined Liberty GTS in February 2019 as a dedicated M&A claims counsel and now oversees the GTS claims practice. Simon qualified as a lawyer in 2008 after completing his training at CMS. He moved to Norton Rose Fulbright LLP in 2013, where he was a Senior Associate in the insurance team. During his time in private practice, Simon specialised in assisting insurers to investigate and assess policy claims across a range of business lines, with a particular focus on handling high-value M&A insurance claims. Simon has extensive London market experience and undertook secondments at two leading Lloyd's syndicates before joining the GTS team.

Luke Marcoux

Head of Americas Claims

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Luke is the Head of Americas Claims at Liberty GTS. Prior to joining Liberty GTS, Luke represented domestic and international insurers concerning coverage under various types of financial institutions policies including: directors and officers liability, representations and warranties, banker's blanket bond, and professional liability. Luke graduated from Franklin & Marshall College with a Bachelor's degree in English Literature and earned his law degree from Brooklyn Law School. He is admitted to practice in New York.

Appendix

TLI in action — case studies

Tax credit policies

TLI in action — case studies

The case studies below are a non-exhaustive, anonymized list of examples of risks which we have actually insured globally.

Corporate taxes — forfeiture of tax losses

- An industrial company acquired another industrial company for a substantial sum. The target had brought forward tax losses (to which value was attributed) which it was gradually utilizing. In order to drive operational efficiencies, the acquirer transferred its own profitable business to the target. One likely result of this was that tax losses might be utilized faster.
- The acquirer was concerned that the transfer would amount to a major change in the target's trade/business, such that the tax losses would be forfeited.
- We reviewed the proposed changes and were satisfied that, under the relevant legislation, there should be no major change to the target's trade/business for tax purposes. We provided insurance cover for the additional corporate tax which would be payable (including in future periods) in the event of the tax loss forfeiture, thereby giving the acquirer greater certainty around future cash flows and the value of their investment.

Corporate taxes — real estate investment trust (REIT) status

- An investor was considering the acquisition of a large U.S. REIT owning commercial properties. REITs are entitled to beneficial tax status, provided certain requirements are met. A number of potential REIT qualification issues were identified during the diligence process, including a mix of operational, shareholder-level, and historical transaction-related risks.
- The seller was not willing to provide an indemnity. In order to help the deal progress, the seller and buyer agreed to procure a TLI policy and share the costs of this. The TLI policy covered the REIT qualification status and was ultimately combined with a R&W policy to provide increased comfort for the buyer under a single policy.
- Working with advisers, we reviewed each of the potential REIT qualification issues and were able to provide insurance cover for these well in advance of the deal closing, such that the deal was not delayed due to this material issue.

Corporate taxes — S-corporation classification

- The target, a manufacturing company, was originally organized as a traditional C-corporation. However, two years prior to the proposed acquisition, it had elected S-corporation status for U.S. federal income tax purposes.
- Several risks were identified during diligence which may have invalidated the target's S-corporation election (e.g., late/missing filings) which would have resulted in multiple tax exposures (e.g., corporate tax on income, as well as on built-in gains from the historical C-corporation periods and loss of a valuable step-up). Both parties therefore wanted additional protection and a risk transfer against this potentially material risk arising.
- We were provided with, and reviewed, supporting documentation and were able to insure the position that the S-corporation election would be respected by the tax authority. This allowed the acquisition to be completed.

Corporate taxes — unique or unusual business structures

- A target's business involved a proprietary financial instrument trading strategy involving complex hedging instruments.
- During diligence it was identified that, although extensive advice had been taken on the treatment, given that the structure was unusual and complex, there was a remote risk that the tax treatment of these transactions could be challenged and certain deductions could be disallowed or unwound, resulting in a substantial unexpected tax bill. This tax bill could also, due to the structure, be assessable directly against the target's owners.
- The buyer was ultimately satisfied that the risk was remote; however, due to the potential direct liability of the target's owners (the sellers), the sellers sought a TLI policy.
- We reviewed several strong legal opinions (including the original contemporaneous opinions) supporting the historical treatment and strategy. Following extensive further underwriting to analyze this complicated structure, we were ultimately able to insure the sellers against the risk of the substantial tax liability arising and being assessed against them.

