

### **PART 3. APPELLATE SYSTEM**

#### 1. Outline of Appellate System

When the tax authorities infringe taxpayer's legitimate rights in respect of national taxes, there are two methods by which appeals from taxpayers are reviewed and relief may be given. These are "administrative appeal" and "litigation."

The administrative appeal system allows a taxpayer (and other interested parties) to protest against actions by the tax authorities, such as correction, determination and seizure, by filing a protest with an administrative agency and requesting the annulment or amendment of the action concerned. An administrative appeal is, first of all, filed with the administrative agency that has taken an action. This is called a "request for reinvestigation" and is the first stage of an administrative dispute.

If the taxpayer is not satisfied with the decision made by the administrative agency, he or she may file a "request for reconsideration." Generally, this request is filed with an administrative agency one level higher than the administrative agency that has taken the action pertaining to the original complaint. In the case of national taxes, the request for reconsideration is filed with National Tax Tribunal, established especially for this purpose as an independent body.

Thereafter, if the taxpayer is not satisfied with the decision made by the President of National Tax Tribunal, he or she may then bring the matter to a judicial court.

Administrative Appellate Law and Administrative Litigation Law are the general procedural laws governing administrative disputes. Because the number of actions on national taxes is enormous, they occur repeatedly, and these actions require specialist knowledge. Specific rules on national tax disputes are stipulated in General Law of National Taxes Procedure considering the above-mentioned particular characteristics of national taxes.

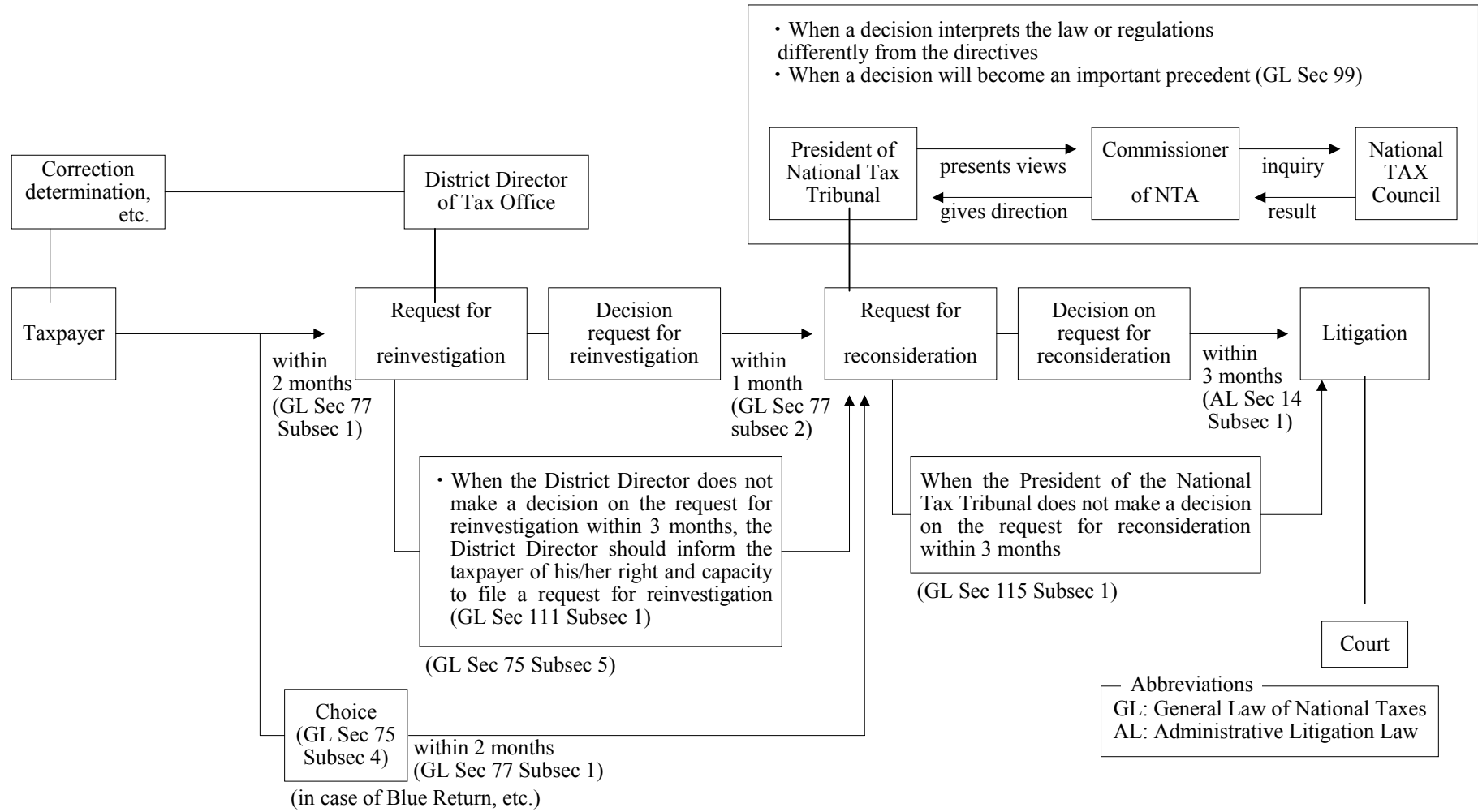
That is to say, while Administrative Appellate Law provides that, in principle, requests for reconsideration be filed with an administrative agency one level higher than the administrative agency that took the original action, General Law of National

