Frequently Asked Questions

1. **What is Tax Insurance?**

   Tax Liability or Tax Opinion Insurance can help a company reduce or eliminate an unwanted or contingent liability arising from a successful challenge by the I.R.S. and/or other tax authority of a company’s tax treatment of a current, pending or historical transaction or investment.

2. **What is FIN 48?**

   In its desire for greater transparency and consistency among companies in their accounting for income tax liabilities, the Financial Accounting Standards Board (FASB) introduced the guidance known as “FIN 48.” Its formal name is FASB Interpretation No. 48 “Accounting for Uncertainty in Income Taxes: An Interpretation of FASB Statement No. 109.” FIN 48 requires companies to analyze each material tax position in a two step process relating to the likelihood of the tax authority respecting the underlying legal analysis and the amount assigned to the tax benefit.

3. **What is FIN 48 Insurance?**

   FIN 48 Insurance is a version of tax insurance aimed at US public companies concerned with mitigating adverse economic and reputational consequences resulting from the I.R.S. or other tax authority challenging a previously unrecognized income tax liability, or in FIN 48 parlance, a previously recognized tax position.

4. **How is FIN 48 Insurance different from Tax Insurance?**

   FIN 48 Insurance is written on an annual basis and can be adjusted by an insured each year to take into account changes relating to the insured tax positions. FIN 48 insurance also can be written with respect to multiple tax positions. Traditional tax insurance typically has been written for specific single tax positions with a 6 year policy purchased upfront. Transactional tax insurance has been used more actively (but not exclusively) by Private Equity Firms, Hedge Funds and situations involving M&A activity.
Frequently Asked Questions

5. What is Schedule UTP and Schedule UTP Insurance?

Schedule UTP is the form on which large US Corporations must disclose uncertain tax positions on their corporate tax returns. The UTP standards are similar to FIN 48. Schedule UTP Insurance refers to the version of tax insurance aimed at mitigating financial and reputational impacts resulting from an IRS challenge of a tax risk which has been identified through the UTP process.

6. Who Are Our Likely Users of FIN 48 Insurance?

- US public companies
- After 2010, US private companies
- Companies with more complex and far flung operations and structures, i.e., many subsidiaries operating in many tax jurisdictions.
- Companies who have entered into complex corporate or financing transactions which they are not certain of the tax results.
- Professional advisors, such as lawyers and accountants, frequently identify the need for transactional tax insurance and will often be involved in the FIN 48 Insurance / Schedule UTP Insurance processes.
Frequently Asked Questions

7. What are some of the situations which can be covered by FIN 48 Insurance or Transactional Tax Insurance?

- FIN 48 Insurance can be written for a wide range of federal, state and local and foreign tax situations. Some of the areas where tax insurance has been underwritten to date are, for example:
  - Tax-free Reorganizations
  - Section 355 Spin-Offs
  - Tax-free Mergers – US, International
  - Partnership Issues
  - Employee Benefits Issues
  - Section 280G Golden Parachute Issues
  - Real estate acquisitions/sales
  - NOLs
  - Tax Credits (Low Income Housing, New Markets Tax Credits, State Solar Renewable Energy Credits (SRECs), etc.)

  - More fact intensive issues, such as transfer pricing, are more challenging to insure and underwrite, but may be explored with insurers.
  - Tax Shelters (Reportable and Listed Transactions) are not insurable.

8. Can FIN 48 Insurance and Tax Insurance cover foreign and state and local tax issues?

   Yes

9. Why do companies buy FIN 48 Insurance?

   FIN 48 Insurance protects against an unexpected hit to earnings relating to unrecognized positions for FIN 48 purposes. The potential for having to adjust a company’s FIN 48 disclosures when the IRS or other tax authority weighs in is a continuing source of concern to tax managers, CFOs and boards of directors. Similar concerns come into play with Schedule UTP.
Frequently Asked Questions

10. Why do companies buy Transactional Tax Insurance?

Various reasons, for example …

• Alternative to Private Letter Ruling from the IRS
• Small Probability of Catastrophic Loss
• Allocation of Economic Risk of Tax Loss
• Counterparty credit risk in tax indemnity agreements

11. What is the cost of Tax Insurance?

FIN 48 Insurance and Schedule UTP Insurance are annual policies with an annual premiums generally in the range of 1.9% to 3% of the policy limits insured (i.e., the annual premium for $100M of coverage at a 2% rate is $2M).

Transactional tax insurance, by contrast, typically is written for a one-time, upfront premium (and a 6 year term) for 4% to 6% of the limits insured, typically covers increased M&A exposures.

12. Is this an off – the – shelf product?

No, the tax policy – whether for FIN 48, Schedule UTP or a transactional risk - is not a “shelf” policy, but rather a negotiated indemnity agreement that is customized to ensure that it meets the unique needs of each transaction and satisfies each client’s risk transfer and other expectations.

13. Are there extensive exclusions?

No, tax policies actually have relatively few exclusions. The coverage operates comparably to a typical tax indemnity in a stock purchase agreement.

14. Will insurers enter into confidentiality agreements?

Aon and insurers routinely enter into confidentiality agreements with clients.
Frequently Asked Questions

15. What is the market capacity?

Tax insurance programs up to $250M are available. Most insurers in this market can provide $25M or more by themselves. Larger programs may be possible. We anticipate similar capacity is available for FIN 48 Insurance and Schedule UTP Insurance.

16. What is the Due Diligence Process?

Insurers typically seek to confirm that the intended tax treatment should be upheld if challenged by the IRS or the relevant tax authority. Depending on the insurer and the tax issue(s), outside counsel may be retained with the cost of due diligence paid by the client. Due diligence costs tend to range from $25,000 to $50,000, but will depend on the number of issues involved and scope of the due diligence. Frequently, the insurers will agree not to exceed a maximum amount without the insured’s consent to allow these costs to be controlled. FIN 48 Insurance and Schedule UTP Insurance will be underwritten based on a review of the companies’ FIN 48 analysis by the insurer and counsel.

17. Is a Tax Opinion Required for Underwriting?

While it makes for a more efficient underwriting process to provide insurers with a road map, insurers will use their own counsel to underwrite a transaction in the absence of a tax opinion or memo. As noted, FIN 48 Insurance will be underwritten based on a review of the companies’ FIN 48 analysis.

18. Have Insurers paid Claims?

Yes. The underwriters of tax insurance have experienced losses and paid claims. However, particularly in the transactional context, the real benefit of the policy often is that it allows a buyer and seller to move past a difficult negotiation issue and make a deal.
Frequently Asked Questions

19. Why Aon Financial Solutions?

Aon Financial Solutions works with private equity and corporate clients and their principal legal, accounting and financial advisors to address transactional risk in M&A and financing transactions. Our team, which is led by Michael Schoenbach and Gary Blitz, Managing Directors of Aon Financial Solutions, has significant depth experience with tax insurance, and is the only major broker which has identified FIN 48 Insurance and Tax Insurance as an area of specialty. Michael is a former CPA and Gary practiced tax and insurance law for 20 years prior to joining Aon. They are supported by the Aon Private Equity and Transactional Solutions Group to make up the strongest team in the industry.