Tax on capital gains — tax-neutral demergers/ spin-off

- A large European infrastructure business carried out two separate branches of activity. These branches had different management, different customers, and ultimately suited different investor profiles. Therefore, to maximize operational efficiency and investment potential, the two businesses were demerged through a series of steps over several months.
- Under the relevant law (derived from EU law) and general anti-avoidance rules, demergers are tax neutral provided they have sufficient business justification and are not undertaken mainly for tax reasons. Had the demerger not been tax neutral, this would have crystallized a dry tax charge equivalent to around a quarter of the value of the whole business.
- We reviewed the commercial rationale for the demerger and assessed it in light of any potential tax impacts and were able to provide insurance cover for the risk that the tax-neutral treatment did not apply. This gave the insured additional comfort around completing the demerger.

Tax on capital gains — availability of double taxation agreement benefits

- In a group restructuring exercise, an offshore company indirectly holding real estate in North Asia was transferred to a new offshore holding entity.
- Under relevant local law, such an indirect transfer could potentially result in a nonresident capital gains tax charge. However, the offshore company was located in a jurisdiction which had entered into a relevant double taxation agreement with the country where the real estate was located.
- We considered various issues, such as whether the offshore was a real estate holding company for the purposes of the domestic law (which depended on the value of real estate assets held versus other assets) and whether the benefits of the treaty were actually available (which depended on fulfilling certain substance requirements and satisfying the principal purpose test).
- Based on this review of the legal and factual position, we were able to insure the risk and this therefore allowed the group restructuring to proceed without retaining the risk of the future capital gains tax charge arising.

Tax on capital gains — characterization of gains

- A seller in a major Asian holding jurisdiction had acquired its investment in a target over several years, with its latest capital contribution completed approximately two years before the seller decided to sell its shares in the target.
- Under local law, gains derived from the sale of shares of a preferential nature or shares with redeemable or convertible features potentially fall outside of the safe harbor rules, which could result in their being subject to tax unless they are determined to be capital gains.
- On a holistic assessment of facts surrounding the investment, including considering the law and practice in relation to the badges of trade, we were able to insure the risk that the gains should constitute capital gains and not be taxable under the relevant local law, thereby providing certainty to the seller.

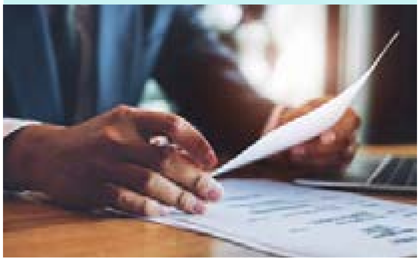
VAT and land transfer tax — transfer of going concern (TOGC)

- A property developer acquired a parcel of land for development. The seller had entered into a lease (on arm's length terms) with a third party shortly before the sale where the rent was relatively small compared to the value of the land.
- A risk was identified that the sale was not a transfer of a going concern (TOGC) for VAT purposes, due to the timing and relative value of the lease. If it was not a TOGC, then VAT and additional land transfer tax would be payable, adversely impacting the buyer's cash flows. The buyer and seller could not agree who should bear the risk.
- We reviewed the legal and factual position that the transaction should be treated as a TOGC and were able to insure the buyer and seller against the risk arising. This allowed the transaction to complete as the buyer and seller had otherwise been unable to agree with whom the risk should sit.

Real estate transfer tax (RETT)

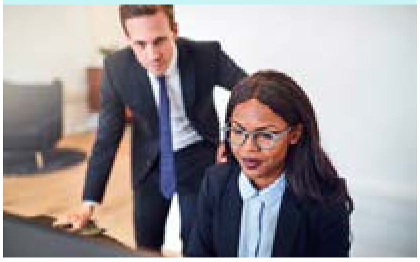
- A European property investment company was engaged in the purchase of the minority share of a partner in a particular investment.
- Due to certain complexities within the structure and recently introduced RETT rules, there was some concern that the purchase and associated restructuring involving a further minority investor would be treated as a trigger event such that additional RETT would be payable.
- We reviewed the transaction and restructuring plans, as well as the interrelationships between the various investors and management of the structure and were able to provide insurance cover against the RETT arising, thereby allowing the deal to progress as neither the seller nor buyer was willing to bear the additional RETT cost.

