Part II

Taxpayers' Rights: Current Issues

In Japan, tax procedures are governed by laws of general application such as the National Taxes Common Provisions Law,[1] the National Taxes Collection Law[2] and the National Taxes Infringement Control Law,[3] as well as individual substantive tax laws such as the Income Tax Law,[4] the Corporation Tax Law[5] or the Consumption Tax Law.[6] However, all of these tend to be expressed in terms of the *obligations* of the taxpayer. There is little systemic recognition of the *rights* of the taxpayer.

In developed countries, a major revolution has been under way to establish the concept of 'taxpayers' rights'. To this end, existing administrative procedure laws and specific tax procedure laws have been supplemented with new provisions to control the powers of the tax authorities and attempts have been made to raise the consciousness of the taxpayer by creation of measures such as a Declaration of Taxpayer Rights,[7] a Taxpayer's Charter,[8] a Taxpayers' Bill of Rights,[9] *etc.* The respective governments and tax authorities are thus making plain their commitment to fairness and transparency in tax procedures.

In contrast to this situation abroad, the Japanese government and tax authorities show no sign of promoting the fairness and transparency of tax procedures, or taxpayers ' rights in general. Academics[10] and the *zeirishi* community[11] have been criticising this position for many years.

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1 *Kokuzei Tsusoku Hô* (Law No. 66 of 1962)
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2 *Kokuzei Choshu Hô* (Law No. 147 of 1959).

3 *Kokuzei Hansoku Torishimari Hô* (Law No. 67 of 1990).

4 *Shotoku el Hô* (Law No. 33 of 1965).

5 *Hôjinzei Hoˆ* (Law No. 34 of 1965).

6 *Shôhizei Hoˆ* (Law No. 108 of 1988).

7 Revenue Canada Taxation, *Declaration of Taxpayer Rights* (1985).

8 lnland Revenue & Customs and Excise, *Taxpayer 's Charter* (1986, 1991).

9 Omnibus Taxpayer's Bill of Rights (U.S.) (1988).

l0 See Ishimura, K ô ji, *Charters of Taxpayers ' Rights in Developed Countries* [Senshin-shokoku no Nôzeisha Kenri Kenshô] (1993), Part 1 .

11 Tokyo *Zeirishi* Association [Tôkyô Zeinshikai], *Prospectus for Legal Consolidation*

of Tax Administration [Zeimu Gyôsei no Hôteki Seibi ni kansuru Yôkô] (1993), reproduced in (1993) 437 *Tôkyô Zeirishi Kai* [Tokyo Zeirishi Circles] 4; Tokyo Regional *Zeirishi* Association Research Department [Tôkyô Chihô Zeirishikai Chô sa-bu], *The Enactment of the Administrative Procedures Law and the State of Tax Administrative Procedure (Second Opinion Paper)* [Gyôsei Tetsuzuki Hô Seitei no Ugoki to Zeimu Gyôsei Tetsuznki no Arikata ni tsuite (Dainiji Ikensho)] (1992); Materials from the 1990 JFZA Public Forum 'Problems with Tax Administrative Procedure' [Zeimu Gyôsei Tetsuzuki no Sho-mondai ni tsuite].

Chapter 7

What Are Taxpayers' Rights?

7.1. The Meaning of Taxpayers' Rights

In recent years, with the diversification and increasing complexity of Japanese society, various rights that are not provided for in the Constitution are starting to be recognised, such as taxpayers ' rights, the right to privacy, the right to know, the right to access to sunlight, the right to scenery and environmental rights. It is clear, then, that taxpayers' rights are a relatively new concept in Japan. There are no provisions in current Japanese legislation setting out the contents of taxpayers' rights, with the result that the specific contents of taxpayers' rights are currently under dispute. Most *zeirishi* are of the opinion that the most important element of taxpayers ' rights is the right to procedural fairness, and they have lobbied the government and the National Diet to create legislative guarantees in this area.[1] On the other hand, many academics and taxpayer associations favour the view that the main focus should be on democracy for taxpayers, in particular constitutionally-based rights to control the way the government collects and spends tax revenue.[2]

7.2. The Conservative Approach of the Japanese Government

In 1990 the OECD published a report titled *Taxpayers ' Rights and Obligations: A Survey of the Legal Situation in OECD Countries* ("the OECD report"). The report contains a comparative analysis of taxpayers' procedural rights in OECD countries. The Japanese system is of course discussed.

What response have the Japanese government and administration displayed to the OECD report and the diversified approaches to procedural rights discussed there? At the parliamentary Finance Committee Meeting on February 27, 1992, debate centred on the need for a legislated charter of taxpayers' rights and the current state of protection of such rights. In response to a question by the representative of the Japan Social Democratic Party, the Minister of Finance and the Director of the Taxation Bureau of the Ministry of Finance answered to the effect that:

> Charters of taxpayers ' rights in other countries merely restate existing rights held by taxpayers, and do not expand taxpayers ' rights. Even in countries without a charter, including Japan, there is sufficient protection for taxpayers within the bounds of the existing system. Therefore, there is no need to introduce such a charter by legislation.[3]

Clearly, the Japanese government and administration are not positive towards establishment of taxpayers ' rights and the promotion of fairness and transparency in tax administration procedures.

It cannot be denied that on the face of the OECD report, Japan does appear to have well-developed tax administration procedures. However, if one examines the correlation between the systemic surface and its practical operation, including for instance the

various unreasonable audit procedures or the lack of any opportunity for participation by taxpayers in the creation of circulars, it is impossible but to evaluate the Japanese system negatively. There is little evidence of any attempt to protect taxpayers ' rights by combination of the concepts of fairness in procedure and taxpayer participation, concepts which should form the foundation of a system of tax procedures.

7.3. The Current State of Taxpayers' Rights in Japan

In order to exercise the public power of taxation fairly, the tax authorities need to obtain the voluntary cooperation and confidence of the taxpayer, and to this end tax procedures need to be fair and transparent. Tax procedures need to be enacted in legislative form in as much detail as possible. Furthermore, information on tax procedures needs to be widely available to the public. By these means, taxpayers are able to participate in tax procedures on an equal footing with the tax authorities. The government and the tax and revenue authorities are urged to promote these practices.

However, Japanese tax administration has developed with the tax authorities in a clearly superior position. Further, tax procedures are extremely opaque so that many decisions are made arbitrarily by the tax authorities. Legislative provisions are loosely worded, leaving room for a wide exercise of discretion by the tax authorities.

The tax authorities create tax circulars based on such broad discretions: it is often the case that they unilaterally force procedures upon the taxpayer, and many details of tax procedure are enforced through administrative guidance. There are particular problems with tax audit procedures, such as its general opaqueness, abuse of discretionary powers by the tax authorities and coercive administrative guidance.

Legislative drafting for tax laws is done by officials of the Ministry of Finance, *i.e.* the bureaucracy. Members of the National Diet, the elected representatives of taxpayers, are unskilled in tax matters and are not in a position to adequately fulfil their function of preparing legislation in this area.[4] Given that the bureaucracy has this grip on the practical power to legislate in the tax area, their opinions have a profound effect on procedural tax legislation. However, the bureaucracy's opinions do not currently include improving procedural fairness by consolidating procedures relating to tax assessment, or increasing public awareness of the kinds of information obtained by the tax authorities through these procedures. On the contrary, there is a strong view in the bureaucracy that it is sufficient if taxpayers who are dissatisfied with the tax authorities' procedures can protect their rights through litigation after the problem has occurred. But the tax authorities on the front line who actually administer tax procedures hold the opinion that a high proportion of suits only serves the purpose of hindering efficient administration: even where a problem arises, they tend to use administrative guidance to avoid litigation.[5]

Academics and the *zeirishi* associations have long argued for increased fairness and transparency in tax procedures through new legislative provisions. However, the bureaucracy, which holds the actual power to legislate, has not responded to these claims, and no revolution in tax procedures has yet occurred.

7.4. The JFZA Report

The Administrative Procedure Law was finally enacted in 1993 after continued resistance from the bureaucracy. As soon as the drafting process commenced, tax

specialists such as *zeirishi* and academics produced many statements and reports, aiming to establish procedural rights for taxpayers.

The JFZA's Tax System Consultative Committee published a report entitled *The State of Tax Administration Procedures (Second Opinion Paper)*[6] ("the JFZA report") in November 1990. This report brings together many current issues in tax procedure in Japan, and is an important reference.

7.4.1. The Basis of Tax Administration

The JFZA report proposes that tax procedures not be excluded from the operation of the Administrative Procedure Law, contrary to the opinions of the bureaucrats who participated in the legislative process. In addition, the report states that:

> In future debate on putting administrative procedures in legislative form, it is necessary to place general and common items in a general administrative procedure law after due consideration is paid to the special nature of tax administration, and items specific to tax administrative procedures should be provided for in separate special legislation.

7.4.2. Specific Issues with Tax Administration Procedures

The JFZA report discusses issues in tax administration procedures in relation to stages in the tax audit: procedures are divided into pre-audit procedures, audit procedures and post-audit procedures.

7.4.3. Pre-audit Procedures

Illegal administrative dispositions in general in Japan are dealt with through a system of ex *post facto* relief measures, and in tax administration too there are insufficient concrete procedural provisions governing actions before or during a disposition.

However, in the UK and USA, based on the belief that freedom and equality cannot be protected without fair administrative procedures, procedures are in place to govern administrative actions at any stage.

In Japan too, from the point of view of procedural fairness, at least the following pre-dispositive procedures should be adopted.

(I) *Issuance of Circulars*

Circulars are orders or instructions by a superior administrative body to organs and officials within its jurisdiction, and are not a source of law as such. However, the fact is that circulars serve the important function of filling the gap between law and administration, so much so that tax administration is referred to as 'administration by circulars'. In addition, circulars have a profound effect on the self-assessment system. Therefore, the following measures should be instituted.

(a) A structure needs to be established to allow learned persons and organizations of tax specialists to voice the opinions of taxpayers during the process of creating

circulars. This is to provide procedural safeguards against administrative exercise of legislative power, since there is the possibility that *de facto* legislation will be implemented in the form of circulars.

(b) Except where it would breach the public interest or equity in the imposition of taxation, circulars should be made available to the public in writing. This is important for predictability and to allow equal treatment.

(2) *A System of Advance Rulings*

A system of advance rulings, similar to that existing in the USA, should be adopted as a form of administrative guidance. This would allow taxpayers to seek a ruling from the tax authorities before taking a course of action, and by expressing this opinion the tax authority generates an opportunity to debate the interpretation and application of the law with taxpayers, guarantees predictability and promotes the stability of the self-assessment system.

7.4.4 Audit Procedures

Tax audits under the self-assessment system are activities by a tax authority to collect data relating to the facts of the tax case, presupposing primary assessment procedures by the taxpayer and having as their aim the fair and equitable realization of taxpaying obligations.

(1) *Sending of Audit Notifications*

From the point of view of the guarantee of procedural fairness in Article 31 of the Constitution,[7] it would be appropriate to introduce a system of sending a notification to the taxpayer and his or her *zeirishi* a reasonable time before a tax audit (say, 14 days), containing details such as the proposed date and place, the type of tax and tax year under consideration, the reasons for the audit, the name and affiliation of the audit officer and what books, records and other documents need to be prepared for inspection.

(2) *Procedures and Notification for Extended Audits*

Extended audit is a procedure to collect data from third parties in order to trace the extent of the taxpayer's income, and should not be called upon lightly. It is desirable for the taxpayer and his or her *zeirishi* to be notified and allowed a hearing before an extended audit is put into operation, and the third party should be presented with an audit notification at the time of the audit.

(3) *Establishing Necessity for Tax Audits*

Since tax audits are an exercise of public power, they need to be based on guaranteed fair procedures.

Tax audits can be divided into four types: assessment audits (for correction or determination), delinquency audits, infringements audits and audits relating to administrative review. However, the question of necessity arises most often in relation to assessment audits, especially those dealing with income tax and corporation tax.

If the question of necessity in tax audits is to be determined properly, an objective third party body needs to be established to rule on the issue in individual cases.

(4) *Hearing during Audit and Notification of Audit Completion*

During a tax audit, the taxpayer and his or her *zeirishi* need to be allowed a hearing to express their opinions. When the audit is over, the taxpayer should be notified as such in writing by way of a notification of audit completion.

(5) *Presentation of Identification*

Tax officials should be required to present their identification when conducting a tax audit, regardless of whether this is demanded by the audit subject.

7.4.5. Post-audit Procedures

Assessment of tax under the self-assessment system is ideally meant to be completed by the taxpayer's own return. However, when an error is revealed in that return by a tax audit, the tax authorities may recommend that the taxpayer submit a revised return or may issue a correction disposition.

(1) *Encouragement of Revised Returns*

A recommendation to file a revised return following a tax audit is nothing more than a request from the administration with no legal effect whatsoever - the taxpayer can exercise his or her own judgment on whether to adopt the recommended course of action. What many taxpayers probably do not realise is that by filing a revised return, the path to administrative review and tax litigation is closed off for them. Consequently, it is an absolute necessity to put a stop to recommendations to file revised returns that are issued with the tone of commands.

(2) *Clarification of Discretionary Powers*

The boundaries of administrative discretion (for instance in the imposition of heavy penalty tax) should be kept to the minimum, based on the principle of 'administration by legislation'. Further, for legal provisions whose interpretations have not been finally determined, concrete illustrations should be made available in a public circular to gain the understanding and confidence of the public.

(3) *Provision of Reasons*

Under the ideals of democracy, if some action disadvantageous to the general public is to be taken, the reasons for this action should be made clear.

Attaching reasons when issuing a disposition acts to ensure the caution and reasonableness of the tax authorities' decisions and to control arbitrariness. Further, attaching reasons allows for the smooth running of administrative review and makes taxpayers aware of the processes involved in reaching the conclusions that were reached.

Provision of reasons is a central indication of procedural fairness, and needs to be expanded - at the moment, reasons are only required for correction dispositions for blue returns.

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l JFZA Tax System Consultative Committee [Nihon Zeirishikai Rengôkai Zeisei Shingikai], *The State of Tax Administration Procedures (Second Opinion Paper)* [Zeimu Gyôsei Tetsuznki no Arikata (Dainiji Ikensho)] (1990).

2 See Kitano, Hirohisa, *Principles of Tax Law <Third Edition>* [Zeihôgaku Genron <Daisanpan>] (1992), at 69; Japan Civil Liberties Union [Jiyu Jinken Kyôkai], *Declaration of Taxpayers ' Rights* [Nôzeisha no Kenri Sengen] (1986); Citizens for Tax Justice [Fukôhei na Zeisei o Tadasu Kai], *Texpayers' Charter of Rights* [Nôzeisha no Kenri Kenshô] (1993).

3 February 27, 1992: 5 *123rd Diet House of Representatives Finance Committee Proceedings* [Dai-123-kai Kokkai Shûgiin Ôkura linkai-giroku] 45.

4 See, for instance, Uchibashi, Yoshihito, 'Diet Members' Draft Bills Left on the Shelf: The Administrative Wall Obstructing Popular Will' [Giin Teishutsu Hôan Tanazarashi: Min'i o Habamu Gyôsei no Kabe] *Nihon Keizai Shinbun* (September 25, 1994 morning edition); Igarashi, Takayoshi, *Legislation by Diet Members* [Giin Rippô] (1994).

5 Ishimura, Kôji, *Charters of Taxpayers' Rights in Developed Countries* [Senshin-shokoku no Nôzeisha Kenri Kenshô] (1993), at 42 ff.

6 JFZA Tax System Consultative Committee, *supra* n. l.

7 *Nihonkoku Kenpô* (1947).

Chapter 8

The Administrative Procedure Law and Tax Procedures

8.1. The Legislative History of the Administrative Procedure Law[1]

The need for a uniform system of administrative procedures enshrined in legislation has been advocated for many years by specialists such as academics and *zeirishi*. There were proposals to this effect at the 1964 and 1983 sessions of the then Interim Administration Council (*rinji gyôsei chôsakai*), which were followed by a flurry of proposals and research reports from various sectors. However, the bureaucracy displayed strong resistance, so that very little progress was made towards legislating an administrative procedures law.

Criticism mounted from various sectors at the inactivity, and cries were raised in Japan and from abroad to unify the fairness, transparency and uniformity of administrative processes.

In this context, in December 1991 the Fair and Transparent Administrative Procedure Sub-Council (*Kôsei, Tômei na Gyôsei Tetsuzuki Bukai*) of what was now called the Interim Council for the Promotion of Administrative Reform (*Rinji Gyôsei Kaikaku Suishin Shingikai*) put together an outline draft for a new administrative procedure law and published its Report on the Enactment of a Fair and Transparent Administrative Procedure Law.[2] Then, in May 1993 the Administrative Procedure Bill and National Taxes Common Provisions (Amendment) Bill[3] were completed and submitted to the National Diet, and were enacted in November 1993.[4]

8.2. Special Features of the Administrative Procedure Law

There are many types of administrative process, such as administrative disposition procedures, administrative investigative procedures, administrative guidance procedures, administrative legislative procedures, administrative planning procedures, *etc.*[5] However, the four categories of administrative process that were the subject of concrete discussion and were included in the APL were 'dispositions in response to applications', 'unfavourable dispositions', 'administrative guidance' and 'notifications'. On this point, Article 1 of the APL says:

> The aim of this Law is, in relation to dispositions, administrative guidance and notifications, to aspire to greater fairness and transparency . .. in administrative management by providing for common matters, and by these means to contribute to the protection of the rights and interests of the Japanese people.

However, as will appear in later analysis the operation of the APL has been almost entirely excluded m the area of tax administration. There has been strong criticism of this fact, which amounts to totally ignoring the demands of *zeirishi* and other tax specialist organizations.[6]

8.3. The Management of Tax Procedures

In relation to the applicability of the APL to the tax field, Article 3(1)(vi) excludes "dispositions and administrative guidance relating to national tax infringement cases" from the ambit of the Law. Further, Article 1 (2) of the Law states that "where there are special provisions in another law, these will take precedence over this Law" and Article 74-2 of the National Taxes Common Provisions Law[7] expressly excludes the application of the APL: this combination means that provisions relating to dispositions in response to applications,[8] unfavourable dispositions[9] and notifications[10] are basically entirely excluded. Consequently, assessment dispositions such as corrections, determinations or Administrative assessment, as well as assessment audits, collection dispositions and delinquency dispositions are all outside the scope of the protection of the APL.

To provide concrete examples, the Law does not apply to application for permission to file a blue return, rejection of such an application, revocation of such permission, application for permission to extend the filing period for a corporation tax return or application for recognition as a corporation promoting the public interest. The procedural inadequacies of these administrative acts have long been pointed out, but the Law cannot operate to ameliorate them. Further, the Law has almost no application to tax audits, the area of most concern to taxpayers.

The JFZA has long said that tax administration should be included in the scope of the APL.[11] However, such claims were rejected, and the Law proceeded to enactment without incorporating the tax administration field. One area where the Law might appear at first sight to be applicable to tax administration is administrative guidance under Article 32, but this is in fact excluded by Article 74-2(2) of the amended National Taxes Common Provision Law.