20. Who can I contact to learn more?

<table>
<thead>
<tr>
<th>Name</th>
<th>Office</th>
<th>Cell</th>
<th>Email</th>
</tr>
</thead>
<tbody>
<tr>
<td>Michael Schoenbach</td>
<td>(212) 441-2337</td>
<td>(917)370-2899</td>
<td><a href="mailto:michael.schoenbach@aon.com">michael.schoenbach@aon.com</a></td>
</tr>
<tr>
<td>Gary Blitz</td>
<td>NY (212) 441-1106 DC (202) 429-8503</td>
<td>(301)704-4640</td>
<td><a href="mailto:gary.blitz@aon.com">gary.blitz@aon.com</a></td>
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Disclaimer
The descriptions of insurance products are for discussion purposes only. They are not offers of insurance. The products offered by a particular insurer may change and may differ from these descriptions in material respects.
Bringing Certainty to the Uncertainty of Schedule UTP

David S. De Berry, Esq.
Gary P. Blitz, Esq.

IRS Commissioner Douglas H. Shulman calls it a “game changer.” For the first time in U.S. history, taxpayers (initially large corporations) must disclose to the IRS their uncertain tax positions as part of their federal income tax return filings. For the second time in four years, organizations must come to terms with a new transparency doctrine that is certain to enhance the IRS’ enforcement capabilities. Again, U.S. companies will be analyzing their material tax positions and determining which must be disclosed. However, these disclosures will now be made directly on tax returns filed with the IRS. And these disclosures will now require a concise description of each uncertain tax position. What if that disclosure is found to be inadequate or leads to an assessment for which no financial reserve was accrued?

Tax insurance is a tool that will allow such companies’ tax and financial executives to take steps to manage that exposure and protect themselves from associated liability.

This article briefly summarizes the nuts and bolts of the new filing requirements, and describes what tax insurance is and how it can be used to mitigate the risk of an adverse tax determination.

Who Must File Schedule UTP? Will Your Corporation or Client Be Affected?

Schedule UTP is applicable to every public or privately held corporation that issues or is included in audited financial statements, is required to file form 1120, 1120-F (including a protective return), 1120-L or 1120-PC., has one or more uncertain tax positions and meets the total asset threshold. Essentially, this means that Schedule UTP applies to all subchapter C corporations, foreign corporations with U.S. source income, life insurance companies and property-casualty insurance companies that meet the asset threshold, have uncertain tax positions and issue or are included in audited financial statements.

The IRS is phasing-in over five years the reporting requirements imposed by Schedule UTP based upon asset size:

<table>
<thead>
<tr>
<th>Tax Year Requiring Schedule UTP</th>
<th>Asset Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>$100M or more</td>
</tr>
<tr>
<td>2012</td>
<td>$50M or more</td>
</tr>
<tr>
<td>2014</td>
<td>$10M or more</td>
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</tbody>
</table>

Aon
The asset threshold is based on worldwide gross assets as of the beginning or end of the tax year (whichever amount is higher) as reported on the corporate tax return. This generally should follow the corporation’s books, records and accounting methods. An affiliated group filing a consolidated return will file a Schedule UTP for the affiliated group as part of that return.

A corporation has an uncertain tax position if:

1. The corporation or a related party has recorded a reserve with respect to a U.S. federal income tax position taken in its current tax year or a prior tax year in its audited financial statements (Generally speaking, under the mandate of FIN 48, these are material positions which have less than a more likely than not (50%) expectation of success if challenged by IRS); or

2. The corporation or a related party has not recorded a reserve with respect to a U.S. federal income tax position taken in its current tax year or a prior tax year in its audited financial statements on the basis that the corporation or related party expects to successfully litigate the tax position. (FIN 48 provides an exception from its reserving and disclosure requirements where a successful litigation outcome is expected.)

**Transition Rule May Be A Huge Break.** Part II of Schedule UTP addresses prior tax years. Part II will only be operative in future tax years. It does not need to be completed for tax positions taken before the 2010 tax year. Thus, a corporation is not required to report on Schedule UTP a tax position taken in a tax year beginning before January 1, 2010, even if a reserve is recorded with respect to that tax position in its audited financial statements issued in 2010 or later.

The IRS, however, is considering whether to extend Schedule UTP reporting requirements to include pass-through entities and tax-exempt entities and is expected to issue additional guidance on the extension during 2011.

**What Must Be Disclosed on Schedule UTP?**

As to each uncertain tax position that either has a reserve or has no reserve because the taxpayer expects to litigate the position, Schedule UTP requires a concise description of the tax position, including a description of the relevant facts affecting the tax treatment of the position and information that reasonably can be expected to apprise the IRS of the identity of the tax position and the nature of the issue.

The IRS seeks a level of disclosure that would be consistent with the disclosure required under Form 8275, used to avoid certain accuracy-related and/or preparer penalties. The form is used when a taxpayer is taking a position that is contrary to a revenue ruling, for example.
The instructions for Form 8275 require a “description of the relevant facts affecting the tax treatment of the item. To satisfy this requirement you must include information that reasonably can be expected to apprise the IRS of the identity of the item, its amount (not required for UTP) and the nature of the controversy or potential controversy [which can include] a description of the legal issues presented by the facts.”

The concise description need not include the rationale for the position, the basis for the uncertainty or the taxpayer’s assessment of the position.

The Instructions for Schedule UTP offer the following examples of concise descriptions:

- **Allocation of M&A Costs**: “The corporation incurred costs of completing one business acquisition and also incurred costs investigating and partially negotiating potential business acquisitions that were not completed. The costs were allocated between the completed and uncompleted acquisitions. The issue is whether the allocation of costs between uncompleted acquisitions and the completed acquisitions is appropriate.”

- **Recharacterization of Partnership Distribution**: “The corporation is a member of Venture LLC, which is treated as a U.S. partnership for tax purposes. The corporation received a cash distribution during the tax year from Venture LLC. The issue is the potential application of section 707(a)(2) to re-characterize the distribution as a sale of a portion of the corporation’s Venture LLC interest.”

- **Allocation of Environmental Clean up Costs**: “The corporation incurred costs during the tax year to clean up environmental contamination that was caused by its activities in prior years at site A, which contains both the manufacturing facility and its corporate headquarters. The issue is the allocation of the cleanup costs between X’s production and non-production activities under section 263A.”

The corporation must separately flag transfer-pricing positions. The potential application of Schedule UTP is expansive.

Size is a factor too. A corporation must rank by size each tax position listed in Part I of Schedule UTP. Size is determined by the amount of reserve taken for a position (which may include the interest and penalties, if reserved for the position) or, with respect to positions not reserved because of an expectation to litigate, the relative amount of tax, interest and penalties. If the relative size of the tax position is equal to or greater than 10 percent of the aggregate tax reserves for U.S. income tax uncertainty, it must be separately flagged as a major tax position.
Potential Impact on Public Companies and Likely Affected Industries

The requirement to confess and rank created by Schedule UTP can be particularly problematic for public companies. It is certain to raise liquidity concerns in the eyes of analysts following companies with large reserves for U.S. tax positions.