Transfer pricing (TP) — shareholder loans



- A financial institution was looking to liquidate one of its funds following the sale of its remaining investments. However, the fund had given several indemnities in relation to TP risks. The buyer agreed to release such indemnities provided that an insurance solution was obtained, which included substantially similar cover to the indemnity.
- The risks related to intragroup loans which had been in place for several years from an overseas top holding company. These loans were subordinated, carried high rates, and resulted in relatively high leverage for the borrowers. Nevertheless, the loans and interest were all appropriately repaid.
- With assistance from TP experts, we assessed whether the leverage was excessive and the rates were at arm's length by checking the comparables and methodology used by the investor. Based on this, we were able to provide the requisite level of insurance cover for any TP adjustments and the investor was consequently able to liquidate their fund.

Withholding tax — dividends and interest



- A private equity house with a presence and investments across Europe managed its investments on a day-to-day basis from a Luxembourg hub where it had been based for many years, had many employees, a significant physical presence, and sound commercial reasons for basing itself there. As part of a transaction, one of its investments was due to pay a large dividend to the Luxembourg parent.
- The risk was that, following the uncertainty created in the European Union by the Danish Cases, in particular around beneficial ownership, substance, and the purpose of a structure, withholding tax (WHT) should have applied to the dividend.
- We reviewed the historical reasons for the structure, how it was currently operated (including discussing the operations with local management team members), and how the dividends were proposed to be used. Based on this, we were able to put in place insurance cover against the risk that WHT was payable on the dividends to be paid, subject to the insured undertaking to maintain its existing structure and following any changes to guidance in this area. This provided greater certainty to the insured in releasing cash from the structure for use elsewhere and to improve the investment's rate of return.

Withholding tax — qualification for reduced rate based on trust status

- In a major APAC jurisdiction, qualifying trusts which, broadly, are managed locally and don't engage in a trade, can generally access a reduced WHT of half the normal rate on fund payments to foreign residents provided that there is an effective exchange of information agreement in place between the jurisdictions.
- Due to the complexity and history of the trust structure, there was a concern that, even though the trust had historically qualified for the reduced rate, the contemplated disposal of an investment might taint the trust's nontrading status under the rules, which would result in higher rates of WHT on certain contemplated payments.
- We reviewed the background, as well as historical and relevant law and precedent, and were able to insure the WHT taken by the trust (i.e., our policy covered the additional WHT that would arise on the payments if the qualifying status were lost), thereby allowing the payments to be made with greater certainty.

Employment and income taxes — employment versus investment income

- A European set of renewable energy investments was partly sold to, and obtained additional investment from, a private equity fund. As a result, the investment was indirectly held by a mixture of the fund, working managers, and founders. While the individuals had invested into the same share class, and for the same values, as the fund, the shares still contained standard restrictions on transferability and drag and tag rights.
- Given that some of the individuals still worked as managers on a day-to-day basis, there was a concern that a future flow of dividends and an ultimate capital gain on sale could be recharacterized as employment income. This would have resulted in withholding obligations in the structure and would have undermined the fund's investment model and made a sale more challenging.
- Although it was an active area of interest for tax authorities, we reviewed the intended shareholding structure, its operation, financial models, and relevant case law in detail. We were satisfied that the individuals' income in this case was correctly classified as investment income and were able to insure against the risk that the forecast dividend flows and capital gains during the life of the investment would be treated as employment income.

