

General Communication with Tax Authorities in friendly or unfriendly ways

Tax Commission – of course...!

Prague, 2014 – [Working Session (VMWT-9200017)]

[National Report of Japan]

[Reporter name]

Yamagami International Law & Patent Offices
Ueichi Building 5F, 1-6-10 Ginza, Chuo-ku, Tokyo,
1040061, Japan

Telephone number +81-50-3775-5971

yamagami@yilaw.jp

General Reporter: Shogo Yamagami*

*Special thanks to Toshinori Uneki, an attorney-at-law in Japan, specializing in Tax laws. His address is: t_uneki@jurists.co.jp

<p>Dr. Christian Presoly Batliner Gasser Rechtsanwälte Marktgass 21 FL 9490 Vaduz</p>	<p>Gustavo Yanes Hernández Monereo Meyer Marinel-lo Abogados Alfonso XII, 30, 5º E 28014 Madrid</p>
---	---

T: +423 236 0480
presoly@batlinergasser.com

T: +34.913 199 686
gyanes@mmmm.es



INTERNATIONAL ASSOCIATION
OF YOUNG LAWYERS

[19th] [Feb.] [2014]

1. Introduction

Tax authorities – surely each one of us had the pleasure to deal with one: as taxpayer at least with the tax authority of the country you are resident of, as a lawyer helping others in tax matters you might have had the chance to deal with the tax authorities of other countries as well. If the latter is the case you might have seen some differences in the behaviour of the different tax authorities. You might have realized that the tax authorities in some or even the majority of the countries do treat the taxpayers not as their customers or clients but rather as subordinates. In such cases the communications tends to be rather hierarchical and often results in administrative proceedings against the tax authorities with more or less success.

Other countries have realized that treating the taxpayer in ways like we know from the tale of Robin Hood and the Sheriff of Nottingham only results in the tax payers trying to circumvent their tax obligations. Some countries, thus, have not only reduced the taxes in their countries. They also made their tax authorities treat the taxpayers as their clients e.g. in offering the taxpayers the possibilities for tax rulings and trying to take a more tailored approach towards their taxpayers .

These – sometimes very significant – differences are what we are focusing on in this year's tax report: We want to show that there are big distinctions in the behaviour of and the dealing with the tax authorities in different countries both in the stage of an advance agreement on a tax position as well as in an objection or litigation phase. For this reason AIJA members from several countries around the globe were so kind to volunteer as national reporters for this report which is crucial for such a comparative topic.

The General Reporters would like to thank you all in advance for your contributions and are already very interested in the results of this year's annual congress session of the AIJA Tax Commission.

2. Questionnaire

Note: General assumption is discussions with the tax authorities regarding (corporate) income tax or indirect taxes. If a difference would apply in the treatment between either of these, please indicate in your report. Also, if there are different levels of tax authorities for different taxes or issues, please mark that in your report.

2.1 Communication general

How does the General Communication with the Tax Authorities take place?

- a. Is a direct contact in between the tax payer and the Tax Authorities possible/common/advisable?

Yes, it is common to directly contact the Tax Authorities under the formal advance ruling system or via a face-to-face meeting through an ordinary inquiry counter.

- b. If not, does the communication only take place via tax counsels?

[N/A]

- c. How can the communication regarding special matters be described?

It depends on the taxpayer's and the Tax Authorities' preferences. Usually, we have an oral discussion, based on a brief paper which describes the taxpayer's standing.

- d. Does it take place only in a written form or are meetings possible?

In each procedure meetings are possible.

- e. Can the behaviour of the Tax Authorities in your country be described as all dominant, cooperative, customer-oriented or otherwise?

Although it depends on the nature of the case, generally the Tax Authorities deal with inquiries cooperatively. In the advance ruling system, the Tax Authorities have stated that they will provide an estimate within one month as to if they can reply and (if so) when they can reply.

2.2 Agreements between tax payers and tax authority

- a. Is there the possibility of a tax ruling and, if so, which costs can be expected?

Advance tax rulings are possible, and apart from the professional fees, the Tax Authorities will not charge for the inquiry application.

- b. What is the average time frame to get a tax ruling done?

Although it depends on the nature, difficulty, and complexity of the case, on an empirical basis, generally 3 months.

- c. Are these consultations binding and, if so, which possible remedies do exist?

A formal advance tax ruling is binding to the extent that the facts and circumstances have not changed.

- d. Once a tax ruling between all the parties concerned has been achieved, can one rely on it?

The taxpayer can rely on it. Please be aware that an advance tax ruling is a fact-based ruling; therefore it is not guaranteed that similar taxation will be applied to similar cases.

- e. What is the exact legal status of a tax ruling?

The tax ruling system is based on the internal regulation of the Japanese Tax Authorities (the National Tax Agency).

- f. Is it common in order to get a tax ruling that the tax payer has to give up certain rights or explicitly agree to e.g. information exchange?

In order to obtain a tax ruling, the taxpayer must provide sufficient information regarding the transaction which the Tax Authorities request, or they will not issue a tax ruling.