As for amounts not reserved, the interplay between GAAP, Schedule UTP, securities law and corporate governance will be particularly complex. To the extent that the discrepancy between tax reserves taken for financial statements and the actual exposure under Schedule UTP widens and imposes liquidity problems, the duty to speak and/or implement proper corporate governance would appear to heighten.

IRS Commissioner Shulman has voiced his opinion that directors are legally charged with oversight of their company’s compliance with tax laws. He has proposed a number of detailed inquiries that should be made by audit committees. These could well become the standards that a plaintiffs’ attorney will seek to impose upon the board after an IRS examination of Schedule UTP leaves the company with a significant liquidity problem or diminished net worth from a significant charge to earnings.

Mitigating the Risk of Adverse Tax Consequences

While aggressive tax positions are not likely to be insured, the enormous uncertainty inherent in the U.S. tax law leaves companies in need of tools to mitigate the risk of an unsuccessful outcome in the face of a good faith effort to properly treat sound business transactions. There is a significant need to manage the risk of positions purportedly not disclosable under FIN 48 or in Schedule UTP.

The risk that one or more uncertain tax positions will be successfully challenged can be transferred to an insurance carrier in exchange for a premium. Should an insured tax position be successfully challenged by the IRS, a tax insurance policy would pay an amount equal to the tax, interest and penalties due, in addition to contest cost and a gross up. Of course, this is subject to policy terms and conditions, limits and retentions.

Tax Insurance is a tool that has been in use since the mid-1980s and has become a tried and true means to obtain certainty regarding a tax position where traditional sources of comfort are unavailable, impractical or simply would take too long. The potential scope of tax insurance is quite broad from corporate issues (reorganizations, section 338(h)(10) elections), net operating losses, partnership issues, golden parachute excise taxes and so on. Transaction parties have often relied upon tax insurance to navigate tax exposures in M&A transactions and
corporate taxpayers are now seeing it as a means to address ongoing business tax risk.

Several factors support the consideration of tax insurance. The obvious certainty it provides can be enormously valuable in planning and structuring transactions. Schedule UTP (as FIN 48 before it) requires companies to reflect upon their tax positions and judge whether disclosure is required. An outgrowth of this is the harsh reality that – apart from a UTP or FIN 48 disclosure - many companies and their tax and financial executives charged with administering their tax compliance function will have significant uncertainty inherent in their balance sheets. FIN 48 and Schedule UTP actually use a fairly low standard of 50 percent likelihood of success with the flipside of a 50 percent likelihood of a tax loss. Tax insurance can bring certainty to this picture and provide support (and needed liquidity) where the decision not to disclose is reasonably made, ultimately challenged and proven wrong.

An understanding of the appetite of a tax insurance underwriter is an important starting point. Tax insurance seeks to cover tax positions taken for good business reasons. Tax shelters (reportable and listed transactions) are off-limits. Underwriting appetite tends to center around “should” level risks, often considered to be a two-thirds likelihood of success. Unlike a tax professional writing an opinion subject to the strict requirement to rely upon legal authority, an underwriter can consider outside facts, nonbinding guidance, transaction structure and policy structure and their view of legislative intent based on informal indicators in reaching their underwriting judgment. This allows policies to be written for a position in the “more likely than not” area.

How to Obtain Tax Insurance

As is the case with most specialized lines of insurance, an insurance broker and an insurance underwriter specializing in the particular coverage often bring the added value with respect to pricing, terms and dispatch.

The application process typically begins with a non-disclosure agreement among the parties, followed by a draft Schedule UTP completed by the corporate taxpayer, a FIN 48 memorandum that should indicate which uncertain tax positions have been reserved for financial statement purposes, a loss calculation on the tax positions sought to be covered and any legal opinions that may address any such tax positions.

The broker will assist the taxpayer through the application and underwriting process and select specialized underwriters who will provide prompt feedback as to preliminary questions, terms and conditions. The entire process can generally be accomplished in the course of a couple of weeks.
Schedule UTP has added a new degree of uncertainty to an already uncertain tax world. As companies consider their material positions and their proper treatment under FIN 48 and Schedule UTP, risk advisory and mitigation tools such as tax insurance are worthy of serious consideration to manage the risks associated with these disclosure requirements.

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How M&A Is Weaving the Web

» SOX Pressures on IP Assets

» Is Another Refco Looming?
Peace of Mind In Handling a Target’s Taxes

Tax insurance can cut the risk of a post-deal financial blow

By Gary Blitz
Inheriting a target’s tax attributes historically is one of the trickiest challenges that a buyer faces in the deal process. Even with the most diligent and expert effort to gauge the complete picture, there rarely is complete assurance that the combined company won’t be dunned for unpaid state, federal, or foreign taxes -- allegedly or actually due -- well after the deal closes. The sums can be sizable, and contesting the delayed bills can be complex, expensive, and time-consuming. To cushion the jolt, acquirers can purchase tax insurance -- a risk management tool for defraying the costs.

In this article, Gary Blitz, attorney and executive of Aon Financial Solutions, explains what tax insurance is all about and how it fits into dealmaking at a time when the tensions between businesses and tax regulators such as the IRS are increasing and controversial new formats to avoid or reduce tax loads are coming under attack. To highlight the most important points, the article has been structured in a question-and-answer format.

For starters, what is tax insurance?

Tax insurance is one of a suite of risk-transfer insurance products -- along with reps and warranties insurance, litigation buyout insurance, and environmental insurance -- that are aimed at addressing deal risks. Tax insurance provides protection to a taxpayer in the event that a tax position it has taken is challenged by the IRS or a state, local, or foreign taxing authority. The policy can cover tax liability, interest, penalties, contest costs, and a gross-up.

In concept, it’s quite simple. The policy works in a manner similar to a private letter ruling from the IRS. The insured taxpayer represents to the insurer the facts underlying a transaction and the policy covers what the tax law will apply to those facts in the manner intended.

The insured taxpayer sets the limit of liability it buys. Typically, this number is based on potential tax liability, interest, penalties, contest costs, and gross-ups. Some insured parties will seek to cover the total of all of these potential costs. Others are more practical about this decision and seek to insure only a portion. In that case, the premium costs are smaller because less insurance is bought.

Is tax insurance different from "tax opinion insurance"?

Not really. The names often are used interchangeably. The typical scenario involves a policy that covers a risk that a tax expert has opined or advised on. I like to think of the tax insurance product as being broader than tax opinion insurance because it will address situations in which opinions may not be issued and ancillary risks, which might not be subject to opinions such as recapture of historic tax credits due to physical damage or foreclosure.

Why do acquirers buy tax insurance?

The reasons vary. Private equity firms use the product, as well as companion products addressing reps and warranties, litigation, and environmental risks, to avoid a large unanticipated tax payment that was not modeled in the acquired company’s cash flows.

Coverage often is used to provide comfort to a third party. For example, a buyer and a seller might disagree over the treatment of a tax attribute of a target company. The insurance provides a means to address concerns of the buyer if the seller’s view of its tax position does not pan out.

