

## Tax Defence

### Professional Expenses Insurance Policy

This is a 'claims made' insurance which covers only claims notified in writing during the Period of Insurance.

This Policy, the Policy Schedule and any endorsement must be considered as one document. The proposal document and any other information supplied by you all form part of the contract. The Insurer agrees to pay the Professional Expenses incurred by the Designated Agent when acting for an Insured in the event of an insured incident providing the relevant premium has been paid.

#### **Definitions**

##### **Any One Claim**

All claims arising from the same original cause or event shall be regarded as one claim. This includes a Full or Aspect Enquiry into a later year's Self Assessment Return where a previous year's Self Assessment Return is still subject to an open Full or Aspect Enquiry, providing the subsequent Enquiry is notified in a Period of Insurance.

##### **Appeal**

The formal mechanism to resolve HM Revenue and Customs (HMRC) Enquiries and Disputes at either the First-tier Tribunal, Upper Tribunal or VAT Tribunal. Also the procedure required to refer the subsequent decision to a higher authority.

##### **Abbey Tax**

Abbey Tax, a division of Abbey Tax and Consultancy Services Limited (ATCS), which administers the Professional Expenses Insurance Policy including the collection of premiums and the settlement of claims on Insurers' behalf and to whom any notification of claim must be made. ATCS is an appointed representative of Abbey Protection Group Limited (APG). APG is authorised and regulated by the Financial Conduct Authority. Firm Number: 308829.

##### **Designated Agent**

Abbey Tax, or in the event that Abbey Tax cannot provide a consultant and with Abbey Tax's prior written approval, another accountant or firm of accountants or other appropriately qualified person who is appointed to act in accordance with the terms of this Policy.

##### **HMRC enquiries and disputes**

###### **(i) Business Self Assessment Full Enquiry**

A Full Enquiry by HMRC into the Insured's Self Assessment Return following the issue of a Notice under

- S9A or S12AC of the Taxes Management Act 1970; or
- Paragraph 24(1) Schedule 18 Finance Act 1998

together with a request to examine all of the Insured's business books and records.

###### **(ii) Personal Self Assessment Full Enquiry**

A Full Enquiry by HMRC into the Insured's Self Assessment Return following the issue of a Notice under

- S9A of the Taxes Management Act 1970

into their non-business tax affairs, for example into rental income and/or interest received. This will be accompanied with a request to examine all of the prime documents.

###### **(iii) Income Tax Self Assessment Aspect Enquiry**

An Enquiry by HMRC which is restricted to one or more specific aspects of the Insured's Self Assessment Return following the issue of a Notice under

- S9A or S12AC of the Taxes Management Act 1970.

###### **(iv) Corporation Tax Self Assessment Aspect Enquiry**

An enquiry by HMRC which is restricted to one or more specific aspects of the Insured's Self Assessment Return following the issue of a Notice under

- Paragraph 24(1) Schedule 18 Finance Act 1998.

**(v) Employer Compliance Dispute**

A Dispute which takes place following an expression of dissatisfaction with the Insured's PAYE, and/or NIC affairs following an Employer Compliance Visit by HMRC or following an expression of dissatisfaction with the Insured's P11Ds or P9Ds.

**(vi) IR35 Dispute**

A dispute which takes place when HMRC challenge the status of an Insured's contract for services and invokes the IR35 legislation following either

- the issue of a Notice under Paragraph 24(1) Schedule 18 Finance Act 1998; or
- an HMRC Employer Compliance Visit.

**(vii) VAT Dispute**

A Dispute which takes place following a VAT Control Visit where a written decision, assessment or statement of alleged arrears is received from HMRC into the Insured's Value Added Tax Return; or following the receipt of a Notice of VAT default surcharge, misdeclaration or late registration penalty.

**(viii) Schedule 36 Pre Dispute**

A written request by HMRC under Sch36 FA2008 to inspect business records, assets or premises or in the case of a personal taxpayer a request for the production of documentation to check their Income Tax position.

**Insured**

The company, firm, partnership, organisation or individual specified on the Schedule to this Policy.

**Insurers**

Markel International Insurance Company Limited, 20 Fenchurch Street, London EC3M 3AZ bound pursuant to a binding authority with Abbey Protection Group Limited. Unique market reference B6027APG2014001 (or renewal or replacement thereof).

