

Tax Defence Professional Expenses Insurance Policy



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

Whereas the Insured has submitted a written proposal and declaration or renewal declaration to the Insurers it is agreed this shall be the basis of, and be incorporated into this Policy. The Insurers, Brit Insurance Limited, agree to indemnify the Insured to the extent and in the manner provided within this Policy in consideration of the Premium. This Policy, the Policy Schedule and any endorsement must be considered as one document.

Definitions

Any One Claim

All claims arising from the same original cause or event shall be regarded as one claim including 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.

Appeal

The formal mechanism to resolve HM Revenue & Customs (HMRC) Enquiries & 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.

ATP

Abbey Tax Protection, a division of Abbey Protection Group Limited, which administers the Professional Expenses Insurance including Claims Settlement on Insurers' behalf and to whom any notification of claim must be addressed.

Designated Agent

ATP, or in the event that ATP cannot provide a consultant and with ATP'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 & 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 tax position.

Insured

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

Insurers

Brit Insurance Limited, 55 Bishopsgate, London, EC2N 3AS. Brit Insurance Limited is authorised and regulated by the Financial Services Authority.

Period of Insurance

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

Professional Expenses

Any fees, expenses and other disbursements reasonably accrued by the Designated Agent in connection with any claim or proceedings including those incurred by Insurers on behalf of the Insured in connection with such claim or proceedings but excluding administration costs such as those incurred in completing claims forms, providing claims updates, or supplying information in support of reimbursement of fee notes in respect of any claim made under this Policy.

Territorial Limits

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

Cover

Insurers agree to indemnify the Insured against 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 ATP 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.

Limits of Insurers' Liability

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 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 & 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 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 with in 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 amnesty where the Insured has made an incorrect return to HMRC;
7. Professional Expenses incurred before the written acceptance of a claim by ATP;
8. taxes, fines, interest or any other duties or penalties imposed or assessed upon the Designated Agent or 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;

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.

12. Routine compliance checks conducted by HMRC where there is no statutory enquiry notice issued, including Employer Compliance and VAT control visits.

General Conditions

1. Due Observance

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

2. Cancellation

This Policy may be cancelled at any time on the written instructions of the Insured and the premium shall be adjusted on the basis of Insurers receiving the customary short term premium and an administration charge of £25. There will be no refund of premium if the Insured has notified a claim to ATP during the Period of Insurance.

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, but no administration charge shall apply.

3. Disagreements

In the event of any disagreement between the Insured and ATP 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 that consent. 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 a full and truthful account of the facts, including providing all relevant documentary evidence in the Insured's possession. The Insured shall ensure that all documents as necessary are provided or obtained and that meetings are attended 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 1985 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 ATP or the Insurer will be processed by ATP 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 ATP 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, 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 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

ATP 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 ATP together with all relevant information. ATP will then advise in writing whether Insurers' consent has been given. Where consent is given ATP 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 ATP or the competent person who is specified in the Schedule to this Policy, but prior written approval from ATP must be obtained if an alternative agent other than ATP is required to act. Insurers will be entitled to obtain from the Insured and 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. ATP will consider General Condition 5 in arriving at their decision as to whether it is reasonable for the appointment of an alternative Designated Agent.

(d) Meetings

Representation of the Insured at meetings shall be limited to one attendee of the Designated Agent unless more than one area of tax, i.e. Self Assessment/VAT/PAYE/NIC, is involved. ATP 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 ATP is satisfied that the charges are reasonable. Quarterly interim bills will also be paid provided there is additional certification that the Insured acknowledges that Insurers may be entitled to recover such payments should their consent be 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 Designated Agent must take all steps necessary to recover the costs and

must pass all such recoveries in full to ATP for Insurers.

Complaints

It is our intention to provide you with a high level of service at all times. If there are occasions when we do not meet your standards we have a Complaints Procedure which is designed to resolve the matter. In the first instance please contact:

Customer Services Manager, Abbey Tax Protection, One Mitchell Court, Castle Mound Way, Rugby CV23 0UY

Tel: 0845 223 2727 Fax: 0845 223 2728

Your complaint will be handled in the strictest confidence. A complaint will not affect any further service provided to you and will be dealt with by a competent person. In the event you remain dissatisfied, you may be able to refer the complaint to the Financial Ombudsman Service. Their details are:

Financial Ombudsman Service, South Quay Plaza, 183 Marsh Wall, London E14 9SR

Tel: 0845 080 1800

www.financial-ombudsman.org.uk

This procedure will not prejudice your right to take legal proceedings.

Financial Services Compensation Scheme

In the unlikely event that we cannot meet our liabilities to customers under this insurance, our customers may be able to claim compensation under the Financial Services Compensation Scheme. In the event that we cannot fulfil our claims requirements under the policy, then Brit Insurance will appoint a suitably qualified individual to deal with the claim. Both APG and BIL are covered by the Financial Services Compensation Scheme (FSCS). Further information about the scheme is available from FSCS at www.fscs.org.uk

Communications

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

Abbey Tax Protection, One Mitchell Court, Castle Mound Way, Rugby CV23 0UY

Fax 0845 223 2728 Email: 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 ATP at the address above.

Abbey Tax Protection is a trading division of Abbey Protection Group Limited (APG); registered office, Minorities House, 2-5 Minorities, London, EC3N 1BJ, registered in England and Wales No. 4959808. APG is authorised and regulated by the Financial Services Authority in respect of insurance mediation activities only. Abbey Protection plc is the ultimate holding company for APG.