

Review and Improvement of the Pre-system of Administrative Reconsideration of Tax Disputes

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Abstract

The transformation of economic and social system is accompanied by the transformation of tax system. The change of tax system plays an important role in reshaping national social relations, government market relations and even the structure of the country itself. Article 88 of the Law of the People's Republic of China on the Administration of Tax Collection sets up the pre-reconsideration system for tax payment disputes, which has always been the focus of discussion in the theoretical circle. In the realization of value, administrative reconsideration plays a role in protecting national fiscal revenue, strengthening internal supervision and regulation, realizing taxpayer's right relief, and saving judicial resources. But at the same time, the administrative reconsideration organs are not fair enough and their professionalism is limited. The legal interest of administrative review is unbalance and does not conform to the principle of proportionality; Hindering the value of external judicial relief in administrative litigation; Problems that harm the entity rights of taxpayers. In judicial practice, tax authorities often lose in administrative litigation because of inaction, obvious misconduct, errors in the application of laws and regulations, violation of legal procedures and mistakes in not filing cases. It can be seen that, as the system design of administrative organs' self-supervision and regulation, administrative reconsideration pre-processing not only fails to play the value of promoting the settlement of tax disputes and protecting taxpayers' rights, but also deviates from its establishment purpose by turning it into a "protective shield" for administrative organs to avoid taxpayers' rectification of their improper taxation behaviors and a "stumbling block" for taxpayers to safeguard their legitimate rights. Therefore, it is necessary to review and improve the administrative review advance system. After comprehensive consideration, it is suggested to cancel the statutory pre-system of administrative reconsideration and establish a sound mechanism of free choice of right relief; Restructure the administrative reconsideration system of tax disputes, reform the independence and neutrality of the reconsideration organs, and improve the accuracy of reconsideration decisions; Strengthen the capacity building of administrative reconsideration organs, and improve the professional level of administrative reconsideration. Finally improve the fairness and accuracy of the reconsideration decision, enhance the credibility of the government, and realize the dual value of the administrative reconsideration system in the protection of tax revenue and right relief.

Keywords

Administrative reconsideration in advance; Taxpayer rights relief; The principle of proportionality; Free choice mechanism.

1. Presentation of Problem

Tax revenue plays a basic, pillar and guarantee role in national governance, providing strong support for promoting high-quality economic development. It is also the most direct and profound part of the contact between the state and the people, and gradually forms a tax collection game relationship in the process of development. Tax rule of law not only emphasizes the obligation of taxpayers, but also gradually enters the vision of system reform. At present, China's taxpayer rights relief system has initially taken shape, but limited by the financial and tax system, administrative review and judicial litigation mechanism and the interest game between the two sides, it has not fully and effectively played its due value of protecting taxpayer rights, reflecting the justice of the rule of law, and promoting the modernization of national governance.

Article 88 (1) of the current Law on the Administration of Tax Collection stipulates that in case of a tax dispute with a tax authority, a taxpayer must first pay, remit or provide a corresponding guarantee in accordance with the tax decision of the tax authority before applying for administrative reconsideration. If the decision of administrative reconsideration is not accepted, an administrative lawsuit may be filed. The "double front" system has brought certain difficulties to taxpayers in safeguarding their rights, especially the administrative reconsideration front system has extended the cycle of taxpayers' safeguarding their rights to a certain extent, hindered the judicial organs from playing a relief role, and even turned into a tool for tax administrative organs to prevent taxpayers from pursuing and correcting their improper tax behavior. In 2015, the Ministry of Finance and the State Administration of Taxation drafted and published the Draft Revision of the Law on the Administration of Tax Collection (Draft for Comment), in which there was a strong call for the cancellation of the pre-payment of tax disputes and the pre-reconsideration of tax disputes, especially the reinforcement and correction of the administrative reconsideration system. It is of great significance to scientifically and efficiently deal with tax payment disputes, safeguard the legitimate rights and interests of taxpayers and build a modern tax collection and administration system. But so far, neither the tax payment advance system nor the administrative reconsideration advance system has been revised.