The Insurer is liable only for the proportion of liability it has underwritten. The Insurer is not jointly liable for the proportion of liability underwritten by any other insurer. Nor is the Insurer otherwise responsible for any liability of any other insurer that may underwrite this contract.

**Period of Insurance**

The period as specified in the Schedule to this Policy and for which the premium has been paid.

**Professional Expenses**

The fees and expenses reasonably incurred by the Designated Agent in connection with a claim, including those incurred by Insurers on behalf of the Insured in connection with the claim. These exclude administration costs such as completion of claims forms, providing claims updates and supplying information in support of reimbursement of fee notes.

**Territorial Limits**

Enquiries and Disputes undertaken by HMRC within the United Kingdom and Northern Ireland, excluding the Isle of Man and the Channel Islands.

**Cover**

Insurers will pay Professional Expenses incurred by the Designated Agent as a result of any HMRC Enquiry or Dispute, as specified in the Schedule, into the Insured within the Territorial Limits and which is notified to Abbey Tax during the Period of Insurance in connection with representation of the Insured, including an Appeal, in order to respond to HMRC's requests and allegations;

provided that:

- a) where HMRC is conducting an enquiry under the IR35 legislation the Insured must have a written contract for services and must have implicitly adhered to the terms of the contract;
- b) Insurers have given prior consent to an Appeal;
- c) the HMRC Enquiry or Dispute relates to Corporation Tax, Income Tax, Capital Gains Tax, PAYE or VAT liabilities.

The maximum liability of Insurers under this Policy in respect of any one claim and in aggregate for any Insured in the Period of Insurance is £75,000.

### Exclusions

Insurers will not be liable to provide indemnity in respect of:

1. any claim made, brought or commenced outside the Territorial Limits;
2. any claim where the Professional Expenses are capable of being reimbursed under any other Policy or Certificate;
3. any cause or event occurring prior to or existing at inception of this Policy, or at the time an Insured was declared for membership of the Professional Expenses Insurance scheme which the Insured knew, or ought reasonably to have known, was likely to give rise to a claim;
4. an enquiry under Public Notice 160 or Section 60 of the VAT Act 1994 or matters handled by HM Revenue and Customs Specialist Investigations, Civil Investigations of Fraud and Criminal Investigations Sections. Also Code of Practice 8 and 9 cases and/or the defence of any tax and/or criminal prosecution;
5. any claim made where
  - a. Income Tax or Corporation Tax Self Assessment Returns are submitted outside the statutory time limits, except for Income Tax Self Assessment returns where HMRC accept the reasons for the delay; or
  - b. the Insured has not notified chargeability to tax within the statutory time limits; or
  - c. a Return is submitted at the final filing date which contains provisional figures in respect of all of the trading income and expenditure;
6. an investigation arising out of a voluntary disclosure made to HMRC in respect of omitted Tax, NIC or VAT liabilities which become due as a result of an Insured's deliberate act or following an HMRC campaign where the Insured has made an incorrect return to HMRC;
7. Professional Expenses incurred before the written acceptance of a claim by Abbey Tax;
8. taxes, fines, interest or any other duties or penalties imposed or assessed upon the Insured by any revenue authority, court or tribunal;
9. any dispute arising under the National Minimum Wage Act 1998 or the Tax Credits Act 2002;
10. the cost of preparing and reconciling Returns, accounts, records or any other statutory returns, and the cost of professional valuations to support them. To include the reconciliation of VAT Returns to accounts, Construction Industry (CIS) returns and Real Time Information (RTI) payment submissions.
11. Professional Expenses incurred in respect of any
  - a. HMRC Enquiry into a tax planning arrangement where HMRC has allocated a Disclosure of Tax Avoidance Scheme (DoTAS) Number for inclusion on the relevant Self Assessment Return or where a DoTAS Number would have been issued but for the failure to notify HMRC of the tax planning arrangement; or
  - b. any matter relating to bespoke tax planning outside of the normal trade such as film partnerships or film schemes, or planning involving artificially created losses or loan arrangements;
  - c. cases referred to the General Anti-Abuse Rules panel.

## **General conditions**

### **1. Due Observance**

The Insured must comply with all the terms of this Policy.

