VANBRIDGE
AN EPIC COMPANY

Tax Credit Insurance

Tax credit insurance, one of a suite of tax liability insurance solutions, provides assurance to taxpayers that anticipated federal or state tax credits and/or incentives will ultimately be respected. Tax credit insurance is used by banks, investors, and developers to mitigate adverse financial consequences if the IRS or another tax authority challenges the qualification, availability or transfer of the expected tax credits, or if the credits are subject to recapture.

For example, in a renewable energy finance transaction, tax credit insurance works as a credit enhancement for the indemnities provided by a sponsor or developer to an investor or a tax credit purchaser. Tax credit insurance can be implemented on a single project or investment, or on a portfolio basis in a variety of ways to insure a developer, sponsor, tax equity investor or partnership, or tax credit purchaser or syndicator.

While tax credit insurance has been most associated with renewable energy tax credits (Investment Tax Credits and Production Tax Credits), various other federal and state tax incentives may be insured including opportunity zones, new market tax credits (NMTC), historic tax credits (HTC), low-income housing tax credits (LIHTC), state film development credits, and research & development tax credits, among others.

Typical Tax Credit Insurance Policy Terms

Insured Event: Loss, reduction or disallowance of an expected tax credit; failure of an investment or transfer structure to be respected; tax credit being suffered in a recapture event

Policy Duration: Typically, 7 years (longer in certain cases)

Limit of Liability: Ranging from $5M to $1B, per risk

Premium: Based on a percentage of limits insured, paid once and upfront. Approximately 2-4% x limit of liability, e.g., 3% x $25M = $750,000 (paid once at policy inception)

Amount of Loss: Amount of lost tax credits (or additional tax assessed) plus interest, penalties, challenge defense costs, and gross-up (taxes on receipt of the insurance proceeds)

Retention/Deductible: Negotiable depending on the exposure; often nil or minimal deductible for contest costs

Key Exclusions: (i) Material misrepresentations (of which insured has actual knowledge) (ii) change of law (limited to code and regulations); (iii) inconsistent tax positions or contest settlement without insurer consent

Insurers: 20+ leading markets, each “A” rated or better by S&P and/or A.M. Best

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Let’s Talk

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