Collection dispositions for administratively assessed taxes and tax administrative guidance are excluded from the scope of the Law because:

> These collection dispositions are monetary in nature and are issued frequently in large numbers, so that the necessary procedural framework is provided in an individualized and self-contained form in the National Taxes Common Provisions Law and other such laws. Administrative guidance is extremely common under a self-assessment system, and requiring that it be issued in written form would not contribute to the fair enforcement of tax administration.[12]

It should be noted that a major reason for the inapplicability of the APL to tax procedures was the extremely negative attitude of tax administrative agencies such as the Ministy of Finance towards the new Law. By way of example, during proceedings of the Sub-Council of the Interim Council for the Promotion of Administrative Reform, the Ministry of Finance representative expressed the ambiguous opinion that:

> Current tax procedures include many that have been internalized over many years. It would require a great deal of work to revise all 339 laws within the Ministry's jurisdiction, so the Ministry can agree to reform to the extent of debate and streamlining in applying a uniform law to procedures that are no longer appropriate. There are doubts as to the practicability of reviewing all 339 laws, but if there are strong opinions that procedures are unreasonable and need

to be reviewed, then this may be inevitable, and a basic policy for doing so will need to be developed.[13]

8.4. Tax Administration as a Form of Administrative Guidance

Administrative guidance is one activity governed by the APL. As general principles for administrative guidance, Article 32 of the Law states that:

(a) where an administrative body engages in administrative guidance, it must not exceed the boundaries of its duty or its jurisdiction;
(b) administrative guidance does not have any compelling force at law; and
(c) an administrative body may not treat a second party disadvantageously because that party has refused to comply with administrative guidance.

The Law lists some further principles for administrative guidance;

(a) an administrative body should make clear the aims, contents and the names of responsible officers for any administrative guidance;[14]
(b) where a second party who is subject to administrative guidance seeks a statement of the administrative guidance in writing, the administrative body must comply with the request;[15] and
(c) where an administrative body engages in administrative guidance of many persons with the same objective, the criteria on which the guidance is based should be determined and made public.[16]

These provisions may be 'general principles' for all administrative guidance, but are excluded from application to tax administration by Article 74-2(2) of the National Taxes Common Provisions Law.[17] It must be said that this exclusionary response to the situation is highly problematic and contradicts the core concepts of the APL. Provisions that govern ' administrative guidance' should apply in the tax field as much as in any other until a special law such as the National Tax Common Provisions Law makes special provisions for administrative guidance in the tax area, and the current exclusion clauses in the National Taxes Common Provisions Law can only be said to show the true character of the APL as a mere legal facade with no legal substance.

One situation where the APL *may* apply to a tax procedure in spite of the exclusion clauses is the purely voluntary audit.

(1) *Purely Voluntary Audits and Guidance of Returns*

In the operation of tax audits, there are some audits that do not necessarily have a basis in legislation but are conducted with the consent of the taxpayer.

In relation to such purely voluntary audits, the audit subject does not bear a duty not to obstruct public officials and there is no indirect compulsion to comply with the audit in the form of penalties. It is difficult to categorize such audits. One argument is that such audits ought to be seen as a type of administrative guidance governed by Article 1 of the APL on ' Concepts of Fairness and Transparency in Administrative Management' which *does* apply to tax administration. Consultations with the taxpayer for the purpose of collecting assessment data[18] should also be seen as a form of administrative guidance.

In addition, supervision of returns and tax consultation, including recommendations to file revised returns, can be interpreted as administrative guidance. Therefore, such administrative acts are governed by the 'Concepts of Fairness and Transparency in Administrative Management' of Article 1 and the 'General Principles on Administrative Guidance' of Article 32. In other words, there must be a guarantee that the taxpayer will no be at a disadvantage because he or she did not comply with a purely voluntary audit or return supervision or tax consultation, despite having no duty not to obstruct.

It is worth considering that if there was no exclusion clause like Article 74-2(2) of the amended National Taxes Common Provisions Law, the tax authorities would have to do the following in implementing administrative guidance:

(a) specification of the objectives, contents and responsible officer for the guidance;
(b) written explanation of the details of the administrative guidance; and
(c) publication of the criteria on which the administrative guidance is based (where it is implemented on a large scale or repeatedly).

Further, the activities of the tax authorities would have to:

(a) not breach the Constitution[19] or other laws or regulations;
(b) not exceed the objectives, authority, the specified activities or the powers of the body; and
(c) be subject to the doctrine of estoppel.

On a related point, in the implementation of purely voluntary audits, returns supervision or tax consultation, the tax authorities ought, on their own initiative, to inform the taxpayer whether their actions are administrative guidance or are based on law. Further, where the taxpayer is not informed as such, the taxpayer ought to be able to confirm this before agreeing to the procedure.[20] It is extremely important to bear in mind that the APL may apply to the tax area in these respects, albeit only through the ' Concepts of Fairnessoand Transparency in Administrative Management', the 'General Principles on Administrative Guidance' and 'Clarification of the Contents, Aims and Responsibility for Administrative Guidance ' .

8.5. Strategies for the Future

The current situation where the APL has virtually no application to tax procedures is a direct reflection of the negative attitude of Ministry of Finance bureaucrats towards the applicability of the APL to tax procedures. The enactment of the APL certainly does not mean that the proposals for reform of tax administrative procedures in the JFZA report[21] can be forgotten: there is no change to the urgent need for reform in the area of tax procedures. What legislative responses are possible in this context?

(1) *Reform of Existing Legislation*

One option would be to reconsider the exclusion provisions in the APL and Article 74-2(2) of the National Taxes Common Provisions Law.

There are many provisions in the APL that would be invaluable if the Law was made to apply to tax procedures. For example, fair procedures would be ensured for all kinds of dispositions if the provisions on unfavourable dispositions were applied to tax

administration. Procedures for offering explanations, hearings, requests for inspection of documents, participation of an interested third party in a hearing, provision of reasons for an unfavourable disposition, *etc*. would all become applicable to assessment dispositions. If procedures under current tax laws were reviewed in light of these standards, the taxpayer's procedural rights would be satisfactorily protected.

If the reason thay the APL was made inapplicable to tax administration was that it was enacted in haste without waiting for a true consensus to be reached, then no time should be lost in reviewing its applicability to the tax area with the aim of making the majority of the Law applicable now that the Law has been enacted.

If the Law became generally applicable to tax procedures, it would be necessary to create a new tax administrative procedure law or to amend the National Taxes Common Provisions Law to provide for procedures specific to the tax area. As already alluded to, the categories covered by the APL are confined and, as pointed out in the JFZA report, the issues that need to be tackled in achieving fairness and uniformity in tax procedures are multifarious. To respond to this situation, even if the applicability of the APL is expanded to cover tax procedures, it would be indispensable to make provision to govern the specific details of tax procedures.[22]

(2) *Enactment of a Special Tax Procedure Law*

Another option would be to accept the position under the APL and enact a new procedural law specific to the tax field.

This is the approach adopted in Germany. Germany has a General Administrative Procedure Law,[23] but it does not apply to tax administration. Instead, the Tax Basic Law[24] contains detailed provisions on tax procedures. In adopting this approach, Japan would be able to incorporate the necessary provisions into the National Taxes Common Provisions Law.

A variation on this same theme would be to create special laws such as a Tax Administration Procedure Law, a Tax Audit Procedures Law, *etc.* This is the practice followed in France.[25]

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1 *Gyôsei Tetsuzuki Hô* (Law No. 88 of 1993), hereafter "the APL" or "the Law".

2 Reproduced in Management and Coordination Agency Administrative Inspection Bureau [Sômuchô Gyôsei-kanri-kyoku], Article-by-Article Interpretation of the Administrative Procedure Law [Chikujô Kaisetsu Gyôsei Tetsuzuki Hô] (1994) 277. For an analysis of the APL in English, see Kö dderitzsch, Lorenz, 'Japan's New Administrative Procedure Act: Reasons for its Enactment and Likely Implications' (1991) 24 Law in Japan: *An Annual* 105.

3 lts full title was Bill Concerning the Adjustment of Related Laws due to Implementation of the Administrative Procedure Law [*Gyôsei Tetsuzuki Hô no Shikô ni Tomonau Kankei-hôritsu no Seibi ni Kansuru Horitsuan*].

4 For a concise explanation of the history of the APL, see Kaneko, Masashi, *The Administrative Procedure Law* [Gyoˆ sei Tetsuznki Hô] (1994), at 195 ff.

5 See Sonobe, Toshio, 'Introduction to the Administrative Procedure Law', in Ogawa, Ichirô et al. (eds), 3 *Treatise on Contemporary Administration* [Gendai Gyôsei Taikei] (1984) 3.

6 Tokyo *Zeirishi* Association [Tôkyô Zeinshikai], Prospectus for Legal Consolidation of Tax Administration [Zeimu Gyôsei no Hôteki Seibi ni Kansuru Yôkô] (1993), reproduced in (1993) 437 *Tokyo Zeirishi Kai* [Tôkyô *Zeirishi* Circles] 4.

7 *Kokuzei Tsusoku Hoˆ* (Law No. 66 of 1962).

8 Chapter 2 of the Law.

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9 Chapter 3 of the Law.

l0 Chapter 5 of the Law.

11 See opinion of interested parties in relation to tax administration procedures on May l 6, 1990: 10 *118th Diet House of Representatives Finance Committee Proceedings* [Dai-l 18-kai Kokkai Shûgiin Ôkura linkai-giroku] 21 ff.

12 This is the reason stated in the Table of Items for Reform (*Kaisei Taishô Jikô Ichiran*) in the National Taxes Common Provisions (Amendment) Bill.

13 See Outline of the 12th Discussion of the Fair and Transparent Administrative Procedure Sub-Council [Kôsei, Tômei na Gyôsei Tetsuzuki Bnkai Daijunikai Shingi Gaiyô] for April 12, 1991, reproduced in Administrative Management Research Centre Research Division [Gyôsei Kanri Kenkyuˆ Sentâ Chôsa-kenkyuß u] (ed.), *Towards Fairer and More Transparent Administrative Procedures (Collected Materials)* [Kosei, Tomei na Gyosei Tetsuzuki o Mezashite (Shiryôshû)] (1991) 119.

14 Article 35(1) 'Clarification of the Contents, Aims and Responsibility for Administrative Guidance.

15 Article 35(2).

16 Article 36.

17 For more details, see ' Takano, Toshinobu, 'The Partial Amendment to the National Taxes Common Provisions Law under the Administrative Procedure Law' 42(6) Zeimu Kôhô 202; Minami, Hiromasa, 'Towards Transparency and Fairness in Tax Procedure' (1994) 22 *Sozeihô Kenkyuˆ* [Japan Tax Law Review] 1 .

18 Income Tax Law [*Shotokuzei Hô*] (Law No. 33 of 1965) Article 235; Tobacco Tax Law [*Tabakozei Hô*] (Law No. 72 of 1984) Article 27(2); *etc*.

19 *Nihonkoku Kenpoˆ* (1947).

20 see Kitano, Hirohisa, *The Structure of Contemporary Tax Law* [Gendai Zeihô no Kô zô] (1972), at 322.

21 JFZA Tax System Consultative Committee [Nihon Zeinshikai Rengôkai Zeisei Shingikai], *The State of Tax Administration Procedures (Second Opinion Paper)* [Zeimu Gyôsei Tetsuzuki no Arikata (Dainiji Tôshin)] (1990).

22 The Tokyo *Zeirishi* Association favours this approach, and has published an opinion paper on adjustments to the National Taxes Common Provisions Law. See Tokyo Zeirishi Association [Tôkyô Zeirishikai], *Opinion Paper on Consolidation of the National Taxes Common Provisions Law* [Kokuzei Tsûsoku Hô no Seibi Jûjitsu ni Kansuru lkensho] (1 994) attached as an appendix to this volume.

23 *Verwaltungsverfarensgesetz* (BGB1 1976 IS.1253).

24 *Abgabenordnung* (AO 1977, Stand: 1 Juni 1990),

25 See Ishimura, Kôji, *Charters of Taxpayers ' Rights in Developed Countries* [Senshin-shokoku no Nôzeisha Kenri Kenshô] (1993), at 52 ff.

Chapter 9

Issuance of Circulars

9.1. An Overview

As expressed in the JFZA report,[1] the problems with the fairness and uniformity of Japanese tax administrative procedures are multifarious. One of these problem areas is fairness in circular issuance procedures.

Circulars (*tsûtatsu*) are commands or directions by a superior administrative agency to its subordinate bodies or officials, but have no binding force on taxpayers.[2] However, it is not possible for taxpayers or tax specialists to interpret or apply tax laws or to check the validity of specific treatment by the tax authorities without consulting tax circulars. In other words, circulars do virtually have the force of law, and do have *de facto* binding effect on the taxpayer.[3]

In particular, in recent years the tax authorities have started a trend of issuing copious circulars with the aim of closing loopholes in the tax laws. Article 84 of the Constitution[4] states that taxes must be imposed only by legislation: there has been mounting criticism by academics and tax specialists of the current situation where taxes are virtually imposed by circular.[5] While it is not possible to deny the necessity for circulars, there are increasing calls for reconsideration of the current position where circulars are a unilateral act of the tax authorities.

9.2. Participation of Interested Third Parties in the Issuance Process

It goes without saying that tax circulars should be issued only within the confines of tax laws and regulations: the tax authorities must not use tax circulars to usurp the legislative function. In order to produce circulars that are not flawed in this way, it is necessary to institute a screening system in the process of issuing circulars to involve taxpayers and other interested third parties.

Circulars can be divided broadly into basic circulars (*kihon tsûtatsu*) and individual circulars (*kobetsu tsûtatsu*). In relation to basic circulars, there is a precedent for consultation of taxpayers and interested third parties in the case of the basic circular covering the Corporation Tax Law[6] - the Corporation Tax Law Basic Circular Review Council (*Hôjinzei Hô Kihon Tsûtatsu Seibi Shingikai*) was in operation over the three or so years following the amendment of the Corporation Tax Law in 1 965. However, since then there have been no similar councils.

On the other hand, there have never been any such councils in relation to individual circulars - the tax authorities have always been able to issue and publish such circulars without any input from taxpayers or tax specialists. The opinion has been put that the effectiveness of the circulars in closing loopholes would be weakened if they could only be issued after publication and hearings. However, the Constitution is quite clear in prohibiting the executive from performing a legislative function. Even if the aim of issuing the circulars is to ensure equity in sharing the tax burden through closing loopholes, it is not permissible for the executive to make law.
Consequently, for circulars that affect the rights and obligations of taxpayers, regardless

of whether they are basic circulars or individual circulars, it is necessary to introduce a system whereby they are finalized and issued only after going through procedures allowing taxpayer participation. Further, where the tax authorities adjudge the need for an urgent issuance, the circular should be issued provisionally, on the condition that it will be subjected to a hearing within, say, six months. For such circulars that affect the rights and obligations of taxpayers, this procedure should be enshrined in legislation as soon as possible, after due consideration by the National Diet.[7]

9.3. Why have greater participation?

The National Diet, as the legislative arm of government, conducts effective politics through being composed of the elected representatives of the people. Likewise, the executive arm of government makes effective policy decisions through obtaining the participation of interested third parties. In this sense, it is very important for the tax authorities to hear the opinions of interested third parties such as taxpayers and zeirishi in issuing circulars. A guarantee of participation by such interest parties is also a step towards the goal of open tax administration.[8]

Certainly, participation of interested parties in the issuance process for circulars can be praised as the incorporation of public will. However, the down side is that it creates a broad discretion in the tax authorities to freely make circulars. A guarantee of participation by interested parties in the issuance process should not be seen as support for the free use of delegation of legislative power.

'1 JFZA Tax System Consultative Committee [Nihon Zeirishikai Rengôkai Zeisei Shingikai], *The State of Tax Administration Procedures (Second Opinion Paper)* [Zeimu Gyôsei Tetsuzuki no Arikata (Dainiji Tôshin)] (1990).

2 Article 14(2) of the National Government Organization Law [*Kokka Gyôsei Soshiki Hô*] (Law No. 120 of 1948) states:

> Each minister, committee and agency director has the power to issue instructions and circulars to bodies and officials within his or her jurisdiction in order to command or direct in relation to the activities of that ministry, committee or agency .

3 The circulars with the most effect on taxpayers' rights and duties are the so-called interpretive circulars, rather than the operational circulars. National taxes are mostly assessed according to the self-assessment mode, under which the taxpayer himself or herself makes the primary assessment of tax liability. Tax circulars are supposed to be internal standards of the tax authorities that have no binding legal effect on the taxpayer, but since taxpayers make reference to published tax circulars when binding themselves by their own assessment, the circular can be said to have a binding effect.

4 *Nihonkoku Kenpô* (1947).

5 See Kitano, Hirohisa, 'Taxation by Circular, Administration by Circular', in Kitano, Hirohisa (ed.), I *Research on Precedents: Treatise on Japanese Tax Law* [Hanrei Kenkyu: Nihon Zeihô Taikei] (1978) 51 .

6 *Hôjinzei Hoˆ* (Law No. 34 of 1965).

7 See Ishimura. K ô ji, *Charters of Taxpayers ' Rights in Developed Countries* [Senshin-shokoku no Nôzeisha Kenri Kenshô] (1993), at 20 ff.

8 At present in the United States, there is no requirement of publication of drafts or of participation of interested third parties in relation to rulings (as opposed to regulations). However, the view is gathering momentum in academic circles that quasi-1egislative rulings at least should conform to the rule-making procedures in the Federal Administrative Procedure Act so that proclamation occurs only after publication of a draft and allowing for the expression of opinions of interested third parties. See Galler, Linda, 'Emerging Standards for Judicial Review of IRS Revenue Rulings' (1992) 72 *Boston University Law Review* 841 .

Chapter 10

A System of Advance Rulings

l0.1. An Overview

It has been suggested that a system of advance rulings be considered as one link in the consolidation of tax administration procedures, and the JFZA report advocates this in its section on 'Creation of an Advance Rulings System'.[1] In broad terms, advance rulings are prior assessments by the tax authorities of the tax treatment of a transaction that the taxpayer is planning to conduct. Currently, a system of advance pricing agreements is in place for transfer pricing taxation, based on the US advance rulings system. The Japanese and US systems differ slightly. The Japanese system of advance pricing agreements for transfer pricing taxation provides rulings on actual transactions, whereas the US system resolves hypothetical legal problems.[2]

In other words, the advance rulings system is a system where the taxpayer seeks a prior written ruling on the interpretation and application of tax laws, as to what taxes would be assessed on a particular transaction that the taxpayer plans to conduct. From the other perspective, the tax authorities bear a duty to respond to the request in writing, stating their legal opinion of the transaction. Once the taxpayer receives the written statement, the doctrine of estoppel will apply to transactions conducted in reliance on the stated interpretation. The tax authorities are thus prevented from issuing dispositions contrary to a ruling that they have issued. Thus, the import of introducing a system of advance rulings as one aspect of the consolidation of pre-assessment procedures is to protect the taxpayer through the application of the doctrine of estoppel.

Tax laws, regulations and circulars are becoming increasingly complex. In this context, it is indispensable for the tax authorities to be able to issue written rulings in answer to queries addressing taxpayers' individual circumstances.

If such a mechanism was in place, the flow-on beneficial effects would include the following.

(a) The taxpayer would be able to avoid unnecessary disputes with the tax authorities. This would lead to a reduction in the number of cases of post-dispositive relief such as objections, NTT review and litigation.

(b) The accumulation of rulings would create a kind of precedent system. The taxpayer would be able to consult prior rulings to gauge how his or her transaction would be treated.

(c) Where a ruling had been issued, any ensuing tax audit could be implemented much more simply, being confined solely to confirmation of the facts.

In this way, the adoption of a system of advance rulings would benefit the tax authorities as well as the taxpayer.

10.2. The Current System in Japan

Japan currently has a system of advance pricing agreements for transfer pricing taxation.[3] However, this system is based on resolution of practical problems, not legal issues.

It is probably worth explaining the transfer pricing taxation system at this point. For instance, where a Japanese parent company exports products to a foreign-based subsidiary, it might be possible for the parent company to artificially deflate sale prices, reducing the profit of the parent company and depriving the tax authorities of revenue. In this situation, income that should be taxed in Japan (the difference between the actual amount received and the market price) flows to another country. The funds left with the foreign subsidiary can then be taxed at a lower rate in the foreign country. Alternatively, the Japanese parent company might artificially inflate the export price for its own benefit, removing funds from the tax jurisdiction of the foreign country where the subsidiary is based. Consequently, transfer pricing taxation exists where prices in transactions between related companies seem irregular, to ensure that tax can be calculated on the basis of fair and reasonable prices as assessed by the relevant tax authority.