Another example might be the inability of a seller to provide an indemnity, perhaps because it is a PE fund
winding up and seeking to return funds to investors. Tax insurance is a mechanism for providing the comfort of an indemnity to a buyer -- without the seller's having to stay in existence to address the contingent liability associated with the tax issue at hand.

**Do sellers buy coverage?**

Absolutely, sellers are frequent buyers. Deal dynamics often dictate who makes the call to buy the insurance. It may be the seller who is seeking to address an issue raised by a potential buyer so it doesn’t have to provide an indemnity or minimize the need for an indemnity. Another scenario we see is a seller seeking to prepare a company or asset for sale and using tax insurance to simplify the due diligence process.

In either scenario, the cost of the insurance will fall on the seller in practical terms, either as a direct premium payment or an actual or implicit price adjustment by the buyer to defray the cost. An exception to the rule is the case in which the buyer proposes a structure that is beneficial in the context of the buyer’s tax attributes but is irrelevant to the seller. In that case, the insurance is for the buyer’s benefit and the buyer might pay the cost of the insurance.

**Why not simply get a private letter ruling (PLR) from the IRS?**

There are various reasons why a taxpayer might forego the ruling process and opt for insurance. These begin with unavailability of a ruling under IRS ruling policies. The list of issues the IRS will not rule on in advance in the corporate area is extensive. Confidentiality and timing concerns relating to getting a pending deal closed also come into play.

**What about timing? Describe the insurance process.**

If a deal requires speed, the insurance process can move fairly quickly. Typically, a non-binding indication of insurer(s) interest can be obtained in about a week to 10 days. Often, this can be based on non-confidential information or draft documents. If acceptable to the client, a more detailed due diligence stage would begin.

Potential hidden costs to a buyer include liability for the target company’s failure to satisfy its tax withholding obligations with respect to deferred amounts.

This can take about two to three weeks but often can be accelerated, as a transaction schedule requires.

**What sort of situations can be insured?**

Policies have been used to cover a broad range of tax risks. It is most common to see the policies used in a deal setting, but ongoing tax situations also can be covered. Insurers, however, are most comfortable with sound business transactions with tax implications that have greater financial consequences than the parties can afford to or choose to bear.

Some examples of insurable situations are tax-free reorganizations, tax-free spin-offs, treatment of redemptions, loss of Section 338 (h)(10) election due to defective S corporation status, golden parachute excise tax, structured real estate transactions, and net operating losses. Basically, if a situation is capable of a tax expert’s analysis, it probably is insurable.

**How about tax shelters or aggressive transactions?**

No and no. Neither tax shelters nor aggressive deals are the sort of transactions insurers want to insure. They are looking to provide comfort where there is a sound tax structure and business purpose. Generally speaking, insurers look for a "should" level of comfort with a deal. By the way, buying tax insurance does not trigger reporting requirements.

**On more technical points, will tax insurance protect the insured for the statute of limitations?**

Yes. At the option of the client, the policy can be designed to cover the three-year or six-year statute of limitations applying to various tax liabilities.

**What is the cost?**

There is a prepaid premium, which is a percentage of the amount of coverage purchased. Depending on the insurer's underwriting judgment on the likelihood of loss, limits, retention, and term, the premium tends to be in the range of 5% to 8% of the limit purchased. For example, premiums on a $10 million policy might range...
from $500,000 to $800,000.

How do insurers underwrite the policy? Is a legal opinion required to obtain insurance?

An insurer forms an independent view of the structure of a transaction and bases its underwriting decision on that view. Some insurers use outside counsel, others use in-house expertise.

While information on a deal obviously has to be provided to insurers, it does not have to be in the form of an opinion. We find, however, that from the policyholder’s viewpoint, there are benefits to providing an insurer with a well thought-out and credible roadmap to understanding the risk. This may be in opinion form, a memorandum, or even a ruling request. An opinion offers an excellent way to do this and has added credibility if it comes from the insured’s tax or legal adviser. It also can be more cost effective than paying the insurer’s cost of creating its own analysis.

Does a tax insurance policy require a client to act differently in working with the IRS?

Insurers try to have their policyholders act the same as if they were uninsured. If there is a contest with the IRS, which insurers expect if there is a basis for the contest, the insurer, as with other liability insurance policies, will want to be kept informed and consulted with regarding important strategic decisions. Of course, settlements cannot be entered into without the consent of the insurer.

Do these policies work when it comes to claims?

Clearly, an insured party does not want to substitute a dispute with the IRS for a dispute with an insurer. We understand that insurers have paid some claims under these policies but because the policies tend to protect against catastrophic in areas where loss is not expected, the loss history is not extensive.

However, there are two key reasons why a policyholder should be less likely to find itself in a dispute under a tax policy than a traditional insurance policy. First, the policy is very clear. It specifically refers to the deal or situation that is covered. It also specifically refers by tax code section to the intended tax treatment. Contrast this with a traditional liability insurance policy, which covers something a company may do in the future. Such traditional policies, therefore, must devote pages of text to specify what is intended to be covered and what is not so intended. A tax insurance policy can be very straightforward and have very limited exclusions.

The second reason is that the policy itself is customized — what the insurance industry calls “manuscripted.” This permits the insured party and its advisers to negotiate the language of the policy to address any concerns they might have. If the policy is not satisfactory to the client, that should be considered in its purchase decision.

What is the role of a broker in the tax insurance process?

An insurance broker should be selected because of its specialized expertise in transactional insurance products. The market for tax insurance is fairly specialized and a broker with deep experience can add value in structuring and placing the coverage. It will work on behalf of the client and its counsel to structure the tax insurance aspect of the deal, identify the appropriate insurers to consider providing coverage, and, in the case of large risks, assemble a syndicate of insurers and put together the submission for insurers.

As a deal moves forward, the broker should advise the client on quotes received from insurers and work with clients and their legal advisers to negotiate terms and conditions for the coverage.

At what stage of a transaction should the broker be called?

It’s always good to begin this process early, even if just to brainstorm and understand the process before a buyer or seller is too deep into a deal. As noted earlier, it’s not unusual for an astute seller to try to address a perceived risk in anticipation of going to market.

Gary Blitz is a Managing Director of Aon Financial Solutions, provider of insurance brokerage services with expertise in transactional insurance.
FIN 48: Insurance for When the IRS Doesn’t Recognize What You Did

By Gary P. Blitz

Introduction
Publicly traded companies have been living with FIN 48 since the preparation of their financial statements for the first quarter of 2007. The “uncertain tax position” standard embodied in FASB Interpretation No.48, “Accounting for Uncertainty in Income Taxes: An Interpretation of FASB Statement No. 109,” is now a reality for corporate America across all industries. Nevertheless, FIN 48 continues to fill CFOs and tax executives with angst as they work to comply with accounting guidance that may have enhanced subjectivity and inconsistent reporting among companies in an attempt to increase transparency and level the playing field.