Taxes provides that taxpayers who are not satisfied with an action first submit a request for reinvestigation to the administrative agency that took the action. This is because it is appropriate to give the administrative agency that took the administrative action an opportunity to reinvestigate the case.

Moreover, as already stated, the rule is that a "request for reconsideration" be filed with Regional Tax Tribunal (a specialized institution independent of the relevant administrative agency) instead of the administrative agency one level higher than the agency that took the original action.

The relationship between the administrative appeal system and litigation is as follows. Although Administrative Litigation Law allows the plaintiff to initiate litigation immediately without filing a request for reinvestigation or reconsideration, General Law of National Taxes provides that litigation cannot, in principle, be brought to court unless a decision on an administrative appeal has been received from an administrative agency. This is the principle of 'petition after administrative appeal' (see Figure 9). The above provision aims to avoid situations in which a substantial number of appeals for rescission are filed in court. It is intended that these cases be solved by utilizing expertise and experience at the level of the administrative agency and the tribunal, considering that cases of action on taxation repeatedly occur in large numbers. Further, it contributes to the unified operation of tax administration.

**Figure 10: Outline of the Existing Appellate and Litigation Systems**



## 2. Requests for Reinvestigation

A request for reinvestigation is filed with the administrative agency that has taken the action in question, usually with the competent district director. This approach aims to remedy the rights and interests of the taxpayer through a simple and quick procedure by making the administrative agency that is party to the dispute handle that dispute. The system also aims to secure proper administration.

A request for reinvestigation must be filed within 2 months after the date that a notice of action is received. The tax office investigates the request and decides whether or not the request should be accepted. To assure fair and objective judgment, this examination and investigation is assigned to staff officials other than those who took the original action. The tax office has special staff to handle duties associated with requests for reinvestigation.

Even after a request for reinvestigation is filed, the validity and execution of an action in question are not suspended (so-called “Principle of Non-suspension of Administrative Action”).

Statistical information concerning requests for reinvestigation in recent years is shown in Table 36. Since FY1980, the number of requests for reinvestigation has been decreasing dramatically, reflecting a reduction in cases of salaried income earners claiming refunds of tax withheld as one means of reducing their tax burden.

