

TAX ADMINISTRATION IN JAPAN

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Japan is a jurisdiction in which tax accounts for a significant portion of government revenue. Efficient administration of the tax system is, therefore, very important in Japan. Among the measures employed to achieve that goal are self-assessment withholding taxes, and a year end adjustment system. The broad scope of investigatory powers vested in the tax authority also promote efficiency. But inequities and difficulties in enforcing taxation against certain sectors of the economy remain. Nonetheless the Japanese system of tax administration presents some options for Australia to consider.

Introduction

More than 85% of Japan's revenue derives from its taxes,¹ making taxes the mainstay of government operations. This is similar to the Australian situation, where approximately 93% of government revenue comes from taxes.² The tax systems of both countries consist of a mix of direct and indirect taxes. Nearly three-quarters of Japanese tax revenue is derived from direct taxes.³ Although this figure is considered high by OECD standards, it is significant to note that approximately 67% of Australian tax revenue is derived from direct taxes.⁴

Japanese taxes can be divided into four categories: taxes on income, taxes on property, taxes on consumption, and taxes on the transfer of goods.⁵ The principal taxes on income, the Income Tax⁶ and the

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¹ Japan, National Tax Administration, *An Outline of Japanese Tax Administration 1992* (hereafter "NTA") 4.

² See *Budget Papers* (1994) AGPS.

³ See NTA 9, Table 3.

⁴ Above n 2.

⁵ Japan, Ministry of Finance, *An Outline of Japanese Taxes, 1992* (hereafter "MOF (1992)"), 15.

⁶ Shotoku Zeiho (Law No 33, 1965).

Corporation Tax,⁷ form the backbone of the Japanese tax system. These taxes are levied on the incomes of natural and juridical persons. While income is not defined, a dozen categories of income are identified in a schedular system not unusual in civil law jurisdictions. In addition to these national taxes, local taxes are levied on the same tax base.⁸

Japan's Inheritance Tax Law taxes transfers of property by gift or inheritance.⁹ The other major tax on property is the national landholding tax.¹⁰

The principal tax on consumption is the national consumption tax,¹¹ which is effectively a value-added tax. In addition there are a number of national and local excise taxes on specific commodities, although these have been reducing in number since the 1989 introduction of the consumption tax.¹²

Finally, there are a number of taxes on the transfer of goods, including stamp duties¹³ and a national tax on securities transactions.¹⁴

Given the important role of taxation in government revenue production in both Japan and Australia, smooth and efficient administration of the tax system is essential. This article examines Japanese tax administration, focussing principally on the major tax agency and the administration of the income and corporation taxes. It also offers some comparisons with Australian tax administration.

Organisation of the Japanese National Tax Administration

All Japanese taxes are raised under legislation passed by the National Diet of Japan; revenue-related legislation must originate in the lower house.¹⁵ The National Tax Administration (NTA) is the government agency with principal responsibility for the execution of tax laws and

⁷ Hojin Zeiho (Law No 34, 1965).

⁸ Chiho Zeiho (Law No 226, 1950).

⁹ Sozoku Zeiho (Law No 73, 1950).

¹⁰ Chika Zeiho (Law No 69, 1991).

¹¹ Shohi Zeiho (Law No 108, 1988).

¹² Eg. Tabako Zeiho (Law No 72, 1984); Chiho Doro Zeiho (Law No 104, 1955); Sekiyu Gasu Zeiho (Law No 156, 1965).

¹³ Toroku Menkyo Zeiho (Law No 35, 1967).

¹⁴ Yuka Shoken Torihiki Zeiho (Law No 102, 1953).

¹⁵ Constitution of Japan, Art 60.

all general tax administration.¹⁶ This responsibility extends to interpreting tax legislation. As will be seen in the discussion of tax disputes below, except in the case of constitutional questions, the NTA's interpretation of tax legislation has more authority than the interpretation of the tax tribunal or the courts.