The potential for having to adjust a company’s FIN 48 tax disclosures (and suffer an unexpected hit to earnings) when the IRS has the opportunity to weigh in has become a significant source of concern for financial executives that can be mitigated by a tax insurance product called “FIN 48 Insurance.”

Uncertainty and Ambiguity
A mere two years ago, Credit Suisse, in its report titled Peeking behind the Tax Curtain, summarized the problem in this way:

Corporate taxes are a giant black box for many investors. The combination of companies with multiple corporate entities being taxed in multiple jurisdictions (e.g., state, local, federal, and international) based on multiple sources of tax law (e.g., legislation, statutes, regulations, case law, etc.) is difficult enough to follow (e.g., General electric files over 6500 tax returns in over 250 global tax jurisdictions). Mix in the accounting for income taxes, which is arguably one of the least understood and most complicated areas in accounting, and it’s no wonder that after fighting their way through a typical tax footnote even the most experienced investors have been known to cry out “No mas, no mas.” Layer on top the fact that taxes are one of the larger costs that a company will incur, and you are asking for trouble.

Credit Suisse predicted in 2007 that FIN 48 would result in more volatile effective tax rates and, consequently, more volatile earnings unless companies became more conservative in selecting which tax risks to undertake. It is still too early to know how or whether FIN 48 has influenced behavior, but FIN 48 has indisputably imposed upon boards of directors, CFOs, and tax executives a complicated and costly system for reporting income tax liabilities. Companies that take steps to mitigate their FIN 48 exposure, through expert analysis, insurance, or a combination of the two, will likely be looked upon more favorably by financial analysts and Wall Street.

What Is FIN 48?
In its desire for greater transparency and consistency among companies in their accounting for income tax liabilities, the Financial Accounting Standards Board in 2006 released FASB Interpretation No.48, “Accounting for Uncertainty in Income Taxes: An Interpretation of FASB Statement No. 109” (FIN 48). FASB’s goal was laudable, but a complex framework had to be created in order to implement the new standard. Credit Suisse dubbed it the “FIN 48 Two Step,” a two-pronged analysis of recognition and measurement that companies have to engage in with respect to every material tax position. Good and bad positions can no longer be offset in determining the proper level of reserving. Rather, companies must undertake an often subjective analysis of whether a position should be “recognized” for FIN 48 purposes.

The tax position passes the recognition threshold, a second determination — measurement — is required. The tax position is measured at the largest amount of benefit that is more likely than not to be realized upon settlement assuming the tax authorities have full information. If a position does not pass the two-pronged MLTN threshold, a company is required to post a reserve for the amount of estimated tax liability and make disclosures in its financial statements. The second prong is significant because a position could have to be recognized partially or in total if the amount is not supportable even though it is a winner based on the tax law. Then there is an ongoing requirement to update these determinations if a material change occurs.

Unfortunately, while disclosure has been enhanced, the rules still require many subjective judgments. There are varying interpretations among accounting and tax professionals and the financial and tax executives seeking to apply the accounting guidance. In addition, a public company has to balance its obligations to make truthful and full disclosure (subject to serious legal consequences under the securities laws and Sarbanes-Oxley) with concern over providing a roadmap to the IRS and other tax authorities. A recent article called “The Next Wave of Securities Litigation: FIN 48” noted:

The “cards on the table” aspect of FIN 48 that itself changes the dynamic. By publicly identifying areas of uncertainty, the IRS and other regulators such as the Securities and Exchange Commission (SEC) may be inclined to probe further making an adverse outcome more likely.

For many tax executives, this has to weigh heavily when assessing some of the less than objective aspects of a FIN 48 analysis. The potential ambiguity is significant. Companies now have to contend with FIN 48 overlaying the ever complex and vast tax code and Treasury regulations as cases continue to be heard by the courts (not to mention the
extensive tax law at the state and local level and in foreign countries). The Credit Suisse report included an analysis of relative tax risk among companies and industries, which is set forth in the accompanying chart. It ranked companies based on a z-score which compared each company’s unrecognized tax benefits when FIN 48 was adopted to the ratios of unrecognized tax benefits to taxes paid, market capitalization, cash flow from operations, and total liabilities. While the z-score ranking might suggest the importance of FIN 48 compliance to a company and its investors, it is not necessarily an indicator of what can be thought of as FIN 48 risk. FIN 48 risk is the risk that a company’s FIN 48 reserving and disclosure practices — what the company has decided to recognize and not recognize for FIN 48 purposes — will line up with the company’s actual results after the IRS and other tax authorities have conducted audits, challenged those determinations with which they disagree and litigated with the taxpayer if disputes cannot be settled.

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<tr>
<th>Industry Report Card</th>
<th>Source: Company data, Credit Suisse estimates</th>
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<td>Thrifts &amp; Mortgage Finance</td>
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Is Your FIN 48 Risk Tolerable?
The Credit Suisse report included an analysis of relative tax risk among companies and industries, which is set forth in the accompanying chart. It ranked companies based on a z-score which compared each company’s unrecognized tax benefits when FIN 48 was adopted to the ratios of unrecognized tax benefits to taxes paid, market capitalization, cash flow from operations, and total liabilities.
What are the determinants of FIN 48 risk? FIN 48 risk begins at home with the risk tolerance of a company’s board of directors and financial executives. What is a company’s FIN 48 policy and to what degree do they utilize the services of third-party experts to support its FIN 48 analysis? The complexity of a company’s situation and its tax structuring is also important. A multinational manufacturing company operating in many federal, state, and local jurisdictions almost certainly will be more difficult to evaluate with a degree of comfort than a simpler operation. A company that has engaged in financial and hedging transactions with uncles tax consequences has more FIN 48 risk than a company with a simple capital structure. Regardless of a company’s structure, it can minimize its FIN 48 risk with a prudent reserving strategy and third-party review of reserves.

FIN 48 Insurance Can Mitigate a Company’s Risk
Given the inherent uncertainty created by the intersection of the FIN 48 rubric and the tax law, tax executives will continue to wrestle with their FIN 48 disclosures and seek means to mitigate the risk. This is where FIN 48 Insurance can be “a new and powerful tool in the tax risk-management arsenal” according to Harvey Pitt, former chairman of the Securities and Exchange Commission.\(^{\text{5}}\) He also writes:

\[
\text{[FIN 48 risk insurance] goes further, however, by actually shifting the risk of adverse outcomes from the company to the insurer, and effectively capping the cost of such outcomes at the cost of the premiums, reducing cash flow volatility by providing a source of cash in the event of adverse tax consequences and reducing potential earnings volatility by reducing the likelihood of adverse outcomes.}^{\text{6}}
\]

In an article entitled The Basics of Tax Insurance\(^{\text{7}}\), a leading tax insurance underwriter David S. DeBerry writes: “[FIN 48 insurance] promises cash for one or more uncertain tax positions. Thus, [it] may solve liquidity needs, may offset purchase price negotiation leverage, may render a technical default in a loan or lease covenant caused by tax reserves to be immaterial and may, in the opinion of the company and its auditor, reduce the need for qualitative disclosure of tax issues because the insurance renders the matter immaterial.”

