

Speaking Engagements | August 6, 2024 | 1:00 PM - 2:30 PM ET

Tax Issues With M&A Representations, Warranties, and Indemnifications: Reps and Warranty Insurance, Proceeds and Tax Insurance

Virtual

SPEAKERS

Thomas Gray

Tuesday, August 6 • 1:00 – 2:30 p.m. ET

Representation and warranty provisions are critical components of M&A deals. The use of representation and warranty insurance (RWI) has drastically changed the landscape of how these important deal terms are negotiated. Counsel and advisers must carefully consider these provisions and their financial and tax implications when structuring purchase agreements.

In a traditional M&A transaction, a seller agrees to indemnify the buyer for breaches of the seller's representations and warranties, but this indemnification obligation is often subject to caps, exclusions, and time limits. Typically, the indemnity is backed by an escrow of a portion of the proceeds payable at the closing. Many transactions would also include a "pre-closing tax indemnity" that provides coverage – independent from the representations and warranties – for certain (generally historical) taxes of a target company.

The last decade has seen a huge uptick in the use of RWI in M&A deals. This is often coupled with a significant scaling back, or elimination, of traditional indemnity protections. Where it applies, the insurance outsources to the insurer the risk of loss from a breach of representations and warranties by sellers – enabling sellers to come closer to the "walkaway" construct that they would naturally want while leaving buyers protected.

RWI is not a solution for every transaction. Further, regular RWI policies do not cover everything – such as known taxes or tax issues. For certain known risks, separate tax insurance can be considered. It is important for counsel and advisers to understand the function of representations and warranties, the parameters of RWI and tax insurance and the associated key tax considerations.

Troutman Pepper Partner Tom Gray joins a panel to discuss critical tax provisions relating to purchase price payments and adjustments and key tax considerations for representation and warranty insurance for Stafford on August 6, 2024.

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