Advance pricing agreements permit confirmation from the tax authorities of the appropriateness of prices between parent companies and subsidiaries. Where the tax authorities determine that there is no problem, this can be taken as a green light for that transaction. This provides the taxpayer with predictability and legal stability.[4]

Futher, the Customs and Tariffs Law provides for a system of "pre- assessment instruction".[5] Under this system, Customs Houses must endeavour, for the smooth and correct operation of the self-assessment system, to provide appropriate instruction when information is requested by taxpayers or interested parties as to classifications under the customs rates table, tax rates or taxable bases in relation to particular imported goods. This system can also be taken into consideration in formulating an advance rulings system for Japan.[6]

10.3. Advance Rulings and Freedom of Information

Even if a system of advance rulings is established as a part of pre-assessment procedures, the system cannot claim to be complete without information disclosure provisions or freedom of information legislation. The reason is that because advance rulings are of their nature supposed to be for confirmation between individual taxpayers and the tax authorities, some of the rulings may become public, but many will not. In the United States, the general rule is that rulings are made public, but they may be kept confidential in certain cases. Consequently, if a taxpayer wants to examine a ruling that was not made public, he or she must seek access to the ruling through disclosure provisions in the tax laws or through the Freedom of Information Act. The tax authorities will then make the ruling available to the taxpayer after erasing all identifying markers of the original taxpayer. The taxpayer who obtains the ruling will then be able to use it as a guide for his or her own transaction. In this way, advance rulings are the epitome of pre-assessment procedures: the taxpayer examines the prior ruling and adjusts his or her own transaction to avoid problems. In this way, it is possible to curtail the need for relief at later stages. Thus, advance rulings are

extremely important from the point of view of preventative law. A similar comprehensive system is needed in Japan as soon as possible: at the same time, a system of disclosure of advance rulings is also necessary.[7]

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1 JFZA Tax System Consultative Committee [Nihon Zeirishikai Rengô kai Zeisei Shingikai], *The State of Tax Administration Procedures (Second Opinion Paper)* [Zeimu Gyôsei Tetsuzuki no Arikata (Dainiji Tôshin)] (1990).

2 For details on the US system, see Meldman, Robert E. and Petrie, Richard A., *Federal Taxation:' Practice and Procedure* (1992 4th ed.), at Chapter 14.

3 lndividual Circular: On the Recognition of Price Fixing Calculations between Individual Industries [Kobetsu Tsûtatsu: Dokuritsu-kigyô-kan Kakaku no Santei-hôhô -tô no Kakunin ni Tsuite] (1987 Sachô 5-1 Gai-2-ka Kyôdô). This circular sets out procedures relating to "The Subject of Recognition", "Submmission of Information", "Notification of Result of Investigation", "Revision or Revocation of the Recognition" and "The Format for Recognition Request Forms". As already pointed out, this situation where such important procedures are set out in an administrative circular rather than legislation is lamentable in itself. Even if the guidelines were put in place out of respect for the taxpayer's procedural rights, it is hard to understand why the form of a tax circular was chosen. This system should be debated in the National Diet as soon as possible and placed in legislative form.

4 For details on the transfer pricing taxation system, see Gomi, Yûji, *Question and Answer: Taxation of Transfer Pricing (New Edition)* [Q&A Iten Kakaku no Zeimu (Shinpan)] (1992),

5 *Kanzei Hô* (Law No. 61 of 1954) Article 7(3)
.

6 A feature of advance rulings at the moment is that they are in place only for international matters such as transfer pricing taxation and customs and tariffs. In other words, an element of PR towards foreign countries is in evidence. It is hard to understand why there is no corresponding system for domestic matters.

7 As will be discussed at **12.4**., currently in Japan there is no way under the tax laws to confirm what information is held by the tax authorities, nor is there a general freedom of information law. Incidentally, in the United States, provision is made in this area by Article 6110 of the Internal Revenue Code (Public Inspection of Written Determinations) and the federal Freedom of Information Act (1966).

Chapter 11

Tax Audit Procedures

11.1. Issues with Tax Audit Procedures

11.1.1. The Locus of the Problem

Tax audits can be grouped into the following four categories:

(a) *audits under individual tax laws.* These are audits provided for in the various substantive tax laws, such as the Income Tax Law,[1] the Corporation Tax Law,[2] the Inheritance Tax Law,[3] and the Consumption Tax Law,[4] as well as audits as a precursor to administrative review.[5] These audits are also referred to as 'assessment audits', 'audits for tax assessment' or 'audits under substantive tax laws'.

(b) *delinquency audits.* These audits aim to appraise the scope of the assets of a defaulting taxpayer under the National Taxes Collection Law.[6]

(c) *audits under the National Taxes Infringement Control Law*.[7] These audits aim to collect data where the taxpayer is under suspicion of tax evasion, *i. e* fraud or some other improper conduct.

(d) *purely voluntary audits.*[8] These audits may not necessarily have a basis in legislation, but are conducted as a form of administrative guidance. The various types of extra-1egal inquiry can be placed in this category.

Of these various types of audit, those with most relevance for the ordinary taxpayer are the audits under individual tax laws. In the operation of the tax system, these audits are the most common. These audits "are not to be interpreted as audits for criminal investigations".[9] In other words, they are 'voluntary audits' conducted in the pursuit of normal administrative goals and are by nature only possible with the consent of the audit subject. However, uncooperative taxpayers may be subject to "penal servitude of up to one year or a fine of up to ¥200,000".[10] Taxpayers are judged uncooperative if they "refuse to answer tax officials' questions or answer falsely, or resist, evade or obstruct an audit"[11] or if they "produce books, records or other documents containing false information in relation to an audit".[12]

In this way, assessment audits are voluntary audits in character, but are enforced indirectly through penalties. Although the audits are voluntary, in some cases they will take on the character of an investigation of criminal responsibility. However, the provisions in current legislation are extremely rudimentary: audits are permitted simply "when necessary", a test which is clearly inadequate in procedural terms. It is not surprising, then, that many problems should arise in the implementation of audits. The main reason for the friction created between taxpayers and the tax authorities in conducting audits lies in this inadequacy of procedural provisions.

11.1.2. Perspectives for Reform

There are many problems with tax audits. On this point, the JFZA report[13] raised five particular areas of concern, namely:

(a) sending of audit notifications;
(b) procedures for extended audit and the presentation of the audit notification;
(c) revealing the reasons for the audit;
(d) hearings during the audit process and notification of audit completion; and
(e) confirmation of the necessity of an audit.

These issues all arise from inadequacies of the current legislation, but the courts are also to blame for not criticizing the inadequacies and on occasion upholding them. A typical example is the negative attitude of the court towards requirements of prior notification of an audit or the provision of reasons, saying that "there is no provision in law" or "it is not
a general requirement under the law".[14] Therefore, in order to erase procedural inadequacies, it will probably be necessary to amend the express provisions in the legislation.

The particular issues in tax audits will now be discussed.

(I) *Sending Audit Notifications*

The JFZA report makes the following points regarding audit notifications (*chôsa tsûchisho*):

> From the point of view of the guarantee of procedural fairness in Article 31 of the Constitution, it would be appropriate to introduce a system of sending a notification to the taxpayer and his or her *zeirishi* a reasonable time before a tax audit (say, 14 days), containing details such as the proposed date and place, the type of tax and tax year under consideration, the reasons for the audit, the name and affiliation of the audit officer and what books, records and other documents should be prepared for examination.

This proposal by the JFZA is based on the German example for field audits.[15]

In Japan, there is no system of preceding audits with 'contact letters' as a form of notification. However, adopting this kind of system is very important from the perspective of protecting taxpayers' procedural rights. As pointed out previously, ordinary assessment audits are backed by penalties but are classified as voluntary. Therefore, they differ in nature from criminal investigations. A contact letter is a preliminary pre-audit measure to enquire when would be a convenient time to call on the taxpayer. Therefore, if the proposed date is inconvenient, another date that is mutually agreeable will be negotiated. For normal audits, it is not considered that the taxpayer will be concealing or destroying evidence - the audit is voluntary, and the taxpayer may even rewrite the accounts before the audit if he or she so desires. Where there is the suspicion of tax evasion and the authorities wish to conduct a surprise audit to establish whether a crime has occurred, they should obtain a warrant under the National Taxes Infringement Control Law.

In many countries such as the United States and Canada, regular audits must be preceded by a contact letter in normal circumstances.

The tax authorities would argue that contact letters merely reduce administrative efficiency and serve no useful purpose. However, for Japan to retain its place in international society, it is no longer possible to avoid introducing such audit notifications. If the tax authorities do not begin to issue such notifications on their own initiative, it will be necessary to amend the National Taxes Common Provisions Law or include provisions in a new tax audit procedure law to create a legislative duty to do so.

(2) *Procedures for Extended Audit and Presentation of the Audit Notification*

The JFZA report makes the following statements concerning procedures for extended audits and the presentation of the audit notification.

> Extended audit is a procedure to collect data from third parties in order to trace the extent of the taxpayer's income, and should not be called upon lightly. It is desirable for the taxpayer and his or her *zeirishi* to be notified and allowed a hearing before an extended audit is put into operation, and the third party should be presented with an audit notification at the time of the audit.

The Income Tax Law sets out the persons who are subject to questioning and examination (i.e. those who have a duty not to obstruct public officials) as: [16]

(a) persons with a tax debt or considered to have a tax debt;
(b) persons obliged to submit withholding tax collections; and
(c) third parties having transactional relations with persons having a tax debt.

Of these, (a) refers to audits of the taxpayer himself or herself, whereas (b) and (c) refer to so-called extended audits. By contrast, the Corporation Tax Law merely states the subject of the duty not to obstruct public officials as "the corporation".[17] Therefore, it is not clear exactly which physical persons bear this duty.

Extended audits can on occasion have a detrimental effect on the level of trust in an enterprise and there are reports that they are sometimes conducted as a form of harassment. Amongst these cases there are many that seem to be more issues of human rights than purely of taxation, but there is no denying that, as stated above, extended audit procedures are barely provided for in express tax legislation.

In similar situations in the United States, a summons on a third party record-keeper is always issued. To maintain effectiveness, the format is not entirely voluntary. Detailed provisions are contained in the tax code.[18]

In Japan, to take the example of a financial institution, Tax Office personnel can appear on the doorstep with a Financial Institution Account Audit Certificate (*kin'yû kikan no yochokin-tô no chôsasho*) in hand and claim unlimited access to the financial information
of not only the account-holder or someone thought to be an account-holder, but also of persons who have banking relations with such persons, all without giving any of these account-holders prior notice or allowing them the opportunity to object. Incidentally, at

present the same audit certificates are presented upon extended audits for criminal investigations under the National Taxes Infringement Control Law, but there are concerns that this breaches the requirement for a warrant in Article 35 of the Constitution[19] and Article 2 of the National Taxes Infringement Control Law. This point needs to be carefully reviewed from a different perspective from assessment audits.

If assessment audits are to be reformed through amendment of the National Ta xes Common Provisions Law or the creation of a tax administrative procedure law or a tax audit procedure law, provision must be made for notification of an extended audit, whatever the head of tax under investigation. Notification should be sent to the taxpayer, his or her zeirishi, any other persons subject to the primary audit, and the third party subject to the extended audit and should contain the proposed date and time of the audit and detailed reasons for the audit. An opportunity to oppose the audit should be granted. In addition, the tax authorities should reimburse banks and other third parties for actual costs, such as human resources when photocopies are made at the bank's premises. Concrete provisions are also required in this area.

Of course, even under present law, the situation would be different if financial institutions were more responsive to the position of their clients, rather than immediately complying with tax authorities. They could, for instance, demand reasons for the request to see the account-holder's account details, make the tax authority define narrowly what information is required and hand only that information over in an envelope. The burden of protecting privacy would then be cast on the tax authority, not the financial institution. If these procedures were followed, the tax authorities would probably desist from presenting the rather vague audit certificate and asking to see everything that the financial institution holds on a particular client, and might instead request access in writing with reasons attached and with the inforrnation required narrowly defined: further, they might notify the taxpayer and all others related to the information to be accessed. The financial institution should adopt the attitude of revealing information only if there is no objection from the taxpayer. The Banks Associations should take the lead in creating guidelines for tax audits and financial privacy from the point of view of protecting clients' financial privacy and should encourage voluntary compliance through the banking industry, while at the same time encouraging the tax authorities to abide strictly by such procedures. By these means, some degree of procedural reform could be achieved even within the confines of current law .

Regardless of whether Japan goes as far as adopting the administrative summons system of the United States, at the very minimum there is the need for legislative action to make audit procedures in relation to third parties more transparent by giving prior notification of the details of the extended audit and allowing the opportunity to oppose it.

By way of reference, in Germany the *Abgabenordnung* was amended in 1988 by insertion
of Article 30(a) (Protection of Bank Clients). Under this amendment, where a bank client opens an account upon satisfaction of identification requirements, there are limitations on access to that account for the sake of extended audits. Specifically, the amendment imposes a duty to respect the fiduciary relationship between the financial institution and the client and prohibits periodic repeated access to the account.

(3) *Revealing the Reasons for the Audit*

As mentioned previously, under a self-assessment system, action by the tax authorities is dependent upon initial filing of a return by the taxpayer. Therefore, except for where the law permits audits before the statutory deadline in exceptional circumstances such as where the taxpayer seeks a reduction in provisional tax,[20] there will be no reason for holding preliminary audits before the deadline for filing returns. Further, the tax laws permit an audit "when necessary": the Supreme Court has held that an audit is 'necessary' when there is "objective necessity, taking into account the specific circumstances of the case such as the objectives of the audit, the items to be audited, the manner in which the contents of the claim or return are described, the state of the accounts ledgers, the form of the business, etc.".[21] In this decision, the court held at the same time that "prior notification of the date, time and place of implementation, notification of the reasons and the specific necessity of the audit are not compulsory legal elements" for a tax audit, and expressed reluctance to regard notification as compulsory. Therefore, on the basis of this judgment, the tax authorities do not necessarily have to be able to present objectively reasonable reasons to conduct an audit. However, from the taxpayer's point of view, he or she is unable to assess whether the tax authorities' audit is based on reasonable necessity unless he or she receives a statement of reasons.[22]

In order to overcome the effect of this decision and protect the procedural rights of the taxpayer, it is necessary to have an express legislative provision. Logically, if a duty is imposed on the tax authority to send notification of the audit, then there should also be a requirement to reveal the specific reasons for the audit. Further, there is the need to guarantee the taxpayer the right to dispute the reasonableness of those reasons. In addition, in relation to unreasonable audits such as preliminary audits, it is necessary to provide expressly in legislation that failure to cooperate does not amount to the criminal offence of obstructing an audit. These legislative measures are indispensable to increasing the fairness of audit procedures.

(4) *Hearings during the Audit Process and Notification of Audit Completion*

The JFZA report makes the following points in relation to hearings during an audit and notifications of audit completion (*chôsa shûryô tsûchi*).

> During a tax audit, the taxpayer and his or her *zeirishi* need to be allowed a hearing to express their opinions. When the audit is over, the taxpayer should be notified as such in writing by way of a Notification of Audit Completion.

Where the taxpayer states to the audit officer during the audit that he or she wishes to consult his or her *zeirishi*, there needs to be a legal mechanism to allow postponement of the audit after setting an approximate resumption date. Further, the *zeirishi* should be given true representative powers as in the United States, so that the taxpayer does not need to attend the audit in person.

The right to have a specialist present during a tax audit is not provided for expressly in legislation, except for a few provisions in the *Zeirishi* Law.[23] For this reason, debate on this right to representation has focussed on these provisions. However, debate continues over recognition of the right, because 'tax representation' under the *Zeirishi* Law is not strictly a form of agency and is not accompanied by detailed exposition of the powers of the representative as in the Code of Civil Procedure.[24]

For this reason, it is not uncommon for the tax authorities to make no allowance even if the taxpayer needs to wait for the attendance of the *zeirishi* or if the time or date of the audit is inconvenient for the *zeirishi*. Further, it is also problematic that there is no legal provision for the *zeirishi* to explain facts or answer questions in place of the taxpayer.

In order to counter such problems, the view has been put by the *zeirishi* associations and others that the right to representation at tax audits should be included in Article 2(1)(i) of the Zeirishi Law. However, the right to representation should not be viewed as mainly a question of the legal position of *zeirishi*: the right to representation is a right of the person subject to the audit (which might be someone other than the taxpayer), who can be represented by non-*zeirishi* such as attorneys and third party advisers.

If these facts are included in considerations, the right to representation should be framed more in terms of the taxpayer's procedural rights. There is an urgent need to put in place the taxpayer's right to seek representation, whether this occurs by amendment of the National Taxes Common Provisions Law or through enactment of a new tax administrative procedure law or tax audit procedure law. On the other hand, there should also be some sort of provision made in the *Zeirishi* Law or elsewhere for the *zeirishi*'s obligation and right to attend the audit when requested.

In relation to notifications of audit completion, it is very important to systematize this type of notice. This issue of completion notices needs to be considered in conjunction with the requirement to issue a contact letter for arranging the initial time for the audit.

In Japan, because there is no requirement or custom of issuing contact letters, it is often unclear in relation to which tax period an audit is being conducted. It is hard to prevent a preliminary audit where it is made out to be an audit of a previous tax period. The fact that there is no restriction on re-audits in the tax laws also tends to cause confusion in this area.

Bearing these factors in mind, it is of great importance to systematize written audit completion notifications or Return Confirmation Notifications (*shinkoku zenin tsûchi*), from the point of view of ensuring procedural fairness and controlling preliminary audits.

(5) *Establishing the Necessity of the Tax Audit*

The JFZA report points out the following in relation to establishing necessity for tax audits.

> Since tax audits are an exercise of public power, they need to be based on guaranteed fair procedures. .... If the question of necessity in tax audits is to be determined properly, an objective third party body needs to be established to rule on the issue in individual cases.

Currently, legal regulation of tax audits is extremely sparse. The provisions merely say that an audit may be conducted "when necessary".[25] The Supreme Court has stated that this necessity must be an "objectrve necessity".[26] Therefore, an audit cannot be implemented on the unilateral necessity of the tax authorities. Having said this, one

court decision is not sufficient authority to ensure compliance. In particular, there are special audit groups within the National Tax Administration such as the Information and Examination Section[27] which conduct de facto compulsory investigations: there is no way of putting a check on such audits, which is not a healthy situation. In order for voluntary audits to be truly voluntary, there needs to be some sort of express legislative check in place. The precise meaning of the 'objective third party body' in the JFZA proposal is not certain. However, on a related point, in the United States there is a Taxpayer Ombudsman.[28] Further, in Australia[29] and New Zealand[30] there is a complaints review system or a taxpayer service unit to provide relief against maladministration. In England, a third party Revenue Adjudicator handles complaints from taxpayers.[31] However, in Japan, even if such relief bodies were established within the tax authorities, it would be difficult to put an end to forcible audits: unless there is a body to protect taxpayers' rights that has a strong sense of independence, for instance an ombudsman that reports to the National Diet, it would be very difficult to change the current practices of the tax authorities. Therefore, it would be necessary to accompany the enactment of a tax audit procedure law with the establishment of the office of Parliamentary Taxpayer Ombudsman.