## 3. Requests for Reconsideration

If a taxpayer is not satisfied with a decision made by the district director (or regional commissioner of regional taxation bureau), the taxpayer may file a request for reconsideration with the President of National Tax Tribunal within 1 month after the date that the notice of the decision was issued. The taxpayer may also file a request for reconsideration with the President of National Tax Tribunal if the district director (or regional commissioner of regional taxation bureau) does not make any decision concerning a request for reinvestigation within 3 months after the date that the request was submitted. In the cases listed below, however, a taxpayer may file a request for reconsideration directly with National Tax Tribunal, without submitting a request for reinvestigation:

- (i) When the request for reconsideration is in respect of a correction of income tax or corporation tax payable by a blue return taxpayer,
- (ii) When the initial action was taken by the regional commissioner of regional taxation bureau,
- (iii) When the taxpayer was not advised of his or her right to file a request for reinvestigation, and
- (iv) When the taxpayer is not satisfied with an action taken by the head or staff official of an administrative organ other than NTA, a regional taxation bureau, a tax office, or the Customs.

In these cases, a request for reconsideration must be filed within 2 months after the date that he or she receives notice of the action in question.

**Table 36: Disposition of Requests for Reinvestigation**

Fiscal Year	Number of Cases Filed	Breakdown of Dispositions							
		Withdrawal	Dismissal	Rejection	Annulment or Amendment	Others	Cases Assumed to be for Reconsideration	Total	
	Cases	Cases	Cases	Cases	Cases	Cases	Cases	Cases	
1980	50,226	13,928	598	44,408	1,137	-	50	60,121	
1985	22,461	1,475	249	20,025	538	1	32	22,320	
1990	8,102	2,233	389	6,318	566	2	13	9,521	
1995	5,743	1,333	257	3,428	553	-	38	5,609	
1998	5,785	1,163	387	3,338	566	6	43	5,503	
1999	5,674	1,217	414	3,357	684	7	26	5,705	
2000	5,650	941	404	3,599	850	5	75	5,874	
2001	4,860	887	298	3,062	756	14	54	5,071	
2002	5,119	712	360	2,858	774	2	103	4,809	
Break down of Cases in FY 2002	Income Tax	2,049	222	96	1,167	343	-	16	1,844
	Corporation Tax	752	213	70	340	100	-	15	738
	Other Taxes	1,926	199	63	1,136	327	-	72	1,797
	Collection	392	78	131	215	4	2	-	430

Notes: 1. In some years, the number of cases disposed exceeds that of cases filed. This is because the total number of cases disposed in each year includes the number of cases carried over from the previous year.

2. The figures for corporation tax in FY2001 and FY 2002 include those for temporary company special tax and special provisional corporation tax.

## (1) The National Tax Tribunal

National Tax Tribunal is a body that adjudicates on requests for examination in connection with disposition effected under national tax law. The tribunal was established in 1970 as NTA's subsidiary organization separate from disposition agencies in charge of national tax collection (National Tax Administration, tax offices, etc.) to ensure that through correct and prompt adjudication taxpayers' legitimate rights and interests are remedied and tax administration is properly carried out as well. In July 1984, its designation was changed from an "affiliated institution" to a "special institution."

National Tax Tribunal has its head office in Tokyo, plus 12 regional tax tribunals and 7 branches in major cities.

National Tax Tribunal consists of appeals judges, associate appeals judges, tax tribunal examiners and Management and Co-ordination Office, under the supervision of the President. The President of National Tax Tribunal is appointed by Commissioner of NTA with the approval of Finance Minister.

Appeals judges, associate appeals judges and tax tribunal examiners are responsible for examining requests for reconsideration.

Appeals judges, who play a central role in examining cases of request for reconsideration, are selected from civil court judges or public prosecutors, and are office personnel with sufficient experience and aptitude in taxation. This is done considering the necessity of appeals judges to possess not only a legal education and background, but also expert knowledge of taxation and the capability to investigate the facts of a case. Important positions such as the President of National Tax Tribunal and Chief Appeals Judges in the Tokyo and Osaka Regional Tax Tribunals are currently appointed from legal community.

## (2) Examination and decision

In examining a request for reconsideration, to protect the taxpayer's legal rights and interests, National Tax Tribunal strives to quickly and accurately assess pleas from the taxpayer and the tax authority that has taken administrative action, and to reach a

decision appropriate to each case. To this end, National Tax Tribunal focuses on particular issues that the relevant parties are disputing, with due respect for the taxpayer's rights in the treatment of a request.