The NTA was established in 1949 during the post-war occupation which introduced a number of major reforms, including tax reform. Two factors prompted the establishment of the NTA. Tax administration up to the end of the war had been inefficient and costly. The Shoup Mission, a group of seven American economists and tax specialists commissioned to assess and revise Japan's tax system in 1949, calculated that Japan's old tax system could have produced 25% to 100% more revenue had it been properly enforced.¹⁷ In addition, the post-war tax reforms included introduction of a self-assessment system which was not widely understood. The establishment of the NTA, with an increased staff, made it possible to engage in taxpayer education, as well as a rigorous enforcement program.¹⁸

Although it is considered an external administrative organisation, the NTA is still within the general jurisdiction of the Ministry of Finance, the ministry with ultimate responsibility for governmental revenue and expenditure.¹⁹ The Ministry of Finance also has a number of internal departments with tax responsibilities. The most important of these is the Tax Bureau, which researches and plans the tax system and drafts tax legislation.²⁰

The structure of the NTA comprises a National Office with four departments - the Commissioner's Secretariat, the Taxation Department, the Revenue Management and Collection Department, and the Examination and Criminal Investigation Department - eleven Regional Taxation Bureaux, the Okinawa Regional Taxation Office and 519 District Tax Offices.²¹ Working within this structure, the specific functions of the NTA are to establish policies, plan tax administration,

¹⁶ MOF (1992), 5. The NTA was conceived of at the time the Ministry of Finance was created by the National Administration Organisation Law (Kokka Gyosei Soshiki Ho, Law No 120, 1948) but its precise role was not defined, nor did it come into existence, until 1949.

¹⁷ Shoup Mission, *Report on Japanese Taxation, Vol 1* (Tokyo 1949) 15.

¹⁸ Vicki L Beyer, "The Legacy of the Shoup Mission: Taxation Inequities and Tax Reform in Japan" (1992) 10 *UCLA Pacific Basin Law Journal* 388 at 395-96.

¹⁹ See generally Appendix I, National Administration Organisation Law, above n 14.

²⁰ MOF (1992) 290.

²¹ NTA 11.

issue directives to Regional Tax Bureaux and supervise and control Regional Tax Bureaux and District Tax Offices.²²

Tax administration policy is considered especially important to the self-assessment system, since it can function to ensure that taxpayers understand the significance of taxation and consequently are encouraged to file and pay their taxes.²³ Current policy contains three principal objectives:

- 1 To encourage taxpayers to voluntarily file accurate returns, pay taxes and approach their tax office for assistance when required,
- 2 To ensure correct assessments,
- 3 To develop self-disciplined and efficient officers who promote good human relations.²⁴

The NTA's operations, particularly the way in which it interacts with the Regional Tax Bureaux and District Tax Offices, pursue these objectives. By issuing directives to Regional Tax Bureaux, the NTA can ensure that tax law is interpreted and implemented uniformly nationwide.

Among the directives issued by the NTA, those known as "basic circulars" are made publicly available. The NTA issues Basic Circulars under statutory authority.²⁵ They usually provide additional details to clarify legislation and often give examples to illustrate the legislation. Once they have been made publicly available, Basic Circulars are binding against the NTA, although they do not have the force of law and, therefore, are not binding against the taxpayer. This is similar to the Australian system of "public rulings" that has been operative since mid-1992. Note, however, that Japan does not have the equivalent of binding "private rulings" that are available to taxpayers in Australia.

The Regional Tax Bureaux actually oversee the activities of the district tax offices who have the closest contact with the taxpayers themselves.²⁶ The Regional Tax Bureaux, whose Australian counterpart would be the Branch Office, also have audit and criminal investigation functions independent of the district tax offices. Specifically, Regional Tax Bureaux conduct audits on large

²² Ibid at 12; MOF (1992) 291.

²³ NTA 15.

²⁴ Ibid at 15-16.

²⁵ Kokka Gyosei Soshiki Ho (Law No 120, 1948), Art 14(2).

²⁶ NTA 12.

organisations and investigate tax fraud.²⁷

The district tax offices have the authority for all tax assessment and collection within their jurisdiction.²⁸ As mentioned above, they have the most contact with taxpayers. During the period in which annual income tax returns must be filed, it is common for individual taxpayers to visit their district tax office for assistance with filling out their forms.²⁹ Similarly, the Australian Tax Office (ATO) counterpart, the regional office, provides various forms of taxpayer assistance, particularly during the "tax season".

Other governmental organisations affiliated with the NTA include the National Tax Tribunal and the National Tax College. The National Tax Tribunal is a quasi-independent administrative agency established to hear any taxpayer's "request for reconsideration".³⁰

The National Tax College is the NTA's principal training organisation.³¹ The existence of the National Tax College demonstrates the tax administration objective of developing capable officers who promote good relations with taxpayers. In general, NTA recruits are required to attend a primary course immediately upon commencing employment with the NTA.

