

The Taxation of Corporate Reorganizations

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TAX INDEMNITY CLAUSES: SOME PRACTICAL CONSIDERATIONS

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This article outlines a number of important principles of tax indemnity clauses in share purchase agreements. First, there is no general duty to litigate tax disputes to mitigate damages. Therefore, if the vendor wants to impose a duty to litigate on a purchaser who is claiming under a tax indemnity, the indemnity clause must provide for this.

Second, a claim for a tax indemnity will likely take the form of damages for economic loss rather than a full reimbursement of taxes payable.

*Finally, there are risks to a vendor who pays taxes under an indemnity, because it may not be able to recover the taxes paid if the indemnified party suffers financial reverses. **Keywords:** Agreements; buy sell agreements; purchases; sale of a business; shareholder agreements; shares.*

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