The data of China's tax administrative litigation in 2021 show that among the judicial cases in which taxpayers and other counterparties won, the courts decided to revoke the administrative acts of tax authorities in 66.7% of the cases, an increase of 4.7% over 2020; In 11.1% of cases, court decisions confirmed that the administrative acts of tax authorities were illegal, down 11.4% from 2020; Courts ordered tax authorities to perform their duties in 22.2 percent of cases, up 6.7 percent from 2020. Among them, more than eight reasons for the success of the taxpayer and other counterparties are: inaction of the tax authorities, obvious improper, wrong application of laws and regulations, violation of legal procedures and failure to file a case. It can be seen that, as a rule design of administrative organs' self-supervision and regulation, the pre-system of administrative reconsideration of tax disputes should provide administrative organs with corrective opportunities for self-correction, broaden the path of right relief for taxpayers, and add channels for settlement of tax disputes. However, in recent years, there has been a trend of alienation as a "shield" for administrative organs to avoid taxpayers to correct their improper tax behavior and a "stumbling block" for taxpayers to safeguard their legitimate rights. Therefore, the author believes that it is necessary to review and improve the pre-administrative reconsideration system of tax dispute.

2. The System Value and Realization of Administrative Reconsideration in advance of Tax Dispute

2.1. Ensure the Value of State Fiscal Revenue

Finance is the foundation and pillar of the stable operation and scientific governance of the country, while tax is the main source of national fiscal revenue, which plays an important role in safeguarding and realizing national finance. In tax payment disputes, the administrative review advance system is effectively protecting the national fiscal revenue. First of all, under the administrative reconsideration pre-system, some taxpayers will miss the opportunity to apply for reconsideration because of the lack of understanding of the reconsideration period, reconsideration conditions, etc., and then lose the right to Sue, unable to get back the disputed tax. At the same time, some taxpayers may stop at the administrative reconsideration due to the psychology of "timid litigation" or "idle litigation", accept the reconsideration decision, give up the opportunity to file an administrative lawsuit to fight for their own rights and interests, and the reconsideration decision will take effect as a result, protecting the tax. In addition, if the tax dispute enters the administrative litigation procedure, the court's examination of the administrative act of the tax authority is basically based on the examination of legality, supplemented by the examination of rationality, and will be corrected only when the administrative act is obviously wrong. This not only ensures the maintenance rate of administrative reconsideration decisions, but also ensures that the taxed money will not be lost again due to litigation decisions to a certain extent. Finally, the premise of administrative reconsideration is "tax clearance", so that individual taxpayers who attempt to delay or avoid paying taxes by applying for administrative reconsideration and filing administrative lawsuits cannot succeed, which greatly ensures the stability of national tax revenue and national finance. However, excessive emphasis on tax collection efficiency and neglect of taxpayers' rights and interests will wear down taxpayers' trust and support for administrative organs and tax collection system, and will not help improve the work quality of administrative organs.

2.2. Strengthen the Value of Internal Supervision and Regulation

Administrative reconsideration is mostly under the jurisdiction of the higher level of the administrative organ taking the administrative act as the reconsideration organ, review the scope of acceptance of the reconsideration application, jurisdiction, legal conditions, legal time limit and whether an administrative lawsuit has been filed, make a decision on acceptance or rejection, and conduct a comprehensive review of the administrative act, and amend the improper administrative act. This internalizes the handling of tax disputes within administrative organs, deepens the connection of administrative law enforcement between upper and lower organs, forms the relationship between internal vertical supervision and regulation, not only maintains the overall credibility of administrative organs, but also improves the efficiency of tax dispute handling. However, the superior jurisdiction of administrative reconsideration leads to the taxation power and review power belonging to the same subject, forming the awkward situation that administrative organs "act as both athletes and referees". The reconsideration organs lack independence and impartiality, and it is inevitable that they are negligent in exercising their powers and performing their duties. Therefore, taxpayers also lack a sense of identity and trust in the reconsideration decisions. In the long run, administrative reconsideration will not only be difficult to exert its utility value, but also the integrity and credibility of administrative organs will be damaged.

