

税務係争 Newsletter

2025年7月号

DT弁護士法人受任の審査請求で請求認容

Executive Summary

- 国税不服審判所は、2025年2月6日、DT弁護士法人が受任した審査請求について、納税者の請求を認容する裁決を下しました。
- 論点は、ローンの期日前返済に伴う違約金を事前に免除した場合の益金計上の要否です。
- 見解の相違が生じやすい権利確定主義の適用について納税者の主張が認められた事例としてご紹介します。

ローンの期日前返済に伴う違約金を事前に免除した場合、益金計上は不要とされた事例

納税者が行った取引

日本の金融機関である納税者は、借入人に対し固定金利による貸付けを行った。この貸付けには、借入人が期日前返済をしたときは、違約金を收受する旨の特約が付されていた。その後、納税者は、期日前返済に伴う違約金を免除し、これを受け、借入人は期日前返済をした。税務当局は、税務調査において、免除した違約金相当額について益金計上すべきであるが、交際費に該当するので損金算入はできないと指摘した。そのため、納税者は、一旦修正申告をしたが、そもそも違約金相当額について益金計上は不要であるとして、更正の請求をした。

税務当局が下した処分

税務当局は、免除した違約金相当額について益金計上は不要とはいえないとして、更正をすべき理由がない旨の通知処分をした。そこで、納税者は審査請求をした。

審判所が示した判断

期日前返済に伴う違約金を収入すべき権利は、期日前返済が行われた時に発生し、確定する。したがって、期日前返済が行われる前に違約金を免除した場合は、期日前返済が行われた時において、違約金が発生するような違約行為は存在せず、そもそも実現可能な権利自体が発生しないこととなるから、違約金相当額についての益金計上は不要である。

見解の相違を解消するヒント

収益は、その実現があった時、すなわち、その収入すべき権利が確定したときの属する事業年度の益金に計上すべきとされているが（権利確定主義）、この権利確定主義の実際の適用は、見解の相違が生じやすい論点の一つとなっている。本件は、私法上の権利関係を整理して、期日前返済に伴う違約金を収入すべき権利が発生し、確定するタイミングを分かりやすく説明できたのが勝因と考えられる。

税務係争は課税処分から納税者を防御する手段です

税務係争サービスの案内

デロイトトーマツは、税務係争を通じて、課税処分から納税者を防御します

デロイトトーマツには、反論書・弁護士意見書の提出から審査請求・税務訴訟の代理まで包括的にサービスを提供して、課税処分から納税者を防御することにより、税の問題を解決した実績があります。

フェーズ1 反論書

フェーズ2 弁護士意見書

フェーズ3 審査請求

フェーズ4 税務訴訟

最初のステップは反論書

納税者が、税務調査において、税務当局との見解の相違に直面したときは、納税者の見解とその理由をまとめた反論書を提出するのが、最初のステップとなります。

反論書が有効なケース

例えば、調査官の指摘に対し、①法令・通達だけでなく、判例・裁決も踏まえて反論すべきケース、②調査官による契約書の解釈や事実認定が誤っていると反論すべきケース、③税法以外の法令解釈も必要なケースでは、反論書の提出が有効です。

また、④今後想定される指摘に備えて、予め反論書を作成しておくことも考えられます。

反論書サービス

デロイトトーマツは、発注時に頂いた資料から分かる事実関係を前提として、納税者名義の初期的な反論書を、定額報酬でスピーディに提出します。

あらゆる日本の税目に対応可能です。調査官との協議や、追加反論書の提出にも、時間報酬で対応します。

税務調査対応の切り札

反論書を提出しても見解の相違が解消されないときは、弁護士意見書が切り札となります。

納税者の見解が認められるべき理由を詳細に説明する弁護士意見書を証拠と共に提出して、課税処分を回避できたケースが増えています。

弁護士意見書が有効なケース

特に、①どうしても譲れない重要な論点について、単に反論書を提出するだけでなく、調査官と協議して、必要に応じて追加意見書を提出し、何としても認めさせたいケース、②認められなければ審査請求や税務訴訟をすることも辞さないケースでは、弁護士意見書の提出が有効です。