The bulk of new recruits are high school graduates who have passed a rigorous Government Service Examination.³² These individuals are given a full year of training.³³ At the other end of the spectrum, a one week course is offered to a very small number of recruits who are university graduates entering at the highest level.³⁴ The training provided includes a general orientation to the public service as well as

²⁷ Ibid. Cf General Law of National Taxes (Kokuzei Tsusokuho, Law No 66, 1962) Art 27.

²⁸ NTA 12.

²⁹ In his 40 year retrospective on the Shoup Mission, Professor Martin Bronfenbrenner included a personal observation: "As residents of Tokyo, my wife and I file Japanese tax returns like Japanese citizens. We find the procedures simpler, and the tax office personnel more helpful, than at our previous residences..." M Bronfenbrenner, "Dr. Shoup Revisits Japan: The Shoup Tax Mission Forty Years Later" (1989) 16:4 Japan Foundation Newsletter 7, in n 12. My personal experience of receiving assistance at district tax offices is consistent with this observation.

³⁰ NTA 89; the precise role of the National Tax Tribunal will be discussed in the "Tax Disputes" section of this paper.

³¹ Ibid at 103.

³² Ibid at 101.

³³ Ibid at 103.

³⁴ Ibid at 106.

technical training in tax law, bookkeeping, accounting and economics.³⁵ Advanced courses are available at three to seven year intervals for staff members of particular promise. While the ATO does not maintain its own educational institution in this way, the ATAX program of the University of New South Wales serves a similar function to the National Tax College's advanced courses.

The role of the Zeirishi

As a counterpart to the highly trained staff of the NTA, a number of legal professionals are qualified to work in the tax area. These include attorneys-at-law and certified public accountants and the particularly Japanese tax professional, the zeirishi. This category of legal professional was introduced in Japan in 1942 and was modelled on the German "steuerberater".³⁶ The word "zeirishi" has been translated into English in a number of ways including certified tax accountant, licensed tax accountant, licensed tax agent and tax attorney. To avoid any possible misconceptions stemming from the use of any of these terms, this paper will refer to these tax professionals simply as zeirishi.

Zeirishi operate under government licence, practising exclusively in taxation matters. The principal way to become a zeirishi is by passing a rigorous five-part national examination on financial matters and tax laws and then registering as a zeirishi.³⁷ Persons who have already qualified as attorneys-at-law or certified public accountants may also register themselves as zeirishi.³⁸ In addition, persons with a prescribed number of years of experience as a public servant in a national, regional or local governmental agency dealing in taxation may also register as zeirishi.³⁹ As of March 1993 there were 60,632 individuals registered as zeirishi.⁴⁰ There is no apprenticeship system for entering the profession. This system of admission to the profession is in stark contrast to the Australian system, which emphasises practical experience over education or examined competency.

All zeirishi must join the statutory regional zeirishi association in the area where they are to practice. These regional associations are members of the national federation which has various responsibilities

³⁵ Ibid at 104.

³⁶ *A Guide to the Japan Federation of Young Certified Tax Accountants Associations* (Tokyo, 1992).

³⁷ Zeirishi Ho (Law No 237, 1951), Art 3(1)(1); cf Art 5 and 6.

³⁸ Ibid at Art 3(1)(3) and (4).

³⁹ Ibid at Art 8.

⁴⁰ Personal correspondence from Japanese educator dated 21 February 1994.

for maintaining professional standards. Thus the profession is self-regulated, compared with the Australian system which, as yet, does not constitute a separate profession.

The scope of the work performed by the *zeirishi* is comparable to that of the Australian tax agent. *Zeirishi* are considered to be independent and impartial specialists in taxation with a public duty to ensure that taxpayers fulfil their obligations to pay tax as stipulated in the laws and regulations concerning taxation.⁴¹ *Zeirishi* have three specific duties: to act as tax agent or representative (including representing clients before the NTA and the National Tax Tribunal), to prepare tax documents and to provide tax advice.⁴² Accordingly, *zeirishi* maintain close contacts with taxpayers, guiding them in their tax planning and assisting with tax returns and tax related record keeping. When a taxpayer is audited or is contesting an assessment of the NTA, the *zeirishi* is entitled to appear with the taxpayer and to act as the taxpayer's representative.