(6) *Information Gathering Procedures Accompanying Audits*

In Japan there are next to no provisions under current law to regulate the collection of materials by the tax authorities such as the taking possession and photocopying of books, records and other documents. It is not unknown for audit officers to go through the handbag or desk drawers of the audit subject without obtaining consent, even during voluntary audits. Even though such practices have been identified as problematic in the past, there has been no move to regulate the tax authorities' acts in this area.[32]

Depending on the items being inspected, there are those would lead to the audit subject being liable to penalty if they could be removed or photocopied. Typical examples are doctors ' medical records, or registers of the dead or congregation lists of a religious organization. These documents must be protected from removal or photocopying to maintain the privacy and personal human dignity of the patient or believer,[33] as well as to prevent breach of the duty of confidentiality on the part of the doctor or religious organization.[34] In particular, if a doctor or religious organization discloses secrets without valid reason "by direct oral or written communication or by leaving a document containing secrets where it can be read by others", then the patient or believer can seek a prosecution under Article 134 of the Criminal Code. Audit officers of the Tax Office tend to justify taking possession of or photocopying medical records or registers of the dead by pointing out that they have a duty of confidentiality as public servants, so there is no real problem. However, for the doctor or religious organization there is no waiver of the duty of confidentiality under Article 134 of the Criminal Code for reason that the person to whom the confidence is revealed is a public servant.

There is thus the need to provide concrete provisions in legislation in relation to collection of sensitive information of this type, for instance by requiring personal approval from the patient or believer before the doctor or religious organization can reveal the documents.

The tax authorities can also independently collect information from various sources

without the taxpayer's knowledge or cooperation. For example, Article 235(2) of the Income Tax Law and Article 156-2 of the Corporation Tax Law provide for requests for cooperation to other administrative bodies. Under these provisions, the tax authorities "can, where it is necessary for an audit, request that a public body or governmental organization allow access to or provide records or materials that would be of reference for the audit, or seek other cooperation".

These requests for cooperation are allowable only when there is "reasonable necessity": this is obvious from the above Supreme Court decision. Thus, requests for cooperation that are not based on reasonable necessity are illegal. However, under current law the taxpayer is not even able to find out whether any request for cooperation occurred. Therefore, it is not possible to control obtaining of information by unnecessary requests for cooperation.

As will be discussed in detail later,[35] the significance of the right of privacy in the current age lies in how the "right to informational privacy" is guaranteed. In other words, the challenge is to go beyond the mere "right to be left alone" and put in place a right to control personal information.

From the point of view of this modern type of privacy right, a taxpayer should be notified of any request for cooperation and what information was provided. Then the taxpayer will be able to control his or her personal information. If such notification was required and if it became clear that the tax audit on which the request was based was found illegal or that cooperation was requested beyond what was necessary, then the taxpayer would be able to seek damages from the government.

In this way, in relation to collection of information in tax audits, reform is very important from the point of view of the protection of privacy. The debate must go beyond the duty of confidentiality of public servants. It goes without saying that concrete legislative measures must be put in place to increase the fairness and transparency of procedures.

11.2. Issues with Post-audit Procedures

Under a self-assessment system, the amount of the tax debt is initially assessed by the taxpayer in his or her tax return. However, where it is determined by an audit that there is an error in the taxpayer's return, a revised return may be filed, a correction disposition may be issued, etc. Such dispositions that occur after an audit are known collectively as post-audit procedures (*chôsa-go tetsuzuki*).

11.2.1. Recommendation to File a Revised Return

In recent years in Japan, recommendations or encouragements to file a revised return, a type of administrative guidance, have been problematic amongst post-audit procedures. The issue arises when a tax audit reveals facts on the basis of which tax officials promote to the taxpayer the option of filing a revised return. If the taxpayer files a revised return, he or she is then unable to dispute the outcome through administrative or judicial review. The particular problem at present is with tax officials forcing taxpayers to file revised returns. In other words, the tax officials who do not want the taxpayer to be able to appeal the outcome confront the taxpayer with the possibility of the

continuation or upgrading of the audit (or some other disadvantage) unless the taxpayer files a revised return. Of course, it is not illegal or inappropriate for the tax authorities to merely promote revised retums to the taxpayer as an aspect of administrative guidance. It only becomes a problem when there is no mutual agreement between the taxpayer and the tax official in relation to the revised return, but it is made out that the taxpayer has freely consented.

This type of forced revised return is clearly a case of administrative guidance that breaches the principles of the Administrative Procedure Law.[36] Furthermore, depending on the circumstances, some are of the opinion[37] that there could be an abuse of the public servants' position.[38] The crime of abuse of public servants' position is established when a person with a position in the public service forces a second party on the strength of the former's position as a public servant to do something that the second party was not legally obliged to do. Further, if a forced revised return was found to constitute an abuse of the public servant's position, the execution of the act would not be mitigated by the crime of obstruction of public administration.[39]

The biggest reason why forced revised returns are so prevalent is the fact that audit officers on the front line are pursued by statistical norms, so that they lead an existence almost like insurance salespersons. Put in another way, audit officers who respect the litigation rights of taxpayers are not necessarily well received within upper echelons of the tax authorities, while those officers who raise extra revenue are well received.

There needs to be a legislative response or the creation of guidelines to protect the taxpayer in these areas, including measures to train tax officials that forcing revised returns is prohibited and to proscribe setting work standards according to statistical norms or quotas.

11.2.2. Provision of Reasons

Another issue with increased fairness in audit procedures is the requirement to attach reasons to any disposition. At present, the typical example of providing reasons is the case of a correction disposition for a blue return.[40] However, this is if anything the exceptional case. There are many situations where reasons are not required, such as correction or determination relating to a white return, correction or determination relating to inheritance tax or consumption tax, notification of denial of permission to file a blue return,[41] and imposition of heavy penalty tax.[42]

Providing reasons for dispositions has very great significance in contributing to increased fairness in administration and also reinforcing the taxpayer's appeal rights. If reasons are made clear, it becomes very easy for the taxpayer to seek post-dispositive relief such as administrative review. Therefore, it should be a matter of priority to require the tax authorities to provide reasons for all dispositions, either through amendment of the Administrative Procedure Law or enactment of a new tax administrative procedure law.

It is also important to require tax authorities to instruct the taxpayer of options relating to the availability of appeals such as administrative review.

1 *Shotokuzei Hoˆ* (Law No. 33 of 1965) Article 234.

2 *Hôjinzei Hô* (Law No. 34 of 1965) Article 153.

3 *Sôzokuzei Hô* (Law No. 73 of 1950) Article 60.

4 *Shôhizei Hô* (Law No.l08 of 1988) Article 62.

5 National Taxes Common Provisions Law [*Kokuzei Tsûsoku Hô*] (Law No. 66 of 1962) Article 97.

6 *Kokuzei Chôshû Hô* (Law No. 147 of 1959) Articles 142 ff.

7 *Kokuzei Hansoku Torishimari Hoˆ* (Law No. 67 of 1900).

8 For examples, see Kitano, Hirohisa, *The Structure of Contemporary Tex Law* [Gendai Zeihô no Kôzô] (1972), at 321.

9 Corporation Tax Law Article 156; etc.

10 Corporation Tax Law Article 162; etc.

11 Corporation Tax Law Article 162(2),

12 Corporation Tax Law Article 162(3).

13 JFZA Tax System Consultative Committee [Nihon Zeinshikai Rengôkai Zeisei Shingikai], *The State of Tax Administration Procedures (Second Opinion Paper)* [Zeimu Gyôsei Tetsuzuki no Arikata (Dainiji Tôshin)] (1 990). See **7.4.** above.

14 See *Japan v. Hirota* (Supreme Court, July 10, 1973) 27(7) *Keishû* 1205; *Fujiwara v. Director of Meguro Tax Office* (Tokyo High Court, December 26, 1973) 20(1) *Shômu Geppô* 105; *Terada v. Japan* (Tokyo District Court, May 29, 1975) 21(7) *Shômu Geppô* l542.

15 *Abgabenordnung* (1977, Stand: I Juni 1990) Articles 193 and 194.

16 Income Tax Law Article 234.

17 Corporation Tax Law Article 153.

18 lnternal Revenue Code (USA) 1984 Section 7609 ("Special Procedures for Third Party Summonses").

19 *Nihonkoku Kenpô* (1947).

20 See Income Tax Law Articles 111 ff.

21 *Japan v. Hirota, supra* n.14.

22 See *Japan v. A Taxpayer of Shizuoka City* (Shizuoka District Court, February 9, l

972) 659 *Hanrei Jihô* 36 for a similar judicial opinion.

23 Specifically, see *Zeirishi* Law [*Zeirishi Hô*] (Law No. 237 of 1951) Articles 2(1)(i), 30 and 34.

24 *Minji Soshô Hô* (Law No. 29 of 1890) Articles 79 ff. (Litigation Representatives and Advisers) .

25 For instance, see Income Tax Law Article 234.

26 *Japan v. Hirota, supra* n.14.

27 For more detail, see Chapter 1 , n.25.

28 lnternal Revenue Code 1984 Section 7811 .

29 Australian Taxation Office (ATO), The ATO Service Principles (1989).

30 lnland Revenue (New Zealand), *Problem Resolution Officer, Tax Problems ?* (1990).

31 Revenue Adjudicator's Office (UK), *How to Complain about the Inland Revenue* (1993).

32 ln a case publicised on March 27, 1995, audit officers went upstairs at the taxpayer' s private residence without the consent of the taxpayer or his family, examined drawers and disturbed underwear and other private possessions. The taxpayer argued to the Kyoto District Court that the audit officers' actions were illegal as an abuse of power and sought damages accordingly. The court held the audit illegal for lack of consent and ordered the government to pay damages of ¥600,000. See *Nihon Keizai Shinbun* (March 28, 1995 morning edition).

33 Constitution of Japan Article 13.

34 Criminal Code [*Keihô*] (Law No. 45 of 1909) Article 134.

35 See Chapter 1 2.

36 *Gyôsei Tetsuzuki Hô* (Law No. 88 of 1993).

37 For instance, Kitano, Hirohisa (ed.), *Contemporary Dictionary of Tax Law (Second Edition*) [Gendai Zeihô Jiten (Dainihan)] (1992), at 344.

38 See Criminal Code Article 193.

39 Criminal Code Article 95(5).

40 See Income Tax Law Article 155; Corporation Tax Law Article 130.

41 See Income Tax Law Article 146; Corporation Tax Law Article 124.

42National Taxes Common Provisions Law Article 68.

Chapter 12

Tax Databases and Informational Privacy

12.1. Introduction

Despite Japan's status as an 'information society', computerization of Japanese administrative bodies has fallen far behind private enterprise. The government has therefore given priority to the policy of establishing databases for the information held by administrative bodies.[1] In line with this governmental policy, the National Tax Administration has been taking steps to implement the KSK (*Kokuzei Sôgô Kanri*) System since 1988 with the aim of producing a total database of tax administrative information. In addition, the government is proceeding with the introduction of *de facto* national ID numbers under the guise of 'tax file numbers', based on multi-purpose shared use of information held by individual administrative bodies. By this means, the government will be able to exercise surveillance over various information on the public. The eventual aim is to build a distributed processing comprehensive national database.

On the other hand, there is currently no general freedom of information law at the national level and no specific disclosure law for tax matters. Although the information held by administrative bodies is not publicly available, there has not been too much criticism of the situation. In a way, the public has become used to in camera administration.

If the KSK System, national ID numbers and a national database are introduced, Japan will be a long way along the path to becoming a surveillance society.

12.2. Timetable for Introduction of the KSK System

In December 1987, the Administrative Information System Liaison Committee (*gyôsei jôhô shisutemu kaku-shocho renraku kaigi*) made up of representatives of various national administrative departments published the Basic Policy Statement on Creation of a Database for National Administrative Bodies[2] (hereafter "the Policy Statement"). This Policy Statement aims to establish a distributed processing comprehensive national database by putting information held by each administrative body on database all connected by a computer system with capacity for Open System Interconnection (OSI).[3]

In accordance with the Policy Statement, in 1988 the National Tax Administration set about the introduction of the KSK System to put all tax-related information on database.[4] In addition, from July 1991 the management of taxpayer files was rationalized, so that they were arranged according to the taxpayer, not according to the head of tax as previously. At the same time, the following basic objectives for taxpayer management were revealed:

(a) to create a system that allows different types of taxpayer to be grouped together for tax management purposes;
(b) to have capacity to link with systems of other administrative bodies through OSI, unlike the ADP System currently in use in the National Tax Administration;
(c) to create a national network;

(d) to automate the input of alterations to data; and
(e) to create a system that can make use of tax file numbers.

The KSK System is being developed based on these objectives, and should be ready for operation by about 1997.

12.3. Timetable for Introduction of de facto National ID Numbers

In March 1988, the government's Tax Research Commission (*Zeisei Chô sakai*) established the Sub-committee to Debate Tax File Numbers (*Nôzeisha-bangô-to Kentô Shô-iinkai*) and set in process the debate on introduction of tax file numbers in Japan. In December of 1988, the Sub-committee published a report ("the 1988 Report") In 1992 the Sub committee published another report ("the 1992 Report").[5]

In these reports, the following options were outlined for assigning numbers to individuals
and non-individuals.

(1) *Non-individuals*

Corporations or unincorporated organizations could be assigned numbers either according to new numbers created by the tax administration, or according to pre-existing registration numbers on the business register or corporations register.

(2) *Individuals*

The method of assigning tax file numbers to individuals has ramifications for the everyday lives of the public. The reports examine the following models for assigning numbers.

(a) The U.S./Canadian model. Under this system, numbers already assigned for social security purposes are expanded in application to cover all administrative uses, including tax. If this system were to be adopted in Japan, it has been decided that the existing public pension numbers would be used, so this system is sometimes referred to as the 'pension number system ' .

(b) The Scandinavian model. In Sweden and Norway, every national and resident foreigner is assigned a number upon birth or arrival. If this system were to be adopted in Japan, the Residents Registration and Alien Registration systems would be adapted. This system is also known as the 'birth number system' or the 'resident registration system' .

(c) The Italian/Australian model. In Italy and Australia, the tax authorities assign a special number for tax administration purposes. The Japanese tax authorities already use a numbering system for management of taxpayer files, so the Italian/Australian model could be applied by consolidation of these numbers.

(3) *Selection of a Model by the Government's Tax Research Commission*

Tax file numbers are to be used only for tax administration. Persons to whom numbers are assigned need not be the whole of the general public, but merely taxpayers. Therefore, the body assigning the numbers should be the tax authorities.

If 'pure' tax file numbers were to be adopted, the only option in relation to individuals would be the Italian/Australian model. However, the Tax Research Commission expresses the view in the 1988 Report that the Italian/Australian model is expensive to operate in relation to the advantages obtained, and excludes it from consideration for Japan. The Report then discusses only the other two models. In other words, the government's Tax Research Commission favours a numbering system that can be applied to administration generally (including welfare and police matters) as well as to use by the private sector, not just to tax administration. Thus it would seem that the Tax Research Commission is aiming to adopt a multi-purpose national ID number system under the cloak of the tax file numbering system.[6]

(4) *The Common ID Number System Council*

A mere two months after the establishment of the Sub-committee to Debate Tax File Numbers by the Tax Research Commission, another group was established made up of representatives of 13 national administrative departments and called the Liaison and Debate Council for Relevant Administrative Bodies in Relation to an ID Number System for Taxation and Administration Generally (*zeimu-tô Gyôsei bun'ya ni okeru kyôtsû bangô seido ni kansuru kankei-shôchô renraku kentô kaigi* - "the Common ID Number System Council"). The aim of this group was cooperation and discussion towards the adoption of a common ID number system that could be applied across the board to tax and other administrative areas. Administrators of almost all single-purpose ID systems, such as passports and drivers' licences, participated in this group. In contrast to the Sub-committee to Debate Tax File Numbers, this group did not make the contents of its meetings publicly available. However, together with the Sub-committee to Debate Tax File Numbers, this group can be seen as favouring a de facto national ID number system under the guise of tax file numbers.[7]

12.4. Government Plans for a Comprehensive National Database

The various administrative bodies are proceeding with putting the information they hold on databases in line with the Policy Statement of the Administrative Information System Liaison Committee with the aim of achieving a distributed processing comprehensive national database. The National Tax Administration's KSK System is one flank of this national database.

Currently, the comprehensive database envisaged by the government is of the distributed processing type, not concentrated processing. In other words, the national database would be constructed by each administrative body creating its own database in line with their own administrative requirements, assigning numbers to each individual as required and using the databases of other bodies. In this format, a vertically divided form of administration unique to Japan will develop without intruding on the existing powers of the various administrative bodies but allowing bureaucrats to access required information.

As already pointed out, groups such as the Sub-committee to Debate Tax File Numbers and the Common ID Number System Council are aiming to implement a multi-purpose ID number system, not just a tax file number system. This corresponds to the distributed processing national database envisaged by the government and it is favoured because bureaucrats want to use an ID number that will act as a kind of master-key to access

databases of other administrative bodies. By using this master-key, bureaucrats will gain instant access to various information on citizens and will be able to police citizens with ease.

In this way, the distributed processing comprehensive national database and national ID numbers have been presented as indivisible.

12.5. The Need for Infrastructure Development

Professional organizations such as the Japan Federation of Bar Associations (*nihon bengoshi rengôkai*) and the JFZA have opposed or been negative about the government's plans for a multi-purpose ID number system.[8] Sub-committees of the Tokyo *Zeirishi* Association and Tokyo Regional *Zeirishi* Association,[9] as well as non-government organizations such as Citizens for Tax Justice (CTJ) and Privacy International Japan (PIJ),[10] have also made clear their opposition to the government's plans.

The background to this negative reception is the government's attitude of forcing its plan on the public without sufficient consideration of the taxpayer/citizen's 'right to know' and his or her privacy. There is also a reaction against bureaucrats' unilateral and opaque policy-making decisions in this area. In addition, the negative views represent dissatisfaction with the situation where the government's Tax Research Commission and its Sub-committee to Debate Tax File Numbers are composed almost entirely of bureaucrats, so that the reports of these bodies merely ratify the opinions and policies of the bureaucrats.[11]

These NGOs have provided the following general and specific reasons why they cannot support the government's plan.

(I) *Multi-purpose Use and Private Sector Access*

Not only do current government and bureaucratic plans create a multi-purpose ID number system, but they contain no legal controls over use of the numbers by the private sector. This point has been the greatest concern for those opposed to the government plan.

If there is no intervention in the use of the numbers by private organizations, companies, schools, etc. will each use the ID numbers to create their own databases. 'Group-ism' is often regarded as a feature of Japanese society and it can be said that there is still insufficient social consciousness of privacy rights, In this social context, there is a danger that privacy will be abused as information harvested from the ID numbers is commercialized. Further, bureaucrats will become able to access wide-ranging information on citizens through use of the master-key: as a result, they will be able to exercise control over citizens, not through physical power as in the past but through data, which could lead to abuse of private information by power and a revisitation of the police state.

The aim of the plan for a comprehensive national database is clearly "administrative monopoly and data control of citizens' privacy". This plan would have a great impact on human rights and would not be accepted unquestioningly. The national ID number plan

combined with ready private sector access would lead to an unrestricted public and private database containing wide-ranging information on citizens. That the government and bureaucracy should try to market these under the guise of tax file numbers has gathered criticism as deception.[12]

(2) *The Need to Allow Public Access to Information Held by the Tax Authorities*

As already pointed out, the National Tax Administration is pressing ahead with the construction of the KSK System. A great quantity of information will be fed into the System, but it can be divided broadly into taxpayer information (for individuals and corporations/organizations) and administrative information.

Taxpayer information is essentially a record of the assets of the taxpayer. Therefore, if the taxpayer requests it, such information should be revealed to the taxpayer.

Currently, it would in principle be possible to seek the information held in the database under the Personal Information Protection Law.[13] However, the Individual Information Protection Law was heavily influenced by the opinions of administrative bodies, since it was drafted by the Management and Coordination Agency's Administrative Management Bureau *(gyosei-kanrikyoku*), so tends to lean in their favour.[14]

This bias in favour of the administration can be seen in the fact that the Law makes "fair and smooth operation of administration" the central aim, whereas "protection of individuals rights and interests" is merely supplementary. The bias also finds expression in the limited applicability of the Law. For instance, the Law applies to administrative bodies only, and not to private organizations. The Law applies only to information processed by computer, and not to information processed manually.[15] The Law contains no restrictions on collection of sensitive information. The Law not only excludes many areas from its operation, but also expressly limits access to certain types of information.[16] The Law allows the administration to veto access to information that would otherwise be available if the administration finds it inconvenient.[17] The Law allows use for purposes other than the original purpose at the discretion of the administrative body.[18] And the Law makes insufficient provision for administrative review or complaints.[19]

In relation to corporate taxpayers, there is currently no law that allows access to information, In other words, corporate taxpayers have no way of accessing information on their tax returns and other documents held by the tax authorities, whether it is processed manually or by computer, so there will be little protection for corporations when the KSK System is introduced.

