

TOPICS OF JAPANESE LAW 2012

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Recent Legislation in Japan

1. Failure of Establishment of Charter for the Rights of Taxpayers

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On October 7, 2011, the policy to shelve the establishment of a charter specifying the rights of taxpayers pursuant to revisions of the taxation system for fiscal year 2011 was confirmed at a meeting of the officers of the Tax Commission of the Democratic Party of Japan (DPJ). According to the news, the objection by the Liberal Democratic Party (LDP), the largest opposition party, was the principal reason for the shelving. Since support from the LDP was essential in order to revise the law to raise the tax rate for the consumption tax, the government ruled by the DPJ abandoned the realization of the charter pertaining to the rights of taxpayers. However, one of the most important stipulations of the campaign promises of the DPJ in the general election in 2009, in which the DPJ won and came to power, was to establish a charter pertaining to the rights of taxpayers; consequently, a failure of the establishment of this charter gave the people a feeling of disappointment.

It is noteworthy that the LDP mentioned the existence of the term “Right” as one of the reasons for their objection to the charter pertaining to the rights of taxpayers. In the process of establishing an act on the disclosure of official information, the LDP as the ruling party at that time showed a negative attitude to the position of the people’s right to know as the lead of information disclosure. As a result, there is no clause regarding the right to know in the current Act on Access to Information Held by Administrative Organs(enforced on April 1, 2001). This means the approval of a request for information disclosure is limited only within the scope expressly stipulated in the laws and regulations. In other words, it is to avoid the situation of requests for information disclosure being approved as widely as justified by the right to know, with the latter giving a basis for approving those requests that contain elements of information

disclosure not stipulated in the laws and regulations. The objection to the right in the charter pertaining to the rights of taxpayers may have the same meaning as the aforesaid objection.

With regard to tax investigation in Japan, there is a stipulation that tax officials have the right to carry out a tax investigation, but there are no stipulations regarding the requirement for starting the tax investigation or for any investigation procedures. Non-existence of legal rules governing the method of tax investigation is the greatest cause for the long, severe conflict between the tax agency and taxpayers in Japan. In order to terminate this history of a long conflict, the DPJ made a campaign promise to establish a charter pertaining to the rights of taxpayers. According to the DPJ's plan, general rules for tax investigations were to be announced, and concrete procedures were to be stipulated in the Act on General Rules for National Taxes.

The failure of the establishment of the charter pertaining to the rights of taxpayers this time is considered a victory for the LDP and the National Tax Agency. However, in order to ease the disappointment of the people, the National Tax Agency accepted some compromises. Among those, the following two compromises are especially remarkable.

First, a prior notice is required, as a matter of principle, for the tax investigation. Though a prior notice has already been widely adopted in taxation practice, it shall not be regarded a simple administrative service but be stipulated as a legal obligation in the Act on General Rules for National Taxes.

Second, the Act on General Rules for National Taxes in the past stipulated that the claim for a refund of the tax from the taxpayer who overpaid to the district director may be accepted only in the period of one year after the statutory due date of tax payment, in principle, but on the other hand, the measures for reviving the amount increase from the district director to the taxpayer who under-reported may be taken within three years or five years after the statutory due date for the tax payment. The taxpayers have been strongly criticizing such unbalance between these two systems from the past. This unbalance is to be revised and unified to five years for both systems by the revision of the Act on General Rules for National Taxes.

Notwithstanding the compromises outlined above, when considering

the political situation following the recent failure, it is unlikely that the charter pertaining to the rights of taxpayers will be established in the near future.

(on 6 September 2012)

2. Introduction to a New Legislation — the Law on Family Affairs Procedures

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1 Introduction

On May 19, 2011, the Law on Family Affairs Procedures was enacted. It was promulgated on May 25, 2011, and it will come into force on January 1, 2013. In addition, the Non-contentious Cases Procedures Act, and a law related to preparation of related laws pursuant to the Non-contentious Cases Procedures Act and the Law on Family Affairs Procedures being put into effect were also enacted on the same day. As a result, major laws related to non-contentious procedures will be completely revised. Because both the Non-contentious Cases Procedures Act and the Law on Family Affairs Procedures are being enacted under the same principle, both laws have many provisions with the same purpose. This paper will introduce the Law on Family Affairs Procedures. (The account hereinafter used “Questions and Answers: The Law on Family Affairs Procedures,” edited by Osamu Kaneko, and “Overviews of the Non-contentious Cases Procedures Act and the Law on Family Affairs Procedures” edited by Osamu Kaneko from MINJI GEPPŌ, Vol. 66.6, as references.)

2 Background to formulation of the new law

The predecessor to the Law on Family Affairs Procedures is the Domestic Relations Trial Act, which was enacted in 1947. Because only a few provisions regulated non-contentious procedures, such as domestic trials and domestic mediation, important parts of procedures, such as jurisdiction and trial principles, were left to domestic trial regulations. The