An illustration might help. A hypothetical company has seven material tax positions which it estimates could give rise to a $100 million tax liability if all of the positions are successfully challenged by IRS and other relevant tax authorities. Two of these positions might be successfully challenged and the company will have to recognize FIN 48 liability and take the attendant hit to earnings.

The CFO in this example might consider FIN 48 Insurance to undergird the company’s FIN 48 reserving and disclosure. This new insurance product will pay the company an amount equal to the tax, interest, and penalties in the event an insured tax position is successfully challenged. Depending upon the time sequence of any insurance claims process and the settlement of the tax contest, this may allow an insured company to avoid an unexpected hit to earnings per share if the company cannot reach a positive resolution with the IRS or other taxing authority. FIN 48 Insurance thus can be a very effective tool for companies to mitigate FIN 48 risk.

Is This Too Good to Be True?
Tax insurance has been very successfully written by the insurance markets since the early 1980s when Lloyd’s of London covered Reagan-era safe harbor lease buyers of tax benefits. Since that time, there has been and continues to be a specialty insurance market supported by skilled insurance intermediaries that has helped many companies manage tax risks of all types, ranging from low income housing tax credits to tax free reorganizations.\(^{\text{8}}\) FIN 48 insurance is a new version of tax insurance designed for public companies now subject to FIN 48.

FIN 48 Insurance takes on a structure markedly different from traditional transactional tax insurance. It is an annual policy. While traditional tax insurance is generally written for a three- or six-year statute of limitations period, FIN 48 Insurance will be written for a shorter period of time, likely from one to three years. This works because upon commencement of an audit on an insured tax position, the insured will be able to send in a notice to the insurer and prevent the expiration of the policy with respect to the tax positions under audit.

Also, unlike traditional tax policies, a FIN 48 policy can cover multiple tax positions. In fact, the structure anticipates that as each year goes on and a company updates its FIN 48 analysis, it will seek to decrease or increase the policy limit it maintains. A company would likely take into account positive experience and the running of a statute of limitations and, of course, the incurrence of new recognized (for FIN 48 purposes) tax positions. FIN 48 insurance is a claims-made policy. Should the company stop purchasing FIN 48 protection, the coverage would lapse on any open and unchallenged positions.

FIN 48 insurance is a user-friendly tool for tax executives not used to buying insurance products. It identifies the specific tax positions that are insured. It can be structured to achieve different goals of a company. Most policies will cover recognized positions (i.e., no FIN 48 liability recognized) against the risk that the tax authorities challenge those positions. It is also be possible, however, to cover some unrecognized positions to the extent that the full amount of the liability is not recognized. In addition, for a more complete solution, a company could include unrecognized positions and amounts, though a self-insured retention will be used to eliminate risk transfer for the unrecognized amounts.
Claims under FIN 48 policies will be handled in the same manner as with claims under traditional tax policies and similar liability policies. The company is expected to keep the insurer informed of any notices from tax authorities and any changes in the company’s FIN 48 treatment of such a position. Insurers will have the contract right, among other things, to become involved in any contest with a tax authority and will have the right to consent to any settlements. The insurer, however, should not interfere with ongoing operations.

Consider how FIN 48 insurance might be used in the previous example. Assume the company had purchased a FIN 48 policy covering the seven tax positions with a limit of $100 million (after taking into account a self-insured retention of $20 million). For simplicity’s sake, assume also that there is no interest, penalties or a gross-up. (These items, however, could be included in the coverage.) Now assume that the IRS has successfully challenged the unrecognized positions (i.e., those for which the FIN 48 reserve was posted) and two of the recognized positions (i.e., those for which no FIN 48 reserve was posted) for a total adjustment of $40 million ($20 million for the recognized and $20 million for the not recognized) and, further, that the company and the IRS have settled the case for this amount (with the insurer’s consent) after commencement of an action in U.S. Tax Court. Thus, the company is entitled to collect $20 million under the policy ($40 million loss less the self-insured retention of $20 million). The company should be able to show income from the tax insurance proceeds on its income statement and in the same amount as its increase in tax expense with no net effect to its net income and earnings per share.

FIN 48 insurance, like tax insurance, will not fit every bill, nor be available to cover every conceivable tax risk. There will be a clear prohibition against underwriting reportable and listed transactions (i.e., items that the IRS considers abusive or possibly abusive that, according to Treasury regulations, must be so reported). The insurers also will perform detailed (but not invasive) due diligence, beginning with a review of a company’s FIN 48 analysis. Confidentiality will be of paramount concern, and insurers will enter into nondisclosure agreements. Because the interests of the company and the insured will be aligned, confidentiality should be preserved; after all, it is the insurer that will have the financial downside of any breach of confidentiality.

The insurers naturally will seek to underwrite in those areas of the tax law where they will have the greatest ability to become comfortable with the underlying tax risk and the motivations of the parties are defined by business purpose rather than a pure tax play. Issues of tax law as opposed to lack of factual clarity will lend themselves to underwriting. Nonetheless, there is a wide spectrum of risks that can be underwritten. For example, many issues on the IRS’s “no-ruling” list (see Rev. Proc. 2009-3, 2009-1 I.R.B. (January 5, 2009) are capable of being underwritten by tax insurers.

FIN 48 and an ever-increasingly complicated tax landscape are not going away. Together they will continue to challenge tax and financial executives seeking to comply with the FIN 48 framework. Many companies will look outside to manage this risk. While third-party expertise will play an important role, an ability to transfer the economic downside of an incorrect FIN 48 decision through insurance should appeal to many companies as a useful tool to protect a company’s earnings.

Gary P. Blitz is a managing director of Aon Financial Solutions, which specializes in the use of insurance to address transactional risks. Mr. Blitz joined Aon in 2004 after a 20-year legal career during which he worked extensively with insurance programs covering tax, financial, and regulatory risks, litigation buyouts, environmental insurance, and credit enhancements. He received his B.B.A. degree from the University of Michigan and his J.D. degree from New York University School of Law. He was the founder of the insurance brokerage affiliate of his former law firm. Mr. Blitz can be reached at gary_blitz@aon.com.

1. FIN 48 applies to the financial statements of private companies for fiscal years beginning after December 15, 2008.
2. David Zion & Amit Varshney, Peaking Behind the Tax Curtain (May 18, 2007)
3. “More likely than not” is typically considered by tax professionals to mean a greater than 50-percent likelihood.
5. Harvey L. Pitt, FIN 48 Turns Two, and Certainly Isn’t All that Bad, Compliance Week (April 28, 2009). Mr. Pitt also recommends that companies consider the use of outside experts to evaluate, even render opinions, about income tax positions: “Outside experts can provide independent support for tax determinations, unlike in-house tax staff, or even a company’s outside auditors, whose independence may be open to challenge.”
6. Id.
FIN 48 Turns Two, and Certainly Isn’t All That Bad

By Harvey L. Pitt, Compliance Week Columnist -- April 28, 2009

Back in the halcyon days of June 2006, the Dow was 11,000, unemployment was 4.6 percent, and our collective mood was best described by the title of the movie, “On a Clear Day, You Can See Forever.”

