Tax Insurance

Q4 2025 Canadian Update

Tax insurance has arguably existed as long as representations and warranties insurance, but its use has expanded dramatically in recent years as stakeholders seek to mitigate the financial risks associated with contingent tax positions, particularly in situations where contingent capital would otherwise need to be escrowed or reserved to indemnify a third party for loss resulting from such tax risk.

The growth in insurer appetite and underwriters' technical tax expertise has fueled this expansion. Many carriers have invested heavily in recruiting seasoned tax professionals, which has in turn increased both the willingness and the capacity of insurers to underwrite complex tax exposures once considered uninsurable, such as risks already under audit or in litigation, transfer pricing issues, and valuation-related exposures.

Today, tax insurance is deployed globally. While the product remains less common in Canada than in some other jurisdictions, its adoption is accelerating in step with international trends. For context, there were approximately 1,100 tax insurance submissions worldwide through the first three quarters of 2024, compared with 1,342 submissions over the same period in 2025 — representing roughly 23 percent year-over-year growth.

Underwriters	
Underwriters writing US risks	**34**
Underwriters writing Canadian risks	**15**
Underwriters writing Quebec risks	**7**
Capacity	
Capacity available in the US (any one risk)	**$1.5 billion (USD)**
Capacity available in Canada (any one risk)	**$750,000,000 (CAD)**
Submissions for Insurance	
Global Tax Submissions in 2024	**1,550**
North American Tax Submissions in 2024	**610**
Canadian Tax Submissions in 2024	**32**
Canadian Tax Submissions YTD 2025	**32**
Canadian Policies bound YTD 2025	**9**

Much like other government agencies around the world, the Canada Revenue Agency (CRA) and, more broadly, the Department of Finance, has been tasked with expanding the Canadian tax revenue base. This mandate has been pursued through the introduction of new regulations and the expansion of audit and enforcement staff. As a result, audits are occurring with greater frequency, and taxpayers are being required to provide more extensive information to the CRA than ever before.

Tax insurance has emerged as a specialized and increasingly valuable product in this environment, offering protection against financial exposure as tax laws and transactions grow more complex.

At present, there are only two dedicated, licensed tax insurance brokers operating in Canada. Several U.S.-based brokers have participated in the Canadian market, writing policies domestically without the benefit of a local presence and, in some cases, without proper licensing compliance. Given the dynamic and evolving nature of the Canadian tax landscape, CAC Specialty believes that having experienced, licensed professionals on the ground should be a key consideration when selecting a broker.

Specific Canadian Tax Insurance Considerations

Mandatory Disclosure Rules (MDRs)

When the MDRs came into effect last summer, many insurers declined to insure any transactions that could be considered reportable arrangements. Today, most of those insurers have re-entered the market, although a few remain unwilling to cover reportable Canadian risks.

Separately, it is essential that brokers understand which insurers are unwilling to report themselves under the MDRs framework. While it may not be the insured's direct concern whether an insurer files its Form RC312, a prudent broker should ensure that all parties to an insurance transaction understand their respective reporting obligations.

CAC Specialty believes it is imperative that all Canadian tax opinions submitted to the insurance market explicitly address the client's reporting obligations, particularly as they relate to the contractual protection hallmark. This issue is not merely academic. Recently, CAC Specialty has observed different law firms taking divergent positions on a client's reporting responsibilities under the MDRs. An underwriter's choice of counsel can therefore directly influence its ability to insure a risk.

For this reason, there is a clear advantage in working with a Canadian-based broker like CAC Specialty who understands both the domestic tax community and the risk tolerance of the underwriters and counsel active in this space.

General Anti-Avoidance Rule (GAAR)

GAAR has recently expanded in both scope and enforcement, driven by legislative amendments and evolving judicial interpretation. The potential penalties associated with GAAR assessments are increasingly significant, further underscoring the importance of proactive risk management.

As a full-time Canadian broker, CAC Specialty has observed a marked uptick in market activity. Over the past 12 months, we have both quoted and placed multiple GAAR-related risks. Looking ahead, CAC Specialty expects GAAR coverage to become an increasingly common feature, often added as an additional insured tax position across a growing number of Canadian tax insurance policies.

Advance Tax Payments

Historically, coverage for advance tax payments has been a standard feature in Canadian tax insurance policies. Most clients have expected this protection as part of a comprehensive coverage definition.

Recently, however, the market has shown signs of retrenchment in this area. Some insurers have begun to limit or exclude advance tax payment coverage, making it increasingly important for brokers to identify those markets still willing to offer such protection or to persuade others of the risk's insurability and commercial rationale.

It is worth noting that, to date, no insurer has paid an advance tax payment on behalf of an insured. Nevertheless, the ability to secure this coverage remains an important differentiator both in terms of broker expertise and insurer selection.

Investment Tax Credits

As reflected in CAC Specialty's recent work within the renewable energy sector, we have been actively placing tax insurance coverage for Investment Tax Credits (ITCs) on behalf of clients. While ITC coverage remains a relatively new offering in Canada, the U.S. market has been intensely underwriting tax credit transfer risk since 2023 following the passage of the *Inflation Reduction Act*.

Canada's Clean Economy ITCs represent a significant area of potential tax insurance growth. Clients seeking to secure financing or attract investment should be aware that future ITC refunds can now be insured, providing added certainty to lenders and investors. Likewise, clients looking to bridge-finance anticipated ITC refunds can utilize tax insurance as an effective means of de-risking timing and credit exposure associated with those refunds.

Privilege

Another key reason to engage a broker with a legal background is their understanding of the risks associated with breaching privilege during the tax insurance underwriting process. At CAC Specialty, our tax insurance practice comprises 10 brokers, all of whom are trained lawyers, and we are acutely aware of how to preserve and protect client privilege throughout every stage of underwriting and placement.

As the Canadian tax insurance market continues to expand, CAC Specialty stands ready to help clients navigate this increasingly sophisticated and evolving landscape with both legal precision and market expertise.

Claims

Tax insurance works exactly as intended—when a covered tax loss occurs, insurers pay. In fact, CAC is aware of hundreds of millions in tax losses paid across the tax insurance market in the past couple of years. As long-tail exposures continue to develop, that figure is expected to rise significantly as additional claims are resolved with taxing authorities. CAC has seen a steady increase in the number of claims made under tax insurance policies as well, reflecting the product's maturity and its expanding use in complex, high-value transactions. Given the well-defined nature of covered risks and the narrow scope of exclusions, claim denials are very remote.

Over the past five years, CAC has supported more than a dozen tax insurance claims, one-third of which have been resolved without loss due to successful taxpayer outcomes, with the remainder progressing through audit and litigation.

Why CAC Specialty

Over the past five years, CAC Specialty has pioneered the use of tax insurance in the ordinary course of business, placing more than $15 billion in coverage for Fortune 20 companies and private equity-backed clients. We maintain a 99 percent quote-rate and the highest bind rate in the market, underscoring both insurer confidence in our submissions and the strength of our execution.

As the largest dedicated tax insurance brokerage in North America, CAC Specialty combines deep technical expertise with industry-leading efficiency. Our team includes a dedicated Canadian broker, Jeremy Matthies, who brings over 20 years of legal experience in Canada, having served for a decade as general counsel to a major private healthcare aggregator and a TSX 200 public company.

Beyond placement, CAC Specialty serves as a strategic advisor, not merely an intermediary, delivering bespoke and comprehensive coverage solutions tailored to each client's unique business objectives.

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