弁護士意見書サービス

デロイトトーマツは、弁護士名義の意見書の提出だけでなく、調査官との協議や追加意見書の提出も含め、成功報酬又は時間報酬で包括的に代理して、課税処分の回避に努めます。

サービス提供前に、納税者の見解が認められる可能性がどの程度あるかを検討します。

税務におけるスピークアップ

税務当局が課税処分を下したときは、納税者は、審査請求をして、行政庁としての最終判断を求めるることができます。審査請求は、税務におけるスピークアップの手段といえます。

審判所は、納税者と税務当局の見解をよく聞いた上で、証拠に基づき判断します。

審査請求の流れ

処分通知を受けた日から3ヶ月以内に審判所に審査請求をする必要があります。

審判所では、反論書等のやり取りが、通常3~4回程度行われます。判決までの期間は、1年半程度です。控訴審では、判決までの期間は、おおむね1年以内です。上告審では、判決までに1年以上かかる場合があります。

課税処分を取り消す裁決が下された場合、税務当局は裁判所で争うことはできません。

審査請求サービス

デロイトトーマツは、納税者の審査請求を、成功報酬又は時間報酬で包括的に代理して、課税処分の取消しを目指します。

書面の作成、面談への出席、審判官との協議を含め、全ての審査請求手続に対応します。

更なるスピークアップの手段

審判所が棄却裁決を下したときは、納税者は、税務訴訟を提起して、司法の判断を求めるることができます。税務訴訟は、更なるスピークアップの手段です。

裁判所では、誤った税法解釈の是正も可能です。

税務訴訟の流れ

裁決があったことを知った日から6ヶ月以内に税務訴訟を提起する必要があります。

第一審では、準備書面のやり取りが、通常5~6回程度行われます。判決までの期間は、1年半程度です。控訴審では、判決までの期間は、おおむね1年以内です。上告審では、判決までに1年以上かかる場合があります。

税務訴訟サービス

デロイトトーマツは、納税者の税務訴訟を、第一審、控訴審から上告審まで、成功報酬又は時間報酬で包括的に代理して、課税処分の取消しを目指します。

書面の作成、弁論期日への出席、証人尋問を含め、全ての訴訟手続に対応します。

税制改正要望は課税ルール 자체を変える手段です

税制改正要望サービスの案内

デロイトトーマツは、税制改正要望を通じて、課税ルール 자체を変えることをサポートします

デロイトトーマツには、納税者に対し税制改正要望の助言をし、課税ルール自体を変えることにより税の問題を解決した実績があります。

税制改正要望が有効なケース

現行の課税ルールに問題があったとしても、税務当局がその課税ルールに基づいて課税処分を下してしまうと、税の問題を司法的に解決することは容易ではありません。しかし、法令・通達等を改正することにより、問題のある課税ルール自体を変えれば、税の問題を立法的あるいは行政的に解決することができます。

このように課税ルール自体を変えることが必要なケースでは、税制改正要望が有効です。



税制改正要望サービス

デロイトトーマツは、納税者に対し、成功報酬又は時間報酬で税制改正要望の助言をし、課税ルール自体を変えることをサポートします。具体的には、現行の課税ルールの問題を精査し、実現可能な法令・通達等の改正案を提案し、そのように改正されるべき根拠を準備して、税制改正要望の実現を強力にバックアップします。

税の問題を解決した実績で選ばれています

税務係争・税制改正要望サービスの実績

デロイトトーマツには、税務係争・税制改正要望を通じて、税の問題を解決した実績があります

デロイトトーマツは、受任・関与した多数の案件において、税務係争・税制改正要望を通じて、税の問題を実際に解決しています。

税の問題を解決した最近の実績の例は、次のとおりです。

	税制改正要望	過大支払利子税制		
2025	弁護士意見書	権利確定主義	反論書	相続税
	反論書	再調査の要件	反論書	課税売上割合
	審査請求	交際費	弁護士意見書	CFC税制
2024	反論書	寄附金	弁護士意見書	重加算税
	税務訴訟	組織再編の行為計算否認	審査請求	青色申告承認取消
	弁護士意見書	CFC税制	審査請求	固定資産税
2023	弁護士意見書	債権貸倒損・譲渡損	弁護士意見書	交際費
	弁護士意見書	組織再編の行為計算否認	弁護士意見書	株式有利発行
	税務訴訟	CFC税制		
2022	弁護士意見書	固定資産税	審査請求	みなし譲渡所得
	審査請求	法人の受贈益	弁護士意見書	みなし譲渡所得
2021	審査請求	組織再編税制		
2020	弁護士意見書	印紙税		

