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**Master's Thesis of Public Administration**

**A Study on the Effectiveness  
of the Korean Administrative  
Tax Appeal System**

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## **Abstract**

# **A Study on the Effectiveness of the Korean Administrative Tax Appeal System**

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Governments collect tax forcibly without any individual compensation in the case of the taxation requirement set by law for the purpose of covering their expenses. In this process, a lawful or unreasonable tax disposition can be carried out by a tax office, and some persons' rights or interests can be infringed by the disposition. Therefore, tax appeal system should be provided for prompt and appropriate protection of their rights.

In the tax appeal system, there are judicial tax appeal system like administrative lawsuit and administrative tax appeal systems such as ENTS (the request for examination by the National Tax Service), ATT (the request for judgment by the Tax Tribunal), EBAI (the request for examination by the Board of Audit and Inspection), Objections and Pre-assessment Review. Especially ENTS, ATT and EBAI among them are very important because taxpayers must go through one of the above three procedures in order to file an administrative lawsuit in terms of internal tax. This research studies the effectiveness of the administrative tax appeal system in the perspective related to functional duplication.

When I comprehensively analyze the three administrative tax appeal systems (ENTS, ATT, EBAI) in the perspective of intent (purpose), organization in charge, target group (tax items), subject of trial and provided service(decision), their organizations in charge are different but actually they carry out almost the same functions such as prompt protection of taxpayers' rights and control of tax administration.

This functional duplication in the national tax appeal administration can provide taxpayers with the opportunity of selection among three procedures, contribute to preventing wrong decisions, and bring an expansion of service to taxpayers through the competition between tax appeal agencies. However, it can lead to decrease the efficiency in the viewpoint of efficient allocation of resources, make it difficult to deal with tax appeal cases consistently through different or even conflicting decisions among three procedures, bring taxpayers' confusion and decrease the trust in tax appeal administration.

Therefore, it is needed to find out various ways to settle that functional duplication. This study suggests ways of strengthening horizontal cooperation (coordination) and vertical coordination and measures for adjustment of function. As the ways of horizontal cooperation and coordination, there are various methods such as forming a consultative group, making business agreement, promoting personal exchanges, strengthening formal or informal exchanges, and construction of information sharing system. Also, as the ways of vertical coordination, this study presents prioritizing legal interpretations of three institutions and adjustment or modification by higher body.

As one of measures for adjustment of function, this research suggests mutual transfer of function. For example, we can make ENTS or EBAI deal with the tax cases of small amount asked or indirect tax cases while making ATT handle those of large amount cases or direct tax cases. Also, there is reorganizing method as the other measure for adjustment of function. As the reorganizing method, we can

think of integrating ENTS and ATT and abolishing EBAl. In relation to the integration, we can consider the method of integrating ATT into ENTS or the method of integrating ENTS into ATT. The method of integrating ENTS into ATT can be somewhat more desirable because ATT has more quasi-judicial procedures and taxpayers have higher preference for ATT.

Keywords: tax appeal system, request for adjudgment, request for examination,  
functional duplication

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# CHAPTER 1

## INTRODUCTION

### 1.1 Purpose of Study

In taxations, any person whose rights or interests have been infringed by an unlawful or unreasonable disposition may request the cancellation or modification of such disposition or other necessary measures by filing a request for examination or adjudgment seeking remedies for the infringement.

In the case of filing the request in the national tax (internal tax), taxpayers can select one procedure among three procedures such as the request for examination by the National Tax Service ("ENTS"), the request for adjudgment by the Tax Tribunal("ATT") and the request for examination by the Board of Audit and Inspection("EBAI"). Taxpayers who want to file the administrative litigation about the national tax must go through one of the three procedures before filing the litigation.

However, there is a criticism that the above three systems (ENTS, ATT, EBAI) carry out the very similar function and can result in different decisions about the cases of the same content and lead to taxpayers' confusion. Even though the content of tax appeal cases is almost the same, ENTS, ATT and EBAI can make different or even conflicting decisions. One system among the above three systems

may accept the application of a taxpayer but other systems may not accept the almost same application of other taxpayers.

