## **Deloitte.** Legal

July 2025 | DT Legal Japan

# What to do if there's a dispute over tax?

Let's learn from the latest tribunal case where a taxpayer won and think together!



#### I haven't heard anything about a seizure!

#### **Executive Summary**

- The National Tax Tribunal is not only reliable for fact-finding. It also has considerable authority when it comes to interpreting private law.
- We will provide an explanation based on the National Tax Tribunal Decision on 25 September 2024.
- You can also watch our YouTube lecture on this episode in Japanese <a href="here">here</a>.

#### 1. Leasehold right held by the Lessee

- The lessee in this case (the "Lessee") was the son who inherited the leasehold right to a plot of land with ownership of an old house from his father. In May 2014, he registered the transfer of this ownership, treating the old house as part of the inheritance.
- The lessor of this land had been delinquent in paying taxes. In May 2016, the tax authorities in this case (the "Tax Authorities") seized the land in order to collect
- Delinquent Company

  Leasehold Right Lessee
- The issue in question was whether the Lessee could assert the leasehold right against the Tax Authorities. If a lessee can assert a leasehold right against the tax authorities at the time the land is seized, the lessee should also be able to assert the leasehold right against any subsequent buyer who purchased the land at a

taxes from the delinquent company. However, the Lessee was not notified about the seizure of the land.

■ Furthermore, if land subject to a leasehold right is seized, and the delinquent company possesses other significant assets, the lessee can request the tax authorities to change the target of their seizure. Therefore, when the tax authorities seize land, they are required to notify the holder of the leasehold right if they are aware of the existence of such a holder.

#### 2. Public auction notice issued by the Tax Authorities

■ In 2023, the Tax Authorities decided to auction off the seized land in order to collect taxes from the delinquent company. When auctioning seized land, key details regarding the auction must be announced at least 10 days prior to the auction date. Accordingly, the Tax Authorities issued a public notice regarding the auction of the seized land.

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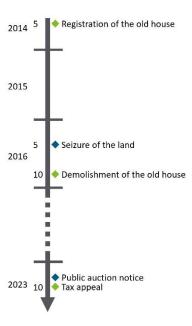
- Subsequently, the Tax Authorities received an inquiry from the Lessee. However, the Tax Authorities responded that the Lessee could not assert his leasehold right against the Tax Authorities. This was because the leasehold right was not registered, and the old house that had been on the land had already been demolished.
- From the Lessee's side, when the Lessee learned that the land where he held the leasehold right was going to be auctioned, he hurriedly contacted the Tax Authorities, but was completely ignored. If the Lessee left things as they were, the land would soon be auctioned. Once it was auctioned, the Lessee had no idea what would happen to his leasehold right. Thus, the Lessee filed a tax appeal.



- At the time the tax authorities seize land from a lessor, if the lessee of the land has a registered building on the land, they can assert their leasehold right against the tax authorities.Furthermore, the significance of the requirements for asserting a leasehold right lies in making the existence of the leasehold right
  - on the subject property recognizable. Therefore, as long as the leasehold right continues to exist, the lessee can maintain the ability to assert their right against the tax authorities, even if the requirements for asserting said right is extinguished after the seizure.
- In this instance, at the time the Tax Authorities seized the land, the Lessee possessed the registered old house on the land. Consequently, it could be said that the Lessee held a leasehold right that could be asserted against the Tax Authorities at the time the public auction notice was issued.
- Next, the National Tax Tribunal examined whether the public auction notice for the land was illegal. When the tax authorities seize land, they are required to notify the holder of the leasehold right if they are aware of such a person.
- However, when the Tax Authorities seized the land in this case, they were aware that the Lessee owned the registered old house and held the leasehold right, but they did not notify the Lessee. Therefore, the public auction notice in this case was issued without the notification that holds significant importance for protecting the rights of the Lessee, making it illegal.
- Additionally, when auctioning seized land, key details of the auction must be announced. If a lessee has met the requirements for asserting a leasehold right, this must be included as part of the key details in the public auction notice. This is because the purchaser of the land at the auction must assume the leasehold right.
- However, the public auction notice in this case did not include the fact that the Lessee's leasehold right was maintained in relation to the Tax Authorities. Consequently, the public auction notice in this case was also illegal due to the omission of key details. Thus, the National Tax Tribunal revoked the public auction notice.

#### 4. Tips for resolving differences of opinion

- Recently, the National Tax Tribunal appears to have been making fact-finding judgments that are fair to taxpayers. Even if a taxpayer is subjected to a tax assessment based on incorrect fact-finding by the tax authorities, there is a sense of reassurance that filing a tax appeal will lead to the correction of such errors.
- The National Tax Tribunal is not only reliable when it comes to fact-finding, but is also dependable in terms of the interpretation of private law. There have been an increasing number of cases where it feels like the National Tax Tribunal has made in-depth judgments on the interpretation of private law, which serves as the foundation for applying tax laws.
- While it might be difficult for the National Tax Tribunal to delve deeply into the interpretation of tax laws themselves, the fact that it thoroughly examines the interpretation of private law, which forms the foundation for applying tax laws, may not be widely known.



#### 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.

### Phase 1 Rebuttal Letter

### Phase 2 Legal Opinion

### Phase 3 Tax Appeal

### Phase 4 Tax Litigation

#### 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.

2025	Tax reform proposal	Earnings stripping rules		
	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.





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