2.3. Save Judicial Resources and Remedy Cost Value

Administrative litigation itself has a long processing cycle and complicated processing procedures, which is bound to increase the cost of protecting the rights of taxpayers. The pre-administrative reconsideration allows some tax disputes to be resolved in the reconsideration

stage, without entering the litigation procedure, which greatly saves the cost of taxpayer's right relief. At the same time, the advance of administrative reconsideration has avoided the influx of a large number of tax cases to the court, which has reduced the work burden for the court. According to statistics, the number of tax administrative litigation cases in the country in 2021 is 1,037. Germany is a civil law country with similar economic aggregate and tax revenue scale to China. From 2008 to 2014, the annual average number of tax administrative litigation cases reached 43,773, while the number of cases in China was only 2.4% of that in Germany. Although such a big difference is not only caused by the existence of the administrative review advance system, it also plays a role in saving judicial resources to a certain extent. However, whether the filtering effect of administrative review on the judicial trial of tax cases is the result of the taxpayer's compromise on the reconsideration decision, and whether it hinders the value of the judicial procedure to exert the right relief is worth discussing.

2.4. High Quality and Efficient Tax Dispute Resolution Value

Tax disputes are professional and technical administrative disputes, including the confirmation of tax subjects, tax objects, tax scope, tax relief and refund, tax basis, tax methods and other matters, tax reconsideration authorities with more professional knowledge and management experience are required to intervene in advance, requiring professionals with high-level knowledge and ability to participate in the settlement. Tax authorities have a large number of professionals who have accumulated rich practical experience, and they have high professional ability and handling ability in solving tax disputes. They can quickly grasp the crux of the problem, judge the matters in dispute, and decide the solution plan, so as to solve tax disputes with high quality and efficiency. At the same time, the establishment of administrative reconsideration pre-procedure is helpful to find out the truth of the case and grasp the focus of the dispute; It is helpful to distinguish the right and wrong of the case and the key issues, so as to improve the level of tax dispute settlement on the whole. In addition, the advance of administrative reconsideration has a positive effect on reducing the responsibility and pressure of the court's administrative trial, so that the court can concentrate its efforts on hearing the administrative dispute cases that cannot be resolved by reconsideration, and promote the settlement of disputes.

3. The Practice Status Quo and Deficiency of Administrative Reconsideration in advance of Tax Payment Dispute

3.1. The Pre-legal Interest of Administrative Reconsideration is Unbalance and does not Conform to the Principle of Proportionality

There are different opinions in the academic circles on the original intention of establishing the pre-system of administrative reconsideration of tax disputes. Among them, scholars represented by Professor Zhang Zhiyuan believe that administrative reconsideration in advance is in line with the interests of the tax authorities, taxpayers and judicial authorities to maximize the system design. For the tax authorities, the pre-administrative reconsideration internalizes the settlement of tax disputes within the administrative organs, which can review and correct improper administrative acts and reduce the consumption of administrative efficiency by administrative litigation. For taxpayers, administrative reconsideration broadens the way of right relief, and administrative reconsideration has the characteristics of high efficiency, simplicity and low cost, and resolving tax payment disputes through administrative reconsideration can effectively reduce the cost and difficulty of right relief. As for the judicial organs, administrative reconsideration, as the pre-procedure of administrative litigation, avoids a large number of professional tax cases flooding into the court and reduces the work burden of the court.

Some scholars have proposed that the fundamental purpose of administrative reconsideration is to protect the legitimate rights and interests of taxpayers. However, when the taxpayer is unable to pay the tax and late payment fee, or is unable to provide the corresponding guarantee, it can not complete the "tax clearance" request for administrative reconsideration, and then lose the right to bring administrative litigation, which ineffectively dissipates the relief rights of the taxpayer groups who are unable to pay the tax or provide a guarantee within the reconsideration period, and goes against the establishment purpose of administrative reconsideration. In this case, the real taxable subject may get away with it, and create time for it to transfer taxable objects, property and tax evasion, making it more difficult for tax authorities to collect taxes, and making it impossible for misplaced taxpayers to complain. Moreover, tax disputes have been internalized in administrative organs for a long time, and external supervision is absent, which is prone to cover up administrative organs and law enforcement personnel are idle in performing their duties. According to the data, in the administrative litigation cases of tax disputes in 2021, the taxpayers experienced administrative reconsideration in the early stage, did not obtain the support of the reconsideration organ, and the reconsideration decision was to maintain the original administrative act, not accept or reject the application for administrative reconsideration accounted for 89.7%. Among them, after the reconsideration decision to maintain the original administrative acts in administrative proceedings, 66% of the cases were supported by the court, and 17% of the cases were lost by the tax authorities, and the data increased by 10 percentage points compared with 2020. It can be seen that under the premise of allowing a certain tolerance rate, there is still no small room for correction in the reconsideration decision made by the reconsideration organ.