Tax returns/tax collection

Generally speaking, tax returns must be filed by all Japanese taxpayers annually.⁴³ There are, however, five methods of tax collection: self-assessment, official assessment, withholding tax, special collection and stamp payment.⁴⁴ Official assessment applies only to the bourse tax and particular taxpayers of indirect taxes.⁴⁵ Similarly, special collection and stamp payments are only used for particular taxes.⁴⁶

The self-assessment method of tax collection is used in collecting most direct taxes, including the income tax, the corporation tax and the inheritance and gift tax, as well as most indirect taxes, in particular the consumption tax, liquor tax, tobacco tax and gasoline tax.⁴⁷ Under self-assessment, taxpayers have primary responsibility for computing their taxable income (known as "tax base") and amount of tax payable, filing a return to establish tax liability based on their calculation and paying the tax due.⁴⁸ Under the self-assessment system, a taxpayer's

⁴¹ *Zeirishi Ho*, Art 1.

⁴² *Ibid* at Art 2.

⁴³ See, eg, *Income Tax Law*, Art 232.

⁴⁴ *MOF* (1992) 200.

⁴⁵ *Ibid*.

⁴⁶ *Ibid* 201, Table 15.

⁴⁷ *Ibid*.

⁴⁸ *NTA* 21.

tax assessment is considered completed upon filing a final return.⁴⁹ The mechanics of the system are detailed in the General Law of National Taxes.

In order for self-assessment to work, a high degree of taxpayer compliance is necessary. The NTA engages in a variety of public relations activities, including educational programs and free tax advice, to foster taxpayer cooperation. As mentioned above, these activities have been part of the NTA's brief since its creation. Australia, too, has begun to emphasise taxpayer education since the introduction of self-assessment, although it is interesting to note Australia's relatively late⁵⁰ adoption of a self-assessment system.

The NTA's latest educational innovation is a computer system for answering basic inquiries over the telephone. This system, known as TAX ANSWER (Automatic Answer Network System for Electronic Response) was introduced in Tokyo in 1987 and is gradually being expanded nationwide.⁵¹

An innovation early in the life of self-assessment was the introduction of a simplified tax return known as the "blue return".⁵² In order to qualify to file a blue return, the taxpayer must be a resident who is either a corporation⁵³ or an individual carrying on a business generating real estate, business or agricultural income.⁵⁴ The taxpayer must have the approval of the Director of the District Tax Office and must agree to maintain its books and accounting records in a prescribed manner.⁵⁵ In return, blue return filers are allowed a variety of benefits in the calculation of income and deductions.⁵⁶ For example, blue return filers are permitted to carry back losses to the preceding year or carry them forward for up to five years.⁵⁷ Blue return filers are also permitted a number of special depreciation allowances and can

⁴⁹ Koji Ishimura, "Japanese Tax Litigation System and Procedures" (1980) 13 *Law in Japan* 111 at 113. The taxpayer can seek to make corrections to this final return for a period of one year after it has been filed. General Law of National Taxes Art 23.

⁵⁰ Partial self-assessment was introduced for the year ending 30 June 1986 and full self-assessment for companies and superannuation funds was introduced for the year ended 30 June 1990.

⁵¹ NTA 74.

⁵² Shoup Mission, above n 15 at 15. For ease of recognition it was proposed that the return be printed on coloured paper. Blue was chosen, hence the name.

⁵³ Corporation Tax Law, Art 121.

⁵⁴ Income Tax Law, Art 143.

⁵⁵ Income Tax Law, Art 148; Corporation Tax Law, Art 126.

⁵⁶ MOF (1992) 64; NTA 22.

⁵⁷ Corporation Tax Law, Art 57.

accumulate several special tax free reserves.

At the time that the blue return system was introduced, it was common for the tax office to issue arbitrary reassessments of business taxpayers who could not justify their incomes. Blue return taxpayers were exempted from this practice and are only subject to reassessment upon a thorough audit of the taxpayer's books and documents.⁵⁸ The blue return system has proven popular with taxpayers, with about half of those eligible for the system using it.⁵⁹

Although tax office reassessments have continued for business taxpayers not participating in the blue return system ("white return filers"), the incidence of these reassessments has greatly diminished since 1984, when a mandatory system of record and book keeping was also introduced for white return filers.⁶⁰ The nature and extent of the record and book keeping required varies depending on whether the taxpayer is an individual or a corporation. Corporations must keep all documents issued or received regarding transactions and must maintain simple books of account showing all transactions. Individuals have the same documentary retention requirements but are only required to maintain books of account if the business income exceeds ¥3 million (approx A\$30,000). However, individuals are required to attach to their final return form a ledger showing business income and necessary expenses.