For instance, there is a relevant case. In the case of food providing service in the funeral hall, the Board of Audit and Inspection judged that the food providing service [before the Ministry of Strategy and Finance' change (2013.10.30.) of published rulings] in the funeral hall was value added tax – exempt item.<sup>1</sup> However, the Tax Tribunal judged that food providing service (before the Ministry of Strategy and Finance' change of published rulings) in the funeral hall was an object of taxation of value added tax.<sup>2</sup> There are more cases in which the National Tax Service and the Tax Tribunal had different views about nearly the same item.

Functional duplication means that more than one agency perform the same function. Conflicting decisions and taxpayers' confusion may result from the functional duplication among the above three systems (ENTS, ATT and EBAI).

I will study the effectiveness of the Korean administrative tax appeal system in the perspective of functional duplication. I will research whether the current administrative tax appeal system shows the functional duplication or not. Also, I will study the usefulness and limitations of the current administrative tax appeal system in the viewpoint of functional duplication, and suggest some plans for effectiveness of the appeal system to overcome the limitations.

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<sup>1</sup> Kamsim 329ho

<sup>2</sup> Josim 2013joong2874

## **1.2 Research Range and Method**

This research analyzes the current Korean administrative tax appeal system. In the administrative tax appeal system there are many systems such as pre-assessment review, objections, ENTS, ATT and EBAI, but I focus on the ENTS, ATT and EBAI. In addition, there are national tax (internal tax, customs) and local tax in the tax, but I review the administrative tax appeal system related to national tax (internal tax).

As the method of research, I study the existing literature about administrative tax appeal system and collect and analyze the data of Tax Tribunal and National Tax Service and statistical data of the Tax Tribunal, the National Tax Service and the Board of Audit and Inspection. I used the statistical data to review the practical operation of the administrative tax appeal procedures, and I mainly used the literature research method in the theoretical discussion on the administrative tax appeal system and redundancy (functional duplication). In addition, in suggesting some effectiveness plans of appeal system, I used the method of investigating the current operation situation of the system in addition to the literature research method, and I tried to reflect the opinions of the people working in the tax appeal administration.

### **1.3 Tax Appeal**

Tax is a monetary burden, and the state or local government collects forcibly the money (tax) without any individual compensation in the case of the taxation requirements set by law in order to cover the expenses (Na, 2007).

In the tax administration of such taxation, a system should be prepared to promptly and properly remedy taxpayers' rights or interests when they are infringed unlawfully or unreasonably, and this is the tax appeal (remedy) system (Park, 2007). In the broad sense, the tax appeal (remedy) system means a person who argues that his or her rights or interests were infringed or will be infringed by the function of the tax administration office claims to restore the original state to the administrative agency or the court, recompense him or her for his or her losses or cancel or change the administrative action, or seek other remedy of damages or prevention, and the administrative agency or the court examines it and gives a decision on the protection of rights and interests, but in a narrow sense, it (tax appeal system) can only be interpreted as an administrative tax appeal system and a tax lawsuit system (Park, 2007).

Today, in all countries, principle of no taxation without law is adopted as the basic principle of the constitution as a device to prevent the abuse of the authority of taxation and guarantee the basic rights of the people, the principle of no taxation without law means that the state cannot impose taxes and the people are not required to pay taxes without the basis of law, and South Korea's constitution also declares the principle as a constitutional fundamental principle (Na, 2007).

In order for the principle of no taxation without law to be properly assured, the state agency that enforces the tax law must comply with the tax law, and if the tax administration function of the state institution infringes on the rights or interests of the individual illegally or unjustifiably, a tax appeal system must be provided as a remedy. Therefore, the tax appeal (remedy) system can be said to be a practical means to substantially guarantee the principle of no taxation without law.

The functions of the administrative tax appeal system can be summarized as follows (Na, 2007).

In the event that a person whose rights or interests has been infringed by the illegal or unreasonable disposition has filed a petition for an appeal, the administrative agency has the opportunity to reflect on its conduct by removing the infringement of the rights or interests by itself. If the decision-making body is a higher-level supervisory body of the disposition agency, it supervises the execution of the tax law of the lower authority.

In addition, the judicial court system is faithful to protection of the rights of the people, and it is prudent and fair, but the burden of time, effort, and cost is large, and the tax law relation which is subject to complicated economic phenomenon is becoming highly specialized, and it is difficult to expect court judges to have such expertise and technical knowledge. Therefore, making administrative agency to solve the tax dispute quickly with professionalism and technicality can complement the courts' shortcomings of non-professionalism and delayed resolution of disputes.