Therefore, although the system design of administrative reconsideration is based on the original intention of taking into account the interests of the tax authorities, judicial authorities and taxpayers, it has a greater risk of damaging the national interests, public interests and taxpayers' interests in practice. Based on the principle of proportionality, its legal interests tend to be unbalanced, and although the purpose is right, the means and methods do not conform to the principles of propriety and necessity.

3.2. The Impartiality of Administrative Reconsideration Organs is Insufficient

As the data from 2021 show, in the litigation stage, of the cases in which administrative reconsideration made a reconsideration decision to maintain the original administrative act, 17% of the taxpayers won the first instance, 11% were voluntarily withdrawn, and 6% were pending. In other words, only based on the result of winning the first instance, the administrative reconsideration organ made 17% of the improper reconsideration decision. From the taxpayer's point of view, if you apply for administrative reconsideration, the risk of being made an improper decision is not small. This makes the taxpayer doubt the impartiality of the reconsideration organ. There are two main reasons for the lack of impartiality of administrative reconsideration organs:

First, the administrative reconsideration organs lack independence from organizational structure to personnel composition. The reconsideration organ is mainly the competent department at a higher level or the people's government at the same level of the organ that has undertaken the administrative act, exercising vertical jurisdiction between the upper and lower levels, and exercising the reconsideration procedure only as a general administrative organization. And the reconsideration personnel are from within the administrative organs, the reconsideration personnel can only draw up the preliminary opinions after the preliminary examination of the specific administrative acts, and the final reconsideration decision is made by the person in charge of the tax authority, and the administrative reconsideration organ

cannot make it independently. Therefore, in the process of administrative reconsideration, it is inevitable that there will be internal cover up or "turn a blind eye".

Second, administrative reconsideration organs lack neutrality. Due to the lack of independence of the reconsideration organ, it also appears to be biased in its reconsideration position. It is especially reflected in the administrative assessment mechanism of the tax authorities, whose assessment indicators include the amount of tax collected and the situation of tax storage, which in disguised form encourages the tax authorities to make the decision to maintain the original administrative act as much as possible in the administrative review. For example, in the "Changchun Tax Bureau of the State Administration of Taxation and Jilin Bank Co., LTD. Administrative Management Case", one of the ten influential tax judicial trials in China in 2019, the Inspection Bureau of Changchun State Taxation Bureau required Jilin Bank to pay the taxes owed and late fees, and the company applied for administrative reconsideration after paying the money, and after receiving the decision of not accepting the case due to exceeding the deadline, An administrative lawsuit was filed. After the review by the court, because the administrative organ chose the reconsideration period more unfavorable to the taxpayer, the application of Jilin Bank exceeded the deadline, and the decision to revoke the reconsideration decision of the administrative organ not to accept.

It is not necessary for correct tax administrative acts to avoid the legitimacy review of administrative review, while it is necessary for wrong tax administrative acts to accept the supervision of administrative review. In accordance with the basic requirements of lawful administration and proper procedures, the purpose of setting the preconditions for tax administrative reconsideration should be to prevent taxpayers from transferring property during the reconsideration procedure, avoiding tax collection and administration, and ensuring the timely receipt of tax, rather than rejecting the application for tax administrative reconsideration by setting harsh conditions. The lack of impartiality of administrative reconsideration will damage the credibility of administrative organs and erode the relief rights of taxpayers.

