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Tentative Outline of Japan's Branch Report on Subject 2  
(Practical protection of taxpayers' rights)

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The outline of Japan's branch report presently in mind of the Branch Reporters is as follows.

1. Identifying taxpayers and issuing tax returns

(No description planned)

2. The issue of tax assessment

Before the enforcement of a formal process of "request for correction," the tax authorities allowed a taxpayer to submit an unofficial "application for correction," in order for a taxpayer to apply that the tax authorities issue a correction to decrease the tax amount.

As a result of some Supreme Court judgment, the tax authorities voluntarily gave up the application of statute of limitation of 5 years and allowed the taxpayers to request refund retroactively for 10 years.

3. Confidentiality

Taxpayers' secrecy is protected by the General Law of National Taxes (GLNT) and other laws including the Private Information Protection Law and the Access to Government Information Law. The violation of these laws will be penalized by imprisonment and/or fine.

In order to protect taxpayers' information from being peeped or manipulated via internet, the National Tax Agency (NTA) separated its taxpayers' data processing system and its internal system from internet. In order for its employees not to inappropriately access taxpayers' information and take such information out of the office, the NTA encrypts documents in its internal system and is monitoring its employees' decoding records. In order for its employees not to inappropriately

print out taxpayers' information, the NTA checks (a) its employees' records of access to taxpayers' information against (b) permission by their supervisors of such access. Some other practices will be described.

#### 4. Normal audits

There exist a pre audit discussion process where the taxpayer's counsel can discuss with the tax authorities and as a result the tax authorities may decide not to proceed with the audit.

Pre notice is required for the audit and no "dawn raid" occurs. The tax authorities would be flexible in scheduling the date/time of the audit.

#### 5. "More intensive" audit

More intensive audits are conducted by Tax Criminal Investigation Departments (TCIDs) of Regional Taxation Bureaus (RTBs). Unlike with normal audits conducted by other departments of RTBs or Tax Offices, tax criminal investigators are authorized to search taxpayers' office or their private facilities and seize accounting documents or other materials without consent of taxpayers. However, in order to conduct such investigation ("compulsory investigation"), a search warrant and a seizure warrant issued by the court is required. National Tax Violation Control Law describes other limitations for protecting taxpayers. Tax criminal investigators have no authority to arrest or detain any suspect (including taxpayers). They are not allowed to carry firearms.

If auditors of other departments of RTBs or Tax Offices conduct compulsory-investigation-type audit (i.e., entering taxpayers' private facilities or opening taxpayers' desks without their permission), the NTA is liable for violating procedural law and may be ordered by the court to pay compensation, and the NTA's determinations based on such audits may be cancelled (9 March 1998 decision by Osaka High Court, 25 February 2000 decision by Kyoto District Court, etc.)

#### 6. Review and appeals

##### (1) Review and administrative appeals

In order to expedite administrative appeal process, the NTA set its performance goal that in case of review the decision should be issued within 3 months, and the National Tax Tribunal set its performance goal that in case of reconsideration its

decision should be issued within a year. In FY2012, 96.2% of reconsideration cases were closed within a year, compared with 46.0% in FY 1999.

In response to the criticism that the National Tax Tribunal would not be fair for taxpayers because it is a part of the NTA, the Cabinet decided in 2010 that around half of appeal judges should be hired from the private sector (lawyers, CPAs and CPTAs) by FY 2013. As of July 2013, 50 appeal judges (about 51% of all appeal judges) were from the private sectors. These appeal judges from the private sectors serve 2 or three years in the National Tax Tribunal under special employment contracts.

If taxpayers are in the process of administrative appeal or judicial appeal, the NTA cannot sell taxpayers' properties seized at public auction.

## (2) Judicial appeals

Burden of proof is on the tax authorities throughout the process.

The court widely allows written statement for uncontested witness.

Examination of witness is conducted within a short period.

Appellate court rigidly restricts new assertions or evidence.

## 7. Criminal and administrative sanctions

It will be briefly described that in Japan criminal sanctions (i.e. imprisonment and fine) and administrative penalties (i.e. additional tax for deficient returns, heavy additional tax, etc.) have different purposes and therefore imposing both of them (fine and heavy additional tax) on a taxpayer is not against the prohibition of double jeopardy nor unconstitutional. 30 April 1958 decision of Supreme Court (Grand Chamber).

## 8. Enforcement of taxes

The tax authorities to the extent possible try to obtain voluntary payment of tax, for example, by way of telephone call.

The tax authorities are open to discussion for flexible operation of non-cash payment and install payment of tax.

## 9. Cross border procedures

It will be briefly described (i) that if a taxpayer's information is received via EOI process, such taxpayer will not be informed by the NTA that his/her information was received, (ii) that in MAP process it is a taxpayer's discretionary choice whether to accept or reject the outcome of the procedure, and (iii) safeguards provided by law in case of cross border assistance and collection.

## 10. Legislation

Various parties' opinion is sought in making legislation.

Even internal instructors and operational guidelines, which do not have the effect of law, are often subjected to public comments.

## 11. Revenue practice and guidance

(to be considered)

## 12. Institutional framework for protecting taxpayers' right

Taxpayers Support Officers were introduced in 2001. There are now 74 Taxpayer Support Officers in RTBs and Tax Offices. They support taxpayers "at the side of taxpayers" by instructing procedures of administrative and/or judicial appeals, or by indicating them the most appropriate tax officer in order to solve the taxpayers' specific problems. The model of Japan's system seems to be the Taxpayer's Advocate in the U.S. (introduced in 1998), and the Taxpayer Protecting Officer in South Korea (introduced in 1999).

## 13. Performance evaluation

(This issue is not in General Reporters' indicative structure.)

The Central Government Reform Law of 2001 requires each minister to set performance goals of his/her ministry and to make its evaluation open public. Under the law, the NTA sets its own performance goals and publishes the evaluation received. Such goals include (i) processing the request of refund within 6 weeks, (ii) processing the request of tax certification within 15 minutes, (iii) processing the request of advance ruling within 3 months, (iv) processing the claimant of taxpayers within 3 days, (v) processing the request of review (by Tax

Offices) within 3 month, (vi) processing the request of reconsideration (by the National Tax Tribunal) within a year, etc. Setting performance goals seem to expedite both the NTA's administrative process and taxpayers' complaints solution process.

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Please note that described above is a tentative outline of the branch report, and is subject to change after receiving comments from other members of the branch, or due to the maximum length limitation of 10,000 words. Several topics may be deleted in order to describe details of other topics. Comments or suggestions from the General Reporters will be highly appreciated.