Employment and income taxes — 280G golden parachute payments

- A transaction involved a series of material golden parachute payments to a senior individual in an organization. The determination of the proper tax treatment of such payments requires consideration of a number of Internal Revenue Code provisions in the U.S., in particular the section 280G change in control rules.
- The seller, a European company selling a U.S. subsidiary, did not want to provide an indemnity or escrow relating to the proper U.S. tax treatment for the payment.
- We reviewed the seller's carefully prepared analysis and calculations describing each of the payment types and amounts in detail, and were provided with additional support for the treatment of the payments as reasonable compensation in the circumstances.
- Following this review, we were able to provide a bespoke policy covering the several potential different scenarios or outcomes from the different potential treatments of the payments. This provided sufficient coverage such that no indemnity from the seller was ultimately required.

Tax credits — employee retention tax credits

- In the midst of the COVID-19 pandemic, the U.S. government passed a number of relief measures, including the Employee Retention Credit (ERC) under the Coronavirus Aid, Relief and Economic Security (CARES) Act to help spur a speedy recovery and provide support to struggling businesses.
- The insured was in the process of applying for a substantial ERC while simultaneously undergoing a major refinancing across several lines of business. The lender became aware of the tax credit and treated the future receipt of this credit as a material cash-flow item for the business, and required the business to somehow guarantee receipt of the credit.
- However, at the time the standards and requirements to qualify for, calculate, and ultimately file to receive the tax credits were ambiguous and uncertain, and therefore required insurance to de-risk this uncertainty.
- We received a detailed memorandum from a specialist ERC adviser setting out the justification and support for the insured's ability to claim the tax credit and the amounts. Following a detailed review, we were able to insure the risk that the full amount of the tax credit would not be available, thereby helping to allow the insured's refinancing to proceed.

Tax credit policies

Tax credit policies are principally used by investors to insure the economics of an investment which relies (at least partially) on the availability of, and ability to utilize, tax credits in order to generate the intended investment return.

Like standard TLI policies, tax credit policies will cover additional tax payable as the result of a successful challenge, in this instance over a covered period due to the loss of the relevant tax credits or similar attributes. They also can cover contest costs, interest, penalties, and gross-up.

Hybrid (including R&W) policies: in some situations, coverage may be provided for a limited set of typical representations and warranties given to an investor or purchaser of a project in respect of tax credits, in addition to one, or a combination, of the coverage types noted below.

Renewable energy tax credit policies

Historically, tax credit policies have frequently been used in the U.S. to insure the availability of investment tax credits (ITC) or production tax credits (PTC) in connection with renewable energy facilities. Often the fact pattern of an investment is not clearly within the scope of tax authority guidance or the guidance is ambiguous. Parties such as developers and capital providers, (including tax equity investors) can use tax credit policies to de-risk this uncertainty and protect the returns on their investments. Liberty GTS has a proven track record of insuring tax credit policies in the renewable energy project space and understands that each project has distinctive strategies and approaches.

For the most common renewable energy tax credit policies, coverage may include, among other aspects:

- **Qualified basis** – that the fair market value for a project is used to calculate the available tax credits
- **Beginning of construction** – that the year in which a project began construction is correct, which determines the rates of the tax credits available
- **Continuity** – that, in the event the construction timelines exceed the prescribed safe harbor period, the "continuous efforts" requirement has been (or continues to be in real time) met, as otherwise the project might not be eligible for the original tax credit rates
- **Repowering** – that, where an older renewable facility or installation is restored, it is sufficiently new to qualify for a new set of tax credits (subject to an 80/20 appraisal)
- **Investment structure** – that the structure which allocates tax credits between the parties will be respected to ensure that investors receive their anticipated level of tax credits

Other main insurable U.S. tax credit types

- **ERCs provided for under the CARES Act:** these were established as a relief program for employers in response to the COVID-19 pandemic. The receipt/value of these credits may be insured where a taxpayer meets the requisite criteria and this can be underwritten. Insurance has been used in this instance to secure access to debt/credit facilities in conjunction with these credits.
- **Low Income Housing Tax Credit (LIHTC)**: these tax credits are granted in connection with the development, construction, and repair of affordable housing. The tax credits mean that low-cost investment can be attributed to such projects, and tax credit insurance allows for additional investor comfort that these tax credits are available.