

Japan Inbound Tax & Legal Newsletter

Fact-finding is key to successful tax appeals

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In Brief

Traditionally, Japan is the country where tax controversy has been the least prevalent, although this trend may be changing. According to the most recent statistics, 3,104 tax appeals were initiated in the National Tax Tribunal (NTT) in FY 2018, which represents an increase of more than 50% over a four-year period (i.e. since FY 2014). This increase is due to the Japanese tax authorities issuing an increasing number of assessment notices and taxpayers appealing the notices rather than complying with them.

There were 216 successful tax appeals to the NTT in FY 2018. Those appeals indicate that fact-finding is key to successful tax appeals to the tribunal.

Tax appeals to the NTT

Fiscal Year	# of tax appeals started	Growth ratio	# of tax appeals completed	# of successful tax appeals	Taxpayer success ratio
FY 2014	2,030	△28.9%	2,980	239	8.0%
FY 2015	2,098	3.3%	2,311	184	8.0%
FY 2016	2,488	18.6%	1,959	241	12.3%
FY 2017	2,953	18.7%	2,475	202	8.2%
FY 2018	3,104	5.1%	2,923	216	7.4%

(Source: National Tax Agency)

1. Options to challenge assessment notices

Differences of opinion between a taxpayer and tax examiners during the course of a tax audit over whether and how much the taxpayer is required to pay are not uncommon. The primary reason for such differences is a discrepancy between the taxpayer's understanding of the facts and those assumed by the tax examiners. Although this discrepancy sometimes can be resolved through open debate during the tax audit process, it is not unusual for unresolved differences of opinion to lead to an assessment notice.

A taxpayer may either accept and comply with an assessment notice issued by the tax authorities as a result of a tax audit or challenge it by appealing it to the issuing tax authorities or the NTT. If the taxpayer appeals to the tax authorities, but receives an unfavorable ruling, the taxpayer still may file an appeal with the NTT. In general, the taxpayer may bring the case to court only after the NTT has rendered a decision unfavorable to the taxpayer in the tax appeal.

2. Tax controversy process

A tax appeal with the tax authorities generally must be filed within three months after the date the assessment notice is received by the taxpayer or the date the taxpayer acknowledges its issuance (if it is not received by the taxpayer). The tax authorities generally aim to issue a decision within three months after receiving an appeal. Since an appeal to the tax authorities essentially is a quick internal review process, an assessment is unlikely to be overturned unless it clearly is erroneous.

A tax appeal to the NTT generally must be filed within three months after the date the assessment notice is received by the taxpayer or the date the taxpayer acknowledges its issuance (if it is not received by the taxpayer). Upon receiving a tax appeal, the NTT notifies the tax authorities that issued the assessment notice that a tax appeal has

been filed, and the tax authorities submit a response to the NTT. The taxpayer then may file further arguments with the NTT. The NTT considers all the arguments and evidence presented and issues its decision in writing, generally within one year after the date the tax appeal was filed.

If the taxpayer wishes to continue challenging the assessment notice after the decision of the NTT, the taxpayer may bring the case to court within six months after the date the taxpayer acknowledges the issuance of the NTT's decision. The taxpayer also may bring the case to court if no decision is rendered by the NTT within three months after the date the tax appeal was made.

3. Fact-finding is what tax appeals are all about

Recent successful tax appeals indicate that fact-finding is key to tax appeals to the NTT. There are two principal issues in tax controversy: fact-finding and legal interpretation. In most tax appeal cases where the NTT reversed an assessment, it did so because it disagreed with the facts assumed and presented by the tax authorities. Fact-finding is an objective exercise and, by relying on objective facts, the NTT functions as a neutral arbiter of disputes between taxpayers and the tax authorities. However, the NTT rarely rejects the tax authorities' legal interpretation, possibly because it is mindful of the wider impact that the interpretation may have on other taxpayers. In such cases, taxpayers may have to bring their case to court.

Comments

Fact-finding is key to successful tax appeals in the NTT:

- A taxpayer generally has an advantage before the NTT if there is a discrepancy between a taxpayer's understanding of the facts and those assumed by the tax examiners. During a tax audit, the tax examiners have to gather facts from relatively limited evidence in a relatively short period of time. It also is difficult for the tax authorities to collect new evidence once a tax appeal has been filed with the NTT. On the other hand, the taxpayer presumably has access to favorable evidence concerning his/her own affairs and can submit new evidence after the tax appeal has been filed.
- The NTT usually determines the facts of a case based on whether the taxpayer or the tax authorities are more reasonable and persuasive in their presentation of the issues. For example, the tribunal may ask itself: which side's presentation is more aligned with the objective facts and/or with the testimony of relevant parties? Which side's argument can explain plausibly evidence that appears to be adverse? If the NTT cannot determine the facts, it will decide against the party with the burden of proof, which generally is on the tax authorities issuing the assessment notice such that they must produce evidence to support their position.
- The NTT hears arguments from both the taxpayer and the tax authorities, performs its own review of the evidence and issues a decision that is essentially from a third party's perspective free of charge. This procedure allows a taxpayer to correct an unjust assessment based on incorrect facts faster. Even if tax litigation becomes necessary (i.e. if the NTT issues a decision unfavorable to the taxpayer), clarifying contentious points in advance should allow tax litigation to proceed more efficiently.
- When faced with an assessment following a tax audit, taxpayers should carefully consider their options and consult with a tax advisor who has specific expertise and experience with tax appeals and tax litigation before deciding whether to accept or appeal the assessment.

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