A system for withholding tax at the source also exists for collecting the income tax.⁶¹ The principal collection agents under this system are employers, who deduct the tax prior to paying wages.⁶² Australians will recognise the parallel to our PAYE system. Other types of income taxed through this system of collection include interest and dividend income, capital gains on share transfers, remuneration for professional services and remuneration for entertainment services.⁶³ The constitutionality of imposing this collection duty on various agents without compensation was unsuccessfully challenged in the 1960s.⁶⁴

While the system of withholding taxes on these various other types of

⁵⁸ Corporation Tax Law, Art 130.

⁵⁹ See NTA 23, Table 7.

⁶⁰ NTA 25.

⁶¹ Income Tax Law, Book IV.

⁶² NTA 26.

⁶³ *Ibid* at 27.

⁶⁴ Hideaki Sato and Masahiro Shibuya, "The Role of Tax Administration and Collection" in *A Final Draft Report from FAIR to the World Bank on "Taxation and Economic Growth" (Asian Miracle Project)* (Tokyo 1993) 175 at 185.

income can be quite complex, the withholding system for wages contains one interesting administrative procedure. Known as the "year-end adjustment", this procedure allows the employer to calculate the taxpayer's total annual income tax liability at the end of the year and make an adjustment in the amount withheld from the final pay packet for the year so that the taxpayer's exact tax liability is paid.⁶⁵ When this year-end adjustment has occurred, it is not necessary for the taxpayer to file a final tax return for the year. Although this system is only available to taxpayers who have no more than a limited amount of non-employment income, most taxpayers with employment income pay their taxes through this system. In 1990, out of 34.8 million full-time employed persons with income tax liability, only 8.5 million filed returns. The remainder would have had returns filed for them under the year-end adjustment system.⁶⁶

Clearly the year-end adjustment system places an additional burden on the employer to actually make the required calculations. Nonetheless, the cost shifted appears to be minimal when compared with the administrative costs and taxpayer angst saved.

These methods of collection have, over time, proved their efficiency. The cost of tax collection in 1950 was ¥2.79 per ¥100 collected; in 1992 it was ¥0.93 per ¥100 collected.⁶⁷ This figure compares favourably with the ATO's collection costs of 1.144% in 1990/91.⁶⁸

In spite of Japan's efforts to simplify tax collection methods and make them more efficient, voluntary compliance remains a problem. The phrase "9-6-4" is used to express the level of underdeclaration of income engaged in by some sectors of the population.⁶⁹ Ninety percent of the income of salaried employees is believed to be caught in the tax net while self-employed persons only declare about 60% of their income and farmers 40%. While these percentages have not been absolutely verified empirically, a general pattern has been shown,⁷⁰ the existence of a tax gap between these three classes of income earners is beyond question. Australia does not have a similar buzz phrase regarding its tax gap or black economy. However, 1984-85 figures show that approximately 50% of the tax revenue lost through evasion practices was due to understatement of business income, while only 3% was due

⁶⁵ Ibid; cf Income Tax Law, Art 190 to Art 193.

⁶⁶ Sato and Shibuya, above n 64 at 187.

⁶⁷ NTA 17.

⁶⁸ Jeff Pope, "The Compliance Costs of Taxation in Australia and Tax Simplification: The Issues" (1994) 12 *APTIRC Bulletin* 104.

⁶⁹ Hiromitsu Ishi, *The Japanese Tax System* (2nd ed Oxford 1993) 68.

⁷⁰ Ibid at 73.

to unreported wage and salary income.⁷¹ This demonstrates that, farmers aside, Australia faces a similar tax gap problem.