Tax Controversy Newsletter

July 2025

Tax Appeal Represented by DT Legal Japan Accepted

Executive Summary

- The National Tax Tribunal issued a decision on February 6, 2025 in favor of the taxpayer regarding the tax appeal represented by DT Legal Japan. The issue at hand was whether it is necessary to recognize income when prepayment penalties for early loan repayment are waived in advance.
- This case is presented as an example where the taxpayer's argument concerning the application of the accrual basis principle, which is often subject to differing opinions, was accepted.

The case determined that it is not necessary to recognize income when prepayment penalties for early loan repayment are waived in advance.

Transaction conducted by the taxpayer

A taxpayer, which is a financial institution in Japan, provided a loan to a borrower at a fixed interest rate. The loan agreement included a special provision that stipulated the collection of a prepayment penalty if the borrower repaid the loan before the due date. Subsequently, the taxpayer waived the prepayment penalty, and the borrower made an early repayment in response. During a tax audit, the tax authorities pointed out that the amount equivalent to the waived prepayment penalty should be recognized as income, but that it could not be deducted as it was entertainment expenses. Consequently, the taxpayer initially filed an amended tax return but later filed a request for assessment, arguing that it was unnecessary to recognize the amount equivalent to the prepayment penalty as income in the first place.

Notification issued by the tax authorities

The tax authorities issued a notification stating that there was no reason to make an assessment, arguing that the amount equivalent to the waived prepayment penalty should be recognized as income. Consequently, the taxpayer filed a tax appeal.

Decision made by the National Tax Tribunal

The right to receive a prepayment penalty arises and is determined at the time the early repayment is made. Therefore, if the prepayment penalty is waived before the early repayment is made, there is no breach of contract that would give rise to the penalty at the time of the early repayment. Consequently, no realizable right to the penalty amount arises in the first place, making it unnecessary to recognize the amount equivalent to the prepayment penalty as income.

Tips for resolving a difference of opinion

Revenue should be recognized as income in the business year in which it is realized, that is, when the right to receive the income is determined (the accrual basis principle). However, the actual application of the accrual basis principle is one of the points where differences in opinion can easily arise. In this case, the victory can be attributed to clearly explaining the timing at which the right to receive a prepayment penalty arises and is determined, by organizing the legal relationships under private law.

Tax controversy is a means of defending taxpayers against tax assessments.

Guide to tax controversy services

Deloitte Tohmatsu defends taxpayers against tax assessments through tax controversy.

Deloitte Tohmatsu has a proven track record of resolving tax issues by providing comprehensive services, ranging from submitting rebuttal letters and legal opinions to representing taxpayers in tax appeals and tax litigation, thereby defending taxpayers against tax assessments.



The first step

When a taxpayer faces differences in opinion with the tax authorities during a tax audit, the first step is to submit a rebuttal letter that outlines the taxpayer's viewpoint and the reasons behind it.

Cases where a rebuttal letter is effective

For example, submitting a rebuttal letter is effective in the cases where it is necessary to counter the tax examiner's points by considering case law, or to argue that the tax examiner's interpretation of contracts or factual findings is incorrect.

Rebuttal letter service

We quickly submit an initial rebuttal letter under the taxpayer's name based on the facts discernible from the documents provided at the time of the order. We do this for a fixed fee, and we can handle all types of Japanese taxes.

We also offer services for further consultations with tax examiners and the submission of additional rebuttal letters, billed on an hourly basis.

The trump card

When submitting a rebuttal letter does not resolve the differences in opinion with the tax authorities, a legal opinion becomes the taxpayer's trump card.