So, too, apparently, was the mood at the Financial Accounting Standards Board, which issued Financial Interpretation No. 48, Accounting for Uncertainty in Income Taxes, to a chorus of objections and predictions of its awful consequences. Objections and predictions notwithstanding, FIN 48 took effect, with last year the first year of status quo FIN 48 compliance. In these uncertain times, boards and managers should examine new options to ameliorate exposure to FIN 48’s sharp elbows.

According to FASB, FIN 48 was supposed to increase the relevance and consistency of income tax reporting. This was to be accomplished by imposing consistent accounting criteria and related disclosure obligations, where none (in the case of disclosure), or at least no specific ones (in the case of accounting criteria) existed. Reading between the lines, FIN 48 was a response to accounting scandals, apparent widespread earnings management facilitated by the murkiness of the income tax accounting rules, and early Sarbanes-Oxley results reflecting a large number of material weaknesses and significant deficiencies in internal controls traceable to income tax accounting issues.

Prior to FIN 48, accounting for income taxes was governed by Financial Accounting Standard No. 109, Accounting for Income Taxes, which lacked specific guidance on income tax-related uncertainties. On the uncertainty question, guidance was to be derived from FAS 5, Accounting for Contingencies, which applied to loss contingencies generally. FAS 5 requires financial statement accrual of a loss contingency (1) if it is “probable” (or likely) that a loss has been incurred, and (2) if the loss can be reasonably estimated. If either condition isn’t met, no loss contingency need be accrued. In the case of income tax positions, this meant companies could recognize the full amount of a potential tax benefit, without any offset based on the possibility that the tax treatment would be disallowed.

FAS 5 left significant discretion as to when to accrue income tax-

ABOUT THE AUTHOR

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As the 26th chairman of the SEC, Pitt led Commission adoption of dozens of rules responding to corporate and accounting crises, created an SEC “real time enforcement” program, and responded to market disruptions from the Sept. 11 terrorist attack.

Before becoming SEC chairman, Pitt was senior corporate partner at Fried, Frank, Harris, Shriver & Jacobson, an international law firm, for nearly 25 years.

He served previously with the SEC from 1968-1978, including three years as...
related loss contingencies (and how much to accrue). The FAS 5 analytical approach gave little incentive for detailed analysis of tax positions, their bona fides or risks, since all that was required to avoid accrual of a loss contingency was to “miss” the “probable” trigger or conclude that a reasonable estimate was not possible. This regime encouraged relatively more risky tax positions and rendered income tax accounting an effective tool for earnings management.

FIN 48 starts from the premise that a company’s financial statements should fully and accurately reflect anticipated future consequences of its present tax positions. To that end, it removes income tax uncertainties from FAS 5’s “probable” standard and imposes a two-step analytical process for evaluating tax positions—first, recognition, then measurement. In order to recognize a benefit from a tax position, a company must be able to conclude it is more likely than not that the position will be sustained. If this test is passed, the company can recognize the largest amount of benefit having a greater than 50 percent likelihood of ultimately succeeding.

The difference between the full benefit claimed on the company’s tax return and the amount recognizable under FIN 48 becomes a charge to income and a balance sheet liability. It also becomes a useful disclosure to the Internal Revenue Service regarding a company’s own assessment of aggressive tax positions. Finally, the company must disclose the level of tax reserves, changes in the composition of such reserves, the amount of accrued interest and penalties associated with uncertain tax positions, and so-called “early warning” disclosure about tax positions for which it is reasonably possible that unrecognized tax benefits will change significantly within 12 months.

FIN 48 effectively required public companies to play by the same accounting and related disclosure rules. It also imposed new discipline, since the position-by-position analysis requires detailed documentation, as well as at least a modicum of objectivity in making tax accounting determinations. However, even under FIN 48, decisions relating to what income tax positions to take ultimately depend on risk appetite and are, therefore, inherently subjective. Even after threshold decisions about tax positions are made, accounting for them under FIN 48 relieves, to a significant degree, on subjective management judgments, in assessing the likelihood each position could stand up to regulatory challenge, determining the benefit that ultimately might be realized (leavened by penalties and interest to which the company might be exposed) and, finally, in determining appropriate disclosure.

We’re into the second year of FIN 48 reporting, and generally speaking, it doesn’t seem to have caused a sea change for good or ill. Thus far, at least, there’s no reported upsurge in earnings volatility related to the new regime, nor in litigation or IRS activity, even though these were among the dire results predicted before FIN 48’s adoption. The ominous prediction that FIN 48 would turn into a financial monster, gobbling up company resources like Sarbanes-Oxley Section 404, also

Commission General Counsel.


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IRS Takes Pass on FIN 48 Data (Oct. 23, 2007)

AICPA Offers View on FIN 48 Services (Aug. 28, 2007)

Oh, Joy: IRS Eager for
hasn't materialized.

That FIN 48 isn't disruptive isn't the same as saying it has produced its intended effects. Earlier this year, one report concluded that one-third of public companies didn't comply with FIN 48's minimum disclosure requirements in 2008. It's too early to tell whether compliance with underlying accounting rules has been any better. What is clear, though, is that even in the best of times, such a high level of non-compliance likely generates a high degree of interest from, and action by, regulators and others.

These aren't, of course, the best of times. The financial, economic, and regulatory worlds where companies operate, report, and pay taxes have changed radically since 2006, and in ways that, when seen through the lens of FIN 48, point toward increased exposure and demand increased attention. The risk environment has been fundamentally altered with virtually all constituencies newly sensitized to the dangers of exposure to untoward levels of risk. Within this new, risk-sensitive (one might say risk-averse) environment, governments are hungry for revenues. Therefore, it's likely both the IRS and state tax authorities will be increasingly aggressive in reviewing FIN 48 disclosures and challenging aggressive or "creative" tax positions.

We're into the second year of FIN 48 reporting, and generally speaking, it doesn't seem to have caused a sea change for good or ill.

Shareholders are angry and looking for blood—or at least scapegoats. If companies "guess wrong" in assessing tax positions, they'll face exposure not only to tax authorities but also shareholder litigation. And, the Securities and Exchange Commission can be expected to closely review company disclosures required by FIN 48. Since FIN 48 permits subjectivity, and income tax accounting historically has been thought to provide a vehicle for earnings manipulation, FIN 48 matters are likely to garner high SEC interest. Of course, under Sarbanes-Oxley, CEOs and CFOs must certify company financial statements, so "guessing wrong" on FIN 48 matters can have dire consequences.

In this new environment, boards of directors and management should take steps to be sure that their company's risk-management apparatus is in place, finely tuned and functioning effectively. Effective risk management is key to enterprise survival and success, particularly in a hostile environment, and income tax accounting risk is simply a subset of enterprise risk. I gave my thoughts on appropriate reactions to FIN 48 shortly after its adoption (please see the July 2007 edition of Compliance Week for that column), but with the heightened risk environment, some additional considerations are in order.