Upon submittal of requests for reconsideration, after presentation of answers by the tax authority, a consultation panel consisting of a judge-in-charge and two or more joint judges is organized to ensure a fair and appropriate decision. The consultation panel is supposed to proceed with the examination appropriately and quickly, based on thorough consultation including sufficient questioning of the assertions of the relevant parties to protect the legitimate rights and interests of the taxpayer.

A decision is made by the President of National Tax Tribunal based on the judgment submitted by the consultation panel. If a request for reconsideration has no justification, it is rejected. If a request is justified, the administrative action may be wholly or partially annulled or amended. The President cannot amend an original administrative action to the prejudice of the taxpayer. If the request for reconsideration is filed after the lapse of the statutory period, or is not otherwise lawful, the President will reject it. In addition, the tax authorities that took the original administrative action cannot bring a case to the courts even if it is dissatisfied with the President's decision, as this represents the final judgment of NTA.

The President of National Tax Tribunal may make a decision that interprets the laws and regulations differently from the directives issued by the Commissioner of NTA, or make a decision that would set an important precedent. In such cases, the President of National Tax Tribunal should present his or her views to the Commissioner of NTA in advance. This procedure is intended to prevent discrepancies in legal interpretations between National Tax Tribunal and NTA, and to maintain consistent administration of tax laws.

If a view presented by the President of National Tax Tribunal acknowledges a taxpayer's allegation, and the Commissioner of NTA finds it appropriate, the Commissioner is required to convey to the President that NTA agrees with the opinion of the tribunal. Otherwise, the Commissioner must refer the President's view to the National Tax Council, which is composed of experts and experienced persons from the private sector, and direct the President according to the resolution of the Council.



**Table 37: Disposition of Requests for Reconsideration**

Fiscal Year		Number of Cases Filed		Breakdown of Dispositions											
				Withdrawal		Dismissal		Rejection		Annulment or Amendment		Others		Total	
		Cases	Index	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%	Cases	Index
1970		4,866	100	736	14.1	596	11.4	1,526	29.2	2,373	45.3	-	-	5,231	100
1975		14,553	299	521	3.7	1,153	8.2	11,430	81.0	1,008	7.1	1	0.0	14,113	270
		Incl.:28		Incl.:12		Incl.:10		Incl.: 2		Incl.: 4		Incl.: 1		Incl.:29	
1980		10,725	220	496	4.2	477	4.0	10,221	86.4	635	5.4	-	-	11,829	226
		Incl.: 6		Incl.: 1				Incl.: 6						Incl.: 7	
1985		7,980	164	444	4.1	418	3.9	9,447	87.8	453	4.2	-	-	10,762	206
		Incl.: 3				Incl.: 1		Incl.: 1						Incl.: 2	
1990		4,135	85	483	10.4	309	6.6	3,440	73.7	433	9.3	-	-	4,665	89
		Incl.:12		Incl.: 4		Incl.: 1		Incl.:12						Incl.:17	
1995		2,744	56	423	12.2	175	5.1	2,295	66.5	560	16.2	-	-	3,453	66
		Incl.:18		Incl.: 3		Incl.: 4		Incl.: 5		Incl.: 1				Incl.:13	
1997		3,210	66	319	10.4	241	7.9	2,144	69.8	366	11.9	-	-	3,070	59
		Incl.:16				Incl.: 4		Incl.: 4						Incl.: 8	
1998		3,108	64	247	7.5	306	9.4	2,208	67.4	515	15.7	-	-	3,276	63
		Incl.:10		Incl.:26		Incl.:16		Incl.: 2						Incl.:44	
1999		3,068	63	191	6.4	271	9.0	2,110	70.3	431	14.3	-	-	3,003	57
		Incl.: 4		Incl.: 3		Incl.: 1		Incl.: 2						Incl.: 6	
2000		3,405	70	254	8.3	310	10.1	2,041	66.4	466	15.2	-	-	3,071	59
		Incl.: 4		Incl.: 2		Incl.: 2		Incl.: 1						Incl.: 5	
2001		2,910	60	236	7.2	280	8.1	2,319	70.4	459	13.9	-	-	3,294	63
		Incl.: 2		Incl.: 1				Incl.: 4						Incl.: 5	
2002		2,823	58	338	9.9	299	8.8	2,266	66.6	500	14.7	-	-	3,403	65
		Incl. 8				Incl. 5		Incl. 1						Incl. 6	
Break down of Cases in FY2003	Income Tax	892		67	5.2	81	6.3	940	73.6	191	14.9	-	-	1,279	
		Incl. 4				Incl. 4								Incl. 4	
	Corporate Tax	623		97	14.7	68	10.3	383	58.1	111	16.9	-	-	659	
						Incl. 1								Incl. 1	
	Other Taxes	1,107		151	11.9	91	7.2	834	65.8	192	15.1	-	-	1,268	
		Incl. 4						Incl. 1						Incl. 1	
	Collection	201		23	11.7	59	30.0	109	55.3	6	3.0	-	-	197	