3.3. The Professionalism of Administrative Reconsideration is Limited

The reasons for the victory of the relative party such as the taxpayer: the inaction of the tax authorities, the obvious improper, the wrong application of laws and regulations, the violation of legal procedures and the mistake of not filing the case, etc., and an important reason for the above problems of the tax authorities is that the professional nature of the tax authorities' administrative reconsideration is limited. For example, in the "Shen v. Beijing Xicheng District Tax Bureau of the State Administration of Taxation, Beijing Tax Bureau of the State Administration of Taxation Notice of no tax refund and Administrative Proposal" concluded in April 2020, because the reconsideration organ on the "Tax Collection Management Law" article 51 "taxpayers exceed the amount of tax payable, Upon discovery, the tax authority shall immediately refund the "tax in excess of the amount of tax payable" in the "understanding and application error, the actual payment of the amount of tax payable in the name of tax payment that does not conform to the actual tax obligation is included in the article" Tax payable ", resulting in the wrong reconsideration decision. There are not a few such cases, and the lack of accuracy and professionalism of administrative reconsideration will also reduce the efficiency of tax dispute resolution and increase the cost of taxpayers' rights relief. The specific reasons for the limited professionalism of administrative reconsideration mainly include the following two points:

First, the review procedures of the reconsideration organs are incomplete. Under normal circumstances, the tax administrative reconsideration adopts the written examination method, and the reconsideration application materials submitted by the taxpayer and the defense materials submitted by the tax authorities are reviewed in writing. Although written

examination can play an efficient and professional advantage, its examination process is relatively single and closed, and it is usually difficult to disclose the examination process, and there are disputes on the openness and transparency of the examination. In addition, the degree of restoration of written materials to the facts of the case is limited, and the role of written examination in finding out the facts of the case is also limited, which may lead to the deviation of the reconsideration body's determination of the facts of the case, and have an adverse impact on the accuracy of the reconsideration decision.

Secondly, staff capacity to enforce the law is inadequate. Due to the uneven legal quality and law enforcement ability of grass-roots staff, the lack of professional assessment mechanism for the law enforcement level of staff within the administrative organs, some staff members lack a comprehensive understanding of the specific provisions or procedural provisions of the tax law, and are prone to irregular evidence collection and incomplete review procedures in the tax process. In the process of making a reconsideration decision, there are problems of incorrect and irregular quoting or application of legal provisions. At the same time, the tax law does not protect the taxpayer's procedure enough, which leads to the arbitrary law enforcement of some staff members, procedural defects and even illegal procedures, which directly affects the effectiveness and quality of reconsideration decisions.

4. Suggestions on Improving the Advance of Administrative Reconsideration of Tax Disputes

At present, the importance of fiscal and tax rule of law in our country has risen to the foundation and an important pillar of national governance, which not only emphasizes the rule of law and financial management, but also attaches importance to the protection of taxpayers' rights and interests. However, because the national tax collection and administration has always paid more attention to the protection of national tax revenue, and ignored the protection of taxpayers' rights and interests, and the awareness of taxpayers' own rights protection has been weak. For a long time, tax-related legal services in our country have always been in the initial stage of development, and there is a big gap compared with some mature tax-related legal services in foreign countries. Therefore, it is imperative to adjust the tax collection and management mode. The adjustment of the pre-procedure of administrative reconsideration in tax disputes is a measure suitable for the tax rule at this stage, which will greatly smooth the relief channels of taxpayers, eliminate the barriers of rights holders, and then promote the new development of tax rule by law and tax administration according to law.

4.1. Abolish the Statutory Pre-processing of Administrative Reconsideration and Establish a Sound Mechanism for Free Choice of Rights Relief

After a comprehensive review of the tax dispute administrative review advance system, it can be found that its erosion of taxpayers' right relief gradually deepens, and its legal interest value also has a trend of imbalance. Therefore, it is suggested to cancel the pre-system of administrative reconsideration, establish and improve the free choice mechanism of right relief, and give taxpayers the right to freely choose whether to solve tax disputes through administrative reconsideration or administrative litigation, so as to find the balance point between tax collection efficiency and taxpayer right relief. To this end, the following measures are taken to protect the national tax revenue:

4.1.1. Establish a Double Incentive Mechanism for Reconsideration and Tax Payment

It is suggested to establish and improve the incentive mechanism to encourage taxpayers to give priority to administrative review, pre-pay the due tax in advance or provide guarantee. Considering that the advantages of administrative reconsideration such as efficiency and simplicity should be brought into full play, and the relief rights of taxpayers should be protected,

we can encourage the promotion of administrative reconsideration advance on the basis of abolishing the statutory advance of administrative reconsideration. If the taxpayer directly brings an administrative lawsuit without administrative reconsideration, even if he wins in the lawsuit, he cannot ask the tax authorities to compensate for the litigation costs. The United States has adopted this method to achieve good incentive effect and has certain reference value. At the same time, the positive and negative direction of the way to encourage taxpayers to pay taxes in advance or provide guarantees. If the disputed tax is paid in advance and overpaid, certain interest will be paid upon refund; The active pre-payment of the disputed tax will be recorded in the credit system, and the enterprise will be given certain tax incentives in the future. Strictly supervise the asset dynamics of taxpayers during the settlement of tax disputes, and for those who use the dispute settlement period to transfer hidden or maliciously disposed of property, preservation or punishment measures can be taken to collect the tax payable in advance and charge interest.

4.1.2. Establish and Improve the Tax Payment Credit Management System

As early as 2014, the State Administration of Taxation successively issued system documents such as the Measures for the Management of Tax Payment Credit (Trial), Measures for the Information Disclosure of Major Tax Violation Cases (Trial) and Tax Payment Credit Evaluation Indicators and evaluation Methods (Trial), and constructed new tax payment credit evaluation indicators, evaluation methods and hierarchical and classified management models. A modern tax credit management system has been initially established. The objective record of taxpayers' daily tax-related behaviors is divided into four grades: A, B, C and D, and the classification management is implemented accordingly. The establishment of a sound tax credit management system is conducive to comprehensively monitoring taxpayers' tax behavior, urging taxpayers to take the initiative to pay taxes, promoting tax collection and management, and protecting tax revenue.

4.1.3. Establish a Tax-related Information Sharing Platform.

The purpose of "Tax Collection and Management Law" insisting on "tax clearance" is to protect tax revenue, if we can strengthen the sharing of tax-related information, the contradiction between tax authorities and taxpayers will be alleviated. To strengthen the sharing of tax-related information and realize tax supervision, it is necessary to build a tax information sharing platform with "all corners". The tax authorities can cooperate with various regulatory departments in the market to conduct real-time monitoring of taxpayers' account assets and fund dynamics, and exercise certain discretion to forcibly freeze their accounts when taxpayers attempt to evade taxes and transfer assets. Or collect all the funds in their accounts to avoid that after the result of administrative reconsideration or litigation in tax disputes, the taxpayer neither clears the tax in advance nor has any property to execute. Fortunately, some provinces and cities in our country have carried out an attempt to wade through tax information sharing in the form of promulgating local government regulations. It is believed that in the near future, our country can set up a comprehensive and systematic tax information sharing platform to escort tax collection and administration.

4.2. Reform the Impartiality of Reconsideration Organs and Improve the Accuracy of Reconsideration Decisions

The cancellation of administrative review in advance does not deny the utility value of administrative review system. As one of the remedies for taxpayers' rights in our country, administrative review still has unique system advantages, which plays an important role in solving tax disputes, protecting taxpayers' rights and interests, supervising the tax authority's execution of the right according to law and so on. Therefore, in view of the lack of independence and neutrality of the reconsideration organs, it is necessary to reform and improve them, so that the reconsideration organs can conduct careful examination and make fair decisions.

4.2.1. Reform the Independence of Administrative Reconsideration Organs

An important reason why the maintenance rate of the tax dispute administrative reconsideration in our country is very high is that the nepotism between the reconsideration organ and the organ being reviewed is obvious. Therefore, it is necessary to separate from the administration and solve the problem of the independence of the reconsideration organ from the organizational structure and personnel composition. The reconsideration organ should be independent from the current tax authority and given special funds for special purposes, and its staff should also be selected from outside the tax authority, so that it will not be affected by the administrative hierarchy when conducting administrative reconsideration, so as to exercise its power independently and perform its duties fairly. Japan's administrative reconsideration organ has a strong independence, except for some special cases need to consult the National tax Agency's opinion, other matters can be decided by the reconsideration organ. Or set up a relatively independent reconsideration and adjudication body to fundamentally solve the problem of the independence of the reconsideration body. At the same time, we should strengthen the record and supervision of the whole process of reconsideration, enhance the openness and transparency of administrative reconsideration, enhance the public's confidence in administrative reconsideration, and make administrative reconsideration a fair and reliable remedy for the rights of taxpayers.