The judicial court system has fair and cautious remedy function about the infringement of rights and interests by the tax office, but it takes a long time for taxpayers to receive the judgments and it may cause considerable litigation expenses. When the remedy is determined (in the judicial court system), the loss which cannot be restored can already happen. The administrative tax appeal system is meaningful as device for taxpayers to receive the right relief conveniently and quickly.

These tax appeal (remedy) systems can be classified into some types as follows.

First of all, it can be divided into pre-remedy system and post-remedy system according to the remedy (time) point. The pre-remedy system is a system that prevents the taxpayers from receiving taxation disposition by giving the taxpayers an explanation opportunity before taxation is disposed. Post-remedy system is the systems of relief such as the cancellation of illegal or unreasonable taxation disposition in the event of infringement of taxpayers' rights due to such taxation disposition.

Also, tax appeal system can be classified into administrative tax appeal system and judicial tax appeal system according to the nature of the decision bodies. In the administrative tax appeal (remedy) system, tax authorities or independent tax administrative authorities make judgments about whether the tax disposition is illegal (unreasonable) or not. In contrast, judicial tax appeal system means lawsuit procedure by courts.

## **1.4 History of Administrative Tax Appeal System**

When we look at the history of administrative tax appeal system in Korea, some institutions such as administrative appeal by the Administrative Appeal Law (which was enacted on August 3, 1951) and request for examination by a variety of tax law had been recognized and as the National Tax Appeal Law was enacted on December 2, 1961, the appeal process regarding the internal tax was unified. In the National Tax Appeal Law there were three levels of tax appeal procedures such as request for reinvestigation (which could be filed with the head of a tax office who issued the relevant disposition), request for examination (which could be filed with the commissioner of a regional tax office) and request for reexamination (which could be filed with the commissioner of the National Tax Service). Taxpayers had to go through these procedures before filing an administrative litigation.

It can be said that these appeal procedures in the National Tax Service mainly pursued suitability of tax law interpretation and unified management of the national tax administration under massive and complex national tax dispositions.

However, these procedures had the problem that the tax office itself became the judicial body of tax appeal system. Therefore, in order to enhance the protection of taxpayers' rights, by the Framework Act on National Taxes which was enacted on December 21, 1974, the National Tax Tribunal, which was independent of the National Tax Service, was established under the Minister of Finance. As a result, in principle two-trial system (request for examination and request for adjudgment)

before filing an administrative litigation was adopted, and taxpayers can file an objection before the request for examination according to the taxpayers' choice.

After all, we can say that based on independent decision body, the system of 'request for adjudgment' by the National Tax Tribunal was designed to strengthen the protection of taxpayers' rights rather than administrative control.

As the Framework Act on National Taxes was revised on August 31, 1999, in principle single-trial system in the tax (national tax) administrative appeal system has been adopted because taxpayers are able to selectively use one system between the request for examination and the request for adjudgment. Of course, taxpayers can continue to file an objection according to their choice. This change is due to the fact that the administrative litigation system has been reorganized from the previous two-trial system (two-court system) (High court, Supreme Court) to three-trial system (three-court system (administrative court, High court, Supreme Court) (Park, 2007). Criticism was raised that administrative appeal procedures would be onerous and cumbersome if national tax appeal procedures (including request for examination and request for adjudgment) were maintained unchanged despite the change of administrative litigation system from two-trial system to three-trial system (Lim, 2012). However, it was pointed out that this change of administrative tax appeal system to selective single-trial system was not a full consideration of the essence or function of administrative appeal system but rather the consequence of compromise between the positions of the National Tax Service and the Ministry of Finance and Economy which were worried about the contraction of an organization (Lim, 2012).



On February 29, 2008, as part of the government organization restructuring, Tax Tribunal has been newly established, which is the result of unifying the National Tax Tribunal under the Minister of Finance and Economy and Local Tax Examination system in the Ministry of Home Affairs. It has been established under the Prime Minister in order to guarantee its independency and impartiality of tax administrative appeal system.