Notes: 1. The figures include the number of requests for reconsideration filed to the Regional Commissioners of Regional Taxation Bureaus under the Administrative Appellate Law as well as those filed to the President of the National Tax Tribunal under the General Law of National Taxes (the figures followed by "Incl." indicate the number of such requests of the total).

2. In some years, the number of cases handled exceeds that of cases filed. This is because the total number of cases handled includes the number of cases carried over from the previous year.

### (3) Number of requests for reconsideration

There were about 5,000 requests for reconsideration yearly from FY1970 to FY1973, but the number suddenly increased to 14,071 in FY1974, and remained at more than 10,000 until 1984. The increase was due to a rise in the number of claims for refunds of withholding tax on salaried income. After FY1985, however, the number of claims for this purpose decreased sharply, and today, the number of requests has leveled off to about 3,000.

Recent trends with regard to requests for reconsideration are shown in Table 37.

### 4. Litigation

Litigation is a system whereby a civil court, as a fair and independent third party, delivers judgment on a legal dispute through a careful procedure based on oral arguments by the litigant parties. It plays the most important role in protecting the rights and interests of the public.

There being no special court for administrative litigation in Japan, litigation of administrative cases comes under the jurisdiction of ordinary courts. As a rule, litigation to request the annulment of an assessment or collection of national tax cannot be brought to civil court unless a decision has in the first instance been made through the administrative appeal procedure. Litigation for annulment must be brought within 3 months of the date that a taxpayer was informed of a decision concerning a request for reconsideration.

After the initiation of litigation, the validity or execution of the original administrative action by the tax authorities will not, in principle, be suspended.

Table 38 shows trends with regard to litigation cases. It indicates that, although the number of cases filed in FY2002 was slightly smaller than in the preceding year, the pending cases increased because the number of cases closed was smaller than that of cases filed.

**Table 38 Dispositions of Litigation Cases (Government as Defendant)**

Fiscal Year		Number of Accumulated Cases			Number of Disposed Cases							Pending Cases as of End of Current Year
		Carried over	Filed	Total	Withdrawal	Rejection	Decision in favor of Government	Decision partially in favor of Government	Decision against Government	Referred for reconciliation	Total	
1980		913	303	1,216	129	9	209	17	24	6	394	822
1985		842	309	1,151	117	10	230	20	5	9	391	760
1990		649	310	959	74	13	220	5	11	5	328	631
1995		582	358	940	70	12	243	15	13	8	361	579
1998		625	370	995	70	18	323	13	12	11	447	548
1999		548	376	924	66	25	307	12	14	6	430	494
2000		494	388	882	56	16	293	9	13	10	397	485
2001		485	400	885	49	14	284	14	19	24	404	481
2002		481	380	861	48	15	236	13	20	14	346	515
Breakdown of Cases in FY2002	Income Tax	196	140	336	4	5	77	6	7	1	100	236
	Corporation tax	108	64	172	4	-	51	2	6	-	63	109
	Other Taxes	100	71	171	4	5	54	2	4	-	69	102
	Collection	76	98	174	36	2	51	3	3	12	107	67
	Others	1	7	8	-	3	3	-	-	1	7	1

Note: "Others" represents the litigation cases relating with National Tax Tribunal.