4.2.2. Reform the Neutrality of Administrative Reconsideration Organs

To realize the reform of the impartiality of the administrative reconsideration organ, it is necessary to make it independent from the administrative relations, and to put the reconsideration organ in a neutral position to clarify its identity as the intermediary adjudicator. Administrative reconsideration shoulders the dual responsibility of safeguarding taxpayers' right relief and safeguarding national tax revenue, which is not only for the realization of fiscal revenue. Administrative reconsideration should not be ignored, should not be just as a routine procedure of administrative organs "go through the scene", should realize its original intention and clear neutral position. In addition, third-party specialized agencies such as tax agents firms and law firms can be introduced to provide consultation and verification services for reconsideration, improve the neutrality and accuracy of reconsideration decisions, enhance the public's sense of identity with reconsideration decisions and administrative organs, and form an external supervision force to prevent the non-performance of duties or illegal acts of reconsideration personnel.

4.3. Strengthen the Capacity Building of Administrative Reconsideration Organs, and Improve the Professional Level of Administrative Reconsideration

In order to reduce the probability of the administrative reconsideration decision on tax payment disputes being overturned in administrative litigation, avoid the wrong reconsideration decision damaging the rights and interests of taxpayers and increasing the relief cost of taxpayers, it is necessary to clearly improve the correctness of the reconsideration decision and the compliance of the reconsideration procedure, strengthen the "hardware facilities" of the reconsideration organ, and improve the professional level of the reconsideration personnel. Comprehensively strengthen the capacity building of administrative reconsideration organs and personnel. In this regard, improvements are mainly made in two aspects:

4.3.1. Strictly Regulate the Procedures for Reconsideration and Review

Although the examination of the legality of tax administrative reconsideration in principle adopts the method of written review, when the applicant makes a request or the administrative reconsideration body considers it necessary, it should listen to the opinions of the applicant,

the respondent and the third party, and can investigate the situation from the relevant organizations and personnel. For major and complex cases, when the applicant makes a request or the administrative reconsideration body considers it necessary, it may adopt the hearing method. The provisions make it clear that the reconsideration review is not only a way of written review, and the reconsideration organ should not be limited to the simplicity of written review and give up other ways of review. We should attach importance to both substantive review and procedural review, improve the rigor of administrative reconsideration review, and enhance the accuracy of reconsideration decisions.

4.3.2. Standardize Law Enforcement Procedures and Improve the Training of Specialized Personnel

The State Administration of Taxation clearly proposes to strengthen the talent protection of tax rule by improving the difficulty of selecting legal professionals. First of all, it should strengthen the knowledge of tax law of staff, carry out publicity and training of relevant legal knowledge of tax law, organize staff to systematically study administrative law and the Law on the Administration of Tax Collection and Management, and improve the legal literacy of staff. At the same time, the law enforcement procedures are strictly regulated to prevent staff from wrongfully enforcing the law or breaking the law. Finally, it is necessary to improve the staff's ability of understanding and practical application of various laws, and improve the efficiency and quality of administrative reconsideration to resolve tax disputes. In addition, you can also refer to Japan's practice of including tax law professionals in the reconsideration team, such as joining public lawyers, legal advisers, etc.

5. Conclusion

Even though the pre-system of administrative reconsideration of tax disputes in Article 88 of the Tax Collection and Administration Law has the value of safeguarding national fiscal revenue, strengthening internal supervision rules of administrative organs, and saving judicial resources and relief costs, it has gradually deviated from its establishment purpose in practice, and the balance between tax revenue and right relief has gradually been unbalanced. In order to find a balance point of value, the system has been successfully established. In order to make it conform to the trend of streamlining administration and delegating power and play its role more effectively, it is necessary to restructure it. It is hoped that by cancelling the pre-procedure of administrative reconsideration, the free choice mechanism of right relief can be established. Reconstructing the administrative reconsideration system of tax disputes, reforming the independence and neutrality of the reconsideration organs; Strengthen the capacity building of administrative reconsideration organs; Give full play to the utility value of administrative reconsideration of tax disputes.

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