Next, in relation to administrative information held internally by the tax authorities, it is possible to say that these are the property of the people. Therefore, citizens in principle have the right to access currently unavailable information. In most developed countries, including the United Stated, Canada and Australia, there are freedom of information laws to protect the public's 'right to know'. However, in Japan there is still no freedom of information law at the national level.[20]

In many developed countries, including the United States, there are special provisions in the tax laws to allow access to information held by the tax authorities. Individual and

corporate taxpayers can use these provisions to gain access to administrative information.[21]

In Japan, too, there is a need for national information disclosure law, but also freedom of
information provisions in the National Taxes Common Provisions Law for access to information held by the tax authorities.[22]

In addition, there is a pressing need to consider the Canadian example and discuss instituting a parliamentary ombudsman such as a Privacy Commissioner or Information Commissioner[23] to handle complaints.

In Japan, the bureaucrats, who hold the de facto legislative power, are extremely negative towards amending the Individual Information Protection Law or introducing a freedom of information law or an ombudsman system, as would be required to fully protect the rights of the taxpayers/citizens. There is no hint of abandoning the current in camera administration and establishing open administration. Under such circumstances, the introduction of the KSK System and national ID numbers and eventually the comprehensive national database are issues of major concern. Many business groups and citizens' groups have begun to express fears that if the government's plans are implemented without the preparation of an infrastructure to protect human rights, the tax authorities will become an unwieldy and unaccountable entity, which taxpayers and tax specialists who represent them will not be able to withstand.[24]

1 For instance, see the statement of the then Prime Minister Hosokawa on September 21, 1993 at the 128th Session of the National Diet; Interim Council for the Promotion of Administrative Reform [Rinji Gyôsei Kaikaku Suishin Shingikai]. *Final Report* [Saishû Tôshin] (1993), at Section VI (4)(e); Administrative Information System Liaison Committee [Gyôsei Jôhô Shisutemu Kaku-shôho ^ Renraku Kaigi], *Basic Policy Statement on Creation of a Database for National Administrative Bodies* [Kuni no Gyô sei Kikan ni Okeru Dêtabêsu Seibi ni Kansuru Kihôn Hôshin] (1987); Administrative Information System Liaison Committee [Gyôsei Jôhô Shisutemu Kaku-shoĉhô Renraku Kaigi],*On Planned Improvements to Administrative Handling of Information* [Gyôsei-jôhô-ka no Keikakuteki Suishin ni Tsuite] (1994).

2 *Supra* n. 1 .

3 Administrative Information System Liaison Committee [Gyôsei Jôhô Shisutemu Kaku-shôchô Renraku Kaigi], Standards Relating to the Introduction and Use of Open System Interconnection by the Government [Seifu ni okeru OSI Dônyû, Riyô ni Kansuru Kijun] (1991).

4 For details on the circumstances of the introduction of the KSK System, see Ishimura, Kôji, *Issues with Transparency of the National Tax Administration and the KSK System* [Kokuzeichô, KSK Shisutemu no Tômeika no Kadai] (1995), at Chapter 1.

5 Tax Research Commission Sub-committee to Debate Tax File Numbers [Zeisei Chô sakai Nôzeisha-bangô-tô Kentô Shô-iinkai], *Report of the Sub-committee to Debate*

Tax File Numbers [Nôzeisha-bangô-tô Kentô Shô-iinkai Hôkoku] (1988); Tax Research Commission Sub-committee to Debate Tax File Numbers [Zeisei Chôsakai Nôzeisha-bangô-tô Kentô Shô-iinkai], *Report of the Sub-committee to Debate Tax File Numbers* [Nôzeisha-bangô-tô Kentô Shô-iinkai Hôkoku] (1992). For details on the introduction of a tax file number system in Japan, see Ishimura, Koji, *Tax File Numbers and Privacy* [Nôzeisha-bangô-sei to Puraibashî] (1990), at Chapters 1 and 2.

6 See Ishimura. Kôji, *What are Tax File Numbers? (Iwanami Booklet No. 331)*[Nôzeisha-bangô-sei to wa Nani ka (Iwanami Bukkuretto 331)] (1994), at 13.

7 *Ibid.*, at 15,

8 For example, see Japan Federation of *Zeirishi* Associations (JFZA) [Nihon Zeinshikai Rengôkai]. *Proposals Relating to the 1993 Amendments to the Tex System* [1993-nendo no Zeisei Kaisei ni Kansuru Kengisho] (1992); Japan Federation of Bar Associations [Nihon Bengoshi Rengôkai], *Opinion Paper on the Introduction of a Tax File Number System* [Nôzeisha-bangô-sei no Dônyû ni Kansuru lkensho] (1992).

9 For instance, see Tokyo Regional *Zeirishi* Association [Tôkyô Chihô Zeirishikai], *On the Tax File Number System* (*Second Opinion Paper*) [Nôzeisha-bangô-seido ni Tsuite (Dainiji lkensho)] (1992); Tokyo Zeirishi Association [Tôkyô Zeirishikai], *Opinion Paper on the Tax File Number System* [Nôzeisha-bango-seido ni Kansuru lkensho] (1993).

10 For instance, see Privacy International Japan's resolution of October 17, 1994. See also, Citizens for Tax Justice (CTJ), 'Urgent Submission on Tax Reform (1993)', (1993) 6 *Fukushi to Zeikin* [Welfare and Taxation] 7.

11 For more detail on the roles and problems with the various councils and advisory bodies established by administrative bodies in Japan, see Uchibashi, Yoshihito, ' Councils -Unrelated to Public Opinion' [Shingikai, Min'i wa Haruka Tôku], *Nihon Keizai Shinbun* (October 9, 1 994 morning edition).

12 For details, see Ishimura, *Issues with Transparency of the National Tax Administration and the KSK System, supra* n.4, at Chapter 1.

13 *Kojin Jôhô Hogo Hô* (Law No.95 of 1988). The formal title is the Law Relating to Protection of Computer Processed Personal Information held by Administrative Bodies [*Gyôsei Kikan no Hoyû suru Denshi Keisanki Shori ni Kakaru Kojin Jôhô no Hogo ni Kansuru Hôritsu*].

14 The current Personal Information Protection Law was criticized by all sectors from its draft stages on the basis that it did not adequately protect citizens' informational privacy. For instance, see Japan Federation of Bar Associations [Nihon Bengoshi Rengô kai], Opinion Paper on the Draft Personal Information Protection Law [Kojin Jôhô Hogo Hôan ni Taisuru Ikensho] (1988).

15 Personal Information Protection Law Article 1 .

16 Personal Information Protection Law Articles 3, 7 and 14

17 Personal Information Protection Law Article 7(2).

18 Personal Information Protection Law Article 9.

19 Personal Information Protection Law Article 20.

20 There are many freedom of information regulations at the local government level, including Tokyo Prefecture: For instance, see Tokyo Public Documents Access Ordinance [*Tôkyôto Kôbunsho Kaiji Jôrei*] (Tokyo Prefectural Ordinance No. 109 of 1984).

21 For instance, see the U.S. Internal Revenue Code 1984 Articles 6103 and 61l0.

22 For details, see Ishimura, Kôji, *Declarations of Texpayers' Rights in Developed Countries* [Senshin-shokoku no Nôzeisha Kenri Kenshô] (1993), at 88 ff.

23 See Fraherty, D.H., *Protecting Privacy in Surveillance Societies* (1989), at Chapter 2.

24 For instance, see Tokyo *Zeirishi* Association Institutions Department [Tôkyô Zeirishikai Seidobu], *Memorandum on Issues with the KSK System* [KSK (Kokuzei Sôgô Kanri) Shisutemu ni Kansuru Mondaiten ni Tsuite (Memorandamu)] (1994); Japan Federation of Zeirishi Associations (JFZA) [Nihon Zeinshikai Rengôkai], *Opinion Paper on the 1995 Amendments to the Tax System* [1995-nendo mo Zeisei Kaisei ni Kansuru Kengisho] (1994), at Sections 6.9 and 10.

Chapter 13
The Tax Ombudsman System

13.1. Introduction

In Japan, there have been sporadic reports of tax officials adopting a dismissive attitude towards the audit subject during a tax audit or harassing the audit subject with imprudent words. There are also problems such as the tax authorities hinting at future advantages or disadvantages in suggesting that the taxpayer retain a retired tax official (who may be registered or about to register as a *zeirishi*) as his or her adviser.

In addition, there are many reports of maladministration (*kago-gyôsei*) by tax officials, such as errors and omissions,

Taxpayers could feasibly commence court action in relation to such harassment or maladministration. However, the protracted nature of litigation is a continuing problem in Japan, and there is also the consideration of its high monetary cost. For this reason, in most cases of harassment or maladministration the taxpayer does not go to court. Although litigation has been on the increase in recent years in Japan, it is still not a 'litigation society ' like the United States: there seems to be a general Japanese reluctance to sue even after suffering disadvantage at the hands of the tax authorities.

Zeirishi associations and academics have been proposing that a complaints review system be established to allow relief to taxpayers by means of simple and non-litigious procedures.[1] As a result, taxpayers will not have to "grin and bear it" when they suffer harassment or maladministration, and it will be possible to provide speedy resolution to disputes.

13.2. The Current Complaints Review System

In most developed countries, an ombudsman system has been established to deal with complaints relating to administrative bodies.

There a two broad models for ombudsman systems. One model has the ombudsman appointed by the legislature and completely independent of the executive, such as the Parliamentary Commissioner in England[2] or the Commonwealth Ombudsman in Australia.[3] The other model has the ombudsman appointed by the executive, although independent of other administrative bodies. Examples of this type are the Revenue Adjudicator within the U.K. Inland Revenue[4] or the Taxpayer Ombudsman within the U.S. Internal Revenue Service.[5]

Ombudsmen can be further divided into general ombudsmen, who deal with complaints relating to all aspects of administration, and special ombudsmen, who deal with complaints only in a specialist area such as privacy or tax. An example of the former is the Parliamentary Commissioner in England. Examples of the latter are the Privacy Commissioners in Canada and Australia,[6] the Revenue Adjudicator in England and the U.S. Taxpayer Ombudsman.[7]

With this structure in mind, the features of the Japanese ombudsman system can be outlined as follows.

(1) *The Administrative Problem Resolution Program of the Management and Coordination Agency*

The Management and Coordination Agency (*sômuchô*), which can be considered the general overseer of the executive, contains an Administrative Problem Resolution Program (*gyosei sôdan seido*)[8] to deal with complaints relating to the business of the various administrative bodies.

Under this system, it is possible to complain about all areas of the administration. Complaints are heard by approximately 200 Problem Resolution Officers (*sôdan tantô shokuin*)[9] at the Administrative Inspection Bureaus (*gyôsei kansatsu kyoku*) and Offices (*gyôsei kansatsu jimusho*) in 47 locations around the country, as well as by about 5,000 Administrative Problem Resolution Volunteers (*gyôsei sôdan iin*)[10] in various locations. Complaints can be made in person, by telephone (or fax), in writing, etc. There is no limitations period for complaints.[11]

(2) *The Tax Counsellors System within the National Tax Administration*

Tax Counsellors (*zeimu sôdankan*) within the National Tax Administration have three main functions.[12]

The first is to engage in consultation relating to the interpretation and application of tax laws, return filing and application procedures, and tax administration generally.

The second is to dispose of complaints relating to dispositions (including omissions and factual matters) by heads or employees of the tax authorities and the performance of employees' duties in tax administration.

The third is to conduct research and planning in relation to the consultation and complaints review already mentioned.

13.3. Evaluation of the Current System

When a taxpayer has a complaint relating to tax administration, under the current system, he or she can make use of structures within the Management and Coordination Agency or the National Tax Administration. However, these existing complaints review structures have been criticized for "lack of uniformity, specialization and independence",[13] For instance, under the Administrative Problem Resolution Program of the Management and Coordination Agency, the officer who handles the complaint will not necessarily be a specialist in tax, so the taxpayer may be left feeling uneasy whether there has been an accurate resolution of the complaint. Further, there are absolutely no safeguards to assuage the taxpayer's psychological fears that making a complaint could lead to a retaliatory tax audit as a kind of punishment. Thus, while the Administrative Problem Resolution Program may be appropriate for general complaints relating to maladministration, it has not obtained the trust of taxpayers as a resolution method for complaints against the tax administration.

On the other hand, in relation to the Tax Counsellors System within the National Tax Administration, there are serious problems with independence and accessibility.

Further, there is great uncertainty about the qualifications and powers of Tax Counsellors. In particular, it is hard for the taxpayer to have confidence in Counsellors who cannot issue stay orders and have no independent investigative powers.

Further, areas where reform is required in both systems have been isolated as:

(a) the establishment of a published precedent system for complaints;
(b) the publication of an annual report; and
(c) knowledge of the existence of the system and the coutesy of counsellors.

13.4. The Tokyo Zeirishi Association's Proposal

As already mentioned in May 1993 the Tokyo *Zeirisi* Association published the Prospectus for Legal Consolidation of Tax Administration[14] ("the Prospectus"). Section IV of the Prospectus is entitled 'Complaints Review': after pointing out the limitations of the current system, it proposes the establishment of a new "independent specialist complaints review body comprised of knowledgeable and experienced people in order to provide fair and speedy disposal of complaints". In terms of the categorization in **13.2.**, the proposal is to establish a specialist ombudsman within the executive. Further, the proposal extends to requiring the new body to submit an annual report to the House of Representatives Finance Committee.

In putting these proposals into effect, there are many issues to be resolved as to, for example, the qualifications of the "knowledgeable and experienced people", the procedures for making complaints and the format of the annual report. However, there is no argument with the fact that an independent specialized body is needed to provide fair and speedy disposal of complaints from taxpayers. It is to be hoped that the proposals will be realized as soon as possible.

1 For instance, see Tokyo Regional *Zeirishi* Association [Tôkyô Chihô Zeinshikai], *The Enactment of the Administrative Procedure Law and the State of Tax Administrative Procedure (Second Opinion Paper)* [Gyôsei Tetsuzuki Hô Seitei no Ugoki to Zeimu Tetsuzuki no Arikata ni Tsuite (Dainiji Ikensho)] (1992), at 17; Tôkyô *Zeirishi* Association [Tokyo Zeirishikai], *Prospectus for Legal Consolidation of Tax Administration* [Zeimu Gyôsei no Hôteki Seibi ni Kansuru Yôkô] (1993), reproduced in (1993) 437 *Tokyo Zeirishi Kai* [Tôkyô Zeirishi Circles] 4.; Ishimura, Kôji, Charters of Taxpayers ' Rights in Developed Countries [Senshin-shokoku no Nôzeisha Kenri Kenshô] (1993), at 90 ff.

2 See, for example, Bradley, A.W., 'The Role of the Ombudsman in Relation to the Protection of Citizens' Rights' (1980) 39 *Cambridge Law Journal* 304; Bartlett, R.T., 'The Ombudsman in Taxation: A Tripartite Perspective' (1988) 5 *British Tax Review* 164.

3 See, for example, Tomasic, Roman and Fleming, Don, *Australian Administrative Law*

(1991), Chapter 3; Commonwealth Ombudsman (Australia), *Guide: What the Commonwealth Ombudsman Can Do for You* (1992).

4 See Revenue Adjudicator's Office (U.K.), *How to Complain About the Inland Revenue* (1993).

5 See Internal Revenue Service (U.S.), *How to Use the Problem Resolution Programs of IRS* (1991).

6 See Privacy Commissioner's Office (Australia), *Guide to the Federal Privacy Act* (199l); Privacy Commissioner of Canada, *Annual Report 1990-91* (1991).

7 For details on the ombudsman systems in the various countries, see Caiden, Gerald (ed.), I and 2 *International Handbook ofthe Ombudsman* (1983).

8 For more detail, see Miyachi, Seirô, 'Administrative Resolution of Complaints', in Ogawa, Ichirô et al. (eds), 3 *Treatise on Contemporary Administrative Law* [Gendai Gyôseiho Taikei] (1984), 269; Management and Coordination Agency Administrative Inspection Bureau [Sômuchô Gyôsei-kansatsu-kyoku] (ed.), *The Ombudsman System* [Onbuzuman Seido] (1986).

9 0utline for Handling Administrative Complaints Mediation [*Gyôsei Kujô Assen Toriatsukai Yôryô*] (Management and Coordination Agency Instruction No.21 of 1984) Article 4.

l0 Administrative Problem Resolution Volunteers Law [*Gyôsei Sôdan Iinkai Hô*] (Law No. 99 of 1966) Article 2.

11 Outline for Handling Administrative Complaints Mediation Articles 2 ff. For details of complaints review figures, see Management and Coordination Agency [Sômuchô] (ed.), *Management and Coordination Agency Annual Report* [Sômuchô Nenji Hô kokusho] for each year. In 1993 there were about 230,000 cases of administrative consultation, of which 43,000 cases (18%) were complaints.

12 Ministry of Finance Organization Ordinance [*Ôkurashô Soshiki Kitei*] (Ministry of Finance Ordinance No. 37 of 1949) Article 101-4.

13 Tokyo *Zeirishi* Association, *supra* n.1, at Section IV

14 *Supra* n.1 .

Chapter 14

Taxation of Salaried Workers

14.1. Introduction

Under the Income Tax Law, in broad terms, assessable business income is defined as gross profit less necessary expenditure.[1] On the other hand, assessable wage income is defined as income less the wage-earning deduction of a specified amount.[2]

Thus business income earners can deduct the expenses that were actually incurred in running their businesses, whereas wage earners could only deduct a statutory standard amount until recent years. In other words, wage earners could not deduct the actual outlays incurred in pursuing their profession.

14.2. The Ôshima Tax Case

In 1966, one salaried worker argued that he was placed in a disadvantageous position compared to business income earners, since he could not deduct what he had actually expended in pursuing his profession, which was more than the statutory standard amount. He commenced constitutional litigation based on Article 14 ('Equality before the Law') of the Constitution.[3] The case came to be known as the Ôshima Salaried Worker's Case.[4]

In 1985, the Supreme Court made the final determination on the case,[5] holding that the difference between the treatment of wage income earners and business income earners was not so unreasonable as to breach constitutional principles.

14.3. The Introduction of the Optional Deduction Criteria System

The Ôshima case went on for nearly 20 years and finally ended in defeat for the taxpayer, but it had a great impact on the tax authorities. The Ministy of Finance, the responsible body for drafting substantive tax laws, came under considerable pressure due to the effects of the Ôshima case and demands by the labour movement, and opened debate on allowing wage earners to deduct 'necessary expenditure'. As a result, the Optional Deduction Criteria System (*tokutei shishutsu kôjo sentaku seido*) was introduced in 1987.[6] Under this system, wage earning taxpayers are able to select to use special deduction criteria when their actual professional expenses under specified categories exceed a specified amount.

However, under this system, only five types of expenses are specified for the special criteria, namely:

(a) commuting expenses;
(b) removal expenses upon job transfer;
(c) study and training expenses;
(d) expenses in acquiring qualifications; and
(e) home visiting expenses for workers living away from home.[7]

In addition, there are severe restrictions on the use of each category.[8] For this reason, the optional deduction criteria are barely used: since 1988 when the system was implemented, out of some 40 million wage earners, 16 utilized the system in 1989, 5 in 1990, 9 in 1991 and 8 in 1992.