Audits

There is no specific authorisation of audits in any tax legislation, although authorisation can be implied by the fact that there are provisions in most tax legislation detailing the manner in which audits can be conducted.⁷² Consequently, audits appear to be conducted randomly⁷³ but upon the consent of the taxpayer.⁷⁴ The latter developed as a result of a 1972 Supreme Court decision that Articles 35 (illegal search and seizure) and 38 (self-incrimination) of the Constitution applied to administrative procedure as well as criminal procedure.⁷⁵

When the NTA decides to audit a particular taxpayer, they are authorised to interview, or examine the books and records of, the taxpayer, as well as third parties who have had dealings with the taxpayer.⁷⁶ The way in which the audit is conducted depends on the industry and the individual taxpayer involved.⁷⁷ The NTA can also request cooperation from other governmental agencies which may hold documents or other information "necessary for an income tax audit".⁷⁸

The NTA maintains that audits fulfil two purposes: to ensure that taxpayers have correctly determined their tax liability and to "guide" taxpayers on how to correctly determine their tax liability in the future.⁷⁹ The first goal seeks to protect both public revenue and the taxpayer's private profit.⁸⁰ Pursuant to the second goal, the auditors are to regularly explain their actions to the taxpayer and offer instruction to the taxpayer regarding proper methodology in completing

⁷¹ *Reform of the Australian Tax System: Draft White Paper* (Canberra 1985) para. 3.7.

⁷² Eg, Income Tax Law, Art 234; Corporation Tax Law, Art 153 to 156; Inheritance Tax Law, Art 60; Cf, Jiro Yamada, "Sozei Gyosei no Shomondai" (Problems of Tax Administrative Procedure) (1986) 14 *Sozeiho Kenkyu* 1 at 5.

⁷³ NTA 30.

⁷⁴ *Ibid* at 56. Apparently such consent is usually forthcoming.

⁷⁵ Yamada, above n 72 at 6.

⁷⁶ Income Tax Law, Art 234.

⁷⁷ NTA 31.

⁷⁸ Income Tax Law, Art 235.

⁷⁹ Zeimu Unei Hoshin (The Direction of Tax Operations), a tax circular issued by the NTA effective from 1 April 1976, reprinted in *Zeirishi Gyomu Hikkei* (A Handbook of Zeirishi Business) (Tokyo 1990) 73-90 at 75-76.

⁸⁰ *Ibid* at 87.

their returns.⁸¹ Further, should the NTA's audits show a "pattern of mistakes among taxpayers of the same industry", the NTA will alert others in the industry and suggest that they engage in "self-checks" to ensure that the mistake is eliminated.⁸² This is similar to the industry-specific publicity campaigns engaged in by the ATO.

The NTA is also authorised to carry out criminal investigations of taxpayers suspected of intentional tax evasion.⁸³ Such investigations rarely number more than 250 in a year, with about two-thirds resulting in prosecution.⁸⁴

Tax disputes

While the NTA's tax administration policy seeks to prevent tax avoidance and generally ensure that taxpayers pay the right amount of tax, inevitably there are times when the NTA and the taxpayer do not agree on what that right amount of tax is. There are two ways in which a taxpayer can object to an assessment imposed by the tax office: administrative protest and litigation.⁸⁵ Litigation cannot be pursued until all administrative avenues have been exhausted.⁸⁶ In this respect, the system shows similarities to the Australian system.

One of the most common ways in which a dispute arises begins when the tax office amends a taxpayer's self-assessment because the figures shown on the tax return are inconsistent with the findings of its own audit.⁸⁷ In this case, the tax office must send a "Notice of Correction" specifying the nature of the correction and the reasons.⁸⁸ The taxpayer has two months to object to this correction,⁸⁹ although the tax liability established by the correction is not stayed.⁹⁰

The taxpayer's objection, also known as a "request for reinvestigation",⁹¹ must be filed with the director of the district tax

⁸¹ Ibid at 76.

⁸² NTA 31.

⁸³ Ibid at 56.

⁸⁴ Ibid at 58.

⁸⁵ Ibid at 89.

⁸⁶ Ibid at 96; Ishimura, above n 49 at 123.

⁸⁷ General Law of National Taxes, Art 24.

⁸⁸ Ibid at Art 28.

⁸⁹ Ibid at Art 77.

⁹⁰ Ibid at Art 105(1).