- g. Is a tax ruling a public document or will it be treated confidentially by the tax authority? Does the taxpayer have an obligation to keep it confidential?

It is a public document, which includes the taxpayer's name and descriptions of the transaction. However, the publication can be postponed by at most one year, if the inquirer (taxpayer) requests so under its business reasons.

2.3 Remedies against decisions of the Tax Authorities

- a. Is it common that one has to litigate if a decision has been made by the Tax Authorities and which remedies do exist?

The taxpayer is entitled to bring (i) an administrative procedure, i.e. (a) an objection claim ("Igi-Moushitate") to a tax office, or (b) a claim for examination ("Shinsa-Seikyu") to an administrative tribunal, and (ii) a litigation ("Zeimu-Sosho") to a court. The taxpayer must cause the claim to be examined before it litigates.

- b. Is there the possibility of addressing a court or is this an administrative procedure?

Please see answer a.

- c. Which costs are to be expected in such a case?

Apart from the professional fees, an administrative procedure will not result in any charges. In the case of litigation, the taxpayer will be charged a few percentage points of the amount argued, under a certain complex calculation method.

- d. Is it compulsory to have a lawyer in case of any remedy?

It is not compulsory for a taxpayer to have a lawyer in any remedy (i.e., he can proceed his remedial procedure if he wants to do so.)

However in the litigation stage a representative of a taxpayer (if chosen) must be a lawyer.

- e. What timeframe can be expected in case of a remedy/litigation?

Although it depends on the cases argued, on an empirical basis, in general, 3 months for (i)(a) an objection claim (“Igi-Moushitate”), within one year for (i)(b) a claim for examination, and two or three years for (ii) a litigation.

- f. Is it possible to postpone the payment of the tax debt as assessed by the tax authority until the end of a pending litigation with the tax authority? Will the tax authorities require guarantees for the postponement (Bank guarantees, mortgages etc.)?

It is possible to postpone the payment, but a late fee will be charged (generally 9.2% per annum for 2014); please note in a case of transfer pricing the taxpayer may request to postpone the payment until competent tax authorities have achieved a mutual agreement regarding the remedies from the double taxation under the applicable tax treaty. It is customarily recommended to pay the argued amount before the administrative procedure/litigation, because the taxpayer may receive the amount with interest (generally 1.9% per annum for 2014.) if the Tax Authority acknowledges or a court allows to return the argued amount under the administrative procedure/litigation.

- g. Is it possible that the tax authorities submit a report to the public prosecutor to investigate on possible criminal tax offences and under what circumstances?

This is possible if the Tax Authorities consider that the taxpayer may have committed criminal tax offenses.

- h. Is it possible to include a clause in an agreement to automatically amend this agreement in accordance with the outcome of a discussion or litigation with the tax authority (e.g. if an “at arms length payment” is not accepted as such

by the tax authority or if interests are held to be dividends or a loan is seen to be a gift)?

Such a clause would not work to evade the taxation.

2.4 Sanctions

- a. What is the statute of limitations for tax related matters?

Although it depends on the taxes, regarding the limitation of tax correction by the Tax Authorities, it is generally 5 years for Corporate Tax and Income Tax; however, if a taxpayer commits fraudulent acts, including disguise, it will be 7 years.

- b. What is the typical sanction/amount of fines in your jurisdiction? Is there a different fine level for direct or indirect taxes?

In the case of a tax correction, an Additional Tax (up to 35%) will be levied, depending on how the taxpayer committed the incorrect tax filing. The fine levels are the same between direct and indirect taxes.

- c. Is it possible for a taxpayer to prevent tax penalties to be imposed should he/she be able to prove her good faith or reasonable interpretation of the law?

It is possible; please be informed that the court in Japan is very strict to allow a claim of the good faith or reasonable interpretation.

- d. Is it possible to regularize your tax situation with reduced or no fines/sanctions?

Except for limited situations such as the taxpayer truly misunderstands facts and has no any intention to reduce tax, it is difficult.

- e. May tax advisors/tax lawyers be held responsible by the tax authority for their advice to taxpayers?

Except for cases that the tax advisors/tax lawyers have committed criminal tax offenses, they may not be responsible. Please note they may be liable to the taxpayer regarding their tax advice.

2.5 Tax information exchange

- a. Does a tax information exchange on the EU level or OECD level happen and how does it take place?

Tax information exchanges on the OECD level can happen, as Japan is one of the members of the OECD. For instance it was reported last year

that the Japanese Tax Authorities (the National Tax Agency) had received extensive amount of information from the Australian Tax Authorities regarding off-shore vehicles (corporates/trusts) in tax-haven countries that may relate to Japanese taxpayers.

- b. Does your country enter into tax treaties that oblige to exchange information spontaneously, automatically and/or upon request?

Japan has exchanged information under spontaneous, automatic, and upon-request basis customarily under the applicable tax treaties.

- c. Is the tax payer notified in case information is exchanged with foreign tax authorities?

No.

- d. Can the tax payer object against an exchange of information?

No, to the extent the exchange is conducted under the applicable tax treaty and domestic rules.

- End -