Tax specialists and academics have criticised the optional deduction criteria system, saying that the Ministry of Finance had no real intention of permitting wage earners to deduct their actual expenses.[9] There has been no movement in the Ministry of Finance or the National Diet towards expanding the criteria for optional deduction or relaxing restrictions on their use. Unfortunately, taxpayers themselves have not expressed much interest in this system either.

14.4. The Year-end Adjustment System

The 'tax rights consciousness' of Japanese salaried workers is generally lower than that of their counterparts in, for example, the United States. Japanese salaried workers have not shown much enthusiasm for adjustments to the tax environment, such as reform of the optional deduction criteria system. One reason for the cultivation of such a negative attitude might be the year-end adjustment system (*nenmatsu chosei seido*) unique to Japan .[10]

Where a wage earner has income of less than ¥15,000,000 received from a single source or where he or she does not work on a daily basis, he or she is excused from filing a return for income tax, except where complex personal deductions are involved. Instead of the taxpayer filing a return, his or her employer conducts an year-end adjustment. Under this system, at the end of the taxation period (*i. e.* in December), the employer calculates each employee's yearly income and the amount of withholding tax deducted, and makes adjustments accordingly. Income tax on receipts from common investments such as bank interest and small dividends is paid entirely through withholding tax. Futher, common personal deductions for social security payments, life insurance, casualty losses, *etc.* are incorporated into the calculations.

As a result, over 90% of wage earners complete their tax procedures entirely through year-end adjustments. In other words, less than 10% of all wage earners have other income sources or complex personal deductions that require them to file a return.[11]

14.5. The Need for Reform

In calculating wage income, the standard amount wage income deductions system is clearly more efficient than the optional deductions criteria system from the point of view of tax administration. The year-end adjustment system is also efficient from a tax administration perspective.

However, the problem is that efficient tax administration does not necessarily result in healthy taxpayer consciousness. A greater problem is that such administrative policies create a large class of 'tax ignorants', *i. e.* persons uninterested in the tax system. For instance, partly due to lack of PR by the tax authorities, there are many taxpayers who do not know of the existence of the optional deductions criteria system.

In the normal course of events, there are many taxpayers who have no experience of

filing a return, let alone a tax audit. For this reason, for instance, there is little public interest that tax procedures were excluded from the applicability of the Administrative Procedure Law. Unlike business income earners, most wage earners are not interested to know that tax procedures, especially tax audit procedures, are extremely opaque. On the contrary, the tax authorities tend to paint individuals who are ignorant of tax audits and other procedures as paragons of virtue, while businesses which have continuing relations with the tax authorities are painted as reprobates. By these means, the tax authorities can gain support from wage earners for tightening measures in relation to businesses. The slow response of the general public to the cries of tax specialists and academics to increase the fairness and transparency of Japanese tax administration can also be attributed to the tax authorities' creation of a class of 'tax ignorants' or its seeming policy of 'divide and rule' in relation to business and wage income earners.

In order to rectify this situation, it is necessary to improve the current optional deductions criteria system and allow wage earning taxpayers to claim deductions in the same way as businesses. Further, through such reforms, it is necessary to recognise the wager earner's right to file returns. In this case, year-end adjustments would only be applicable at the taxpayer' s election. [12]

1 *Shotokuzei Hoˆ* (Law No. 33 of 1965) Article 27(2).

2 Income Tax Law Article 28(2).

3 *Nihonkoku Kenpô*(1947).

4 For a detailed discussion of this case, see Kitano, Hirohisa, *Salaried Workers ' Tax Litigation* (*Expanded Edition*) [Sararîman Zeikin Soshô (Zôhoban)] (1990).

5 *Ôshima and ors v. Director of SaKyô Tax Office* (Supreme Court, March 27, 1985) 39(2) *Minshû* 247. The taxpayer was unsuccessful at both first instance and on first appeal: *Ôshima v. Director of Sakyô Tax Office* (Kyoto District Court, May 30, 1974) 741 *Hanrei Jihô 28; Ôshima v. Director of Sakyô Tax Office* (Osaka High Court, November 7, 1979) 3 13 Steuer 21 .

6 lncome Tax Law Article 57-2.

7 lncome Tax Law Article 57-2.

8 See Income Tax Law Enforcement Order *Shotokuzei Hô Sekôrei* (Cabinet Order No. 96 of 1965) Article 167-3; Income Tax Law Enforcement Regulations *Shotokuzei Hô Sekô-kisoku (*Ministry of Finance Ordinance No. I I of 1965) Article 36-5.

9 For examples, see Miki, Yoshikazu, 'Taxation of Wage Earners: Some Problems', in Kitano, Hirohisa (ed.), *Lectures in Contemporary Tex Law* (Second Edition) [Gendai Zeihô Kôgi (Dainihan)] (1994) 55.

10 lncome Tax Law Article 3 12,

l1 See Kitano, Salaried Workers' Tax Litigation, supra n.4, at 1 3.

12 For more detail on this point, see Ishimura, Koji, *Charters of Taxpayers ' Rights in Developed Countries* [Senshin-shokoku no Nôzeisha Kenri Kenshô] (1 993), at 277 ff.

Appendix

Appendix 1: Major Tax in Japan

	National Taxes	Local Taxes	
		Prefectural Taxes	Municipal Taxes
Taxes on income and profit	* Income tax (withholding income tax and return-based income tax) * Corporation tax	*** Prefectural inhabitants tax** * Enterprise tax	* Municipal inhabitants tax
Taxes on inheritances and gifts	* Inheritance tax * Gift tax		
Taxes on assets	* Land value tax	* Automobile tax	* Fixed assets tax * Special landholding tax * City planning tax * Light vehicle tax * Enterprise establishment tax
Taxes on consumption	* Consumption tax	* Golf course tax * Special local consumption tax	
Taxes on transactions	* Securities transaction tax * Stamp tax * Registration and licence tax	*** Real estate acquisition tax** * Automobile acquisition tax	

Appendix 2

Opinion Paper on Consolidation of the National Taxes Common Provisions Law

(Kokuzei Tsûsoku Hô no Seibi Jûjitsu ni Kansuru Ikensho)[1]

Tokyo Certified Public Tax Accountant (*Zeirishi*) Association,
March 18, 1994

Summary

Japan's first comprehensive Administrative Procedure Law[2] was enacted in November 1993. This law aimed to establish fair and transparent administrative procedures, and is an epoch-making experiment dealing with matters common to such procedures. This type of general administrative procedure law exists in many Western countries, and the Japanese people, too, are relying on it to promote increased fairness in administrative procedures. In particular, Article 1 of the APL says:

> The aim of this Law is to achieve greater fairness and transparency in administrative procedure and thus to contribute to the protection of the rights and interests of the Japanese people.

This is a very significant provision embodying the principle of procedural fairness.

However, in relation to 'dispositions regarding applications' and 'disadvantageous dispositions' which are central to the APL, the National Taxes Common Provisions Law[3] was amended by addition of Article 74-2(1) to exclude tax procedures (dispositions and other exercise of public power relating to national taxes) from the ambit of the APL.

Further, in relation to ' administrative guidance', which is the other central concern of the APL, protection was provided in the Law by requiring that administrative guidance be issued in writing and requiring publication of the criteria on which collective administrative guidance is based, but again the National Taxes Common Provisions Law (in Article 74-2(2)) excludes the application of the APL to tax administration.

In this way, despite the move to greater fairness and transparency in administrative procedures as a whole under the APL, tax procedures have been left virtually untouched.

In the Western countries that adopted a general administrative procedure law before Japan, reform of tax procedures to recognize taxpayers' rights and gain their trust is advanced as the most important measure for achieving the inevitable increase in the tax burden of citizens in the 21 st century. This recent trend can be seen in the enactment or amendment of the Internal Revenue Code in the USA, the Taxation Basic Law (Abgabenordnung) in Germany, the Tax Procedures Code (Livre des procedures fiscales) in France, the Taxpayers' Charter in England, the Declaration of Taxpayers' Rights in Canada, etc.

The approach to enactment of the APL in Japan was in line with these trends in the tax area. In fact, the Interim Council for the Promotion of Administrative Reform (*Rinji*

Gyôsei Kaikaku Suishin Shingikai) which reported to the government in the process of the enactment of the APL stated that:

> Even in relation to tax procedures that are currently excluded from the scope of the Law, from the point of view of increasing fairness and transparency in administrative procedure generally, it is desirable for the necessary changes to be made to existent procedural provisions so that procedures can be made even more consistent and comprehensive.

The Council raises the specific example of the National Taxes Common Provisions Law as requiring legislative reform in this manner.

It is our opinion that the recent APL should be used as an opportunity to insert the provisions discussed below into the National Taxes Common Provisions Law to address the inadequacies in tax procedures and by these means to aspire to the protection of the rights and interests of the Japanese people.

The following five general areas need to be reformed to achieve procedural fairness in tax procedures .

1. Pre-dispositive Relief

The procedures leading up to corrections and determinations by the Director of the Tax Office need to put in legislative form. In other words, it is necessary to create legislative provisions so that in exercising administrative authority, the correction or determination is issued only after the taxpayer is notified of the facts, is given the opportunity to provide an explanation and the opinions of the taxpayer are heard.

2. Post-dispositive Relief

After the initial administrative disposition has been issued, a dissatisfied taxpayer can seek administrative review from the relevant administrative body. There are various aspects of the National Taxes Common Provisions Law that could be amended to accommodate such post-dispositive relief.

3. Administrative Guidance

Administrative guidance exists for the very reason that it allows expedient and flexible response to particular facts, but cases can be observed where action is based not on law but on the judgement of the administrative body or where it is used as an instrument of power. Therefore, in order that administrative guidance should not obstruct the transparency of administration, the conditions of issuance and the contents for such guidance need to be set out expressly in law.

4. Handling of Complaints

Maladministrative acts that do not amount to dispositions cannot be challenged under current law. Therefore, it is necessary to incorporate into the current system of administrative review a mechanism to deal with complaints that do not currently allow relief.

5. Administrative Quasi-legislation

Administrative bodies enact various internal standards such as cabinet orders and ministerial ordinances that in practice affect the rights and obligations of the public. Amongst standards that are not created with the authority of law, there are some instruments, for instance the interpretive tax circulars, that are serving the same function as laws. There needs to be some form of regulation of such quasi-legislative processes, so that the public can participate in creation and amendment.

* * * * *

The Tokyo *Zeirishi* Association submits the following prospectus for reform in relation to these five areas.

Note that this prospectus should be read in conjunction with the Association's *Prospectus for Legal Consolidation of Tax Administration*.[4]

Prospectus Relating to Reform of the National Taxes Common Provisions Law

(*Kokuzei Tsûsoku Ho no Seibi Jûjitsu ni Kansuru Yôkô*)

Ⅰ. PRE-DISPOSITIVE RELIEF

1. Submission of Returns, Applications and Statements

(1) *Date of Submission According to the Postage Date*

Returns, applications, statements, etc. (hereafter "tax documents") submitted by the taxpayer should take effect when posted by the taxpayer, not when received by the tax authorities.

Reasons

Where a taxpayer submits tax documents by post, the postage rule applies in relation to returns, but there are no express provisions in relation to other tax documents. However, where it is necessary to rely on documents directly related to imposition of tax in order to assess the amount of the tax debt, it creates unnecessary confusion and trouble if the date of submission of such documents cannot be ascertained with certainty, so for the convenience of the taxpayer and the simplicity and clarity of administration, it would be appropriate to adopt the postage rule for all documents submitted to the tax authorities.

(2) *Receipt of Tax Documents*

(a) When the Director of a Tax Office or other administrative body (hereafter "Director of the Tax Office" or "Director") accepts receipt of a tax document required by law, he or she should issue a written certificate of receipt to the person who submitted the document.

(b) When the Director takes receipt of a document not required by law, he or she should issue a written certificate of receipt if this is requested by the person who submitted the document.

Reasons

Under current law, there are no express provisions regarding receipt of tax documents, so taxpayers who have submitted documents remain in an uncertain state, and it is in accordance with the principles of the APL to clarify the situation.

(3) *Revisions*

(a) Where the Director of the Tax Office recognizes that a tax document needs to be revised or amended because it does not comply with tax laws or regulations, he or she must seek such amendments and allow a reasonable time for the filer of the documents to produce them.

(b) It should be possible to make such amendments by the person who submitted the tax document giving oral directions and then placing his or her signature or seal next to the amendments.

Reasons

It is unfair to reject a tax document outright where the taxpayer has merely made small clerical errors due to ignorance or carelessness.

2. Audits

(1) *Prior Notification of the Audit*

(a) When the Director of the Tax Office must conduct an audit of the taxpayer, an Audit Notification should be issued to the taxpayer at least 14 days beforehand. Where the taxpayer has retained a *zeirishi*, the *zeirishi* should also be sent a Notification.

(b) Where the Director cannot provide prior notification our of fear that the aim of the audit would be compromised, he or she must provide the taxpayer with a statement of reasons upon commencement of the audit.

Reasons

Two basic requirements for procedural fairness are notifications and hearings, so prior notification should clearly be given in an exercise of power such as an audit. If the taxpayer learns of the audit at an appropriate interval beforehand, he or she can prevent

injury to the operations of the business and ensure that the audit occurs without friction.

The notification should be provided a reasonable time before the audit, taking into account the amount of preparation required to respond to the audit.

By issuance of such prior notification, the taxpayer's trust in the tax authorities will be increased. By requiring delivery of any notice to the *zeirishi* as well as the taxpayer, the system of taxpayer representation will become firmly established, further protecting procedural fairness.

However, where it is feared upon reflection by the Director that the purposes of the audit will be obstructed if prior notice is given, the concrete reasons for this decision should be recorded in writing to prevent arbitrariness.

(2) ***Disclosing the Details of the Audit***

The Director of the Taxation Office should include the following in a Notification of Audit:

(i) the name and address location of those subject to the audit;
(ii) the head of tax and tax period under examination;
(iii) the reason why an audit is necessary;
(iv) the time and place proposed for the audit;
(v) the officer responsible for the audit;
(vi) instruction of the right to retain a representative.

Reasons

Under the self-assessment system, tax liability is assessed according to the details in the taxpayer's own return, so if the Director is to audit in such circumstances, reasons for the audit should be presented in easily comprehensible form.

(3) ***Restrictions on the Place and Time for Audits***

(a) Where the Director of the Tax Office is to conduct an audit of the following kinds of taxpayer, the audit should be restricted to the opening hours of that business:

(i) factories or other places of business;
(ii) places of entertainment, department stores, restaurants, *etc.*

(b) An audit should not be conducted at a private residence unless the permission of the owner or occupant is obtained.

Reasons

The time and place for tax audits should not be determined solely at the discretion of tax officials, but should be provided for in law. Also, conducting an audit at a private residence should be prohibited in principle as a breach of privacy, and should only be possible with consent.

(4) ***Instruction in Relation to Audits***

(a) The Director of the Tax Office should instruct the taxpayer of the following facts on the Notification of Audit:

(i) that it is possible to alter the time and place of the audit if necessary;
(ii) the penalties for obstructing an audit without any valid reason;
(iii) that a zeirishi may be retained; and
(iv) and that this is the taxpayer's opportunity to express his or her opinions before a correction or determination disposition is issued.

(b) Where a prior Notification of Audit is not issued, these details should be communicated to the taxpayer by other means before the audit.

Reasons

It should be considered a duty of the Director to the taxpayer to issue suitable instructions when exercising administrative power, and strict abidance by this duty contributes to securing the trust of the people in the administration. In the United States, such details are provided with the pre-audit notification.

(5) ***Principles to be Applied during the Audits***

(a) The Director of the Tax Office must endeavour to uncover all the facts when conducting a tax audit, not just those that are unfavourable to the taxpayer.

(b) The Director should notify the taxpayer of the facts revealed during the audit.

Reasons

Under the current self-assessment system, tax liability is assessed by the taxpayer's return. The aim of an audit is to confirm this assessment, so should not involve seeking only the facts unfavourable to the taxpayer. Further, the facts obtained during the audit should be notified to the taxpayer so that he or she can provide an explanation if necessary.

(6) ***Restrictions on Audits of Third Parties***

The Director of the Tax Office should be able to audit third parties only when the facts cannot be fully determined from the taxpayer's own books and records.

Reasons

An extended audit imposes an obligation not to obstruct public officials on third parties: such an obligation should not be imposed lightly, especially since extended audits are merely to seek cooperation in the main audit.

(7) ***Prohibition of Re-audit of the Same Tax Period***

The Director of the Tax Office must not re-audit in relation to the same tax period

unless new facts are revealed.

Reasons

For the Director to re-audit after completion of the initial audit would severely hinder the taxpayer's commercial activity, so re-audit should be permitted only in extremely restricted circumstances. In the United States, there can be only one audit for each tax year unless the Commissioner of the Internal Revenue Service provides notification in writing that a re-audit is necessary.

(8) ***Protection of the Privacy of the Taxpayer and Third Parties***

(a) During a tax audit, the Director of the Tax Office must protect the privacy of the taxpayer and third parties in a transactional relationship with the taxpayer.

(b) The taxpayer should be able to request access to his or her own tax records from the Director.

(c) When it is necessary to correct such tax records, the taxpayer should be able to request correction by the Director.

Reasons

The right of privacy can be understood as the right to control information about oneself. Tax information is no exception, and the right of the taxpayer to obtain his or her own tax records in the United States. Canada, etc. should be adopted in Japan also.

The Personal Information Protection Law [5] contains provisions on the creation, inspection and correction of one's file, but tax information is broadly excluded from the ambit of these provisions. Effective safeguard procedures for tax information need to be established.

(9) ***Formal Challenge to the A udit Officer***

(a) A taxpayer or his or her *zeirishi* should be able to challenge the audit officer when he or she ignores procedures set out in law or conducts the audit unfairly.

(b) The challenge should be made in writing to the Director of the relevant Tax Office, and should contain reasons.

Reasons

Challenges are intended to ensure the fairness of procedures by preventing bias. Challenge procedures, which also exist for court proceedings, not only have the function of preventing inappropriate or illegal exercise of public power before they can occur, but also serve to impress on the audit officer psychologically the importance of fairness of procedure. In the United States, the federal Administrative Procedure Law contains provisions dealing with challenge and disqualification of government officials, and in Germany the Tax Basic Law allows challenge of audit officers ' actions for reason of bias.

(10) ***Respect for the Confidentiality Requirements of Certain Professionals***

Where an audit officer conducts an audit of a taxpayer who has a duty of confidentiality because of his or her profession as a doctor, attorney, zeirishi, certified public accountant, notary public, etc., this duty of confidentiality must be respected and the audit must not breach this confidentiality.

Reasons

The fiduciary relationship of trust between certain professionals and their clients contributes to accurate interpretation of facts and the enforcement of justice, so must be respected during tax audits.

Regard should be had to the examples of the United States, where attorney-client privilege is recognized, and Germany, where privilege is recognized between clients and their attorneys, tax advisers and accountants.

(11) ***Inspection and Photocopying of Audit Records***

(a) Taxpayers and their zeirishi should be able to inspect and photocopy the records of their audits.

(b) When requested to produce audit records, the Director of the Tax Office may not deny the request unless there is a valid reason such as potential injury to the interests of a third party.

Reasons

This measure ensures the accuracy of audits, and is also an important source of information for the taxpayer to pursue relief.

In the United States, the taxpayer can also obtain the tape-recording of the audit, and can obtain photocopies of the audit records for the cost of the photocopies.

In Germany, a right to inspect documents is granted when the taxpayer is seeking relief.

(12) ***The Elements of Inductive Assessment***

The Director of the Tax Office should issue an assessment disposition based on inductive calculations only when it is difficult to grasp the true details of the tax base because information such as accounting ledgers is non-existent or because the taxpayer refuses the audit.

