#### **Table of Contents**

#### **Executive Summary**

#### **Abbreviations**

#### **Chapter 1 Status in Japan**

### Section 1 Overview of Tax Objections and Tax Tribunal

- 1. Tax Tribunal's Structural Change and Its Function
- 2. Data Analysis and Facts on Review at Tax Tribunal and Assessors
- 3. Data Analysis and Facts on Review at Court
- 4. Relationship between On-site Audits and the Number of Objections/Lawsuits Filed

## Section 2 «Highly-Disputed Themes» of Direct Taxes at Tax Tribunal

- 1. Characteristics of «Highly-Disputed Themes» related to Income Tax Act (ITA)
- (1) [Necessary expenses]
- (2) [Salary, etc.] under [Witholding tax]
- (3) [Re/assessment by estimation]
- (4) Income sourced in Japan I
- (5) **Denial** of a family company's actions or calculations
- (6) [Special credit for capital gains from the sale of resided property]/[Special credit for housing loans]
- 2. Characteristics of «Highly-Disputed Themes» of Corporate Income Tax Act (CITA)
- (1) [Directors' remunerations, bonus, and retirement money]
- (2) 『Entertainment expenses, etc.』
- (3) (Gratuitous transfer of monetary or economic benefits]
- (4) [Business year to which taxable earnings/deductible expenses belong]
- 3. Characteristics of «Highly-Disputed Themes» related to Inheritance/Gift Tax Act (IGTA)
- (1) [Principle of appraisal]
- (2) Rights and surface rights on land
- (3) [Scope of property subject to Inheritance Tax]
- (4) [Deductible debt]

## Section 3 «Highly-Disputed Themes» of Consumption Tax Act (CTA), AGRNT, and Collection Act

- 1. Characteristics of «Highly-Disputed Themes» related to CTA
  - (1) 『Input tax credit』
  - (2) [Simplified taxation method]
  - (3) Tax-exempt transactions
- 2. Attributes of «Highly-Disputed Themes» related to AGRNT
  - (1) Refund request/Request for downward correction
  - (2) [Justifiable reason] for a penalty exemption
  - (3)  $\[$ Strict penalty $\]$  on concealment or fabrication of relevant facts
  - (4) Tax audit procedures
- 3. Attributes of «Highly-Disputed Themes» related to Collection Act
- (1) Scope of administrative disposition
- (2) Benefits of appeals/Standing to sue
- (3) [Seizure]
- (4) Suspension, etc. of collection action

#### Section 4. Main Triggers for Tax Disputes and Some Reform Proposals

1. Main Attributes of «Highly-Disputed Themes»

- (1) Opacity in the scope of application
- (2) Exceptions and salvation
- (3) Preferential treatments/tax incentives
- 2. Reform Proposals for Tax Dispute System and Procedures
- (1) Drastic reform of Tax Tribunal and "Proposal of flexible dispute resolution"
- (2) "Proposal of preassessment dispute settlement"
- 3. "Proposal of Adopting Costs Shifting Rule"

### **Chapter 2 Status in the United States**

#### Section 1. Tax Objections to Office of Appeals

- 1. Standard Objections Procedures and Office of Appeals' Function
- 2. Flexible Dispute Resolution
- 3. Recent New Developments at Office of Appeals
- (1) Utilization of ADR and challenges
- (2) "Taxpayer First Act" and expanded support measures for low-income disputants

## Section 2 Tax Litigation in Court

- 1. Implications of Selecting Tax Court as a Litigation Forum
- 2. "Rule of not looking behind a Notice of Deficiency" and Nature of "90-Day Letter"
- 3. Characteristics of Dispute Resolution by Tax Court
- 4. Protection of Tax Litigation Rights of Taxpayers with Limited Means

### Section 3 Rules on Attorney Fees

- 1. The "American Rule" and Its Metamorphosis
- 2. Differences/Similarities between Civil Rights Attorney Fees and Equal Access to Justice Act
- 3. Transformation of the "American Rule" in Tax Disputes
- 4. Further Developments on the "American Rule" in Tax Disputes

## Section 4 Attributes of Most Litigated Tax Issues

- 1. Regulars on the Top 10 "Most-Litigated Issues"
- 2. Disputes on Penalty Issues
- (1) Recent status of penalty issues
- (2) Reasonable cause and its scope of application
- 3. Disputes on Collection Issues
- 4. Disputes on Innocent Spouse Issues
- 5. Disputes on Gross Income Issues and Trade or Business Expenses Issues
- (1) Gross income issues
- (2) Trade or business expenses issues

## Section 5 Summary and Analysis

## **Chapter 3 Status in the United Kingdom**

#### Section 1 Tax Objection Procedures

1. Tax Objection Procedures Before 2009 Reform

2. Tax Objection Procedures After 2009 Reform

### Section 2 Flexible Tax Dispute Resolution

- 1. Basis and Scope of HMRC's Discretion for Flexible Dispute Resolution
- 2. Internal Controls for Flexible Dispute Resolution
- 3. Background and Procedures for Proactive Use of ADR