⁹¹ NTA 89.

office which issued the notice of correction.⁹² While there is no statement that the objection must be in writing, clearly a written objection is contemplated. A hearing will be held based on the objection; the taxpayer is then notified of the determination and whether further review can be obtained.⁹³

Generally speaking, this determination can be appealed to the National Tax Tribunal,⁹⁴ although the appeal, also known as a "request for reconsideration",⁹⁵ must be lodged within one month of receiving a copy of the determination.⁹⁶ The taxpayer may also appeal to the National Tax Tribunal if there is no action on the taxpayer's objection to the district tax office within three months of the objection being filed.⁹⁷ Blue return taxpayers may appeal directly to the National Tax Tribunal without making a "request for reinvestigation" to the district tax office.⁹⁸

The National Tax Tribunal is an administrative court created in 1970 to provide a non-judicial forum for aggrieved taxpayers. It constitutes the second stage of administrative relief that the taxpayer is entitled to seek. Unlike its Australian counterpart, the Administrative Appeals Tribunal, it is not a fully independent court but operates under the auspices of the NTA. Nonetheless, the fact that it is completely separate from the Regional Tax Bureaux and District Tax Offices makes it a more impartial system of review for taxpayer complaints; under the previous system, final determinations on taxpayer objections were usually made by the Director of the Regional Tax Bureau.⁹⁹

An appeal lodged with the National Tax Tribunal must satisfy certain formalities before it will be considered.¹⁰⁰ If it fails to do so for a cause which can be corrected, it will be returned to the taxpayer for correction.¹⁰¹ If the appeal is out of time or out of the jurisdiction of the tribunal, it will be dismissed.¹⁰² The tribunal accepts for

⁹² General Law of National Taxes, Art 75(1). Cf, M Matsukawa, "Administrative Appeals from Tax Dispositions" (1983) 16 *Law in Japan* 91, 94.

⁹³ *Ibid.*

⁹⁴ General Law of National Taxes, Art 75(3).

⁹⁵ NTA 89.

⁹⁶ General Law of National Taxes, Art 77(2). Although this time limit is clear, Art 77(4) also provides a maximum time limit of one year, implying that extensions are possible.

⁹⁷ *Ibid* at Art 75(5).

⁹⁸ *Ibid* at Art 75(4)(1).

⁹⁹ Ishimura, above n 49 at 115.

¹⁰⁰ *Ibid* at 120.

¹⁰¹ General Law of National Taxes, Art 91.

¹⁰² *Ibid* at Art 92.

consideration all appeals which are correct in their form and which establish that the taxpayer has reasons in support of the claim. Upon accepting the appeal, the tribunal invites the relevant tax office to submit a reply to the taxpayer's "request for reconsideration".¹⁰³ Once the tribunal has both the taxpayer's appeal and the tax office's reply, a panel of three examiners, known as appeals judges,¹⁰⁴ will be appointed to the case.¹⁰⁵

The appeals judges of the National Tax Tribunal are selected from a range of legal professionals including lawyers, professors, public prosecutors and civil court judges.¹⁰⁶ Experienced NTA staff members are also eligible for appointment as appeals judges. It has been alleged that the vast majority of appeals judges are drawn from this pool, thus further calling into question the independence of the tribunal.¹⁰⁷

The taxpayer is entitled to rebut the tax office's reply and may also offer written and oral evidence.¹⁰⁸ When a hearing is convened on the matter, the taxpayer is entitled to self-represent or be represented by an attorney, a *zeirishi* or any other appropriate person.¹⁰⁹ Consistent with the fact that Japan's legal system is based in civil law, the hearing is conducted in an inquisitorial manner. The appeals judges actively participate in posing questions and bringing evidence to light, although the National Tax Tribunal is not subject to formal rules of evidence.¹¹⁰ The burden of proof appears to be borne equally by the taxpayer and the tax office.¹¹¹

This procedure contains a number of marked differences to the AAT procedure. Many of these differences, such as the inquisitorial nature of the proceeding and the placement of the burden of proof, are due to fundamental differences between civil law and common law systems.

After the evidence has been heard, the panel will make its judgment known to the President of the National Tax Tribunal, who will then issue a decision.¹¹² This decision can be a rejection of the appeal or a partial or complete amendment of the tax office's determination. In no

¹⁰³ Ibid at Art 93.

¹⁰⁴ NTA 92-93.

¹⁰⁵ General Law of National Taxes, Art 94.

¹⁰⁶ NTA 93.

¹⁰⁷ Ishimura, above n 49 at 118-19.

¹⁰⁸ General Law of National Taxes, Art 84 and Art 101.

¹⁰⁹ Ibid at Art 107.