In addition, taxpayers can choose to use the method of the request for examination by the Board of Audit and Inspection according to the provisions of the Board of Audit and Inspection Act. This EBAI system has existed since the enactment of the Board of Audit and Inspection in 1963. This EBAI system is to commence an audit for administration control, make the preventive audit activities effective and also through this consequently protect the rights and interests of stakeholders (Jung, 2008). The EBAI system has been changed through the revisions of the Board of Audit and Inspection Act and related laws. Especially, when taxpayers went through this EBAI procedure, passing through the appeal procedure under the Framework Act on National Taxes is exempted through the revision of the Framework Act on National Taxes in 1974 (Jung, 2008). In the case that taxpayers made a request for examination by the Board of Audit and Inspection and underwent the procedure, it can be regarded as having undergone administrative judgement (administrative appeal procedure) for the national tax disposition (Chy, 2015; Park, 2007). Therefore, when taxpayers file an appeal against unlawful or unreasonable national tax disposition they can file an appeal by choosing either the appeal procedure under the Framework Act on National Taxes (ENTS or ATT) or

the request for examination by the Board of Audit and Inspection (EBAI) (Park, 2007).

# **CHAPTER 2**

## **LITERATURE REVIEW AND RESEARCH DESIGN**

### **2.1 Theoretical Background**

I will analyze the effectiveness of the Korean administrative tax appeal system in terms of redundancy (functional duplication).

The concept of functional duplication in public administration is related to the concept of redundancy. In general, redundancy means excess or superfluity of anything (Landau, 1969). It can be classified into duplication meaning that two entities carry out the same function and overlapping meaning that two entities share some area of function (Lerner, 1986). According to Lerner (1986), in the overlapping some functions allocated to a unit are also allocated to other unit. However, in the duplication all the allocated functions of a unit and other unit of a system are the same.

Duplication or overlapping between institutions have problems especially in the public sector.

Above all, functional duplication in the public sector is thought to increase the inefficiency as a waste of budget (Yoon, 2013). From the viewpoint of efficient

allocation of limited resources, an appropriate amount of budget should be allocated to the suitable area and unnecessary expenditure of finance should be minimized (Yoon, 2013).

Also, functional duplication can become the source of conflict between institutions (Kim et al., 1991; Yoon, 2013). If there is no proper mutual coordination or cooperation, the possibility of policy failure is able to increase,

If conflicts or non-cooperativeness are deepened due to functional conflicts between public institutions, policy capacity of each institution can be weakened, and it may become difficult to maximize policy capacity through mutual collaboration (Yoon, 2013).

Furthermore, functional duplication between public institutions makes it difficult to form and enforce consistent and balanced policies from a total perspective (Yoon, 2013). It is difficult to ensure the inter-agency consistency of policies in the process of formation and execution of policies when the policy orientations or concrete contents of policies of plural institutions performing similar functions are different or even contradicted with each other (Yoon, 2013).

In addition, functional duplication can also have negative consequences in terms of policy customers (Yoon, 2013). When plural institutions carry out the same function, transaction cost for selection arises in the position of policy customers, and if policies between the institutions are different even though they carries out

the same function, it can lead to confusion due to the inconsistency of government policies (Kim et al., 2007).

On the other hand, there are opinions about the necessity of duplication or overlapping. In the argument of redundancy, duplication and overlapping are thought to be necessary in organization survival because they ensure the reliability and adaptability (Landau, 1969). Also redundancy can assure the quality of policy and decrease the errors of performing wrong policies (Heimann, 1993). In addition, Ostrom(1974) claims the strength of overlapping jurisdictions and fragmentation of authority.

However, duplication or overlapping is not thought to be always desirable. Felsenthal(1980) said “Partial redundancy”, “Total positive redundancy” and “Total negative redundancy as the types of redundancy. According to Felsenthal (1980), a system shows partial redundancy when it has at least two units the functions of which partially overlap. Also, a system represents total positive redundancy when it has at least two units which have the same functions and if we get rid of any one of the duplicate units the system can be dangerous for survival. Especially, Felsenthal(1980) suggested the total negative redundancy concept in which the functions of the two entities are so essentially same that removing the duplicated entity has absolutely no effect on enough operation of the total system. On the other hand, Paik, W. K. (2009) said that problems happen in the justification of redundancy when its cost is greater than its utility or several organizations provide the same services to the same group or exercise the same authority.