### **2. Cancellation**

The insurance element of the contract under the terms of the Policy can be cancelled in writing at any time by the Insured, although Abbey Tax's margin for claims handling, advice and management costs is not refundable. Any refund will be calculated on a pro-rata basis but there can be no refund of premium if the Insured has notified a claim to Abbey Tax during the Period of Insurance. Any refund will also incur an administration charge of £30. This Policy may also be cancelled by Insurers giving 30 days notice to the Insured and the premium shall be adjusted on the basis of Insurers receiving or retaining pro-rata premium.

### **3. Disagreements**

In the event of any disagreement between the Insured and Abbey Tax acting on behalf of Insurers, both parties shall agree to the appointment of a suitably qualified referee to decide the matter. If there is no agreement on a referee, an appropriately qualified person shall be appointed by the President of the Chartered Institute of Arbitrators. The referee's fees shall be paid by the party against whom the decision is made but if the decision is not clear the referee shall have the power to apportion costs. The Insured's costs in preparation for and representation at meetings with the referee shall not be recoverable under this Policy.

### **4. Insolvency**

If the Insured becomes insolvent during the course of any claim or legal proceedings to which Insurers have consented, Insurers reserve the right to withdraw the consent for the Designated Agent to continue to act under the terms of this Policy. The Insured shall be deemed insolvent upon the appointment of an office holder within the meaning given by the Insolvency Act 1986 or upon the appointment of a receiver within the meaning laid down in the Insolvency Act 1986 and or the Companies Act 2006.

### **5. Minimising Claims or Proceedings**

The Insured must take all reasonable measures to minimise the likelihood of a claim being made under this Policy and take all reasonable steps to minimise the cost of any claim.

Insurers reserve the right to withdraw cover in the event the Insured has not co-operated fully with the Designated Agent or provided them with a full and truthful account of the facts, including providing all relevant documentary evidence in their possession.

The Insured must provide or obtain all documents as necessary and attend meetings when requested. In the case of a corporate Insured where records and books of account have not been kept in accordance with the Companies Act 2006 Insurers reserve the right to deny cover in respect of this Insured.

### **6. Data Protection Act 1998**

It is agreed by the Insured that any information provided to Abbey Tax or the Insurer will be processed by Abbey Tax or the Insurer in compliance with the provisions of the Data Protection Act 1998 for the purposes of providing insurance and handling claims, if any, which may necessitate providing such information to third parties.

### **7. Proper law**

The parties are free to choose the law applicable to this insurance contract. Unless specifically agreed to the contrary this insurance shall be subject to the Laws of England and Wales. All Acts of Parliament referred to in this Policy shall include any subsequent amendments, re-enactments or regulations and equivalent legislation enforceable within the Territorial Limits.

## **Claims Settlement Conditions**

### **1. Insurers' Consent**

Insurers' written consent must be obtained by the Insured before the Designated Agent incurs Professional Expenses. This consent will be given provided Abbey Tax is satisfied that there are reasonable grounds for representation and/or there are reasonable prospects of disputing HMRC's decision or allegations. In Employer Compliance, IR35 or VAT Disputes, unless Schedule 36 Pre Dispute cover has been taken out, a request for further information following an audit or control visit does not constitute a dispute; there must be a challenge into the Insured's treatment of any tax, NIC or VAT.

The Insured's and/or the Designated Agent's opinion will be taken into account in determining the prospects of success. In the event the Insured elects to proceed following Insurers' denial of the claim on the grounds of lack of prospects and, if the Insured is successful, cover will be provided as if consent had been given at the outset subject to the terms and conditions of this Policy.

Insurers' consent is an undertaking to provide cover to the Insured subject to the terms and conditions of this Policy and its Schedule but does not imply that all Professional Expenses will be paid. Routine presentation of the Insured's affairs and expenses incurred which go beyond the immediate scope of the claim or proceedings fall outside the cover provided by this Policy.

Consent shall be withdrawn and cover denied in the event of facts becoming known which show that a particular claim should not have been brought under the terms and conditions of this Policy and Schedule. If the Insured makes a fraudulent or false claim or request for payment, this Policy shall become void, any premiums shall be forfeited and any payments made shall be recoverable by Insurers.

## **2. Claims Procedure**

### **a) Duty to Notify**

Abbey Tax must be advised in writing immediately the Insured becomes aware of any cause or event which has or is likely to give rise to a claim under this Policy. Failure to notify during the Period of Insurance may lead to the claim not being admitted.