Cases where a legal opinion is effective

In the case where the issue at hand is critical due to the amount of additional tax, it is necessary to submit a legal opinion, negotiate with the tax examiner and, if needed, submit additional legal opinions to ensure the taxpayer's viewpoint is accepted.

Legal opinion service

We offer comprehensive representation, not only in submitting a legal opinion under the name of a lawyer but also in negotiations with tax examiners and the submission of additional legal opinions, based on a success fee or hourly fee.

Before providing these services, we will review the relevant materials in advance to assess the likelihood of the taxpayer's viewpoint being accepted.

Speaking up in tax matters

When the tax authorities issue a tax assessment, taxpayers can file an appeal with the tribunal to seek a final administrative decision. Filing an appeal can be considered a means of speaking up in tax matters. The tribunal listens to the viewpoints of both the taxpayer and the tax authorities and makes a decision based on the evidence presented.

Tax appeal process

An appeal must be filed with the tribunal within three months of receiving the notice of assessment. Typically, there are about three to four exchanges of briefs during the appeal process. The entire process usually takes about one year until a decision is reached.

Tax appeal service

We provide comprehensive representation for taxpayers' appeals, based on a success fee or hourly fee. We handle all aspects of the appeal process, including the preparation of documents and negotiations with the tribunal judges.

Further means of speaking up

If the tribunal issues a decision that denies the taxpayer's viewpoint, the taxpayer can file a tax litigation in court to seek a judicial decision. A tax litigation represents a further means of speaking up in tax matters. While it may be difficult to correct erroneous interpretations of tax law at the tribunal level, it is possible to do so in court.

Tax litigation process

A tax lawsuit must be filed within six months of becoming aware of the tribunal's decision. First Instance: The period until a judgment is usually around one and a half years. Appeal: The period until a judgment is usually within one year. Final Appeal: It may take more than a year to reach a judgment.

Tax litigation service

We provide comprehensive representation for taxpayers in tax litigation, from the first instance to the appeal and final appeal, based on a success fee or hourly fee. We handle all aspects of the process, including the preparation of documents and attendance at oral arguments.

Tax reform proposal is a means of changing the tax rules themselves.

Guide to tax reform proposal service

Deloitte Tohmatsu supports efforts to change the tax rules themselves through tax reform proposals.

Deloitte Tohmatsu has a proven track record of resolving tax issues by advising taxpayers on tax reform proposals and changing the tax rules themselves.

Cases where a tax reform proposal is effective

Even if there are issues with the current tax rules, once the tax authorities issue a tax assessment based on those rules, judicial resolution of tax issues becomes difficult. However, by amending laws, regulations, or administrative circulars, it is possible to change the problematic tax rules themselves, thereby resolving tax issues legislatively or administratively. In cases where it is necessary to change the tax rules themselves, a tax reform proposal proves to be effective.



Tax reform proposal service

We provide advice to taxpayers on tax reform proposals based on a success fee or hourly fee, supporting efforts to change the tax rules themselves. We carefully examine the issues with the current tax rules, propose feasible amendments to laws, regulations, or administrative circulars, prepare the rationale for why such amendments should be implemented, and strongly back up the realization of tax reform proposals.

Our strong credentials in resolving tax issues make us a top choice.

Track record of tax controversy / tax reform proposal services

Deloitte Tohmatsu has a proven track record of resolving tax issues through tax controversy / tax reform proposal.

In numerous cases that we have undertaken and been involved in, we have resolved tax issues through tax controversy / tax reform proposal. Some recent examples where tax issues were resolved are as follows.