¹¹⁰ Ishimura, above n 49 at 121-22.

¹¹¹ Ibid at 122.

¹¹² NTA 93.

case can the tax office's determination be amended to the detriment of the taxpayer.

The tribunal's decision may be based on an interpretation of the law different from that of the NTA, but the NTA must be given advance notice of that fact.¹¹³ This requirement exists to prevent "discrepancies in the interpretation of laws and regulations".¹¹⁴ If the NTA does not agree with the interpretation it can seek a final opinion on the matter from a body known as the National Tax Council.¹¹⁵

If the taxpayer does not agree with the tribunal's decision (or if no decision has been made after three months), a further appeal can be taken to the judicial courts.¹¹⁶ Court procedure for litigation of administrative matters is detailed in the Administrative Litigation Procedure Law.¹¹⁷ The taxpayer's appeal is such a litigation because it deals with a "grievance relating to the exercise of public power by an administrative agency".¹¹⁸

The taxpayer must bring the judicial appeal within three months of learning of the tribunal's decision.¹¹⁹ The most common form of suit is a request for revocation of either the tax office's determination or the tribunal's decision.¹²⁰ Administrative litigation operates under the presumption that all actions of administrative authorities are correct.¹²¹ Consequently, the taxpayer bears the initial burden of presenting reasons in support of the claim.¹²² It is widely held that once this burden is satisfied, the burden of proof shifts to the tax authority to show that its computation of the taxpayer's tax liability was correct.¹²³ As at the tribunal stage, the hearing is inquisitorial.¹²⁴

If the court's decision is also against the taxpayer, the taxpayer is entitled to continue judicial appeals all the way to the Supreme Court.¹²⁵ At each stage of litigation the taxpayer would bear the

¹¹³ General Law of National Taxes, Art 99.

¹¹⁴ NTA 94.

¹¹⁵ General Law of National Taxes, Art 100.

¹¹⁶ *Ibid* at Art 115.

¹¹⁷ Gyosei Jiken Soshō Ho (Law No 139, 1962), Art 1.

¹¹⁸ *Ibid* at Art 42.

¹¹⁹ *Ibid* at Art 14.

¹²⁰ *Ibid* at Art 3.

¹²¹ Ishimura, above n 49 at 125.

¹²² General Law of National Taxes, Art 116.

¹²³ Ishimura, above n 49 at 125-26.

¹²⁴ *Ibid* at 126-27.

¹²⁵ The Supreme Court is Japan's highest court and the court of last resort. Constitution of Japan, Art 81.

burden of presenting reasons in support of the claim, a burden which would seem to become more difficult at each stage if the taxpayer was consistently losing.

Just as the taxpayer's liability under the tax office's determination was not stayed during the taxpayer's administrative protest, so too does that liability continue during judicial appeals.¹²⁶ It is possible, however, for the court to order a suspension of all or a portion of the liability, provided that the suspension does not impede the public interest.¹²⁷

Conclusion

Can it be said that Japan's tax administration is successful? This may depend on how success is measured. If the criterion is cost of administration, it may be said that the Japanese system is doing well. If, however, the principal criteria are equitability in enforcing the system against all taxpayers or efficiency in eliminating tax avoidance, the 9-6-4 problem which continues, apparently unabated, is a serious chink in the NTA's armour.

For Australians, the principal reason to examine the Japanese, or any other, system of tax administration is for ideas; ideas that have worked in the other jurisdiction and may be worth considering for adoption in Australia or ideas that have not worked elsewhere and should probably be avoided here.

Japan's system of tax administration is, in many ways, conventional, and hence familiar to Australian readers. The self-assessment system and the withholding taxes which resemble PAYE are two examples. The functions of the *zeirishi*, audit procedures, and the scope of the NTA's investigatory powers, are also familiar, as are the basic procedures involved in appealing an assessment.

The power of the NTA and its authority in interpreting tax legislation goes far beyond what we might be familiar with. The way in which the burden of proof is shared between the parties in the appeal of a tax assessment is also quite different from the Australian practice. The Japanese system also contains unique features such as the year-end adjustment system and the extensive orientation training of NTA staff. Given the importance of taxes to government revenue, efficiency measures such as these are to be expected, applauded, and perhaps even emulated.

¹²⁶ Administrative Litigation Procedure Law, Art 25(1).

¹²⁷ *Ibid* at Art 25(2) and (3).