### **b) Initial Consent**

In the event of a likely claim the Insured must complete a claim form and send this to Abbey Tax together with all relevant information. Abbey Tax will advise in writing whether Insurers' consent has been given. Where consent is given Abbey Tax will also provide the Designated Agent with an initial reserve to incur Professional Expenses; this reserve should not be exceeded without further consent or payment beyond this figure may be denied.

### **c) Designated Agent**

The Designated Agent will be Abbey Tax or the competent person who is named in the policy Schedule. The Insured must obtain prior written approval from Abbey Tax if an alternative agent, other than the named party, is required to act. Insurers will be entitled to obtain from the Insured and/or the Designated Agent any information or particulars, whether privileged or not, relating to a claim. On request the Insured will give to the Designated Agent any instructions necessary to secure the required access.

### **d) Meetings**

Attendance at meetings is normally limited to one attendee of the Designated Agent unless more than one area of tax, i.e. Self Assessment/VAT/PAYE/NIC is involved. Abbey Tax will agree for additional technical advisors to attend where appropriate provided prior approval is obtained.

### **e) Payment of Professional Expenses**

In the event of an HMRC Enquiry, Dispute or Appeal, payment of the Professional Expenses properly incurred on behalf of the Insured can be made to the Designated Agent provided that Abbey Tax is satisfied that the charges are reasonable. Payment of interim bills will also be made provided that the Insured acknowledges that Insurers may be entitled to recover such payments should the terms of this Policy be breached and Insurers' consent is withdrawn. If requested the Insured must submit the bill of costs for taxation or audit. If the Insured is registered for VAT, Insurers will not pay the VAT element of the bills.

### **f) Settlement by Insurers**

Where Professional Expenses are likely to exceed the duties which are being claimed, Insurers may pay the Insured a sum equivalent to the duties in lieu of Professional Expenses or further Professional Expenses.

### **g) Recovery of Costs**

Where it is possible to recover costs from HMRC following the successful defence of a claim, the Insured and the Designated Agent must take all steps necessary to require the Insured to recover costs and must pass all such recoveries in full to Abbey Tax for Insurers.

### **Complaints**

Abbey Tax and the Insurer are dedicated to providing a high quality service and want to ensure they maintain this at all times. If the Insured is not satisfied with any part of the service they have received then they should contact Abbey Tax who will do their best to resolve the problem. In the first instance please contact:

#### **The Customer Services Manager**

Abbey Tax  
One Mitchell Court, Castle Mound Way, Rugby CV23 0UY  
Tel: **0345 2232 727**

In the event the Insured wishes to pursue matters further they may be able to refer the matter to The Financial Ombudsman Service:

#### **The Financial Ombudsman Service**

Financial Ombudsman Service, Exchange Tower, Harbour Exchange Square, London, E14 9SR  
Tel: 0845 080 1800 Switchboard: 020 7964 1000  
Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

### **Financial Services Compensation Scheme**

The Insurer is covered by the Financial Services Compensation Scheme (FSCS). The Insured may be entitled to compensation up to 90% of the claim in the unlikely event the Insurer cannot meet its obligations. Further information about compensation arrangements is available from the FSCS.

### **Communications**

Initial notification of a claim must be made in writing by first class post, facsimile or email, and be received by Abbey Tax within the Period of Insurance by addressing it to:

Abbey Tax,  
One Mitchell Court, Castle Mound Way, Rugby CV23 0UY  
Fax: 0345 223 2728  
Email: [claims@abbeytax.co.uk](mailto:claims@abbeytax.co.uk)

All notices and communications from Insurers or their representatives to the Insured shall be deemed to have been duly sent if sent to the Insured or Designated Agent at an address stated in the Schedule (or any endorsement).

All notices and communications from the Insured or the Designated Agent to Insurers shall be deemed to have been duly sent if sent to Abbey Tax at the address above.

Abbey Tax is a trading division of Abbey Tax and Consultancy Services Limited (ATCS); registered office, 20 Fenchurch Street, London EC3M 3AZ, registered in England and Wales No. 08246256. VAT number. 245 7363 49. ATCS is an appointed representative of Abbey Protection Group Limited, which is authorised and regulated by the Financial Conduct Authority in respect of insurance mediation activities only. Markel Corporation is the ultimate holding company for ATCS.