	Tax reform proposal	Earnings stripping rules		
2025	Legal opinion	Accrual basis principle	Rebuttal letter	Inheritance tax
	Rebuttal letter	Requirements for re-examination	Rebuttal letter	Taxable sales ratio
	Tax appeal	Entertainment expenses	Legal opinion	CFC regime
2024	Rebuttal letter	Donations	Legal opinion	Heavy penalty tax
	Tax litigation	Article 132-2 of Corporation Tax Act	Tax appeal	Revocation of blue form tax return approval
	Legal opinion	CFC regime	Tax appeal	Property tax
2023	Legal opinion	Bad debt losses and losses on sale of receivables	Legal opinion	Entertainment expenses
	Legal opinion	Article 132-2 of Corporation Tax Act	Legal opinion	Advantageous placement of shares
	Tax litigation	CFC regime		
2022	Legal opinion	Property tax	Tax appeal	Deemed capital gains
	Tax appeal	Corporate gains on donations	Legal opinion	Deemed capital gains
2021	Tax appeal	Reorganization tax regime		
2020	Legal opinion	Stamp tax		

Introduction to YouTube lectures and publications

Deloitte Tohmatsu distributes and publishes insights to help taxpayers defend themselves against tax assessments.

The YouTube lectures "What to do if there's a dispute over tax?" are released monthly in 10-minute episodes in Japanese.

We also publish English newsletters, once a month based on the YouTube lectures.



Contact

Yutaka Kitamura

Tax Controversy Leader at Tax & Legal of Deloitte Tohmatsu Group / Partner at DT Legal Japan

email yutaka.Kitamura@tohmatsu.co.jp

DT Legal Japan

Tokyo Office Shin-Tokyo Building, 3-3-1 Marunouchi, Chiyoda-Ku, Tokyo, 100-0005, Japan

Tel +81 3 6870 3300

Osaka Office Coolabahs Mitsui Building, 4-1-1 Imabashi, Chuo-Ku, Osaka-she, Osaka, 541-0042, Japan

Tel +81 6 7711 2540

email dtlegal@tohmatsu.co.jp

Corporate Info www.deloitte.com/jp/dt-legal

Dai-Ichi Tokyo Bar Association (Tokyo Office)

Tsutomu Yamatoya

Counsel at DT Legal Japan

email tsutomu.yamatoya@tohmatsu.co.jp

Deloitte. Legal

Deloitte Tohmatsu Group (Deloitte Japan) is a collective term that refers to Deloitte Tohmatsu LLC, which is the Member of Deloitte Asia Pacific Limited and of the Deloitte Network in Japan, and firms affiliated with Deloitte Tohmatsu LLC that include Deloitte Touche Tohmatsu LLC, Deloitte Tohmatsu Risk Advisory LLC, Deloitte Tohmatsu Consulting LLC, Deloitte Tohmatsu Financial Advisory LLC, Deloitte Tohmatsu Tax Co., DT Legal Japan, and Deloitte Tohmatsu Group LLC. Deloitte Tohmatsu Group is known as one of the largest professional services groups in Japan. Through the firms in the Group, Deloitte Tohmatsu Group provides professional services in accordance with applicable laws and regulations. With more than 20,000 people in about 30 cities throughout Japan, Deloitte Tohmatsu Group serves a number of clients including multinational enterprises and major Japanese businesses. For more information, please visit the Group's website at www.deloitte.com/jp.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organization"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which is a separate and independent legal entity, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Bengaluru, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Mumbai, New Delhi, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

Deloitte provides leading professional services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our people deliver measurable and lasting results that help reinforce public trust in capital markets, and enable clients to transform and thrive. Building on its 180 year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte's approximately 460,000 people worldwide make an impact that matters at www.deloitte.com.

All of the contents of these materials are copyrighted by Deloitte Touche Tohmatsu Limited, its member firms, or their related entities including, but not limited to, Deloitte Tohmatsu Tax Co. (collectively, the "Deloitte Network") and may not be reprinted, duplicated, etc., without the prior written permission of the Deloitte Network under relevant copyright laws.

These materials describe only our general and current observations about a sample case in accordance with relevant tax laws and other effective authorities, and none of Deloitte Network is, by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. The opinions expressed in the materials represent the personal views of individual writers and do not represent the official views of Deloitte Network. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

Member of

Deloitte Touche Tohmatsu Limited

© 2025. For information, contact Deloitte Tohmatsu Group.



IS 669126 / ISO 27001



BCMS 764479 / ISO 22301

IS/BCMS それぞれの認証範囲はご覧ください
<http://www.bsigroup.com/clientDirectory>