Reasons

Article 156 of the Income Tax Law[6] and Article 131 of the Corporation Tax Law[7] which permit inductive assessment do not specify when inductive assessment is applicable, and disputes often arise because inducive assessment has occurred even though the true tax base could have been assessed.

Correction and determination dispositions are in principle to be conducted by the Director after auditing the facts, and assessment by induction should only occur when the tax authorities are unable to establish the tax base by audit.

Therefore, the elements to be satisfied before inductive assessment occurs should be that it is impossible to grasp the true amount of income because the taxpayer has not provided accounting ledgers (or they would not be reliable even if provided) or because the taxpayer denies access to information during an audit.

(13) ***Undertakings made during the Audit***

(a) Where during an audit the taxpayer requests a written undertaking from the Director of the Tax Office relating to future tax administration, the Director must provide such an undertaking.

(b) The undertaking can be amended or revoked if the law is changed.

Reasons

By receiving an undertaking from the tax authorities, the taxpayer can achieve legal certainty for the operation of his or her business.

Such undertakings would ensure that different interpretations of tax laws over time by different tax officials would not lead to new taxes being imposed.

(14) ***Notification of Audit Completion***

(a) The Director of the Tax Office must speedily issue a Notification of Audit Completion to the taxpayer if the audit is completed and no disposition is to be issued.

(b) The Notification should contain the taxpayer's name and address, and the heads of tax and tax period under examination.

Reasons

Where an audit is conducted, procedural fairness demands that it be completed within a reasonable period, but as a Notification of Audit Completion is not expressly required under current law, the taxpayer is left in an uncertain state even if the audit procedures have been completed.

Then, sending a Notification of Audit Completion formalizes the end of the audit and stabilizes the taxpayer's position.

(15) ***Invalidity of Illegal Audits***

Where an audit leading to a disposition by the Director of the Tax Office is found illegal, the disposition should be invalid.

Reasons

Where procedures leading to a disposition are illegal, that disposition is illegal and therefore invalid. Thus, where an audit that leads to the issuance of a disposition is illegal, it should be made explicit in legislation that the disposition itself is invalid.

3. Dispositions

(1) ***Presentation of a Draft Correction or Determination Disposition***

(a) Where the Director of the Tax Office is to issue a correction (including recorrection) or determination disposition, he or she should first present the taxpayer with a written statement outlining the contents and legal basis for the disposition and provide an opportunity for the taxpayer to explain the situation.

(b) The explanation can be in oral form.

Reasons

By seeing a draft version of the disposition, the taxpayer is able to understand fully the claims of the tax authority. Further, by having the opportunity to explain and counterclaim, post-dispositive disputes are kept to the minimum, which contributes to efficient and simple administration.

(2) ***Attachment of Reasons for the Correction or Determination***

When the Director of the Taxation Office issues a correction or determination disposition, he or she must attach reasons that explain the specific contents of the disposition.

Reasons

Attaching reasons to dispositions ensures that the Director's judgement will be exercised reasonably and with due caution, and prevent arbitrariness. Further, if the taxpayer proceeds to administrative review, the reasons will permit easier isolation of the points at issue.

Currently, a statement of reasons is required only for correction dispositions in relation to blue returns, but given that white return filers have the same obligation to keep records as blue return filers and that there is little real difference between blue and white returns, it is difficult to see any logical explanation why reasons should be required only for blue returns.

(3) ***Prior Notice of Administrative Assessment of Heavy Penalty Tax***

Where the Director of the Tax Office imposes heavy penalty tax, he or she should beforehand present to the taxpayer the evidence of falsification or disguise of the facts and allow the taxpayer an opportunity for explanation.

Reasons

Heavy penalty tax places a heavy additional tax burden on the taxpayer, so it is necessary to protect the taxpayer's rights by issuing prior notification and providing the opportunity for an explanation. The alleged falsification or disguise of the facts, which must be established to impose heavy penalty tax, should be presented to the taxpayer and he or she should be guaranteed the opportunity to explain the circumstances.

ll. POST-DISPOSITIVE RELIEF

1. *Adoption of the Adversarial Issues Approach*

In an objection or NTT review, administrative review should rely on the adversarial issues approach, not the total dispute approach, in determining whether there has been improper action.

Reasons

Administrative review is a relief measure in relation to a prior disposition (correction, etc.), so the adjudication should be made only on the basis of the facts under dispute.

2. *Selection of an Adviser*

In the case of an objection or NTT review, the claimant should notify the tax authority beforehand whether he or she will accompanied by an adviser for presentation of oral argument, and if representation is not considered appropriate then reasons should be provided by the relevant authority.

Reasons

Under the current system of administrative review, the claimant cannot have an adviser with him or her to present oral argument unless express permission is obtained beforehand. However, since presentation of oral argument is such an important part of the review, the claimant should not need a permit to have an adviser there. If it is not appropriate for the claimant to have an adviser, the claimant should be provided with reasons why this is the case.

3. Restriction of the Adjudication Period

A standard adjudication period should be established in relation to cases of administrative review. This should also be the case for request for correction.

Reasons

There are no provisions dealing with the period within which administrative review and requests for correction must be handled, and where the adjudication is severely delayed the taxpayer's only avenue is to lodge a Forbearance Notice (*Fusakui no Moshitate*) under the Administrative Review Adjudication Law.8 It is desirable to avoid long

periods of uncertainty for the taxpayer, so standard periods should be set, and if an adjudication is not possible before that time then reasons for the delay and a proposed adjudication date should be notified to the taxpayer.

The standard periods should be three months for objections, one year for NTT review and six months for requests for correction.

Ⅲ. ADMINISTRATIVE GUIDANCE

1. The Principles to be Applied in Administrative Guidance

Where the Director of the Tax Office conducts administrative guidance in relation to individual taxpayers, he or she should comply with the following principles to ensure transparency and clarity:

(i) an express statement to the taxpayer that the administrative guidance has no force at law;
(ii) confirmation of the general principles of the administrative guidance;
(iii) clarification of the aims and contents of the guidance;
(iv) (iv)a statement of the aims contents of the guidance in writing where requested by the taxpayer; and
(v) depending on the facts, determination and publication of the criteria upon which the guidance is based.

Reasons

Administrative guidance refers to suggestions, guidance, advice, etc. by an administrative body: such activities are conducted merely at the discretion of the administrative body and have no binding force at law.

However, given the power relationship between the administrative body and the individual, they often have de facto binding power, so the contents of the APL need to be extended to cover tax administrative guidance also.

2. Systematization of Advance Rulings

Where the Director of the Tax Offirce receives a request for an official statement of opinion on the interpretation or application of laws, regulations or circulars from a taxpayer before that taxpayer is to make a transaction, he or she must respond to the request.

Reasons

By having the Director's opinion of the tax treatment of a particular transaction before it goes ahead, the taxpayer can plan accordingly. By these means, the Director can avoid unnecessary future disputes, contributing to the smooth operation of tax administration.

3. Administrative Guidance towards Unspecified Persons

Where the Director of the Tax Office conducts publicity activities, general consultations or guidance of business for the sake of conveying information, the necessity for the guidance should be made clear and the criteria on which it is based should be made public.

Reasons

Amongst cases of tax administrative guidance, there are some instances of publicity activity or tax consultation which are directed to the public and/or business collectively without specifying a particular taxpayer. Just as for the specific administrative guidance mentioned above (at 1.), the criteria on which collective guidance is based should be made public, and its aims and contents should be made widely known.

One facet of guidance of business involves encouraging them to file revised returns by pointing out error-prone activities to business organizations, but like recommendations to file revised returns upon a tax audit, such activity has no binding force and can thus be classed as administrative guidance.

4. Administrative Guidance and Recommendation to File a Revised Return

At the closing stages of a tax audit, the Director of the Tax Office may not urge the taxpayer to file a revised return, although the taxpayer may do so of his or her own volition.

Reasons

By filing a revised return, the taxpayer loses the right to later seek administrative review should he or she be dissatisfied, so tax officials should refrain from persistently urging the taxpayer to do so.

5. Issuance of Written Tax Advice

When the taxpayer requests the Director of the Tax Office to provide a written statement of the outcome of a tax consultation, the Director should provide such a written statement, and if the taxpayer files a return in accordance with the statement there should be no correction disposition due to the principle of estoppel by representation.

Reasons

Tax consultation is one type of administrative guidance conducted by the tax authorities, but there is no guarantee that no correction disposition will ensue even if the taxpayer conforms to the advice proffered. To make mutual responsibilities clear, a written statement should be provided with the tax consultation and the taxpayer should be guaranteed that there will be no subsequent correction if a return is filed in accordance with the consultation.

IV. COMPLAINTS REVIEW

1. The Establishment of a Tax Complaints Review Body

(a) The tax authorities should establish a complaints review body made up of knowledgeable and experienced persons to handle complaints that do not fall under Article 75 of the National Taxes Common Provisions Law.

(b) Complaints to this body should be allowed in written or oral form.

(c) The tax authorities must compile an annual report on the complaints handled in this way, and must submit the report to the House of Representatives Finance Committee.

Reasons

The appropriateness of the response to taxpayers' complaints has a great influence on the general management of tax administration. Currently, the Management and Coordination Agency has a Complaints Consultation Office (*Kujô Shori Sôdansho*) and the National Tax Administration has a Complaints Receipt Desk (*Kujô Uhetsuke Madoguchi*), but there is no uniformity in handling and there are problems with the expertise of the counsellors and their lack of independence. Consequently, there needs to be an independent specialist complaints review body comprised of knowledgeable and experienced people in order to provide fair and speedy disposal of complaints.

V. ADMINISTRATIVE QUASI-LEGISLATION

1. Prior Publication of Administrative Quasi-legislation

(a) Where an administrative body proposes to enact cabinet orders, ministerial ordinances, etc., they should be published for a set period before they come into force to allow public comment.

(b) Drafts of orders etc, should be gazetted for at least four weeks. The same goes for amendments to orders etc.

Reasons

The Constitution of Japan[9] specifies one function of the cabinet as administrative quasi-legislation, i. e. the enactment of legal standards that will guide administrative actions and administrative bodies in the execution of the provisions of the Constitution and other laws.

Quasi-legislation is normally considered to include cabinet orders and ministerial ordinances, as well as internal guidelines such as announcements, circulars, instructions, etc.

Interpretive circulars in the tax areas have the de facto force of law, and since they have

such a direct influence on the public, publication for a certain period and provision of notice is desirable.

2. Participation in Tax Quasi-legislation

In the enactment of orders etc. , the tax authorities must seek written statements of opinion from interested parties after a set period of publication, and must provide the public with the opportunity to participate in the enactment process.

Reasons

Of orders and internal standards in the tax area, interpretive circulars in particular have a direct effect on the public, so interested parties should be allowed to offer written opinions in relation to such provisions, and if necessary public hearings should be organized and there should be broad-ranging opportunities to hear public opinion.

The JFZA needs to be able to participate as an interested party.

3. Prohibition on Retrospectivity for Disadvantageous Items

In the enactment of tax circulars, provisions that are disadvantageous to the taxpayer should not apply retrospectively.

Reasons

Tax circulars affect the interests of many taxpayers. Consequently, in order to avoid confusion when provisions are introduced that disadvantage the public, these should not be made retroactive.

4. System of Publication of Interpretive Circulars

A11 interpretive circulars relating to tax should be published.

Reasons

Circulars are regulations to govern the enforcement activities of an administrative body. Under current tax administration, there are many interpretive circulars relating to tax legislation, and many of these serve as de facto sources of law. However, not all of these are available to the public.

This situation could lead to unequal treatment between persons who had obtained access to such circulars in the calculation of their tax base and those who had not, so all circulars should be made generally available to the public.

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1 Translator's note - Citations have been added in the footnotes. Paragraph numbering in the body of the Prospectus has been altered slightly from the original to conform to English practice.

2 *Gyôsei Tetsuzuki Hô* (Law No.88 of 1993) hereafter "the APL" or "the Law".

3 *Kokuzei Tsûsoku Hô* (Law No.66 of 1962).

4 Tokyo *Zeirishi* Association [Tôkyô Zeirishikai], Prospectus for Legal Consolidation of Tax Administration [Zeimu Gyôsei no Hôteki Seibi ni Kansuru Yôkô] (May 1993).

5 *Kojin Jôhô Hogo Hô* (Law No 95 of 1988).

6 *Shotokuzei Hô* (Law No. 33 of 1965).

7 *Hôjinzei Hô* (Law No. 34 of 1965).

8 *Gyôsei Fufuku Shinsa Hô* (Law No.160 of 1962).

9 *Nihonkoku Kenpô* (1947).

Appendix 3

Tax Administration Initiatives

(Zeimu Un 'ei Hôshin)

National Tax Administration (ed.),
April l, 1976

I. GENERAL ARGUMENTS

1. Basic Approach to Tax Administration

All citizens pay taxes so that they can be applied to public expenses necessary for everyday life.

The mission of tax administration is to enforce fairly the tax laws and maintain the smooth sourcing of tax revenue: the role of tax administration under a self-assessed tax system is to make all taxpayers recognize the significance of the system and to ensure voluntary compliance with return filing and taxpaying obligations. Fulfilling these roles is the ultimate aim of tax administration, and this is achieved through steady improvement of standards in these areas.

Based on such concepts, the basic approaches to tax administration are as follows.

(1) Creating an Environment where Taxpayers Satisfy Return-Filing and Taxpaying Requirements Voluntarily - Making the Tax Office More Approachable

In order for taxpayers to voluntarily comply with return-filing and taxpaying obligations, they need to understand the significance of taxation and be conscious of their obligations in the tax area. They must also understand the tax laws and how to keep the accounts necessary for correct calculations. The way to increase understanding of taxpayers, spread knowledge of the tax laws and develop appropriate accounting practices is to conduct publicity, explanatory meetings, tax consultations, etc. Particularly in audits for administrative assessment, the facts must be accurately appraised and errors in the taxpayer's return must be corrected, but in addition the opportunity should be taken to deepen the taxpayer's understanding of tax administration and his or her tax-paying consciousness.

Under the self-assessment system, it is necessary for the taxpayer himself or herself to take the initiative to perform tax obligations, but to achieve this it is necessary to have support and guidance from the tax authorities. Our purpose is to unite with the taxpayer in managing tax administration.

In order to meet this goal of cooperation, the tax authorities need to be approachable for the taxpayer. To this end, we need to display goodwill towards the taxpayer, attempt not to cause inconvenience and respond actively to the complaints and criticisms of the

taxpayer. Great care must be taken that the taxpayer's claims are evaluated thoroughly, so that there is no hint of decisions being made unilaterally.

(2) Striving to Realize Fair Taxation

In order to enhance tax-paying morals and expect proper voluntary returns and payments, there must be the guarantee that taxpayers in like circumstances will all receive identical treatment. Where a taxpayer files an improper return, every attempt must be made to conduct an accurate audit to correct the errors, and strict measures must be taken against malicious tax evasion.

Further, it must be remembered that the purpose of fair taxation is to ensure a fair tax spread under law and to guarantee the smooth collection of tax revenue.

(3) Maintaining a Disciplined, Cheerful and Efficient Workplace

In order to enhance tax-paying morals amongst the public and obtain the trust and cooperation of the taxpayer, the performance of official duties must be equitable and the workplace attitude must be law-abiding, cheerful and efficient. Employees must each recognize that they have an important role in administering national revenue, so should take pride in their work and judge themselves accordingly. These factors will combine to make the tax authorities more approachable for the taxpayer.

The management and each individual employee must endeavour to achieve a workplace where individual employees act positively and on their own initiative to their full potential and where employees can work frankly and cheerfully.

2. Important Points Common to Administration

(1) Uniformity of Audits and Guidance

(a) The objective of tax audits under a self-assessment system is to secure proper voluntary returns and payments from taxpayers. In particular, where a return is confirmed as improper, a full audit should be implemented to correct the errors, in order to achieve true taxation equity between all taxpayers.

Audits also need to have some sort of guidance aspect, so that voluntary compliance with tax duties can be expected once an audit is conducted. To this end, the true facts need to be appraised and the errors in the return corrected: in addition, the contents of the audit need to be explained convincingly to the taxpayer and the opportunity should be taken to deepen the taxpayer's tax knowledge and to guide the taxpayer to continue with appropriate returns and payments in the future. Where the audit is pursued only to expose incorrect or unlawful matters and there are no such guidance concepts, it becomes difficult to correct the taxpayer's attitude towards tax administration or to expect future voluntary compliance with return-filing duties, and the situation falls into a vicious circle of improper returns and tax audits.

(b) On the other hand, there are currently many taxpayers who cannot properly fill in returns because of lack of appropriate book-keeping, and there are also many who can be expected to complete proper returns if problem areas are pointed out to them and they are given some assistance. For such taxpayers, it is not appropriate to wait for them to file their returns without providing any guidance, either from the point of view of developing taxpayers who can voluntarily file correct returns or from the point of

view of the efficient administration of audits. Therefore, for such taxpayers, guidance should be provided individually or en masse as necessary in relation to book-keeping, settlement of accounts, calculation of taxable bases, etc.

In this case also, unless the true facts of the taxpayer's situation are accurately appraised, it is difficult to conduct effrcient guidance. Further, many situations can only be explained convincingly by comparison and reference to statistics of other similar businesses. Therefore, even in conducting guidance, it is vital to appraise the true circumstances in that business or to conduct the necessary audits to understand the operation of that particular industry.

(2) Active Public Relations

(a) Publicity has great significance alongside audits and guidance in reinforcing the foundations for a self-assessment system.

The objectives of publicity can be broadly divided into:

- enhancing tax-paying morals;
- raising awareness of tax laws and relevant book-keeping and accounting practices;
- drawing taxpayers ' attention to deadlines for filing of returns and payment of tax; and
- deepening the mutual understanding between taxpayers and the tax authorities.

In conducting public relations activity, the objectives of the activity should be made clear, and its subject, theme, timing and medium need to be selected with care.

(i) Publicity which attempts to enhance tax-paying morals has the general public as its subject. Its theme should be the significance that taxes have for national revenue, the degree to which taxes are a part of everyday life, the tax burden borne by the various sectors of society, and comparison with other countries in such areas. Such publicity should deepen the understanding of the significance and importance of taxation for a modern democratic and welfare state.

Such publicity is to be conducted by the National Tax Administration, Regional Taxation Bureaus and Tax Offices as appropriate to their areas of activity, but the National Tax Administration in particular should provide materials to the Regional Taxation Bureaus and Tax Offices and conduct wide-ranging public relations on a national scale through media such as television, radio and newspapers.

Provision of accurate information on the tax system to schoolchildren contributes very effectively to the enhancement of tax-paying morals, so teaching materials

should be provided to all schools and every effort should be made to assist teachers in researching the tax and revenue systems.

(ii) Publicity which aims to raise awareness of tax administration should respond to the level of knowledge of the taxpayer of the types of income, tax administration,

etc. and should provide practical and readily comprehensible information on tax laws, bookkeeping, calculation methods for taxes, etc. in order to increase the number of taxpayers who can voluntarily perform their tax duties properly.

Such public relations is conducted as appropriate by the National Tax Administration, Regional Taxation Bureaus and Tax Offices, but in particular the National Tax Administration and Regional Taxation Bureaus should take responsibility for media such as television and radio and should offer materials such as pamphlets to the Regional Taxation Bureaus and Tax Offices. The Tax Offices are mainly responsible for holding lectures and information sessions on a regional basis.

Finally, the theoretical research undertaken at the National Tax College should be made widely available as one aspect of deepening public understanding of the principles of the tax system and taxation theory.

(iii) In relation to deadlines for filing returns and making payments, the National Tax Administration, Regional Taxation Bureaus and Tax Offices should endeavour to make them well known by selection of effective media and timing.

(iv) Publicity which aims to deepen the mutual understanding between taxpayers and the tax authorities should focus on reinforcing the image of the Tax Offices as approachable and trustworthy. The realities of moden tax administration should be introduced to taxpayers to obtain their understanding. All tax employees should consider themselves public relations officers when in contact with the taxpayer.