At the outset boards should reconsider and, if necessary, reset, their company's risk tolerance. Historically, tax accounting decisions have been made deep within the bowels of organizations, by technical accounting gurus. This approach is no longer appropriate. Tax professionals need guidance from boards as to the degree of risk the board believes acceptable. And, the board or audit committee should stay in the loop as to the disposition of specific tax positions as well as related disclosures.

Companies also should consider tools available to mitigate FIN 48 risk. One obvious tool is using outside experts to evaluate, and even render opinions, about income tax positions. Outside experts can provide independent support for tax determinations, unlike in-house tax staff, or even a company's
outside auditors, whose independence may be open to challenge. Such independent support increases the likelihood that a company's tax positions will be appropriate and that FIN 48 will be correctly applied, which in turn reduces risks associated with regulatory intervention and litigation, as well as those associated with income and cash flow volatility.

FIN 48 risk insurance is a new and potentially powerful tool in the tax risk-management arsenal. It provides comparable benefits to retaining outside experts, since an insured company will be able to point to review and evaluation of its tax positions by the insurer's tax accounting experts. It goes further, however, by actually shifting the risk of adverse outcomes from the company to the insurer, and effectively capping the cost of such outcomes at the cost of the premiums, reducing cash flow volatility by providing a source of cash in the event of adverse tax consequences and reducing potential earnings volatility by reducing the likelihood of adverse outcomes.

FIN 48 was adopted to deal with particular concerns. Recent events indicate that income tax accounting will be a sensitive area for entirely different reasons. Given this new reality, it behooves boards and companies to reconsider their income tax risk tolerance and consider additional steps to manage such risk effectively.

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- $8.5B Total revenue generated by Aon in 2010

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2010 Breakdown of Total Revenue

- HR Solutions (Aon Hewitt)
  - 25%
- Risk Solutions (Aon Risk Solutions & Aon Benfield)
  - 75%
Aon’s Client Promise

The Aon Client Promise

- A focus on optimizing your total cost of risk
- A program designed entirely around your needs
- A dedicated team and a world of resources
- Local access to the best markets in the world
- Constant investment in new ideas and solutions
- The strength of the world’s leading broker on your side
- Powerful benchmarking
- Industry leading service
- Your feedback drives our performance
- Open & honest dialogue about the value we add to your business
Aon Financial Solutions Team

Michael J. Schoenbach, CPA, Managing Director
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Michael has been responsible for the creation of new markets for difficult to place risks as well as the development of new and unique M&A insurance products and litigation buyout insurance programs. Other duties include negotiation and placement of financial guaranties, credit enhancements, professional liability and lender liability coverages. Michael has 28 years of experience in accounting, financial services and insurance brokerage. (Education: Northeastern University, B.S. Business Administration (1978); New York University, Real Estate Diploma Program (1980)).

Gary P. Blitz, Esq., Managing Director
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Gary joined Aon in 2004 after a 20-year legal career during which he became a nationally recognized expert in the insurance of financial and transactional risks, such as M&A insurance, insurance programs covering tax and regulatory risks, litigation buyouts, environmental insurance and credit enhancements. Gary was a founder of the insurance brokerage affiliate of his former law firm. (Education: The University of Michigan School of Business Admin., B.B.A., with Distinction (1980); New York University School of Law, J.D. (1983)).
Aon Transaction Liability Broking Team

Matthew G. Heinz, Esq., Vice President
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Matt works as a broker in Aon’s Private Equity and Transaction Solutions Group (APETS), which serves as a national resource in the private equity space for the broader Financial Services Group. APETS provides services both with respect to management liability and transactional liability products, including General Partner Liability, Representations and Warranty, Tax Liability, Contingent Liability, and Litigation Buyout insurance. Matt began his insurance brokerage career at Aon in 2010. Prior to joining Aon, Matt managed and worked as an underwriter in the Mergers & Acquisitions Insurance Group at Chartis. Matt began his professional career as a corporate attorney with Proskauer Rose LLP in New York City, where he worked for over four years before entering the insurance field. (Education: The College of William and Mary, B.A. (1998); St. John’s University School of Law, J.D. (2003))

Allyson Coyne, Vice President
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Allyson advises clients in the areas of Representations & Warranty Insurance, Tax Indemnities and other transaction related coverages, through her position as a vice president in Aon’s Private Equity & Transaction Solutions practice (APETS). Allyson has been with Aon for over 9 years. She is a member of the Pennsylvania Bar and the American Bar Association, Business Section. She also served as Vice Chair of the Board of Trustees of a non-profit theatre arts organization in Philadelphia. (Education: University of Notre Dame, B.A.; Villanova University School of Law, J.D.; Villanova University College of Commerce and Finance, M.B.A.)
Anka Taylor, Director
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Anka Taylor is widely viewed as the leading expert on Tax and Specific Issue insurance in the London M&A insurance community. Anka is a qualified solicitor and has over ten years experience as one of Hiscox’s senior underwriters. During this time, Anka initiated and developed Hiscox’s M&A presence, underwriting a wide variety of multi-jurisdictional warranty and indemnity, tax, IPO and specific issue risks. As a broker with Aon, Anka has assisted in the largest ever Tax insurance placement, and is the go-to broker for any complex deal issue. Anka’s legal and underwriting background brings unrivalled value to Aon’s clients throughout the transaction process.

Felix Sloman, Client Manager
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Felix joined Aon’s Global Transaction Liability Unit in July 2009, following the completion of his law degree. Felix specializes in the placement of warranty and indemnity, tax and specific issue insurance around M&A transactions. Felix is a regular contributor to industry publications and websites, with a particular focus on the private equity sector. Felix has recently assisted on several “clean exits” for private equity funds in the Nordic region, and the divestment of a number of divisions of global packaging group. Earlier in 2011, Felix non-core subsidiary, and the sale of bottling business in Malaysia. Felix sits in the London office, and works with Aon’s clients in Europe, The Middle East, Asia and South America.
Aon Transaction Liability Broking Team

Jennifer M. Richards, Regional Director for Aon Mergers & Acquisitions, Pacific Region
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Jennifer joined Aon in 2011 from Chartis, the largest underwriter of transaction liability insurance, where she was responsible for their M&A, Private Equity and Real Estate practice groups in North America. Prior to Chartis, Jennifer practiced corporate and securities law at Sidley Austin LLP in New York. Jennifer was born in South Africa, raised in Canada, and currently resides in Sydney, Australia. (Education: University of Cambridge, L.L.M. (First Class Degree) (2000), Osgoode Hall Law School, York University, L.L.B. (1999), University of Toronto, B.A. (High Distinction) (1996).

Bharat Kannan, Director and member of Aon Risk Solutions (ARS)
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Japan country management team based in Tokyo. Following the earthquake and tsunami loss event of March 11, Bharat led insurance recovery efforts on behalf of the largest and most complex ARS Japan clientele. Specifically Bharat supported complex property damage, business interruption and contingent business interruption claims settlements for clients in Japan and abroad. Prior to Bharat's assignment in Tokyo he held leadership roles for Aon in Chicago, Shanghai and Hong Kong. Bharat holds an MSc from DePaul University (Chicago), BBA from Temple University (Philadelphia) and completed management training at INSEAD (Singapore/ France).