### Section 3 Tribunals' Function and Performance

- 1. Classification of Appeal Cases
- 2. Rules on Costs Recovery at Administrative Stages

## Section 4 Main Points of Issues on Tax Litigation

- 1. History and Rationale of the "English Rule" on Costs
- 2. Metamorphosis of the "English Rule"
- 3. Mitigation and Avoidance of Litigation Risk
- 4. Further Changes to the "English Rule"

### Section 5 Characteristics of Highly-Disputed Issues

- 1. Disputes over Penalties
- (1) Overview
- (2) Criteria for imposing accuracy penalties and suspension of penalties
- (3) Criteria for abating/suspending penalties on failure to file returns, etc.
- (4) Relation between penalties and EU Law, etc.
- 2. Disputes over Business Expenses

#### Section 6 Summary and Analysis

## Chapter 4 Status of Commonwealth Countries (Australia and NZ)

### Section 1 Tax Dispute in Australia

- 1. Background and Effects of Reform of Tax Appeal System
- 2. Flexible Dispute Resolution
- 3. Disputes at AAT and Federal Court
- (1) Advantages of appealing to AAT
- (2) Advantages of filing lawsuits with Federal Court
- 4. Rules on Costs
- (1) General rules
- (2) Rules on costs in tax disputes
- (3) Modification of the "Loser pays rule"
- 5. Highly-Disputed Themes
- (1) Penalty cases
- (2) "Deadline extension" cases

### Section 2 Tax Dispute in NZ

- 1. Tax Objection Procedures and Their Characteristics
- (1) New tax objection system and background for its introduction
- (2) Dispute resolution under TAA Part 4A
- 2. Objections Filing with TRA and Its Processing
- 3. Commissioner's Discretionary Powers

- (1) Changes in her stance
- (2) Their nature and current status
- 4. Rules on Costs

## Section 3 Summary and Analysis

- 1. Summary and Analysis of Section 1
- 2. Summary and Analysis of Section 2

## Chapter 5 Status of EU Member States (Ireland and Netherlands)

#### Section 1 Tax Dispute in Ireland

- 1. Tax Objection Procedures Before Its 2016 Revision
- 2. Current Tax Objection Procedures and Their Status
- 3. Flexible Resolution of Tax Disputes
- 4. Characteristics of Disputes over Penalties
- 5. Tax Litigations at Court and Impact of EU Law, etc.
- (1) Impact of Article 6 of ECHR
- (2) Impact of the Aarhus Convention

## Section 2 Tax Dispute in the Netherlands

- 1. Tax Dispute Resolution Procedures and Current Status
- (1) Objections and flexible dispute resolutions
- (2) Tax litigation and its current status
- 2. Relationship with EU law
- (1) Powers of the European Commission and the ECJ
- (2) Relationship between Article 107 of TFEU and dispute settlement by agreement

## Section 3 Summary and Analysis

- 1. Summary and Analysis of Section 1
- 2. Summary and Analysis of Section 2

#### Final Chapter: International Comparison and Options for Reform

#### Section 1 Key Factors Affecting the Number of Tax Disputes Abroad

- 1. Components of Key Factors and Their Status
- 2. U.S. Aspects of Key Factors
- 3. UK Aspects of Key Factors
- 4. Aspects of Key Factors in Australia and NZ
- 5. Aspects of Key Factors in Ireland and Netherlands

## Section 2 Status of Key *Factors* Affecting the Number of Tax Disputes in Japan

- 1. On Factor 1(tax structure)
- (1) Income tax (taxable unit, necessary expenses and blue return system)
- (2) Inheritance tax (interaction with IT)
- (3) Penalties
- 2. On the Other Factors (2 to 9)

Section 3 Pros and Cons of Some Reform Proposals for Tax Appeals Review Organs

- 1. Merits and Demerits of the "Proposal of transferring Tax Tribunal to the Cabinet Office"
- 2. Merits and Demerits of the "Proposal of Tax Court Establishment"

## Section 4 Pros and Cons of Reform Proposals for Resolving Tax Disputes Flexibly

- 1. Merits and Demerits of the "Proposal of Flexible Dispute Resolution"  $\,$
- 2. Merits and Demerits of the "Proposal of Review at Pre-Assessment Stage"

## Section 5 Pros and Cons on "Loser pays rule"

- 1. Trends concerning Rules on Costs
- 2. Review of Costs Rules in Japan's Tax Litigation

# Epilogue

Attachment: Tax Tribunal's Decisions published on its HP (2,594 as of 9/8/2022)

References (Chapter 1~Chapter 6)

List of referred decisions/rulings and their disputed points/themes