(b) There are many limits in implementing public relations in the tax area, and there is a tendency to fall into a negative attitude. Those in management roles at the National Tax Administration, Regional Taxation Bureaus and Tax Offices need to exercise their own judgement in relation to the themes, contents, timing, etc. in order to achieve positive and effective publicity.

(c) In conducting public relations activities, the cooperation of private organizations should be obtained, for instance the *zeirishi* associations, the Japan Tax Association, the Blue Return Taxpayers Association, the Corporate Taxpayers Association, the Indirect Tax Association, the Taxpayers' Savings Union, the Chamber of Commerce and Industry, commerce and industry groups, *etc.*

(3) Consolidation of Tax Consultation

In order for taxpayers to voluntarily perform their tax obligations, it is important to assist them by provision of a tax consultation system where taxpayers can discuss their affairs with ease. Measures that should be considered to this end include:

- greater consolidation of the functions of the Tax Counsellor's Office of the National Tax Administration by expanding the telephone service and the placing more counsellors in regional areas;
- collective interview consultation on Tax Consulting Days; and
- cooperation in tax consultation by private organizations such as the *zeirishi* associations.

(a) Accurate and appropriate answers and practical explanations should be provided during tax consultation in order to create a mood of trust and empathy. Complaints should be handled swiftly and appropriately, given that the taxpayer has felt no option but to formally complain.

(b) The Tax Counsellor's Offices should endeavour to further consolidate effective consultation based on the facts of each case, and should give priority to resolution of com plaints.

(c) In relation to tax consultation at Tax Offices, more ingenuity should be exercised in organization of the Tax Consulting Days to make them more convenient for the taxpayer. Complaints should be under the responsibility of the management, who should take active steps to achieve resolution.

(4) Direct Contact with Taxpayers

(a) By the very nature of tax administration, taxpayers tend to approach the tax authorities with trepidation, so tax officials need to bear this in mind in their contact with taxpayers.

Every effort should be made to make taxpayers at ease with coming to discuss their tax problems by conducting tours of the Tax Office and improving interview facilities. In addition, those on the counter should think of welcoming the taxpayer and aim to raise the whole level of service. Such measures will lead to increased use of the Tax Counsellor's Office of the National Tax Administration and the Tax Consulting Days.

When seeking the presence of the taxpayer at the Tax Office or seeking submission of documents, care should be taken not to inconvenience the taxpayer.

(b) It is important to listen carefully to the claims of the taxpayer, explain clearly the contents of laws, regulations and circulars, and suggest measures that would be to the taxpayer's advantage.
(c) For complaints or criticisms of tax administration, all employees need to be attentive that matters that need to be reformed are reformed speedily, and matters that require explanation or answers to the taxpayer are explained or answered immediately.

(5) Fair and Swift Resolution of Administrative Review Cases

(a) In the handling of administrative review cases, the original disposition should not be viewed rigidly, and the taxpayer's claims should be listened to with humility in conducting an audit from an impartial point of view to appraise the true facts and interpret/apply the laws and regulations correctly. In addition, the case should be handled speedily, with due consideration to the protection of the taxpayer's rights and interests.

In particular, since the National Tax Tribunal operates as an impartial third party body (although formally within the tax administration), there should be no bias towards the total dispute approach, rather the spirit of the adversarial issues approach should be adopted in conducting a complete hearing and achieving comprehensive relief for the taxpayer.

(b) Through the proper and smooth handling of administrative review cases, the tax authorities should reflect upon their own activities and aim for the improvement of tax administration .

Public relations should be energetically pursued to make relief measures widely known to the public.

(6) Close Internal Communication

With the growing diversity of financial transactions over larger physical spaces, it is more and more important for the tax authorities to have good internal communication. If internal communication is insufficient, inaccuracies will arise, tax administration will be delayed, there may be errors in imposition and collection of taxes, and the taxpayer will be inconvenienced and lose trust in tax administration.

Therefore, in administrative planning, it is necessary to provide for sufficient communication with related bodies and ensure that each matter is handled with communication with other bodies in mind. Further, managers' meetings, imposition and collection communication councils, etc. need to be run efficiently to ensure close communication. In particular, there should be positive steps to link related bodies in collection of materials and data and in related audits.

(7) Cooperation with Local Public Bodies and Related Private Organizations

(a) Close relations must be maintained with local public bodies by exchange of materials and information, so that they can cooperate in the realization of fair taxation and further raise the general standard of administration.

(b) Cooperation with private organizations such as the zeirishi associations, the Japan Tax Association, the Blue Return Taxpayers Association, the Corporate Taxpayers Assocation, the Indirect Tax Association, the Taxpayers' Savings Union, the Chamber of Commerce and Industry, commerce and industry groups, etc. must be attained, and consideration must be given to cooperation between these groups to actively promote good book-keeping practices amongst taxpayers, especially small business taxpayers.

(c) In order to achieve fair and smooth tax administration, the role to be played by zeirishi in mediating between taxpayers and the tax authorities is extremely important. Related administrative bodies should communicate to ensure that the zeirishi profession is operating fairly and its functions are being fulfilled.

(8) Use of Computer Systems and Promotion of Streamlined Administration

In response to the increased content of administration due to increased administrative requirements and increased complexity of transactions, the use of computer systems and the simplification and streamlining of administration should be advanced for the efficiency of administration.

(a) In relation to the various systems already being implemented for management of tax debts, including internal mechanisms for replacing manual work and increasing efficiency in relation to returns income tax and corporation tax, these need to be further streamlined and steadily expanded.

(b) The following systems should be developed to make full use of recent developments in technology for electronic calculation:

- a system to assist in external administration such as audits and collection dispositions;
- a system to provide appropriate information to officials at each step of administration and assist them in their decisions; and
- a system to enable formulation of long-term plans for tax administration.

(c) Circulars of the National Tax Administration and Regional Taxation Bureaus should be made clearer and simpler and kept to the minimum in number, and current circulars should be streamlined .

(d) In order to promote the general simplicity and streamlining of administration, administrative manuals and book-keeping methods should be discussed and reformed, and the systems of reporting to the National Tax Administration and Regional Taxation Bureaus should be streamlined.

In addition, more discussion is necessary of management techniques and implementation procedures.

3. Internal Management and the State of the Workplace

(1) Relationship between the National Tax Administration, the Regional Taxation Bureaus and the Tax Offices

(a) The National Tax Administration, Regional Taxation Bureaus and Tax Offices need to perform their respective functions in a unified manner and with mutual trust.

(i) Tax administration must be sensitive to changes in society and the economy. In order to gain an accurate prospect of current and future circumstances relating to tax administration and to respond to the various problems anticipated, the National Tax Administration has the important role of providing and implementing long-term plans on staffing levels and structural issues, staff recruitment and training, human resources and mechanization of clerical procedures.

The Regional Taxation Bureaus, taking into account the prospects of societal and economic development within their jurisdiction and the plans laid out by the National Tax Administration, must establish and implement long-term plans as required in order to deal with the various problems anticipated at that Regional Taxation Bureau.

The National Tax Administration and Regional Taxation Bureaus must strive to reform the system and practices of tax administration to achieve their smoother operation .

(ii) The National Tax Administration should identify the basic direction of tax administration and identify any matters of special importance, while the Regional Taxation Bureaus, in accordance with these directions and administrative, social

and economic realities, should instruct the Tax Offices in concrete implementation.

When the National Tax Administration or a Regional Taxation Bureau issues instructions to an Regional Taxation Bureau or Tax Office, the basic approach should be expressed clearly and simply. Only the outline of the mode of implementation should be included, and the Regional Taxation Bureau or Tax Office should use its originality and independence to implement the instructions as effectively as possible in accordance with circumstances.

(iii) It is basic to tax administration to have a unified approach to interpretation and application of laws and regulations, and this is the responsibility of the National Tax Administration and the Regional Taxation Bureaus. It is also important to achieve a uniform standard of administration between regions and within offices. The National Tax Administration and Regional Taxation Bureaus, through observation and audit outcome discussion groups, must attempt to appraise the standard of administration at each Regional Taxation Bureau, Tax office or internal subdivision. However, the methods for gaging the standard of administration also need to be debated.

In order to achieve uniform standards of administration between regions and within offices, it is necessary to have an appropriate distribution of duties and personnel. The National Tax Administration and Regional Taxation Bureaus must ensure that staffing levels, structures and human resource management are appropriate to the circumstances of each Regional Taxation Bureau, Tax Office or subdivision in accordance with social and economic developments.

(b) When the National Tax Administration or a Regional Taxation Bureau supervises a Regional Taxation Bureau or Tax Office, the latter's administration should not be evaluated merely on statistical results. Rather, consideration should be given to factors such as:

- whether tax administration as a whole is moving in the desired direction;
- whether the operational plans are appropriate to the circumstances of the particular Regional Taxation Bureau or Tax Office;
- whether those in management are performing the appropriate role;
- whether distribution of duties and personnel, and budgeting measures, are appropriate; and
- whether individual employees are conducting their duties with enthusiasm

to judge whether the National Tax Administration, Regional Taxation Bureaus and Tax Offices are united in their commitment to improved administration.

However, in order to attain uniformity in administration and make the respective areas of responsibility clear, instructions from the National Tax Administration or a Regional Taxation Bureau to a Regional Taxation Bureau or Tax Office should in principle pass through the Regional Commissioner of the Regional Taxation Bureau or the Director of the Tax Office.

(c) The National Tax Administration and Regional Taxation Bureaus should allow free

airing of opinions and proposals of the Regional Taxation Bureaus and Tax Offices in relation to practical problems of administration or the laws, regulations and circulars at meetings and on other opportunities, and in addition should actively adopt and implement suitable proposals.

Meetings should be reviewed to see whether they have become formulaic or ritualized -they should be reorganized so that only those which are really necessary are held.

(2) Fair Administration and Employees' Attitude

(a) The management must create the kind of workplace where all employees can fulfil their potential and use their abilities, and where employees can assist each other to work frankly and cheerfully.

For this reason, while policy-making and planning is the duty of management, management must endeavour to provide the opportunity for dialogue with employees and adopt their constructive opinions, so that employees can approach their work with a participatory consciousness. By such contact, management can understand employees' real work circumstances and supervise them with empathy.

Management should endeavour to conduct research, broaden their knowledge base, heighten their supervisory capacity and be a model for those working under them.

(b) Employees need to internalize the basic approaches to tax administration, be conscious of the significance that each particular matter has to tax administration as a whole, and act positively to use their originality in the performance of their duties.

Tax administration is work that requires specialized knowledge and experience. Therefore, employees in this area should endeavour to improve their knowledge of tax laws and their technical capacity in tax administration, bearing a strong sense of responsibility in the execution of their duties. In particular, specialist officers, as employees who have such specialist knowledge and experience, should recognize their core role in tax administration, and sufficiently sense their responsibility in the execution of their duties.

In order to obtain the trust and cooperation of the taxpayer in relation to tax administration, employees who have regular contact with taxpayers need not only to be expert in tax administration, but also to have good communication skills. Therefore, employees must always use their common sense and aspire to providing improved service.

(c) Specifically for the Tax Offices, the following points should be considered.

(i) The Tax Office Director must accurately appraise the circumstances of taxpayers within the jurisdiction and employees within the Office. The Director must also endeavour to ensure that the structures of the Tax Office, which have specialist officers as their mainstays, operate organically and efficiently with their anticipated functions.

In addition, in order to keep the Tax Office moving in the desired basic direction, the

Director needs to steer the Tax Office, adjust and propel its activities, and closely monitor the outcomes of these acts.

(ii) Special Audit (or Collection) Officers should take advantage of their wealth of knowledge and experience in actively pursuing audits and delinquent payments, and should provide an example to all specialist officers in the execution of their duties.

(iii) Division Chiefs and Coordinating Officers, as those responsible for performance of duties of individual units, should embody the will of the Director, and guide their subordinates to implement the relevant plans and achieve accurate administration. To this end, they need to take care to avoid duplication of supervision or unnecessarily detailed supervision which would increase the supervisory workload, destroy the independence of the employees and lower efficiency. At the same time, Division Chiefs and Coordinating Officers **[ditto]** must exercise the necessary supervision and instruction to ensure that their subordinates handle matters appropriately .

(3) Education and Training of Employees

(a) The development of talents of employees is the very basis for conducting smooth and appropriate tax administration. Management needs to supervise employees in the everyday course of administration, but also needs to implement periodic training to upgrade the capacity for performance of duties.

However, for less experienced employees, it is important to have individual supervision sessions as well.

(b) The National Tax College must strive to further raise the level of its curriculum, implement systematic training in accordance with advances in the situation in tax administration, and generally contribute to the development of employees' talents. Training of management in their supervisory roles should also be consolidated so that an improvement in management capacity can be expected.

By strengthening the research structure for tax theory and the operation of tax laws at the National Tax College, the standard of theoretical tax research and the education and training of employees will be improved.

(4) Enforcement of Discipline

Improper action by one section of employees injures the reputation of the whole tax administration .

Employees who take part in tax administration need to renew their recognition of their responsibilities as public servants and the importance of their work as tax employees, and although there may be many temptations in this work environment, they must always pay detailed attention that they do not succumb to these temptations.

The management must of course conduct themselves as examples for their subordinates, and must not only supervise them professionally but must assess their private merits

and demerits to ensure the correct ethical approach in the workplace and prevent misconduct before it occurs. If an incident should occur in spite of this, all necessary avenues should be studied and there should be a strict response after a speedy investigation of the facts.

(5) Maintaining Order in the Workplace

Employees need to recognize their duty as tax employees, and conduct themselves with good sense while obeying the service regulations set out in the National Public Servants Law and other sources. They must also devote themselves to their duties and strive to maintain the orderly discipline of the workplace.

Management must customarily use the supervision and instruction of subordinates to increase the self-awareness of employees and reinforce workplace order, while activity that breaches such order should be firmly confronted.

(6) Improving the Work Environment

(a) In order to make the Tax Office more approachable for taxpayers and to create a situation where employees can work efficiently and cheerfully, it is necessary to maintain work surroundings. For this reason, facilities in the office buildings should be constantly improved, with due attention paid to good layout, prevention of fire and theft, etc.

(b) Considering that home residence has a great influence on employees' will to work, lodgings should be provided and improved so that employees' housing situation is secure.

(7) Management of Employee Health

(a) In order to create a cheerful and efficient workplace, it is important that employees be in good health. Medical facilities should be provided in the form of a clinic, with the aim of early detection of illnesses and systematic health supervision. In addition, vacations etc. should be allowed as appropriate, and comprehensive measures are expected to maintain and improve employees' health.

Especially now that employees over 40 form the majority and there is a trend towards ageing of the workforce, health diagnosis should be consolidated for early detection of geriatric diseases.

(b) In order to restore the vitality of employees and increase morale, recreation activities should be organized giving due consideration to employees' wishes and the demands of work. Attention should be paid to the cultivation of recreation supervisors.

Health and welfare facilities should be enhanced in order to keep the workplace healthy and happy.

Ⅱ. SPECIFIC ARGUMENTS

1. Direct Taxation Matters

(1) Objectives for Administration of Direct Taxation and Common Important Strategies

Administration of direct taxation is relevant to many taxpayers from all sectors of society, and in addition the taxes relate to matters such as income and assets which have an enormous direct impact on taxpayers' lives and businesses. Thus, administration of direct taxes has a great influence on the sense of public trust in the tax administration system as a whole and on the tax-paying morals of the public generally.

Therefore, to administer direct taxes fairly and to ensure a fair distribution of the tax burden is extremely important for tax administration as a whole.

The objective of direct taxes under the self-assessment system is to have all taxpayers submit correct returns.

To this end, it is necessary to conduct unified audits and guidance appropriate to each taxpayer according to the taxpayer's tax history, the scale of income or assets, or the amount of the tax debt.

The following strategies should be stressed in the management of direct tax administration.

(a) *Cultivation of Blue Return Filers*

If the goal is to cultivate taxpayers who can file correct returns on their own strength, since blue return filers form the core of taxpayers their numbers should be increased and they should be nurtured.

To this end, cooperation with the *zeirishi* associations, and private organizations such as the Chamber of Commerce and Industry, commerce and industry groups, the Blue Return Taxpayers Association, the Corporate Taxpayer Assocation, etc. should be promoted, and through supervision of these groups improved book-keeping practices amongst taxpayers and voluntary payment of taxes should be encouraged.

(b) *Focussing of Audits*

In order to conduct effective administration with limited human resources, audits should be conducted after giving consideration to the character of the taxpayer, with priority given to large-amount taxpayers and those who are suspected of tax evasion or those in industries targeted for special attention because of a boom market.

Audit days should be distributed according to the real circumstances of the particular taxpayer, without concern for audit statistics, so that administration is mobile and flexible.

(c) *Improved Audit Methods*

Given that tax audits are to be conducted after balancing public necessity and protection of private interests and only within the bounds of what is socially acceptable with the understanding and cooperation of the taxpayer, prior notification should always be provided for regular audits, surprise audits should be kept to the absolute minimum, and extended audits should only occur when objectively unavoidable.

When in contact with the taxpayer, the basic approaches of the tax authority should be accurately relayed to the taxpayer. In order to avoid unnecessary psychological burden on the taxpayer, the format and wording of notices sent to the taxpayer should be as simple and considerate as possible.

Requests to the taxpayer to attend the Tax Office can impose an economic and psychological burden on the taxpayer, so should not be issued without good reason.

(d) *Effective Collection and Use of Materials and Information*

Materials and information are useful for selection of audit subjects and for the extraction of points for detailed investigation - as well as increasing the efficiency of audit procedures, they also organically interconnect the various tax administration measures and consolidate the content of the audit. Thus, in the collection of materials and information, the particular focus should be on items that are useful and effective, and the collected materials and information should be made use of sufficiently in the ensuing audit. Further, accurate statistics should be kept and analyzed in this area.

(e) *Maintaining Taxpayer Compliance*

Tax audits are entrusted to the tax authorities by the public in order to achieve an impartial tax spread, so all taxpayers are in a position where they may be subject to audit depending on the propriety of their return. Therefore, in relation to persons who use various obstructive methods to hinder tax audits, in order to maintain taxpayer compliance and to expect fair taxation, it is necessary not to yield to such obstructive activity. In these cases, accurate audits should be conducted, taking care that there is no bias compared to general taxpayers.

(f) *Increased Cooperation between Strands of the Administration*

With increased levels of economic activity, it is becoming increasingly necessary to administer the various direct taxes in a unified way through increasingly interrelated and specialised administrative units and an increase in supervisory officers. Therefore, by implementation of efficient collection and use of materials, simultaneous audits, coordinated audits, serial audits, etc., an organic and cooperative system of tax administration can be effected for income tax, corporation tax and fixed assets taxes.

Moreover, the Regional Taxation Bureaus and Tax Offices should engage in mutual support. Employees working on direct taxes should communicate and cooperate with collection officials to speedily and decisively conduct procedures accompanying the relocation of taxpayers and other necessary communications to collection units. They should also speedily review or otherwise deal with enquiries from the collection unit, or make every effort to communicate items acquired during an audit that may be of use in collection.

(g) *The State of Administration*

In order to prevent increase in management duties due to duplication, efficient administration should be emphasized and the following points taken into account.

(i) In the planning of administration, the opinions of employees, particularly those with a wealth of experience such as high-ranking audit officers, should be listened to carefully, and constructive comments should be incorporated into the plans.

(ii) The distribution of administrative duties should be conducted after holistic consideration of the employee's experience, fairness, the difficulty of the case, etc. High-ranking audit officers should be assigned important and difficult cases.

(iii) In order to keep administrative procedures progressing smoothly, the original ideas of employees as to how to achieve this should be used to the full, and appropriate measures should be taken according to the experience and capacity of the responsible employee, the content of the case, *etc.*

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