There are many reasons why functional duplication happens in government organization.

Fundamental reason is organizing centering on function (Yoon, 2013). Similar functions or functional duplication among departments can appear because it is almost impossible to set the boundaries of inter-departmental jurisdictions to be mutually exclusive (Yun, 2005).

Also, government branches' tendency of pursuing self-interest such as survival or extension leads to functional duplication (Yoon, 2013). Extension of the institution brings to the institution and its members many benefits (such as the growth of power or reputation of the leader and the increase of survivability of the organization) (Downs, 1967), and bureaucrats seek to maximize their institutional size (Tullock, 1965; Niskanen, 1971).

In addition, difficulty of communication among institutions can result in functional duplication (Yoon, 2013). If there is a problem in the communication mechanism, it becomes difficult to exchange mutual information easily, and if there is a lack of information on the function mutually, it becomes more likely to produce similar or the same function (Yoon, 2013). In government organizations, it is difficult to mutually cooperate or coordinate because of policy monopoly propensity of each department or mutually exclusive administrative culture, and similar policies are produced (Park et al., 1998).

Lastly, the change of organizational environment can lead to functional duplication (Yoon, 2013). When new government functions are to be added due to environmental changes, similar functions or functional duplication can be produced as departments are competing for and claiming a jurisdiction over newly emerging areas (Yun, 2005).

Even though eliminating functional duplication fundamentally is difficult, if there are several negative consequences because of it, it is crucial to minimize them.

The previous researches related to institutional conflict are as follows. First of all, there are studies suggesting that policy coordination mechanism should be organized in order to solve the conflict. Park, Jae Hee (2000) suggested policy coordination way and development plan in order to solve the conflicts between government branches. Also, there are studies emphasizing institutional cooperation in solving the problem of conflict between institutions. Kim, Y. P. et al. (1991) stressed the informal cooperation mechanism between government branches. In addition, recently many case studies about institutional conflict appear with the advent of new environment such as informatization. Yun, Sang-Oh (2005) suggested the case of government branches such as Ministry of Commerce, Industry and Energy, the Ministry of Information and Communication and the Small and Medium Business Administration in the field of industrial informatization policy. Also, there are studies on the problems of conflict between central government and local government. Arny & James (1990) suggested the case of conflict and cooperation between federal government and state government related to (electric) power policy.

Overall, previous researchers (Kim et al 1991; Yun 2005; Yoon 2013) suggests the following measures to cope with functional duplication. First of all, there is horizontal adjustment plan among institutions in which no third party intervenes. Also, there is centralized adjustment plan of higher administrative agency. In addition, there is reorganization such as integration of institutions. It eliminates functional duplication through fundamental change of organization system.

## **2.2 Studies on Administrative Tax Appeal System**

Many researches have argued that existing tax administrative appeal system should be changed to intensify the function of protecting taxpayers' rights.

Kim, W. S. (1989) proposed that we should make one separate act to unify internal tax appeal system, customs appeal system and local tax appeal system, simplify the structure of tax administrative appeal system, expand the scope of tax appeal in order to increase the opportunity of right relief and ensure the independence of judicial authorities to guarantee fairness of tax judgment.

Suh, Hi-Youl (2005) argued that tax judges and examiners in the national tax tribunal procedure should be increased through workload analysis. Also, Suh (2005) said that the term and status of tax judges should be guaranteed for the fairness of judgment, and considering the burden of taxpayers located in the provinces we should establish local branches of National Tax Tribunal at least in Busan, Daegu and Gwangju. Furthermore, Suh (2005) argued that we should



develop the National Tax Tribunal so that it could carry out the quasi-judicial function and develop it as a tax court in the long run.

Kim, Hongki (2011) suggested that tax tribunal cases should be decided through many conferences of tax judges held, not one conference of tax judges, for a deeper investigation and hearing, and a person whose rights or interests have been infringed by tax officials' administrative guidance also should be allowed to request for a trial in ATT. Also, he said that for the purpose of encouraging ex-officio assistance it might be needed for Tax Tribunal to change the protocol for writing its decisions and order deliberation and writing of the concerns that taxpayers did not present to decide the reasonableness of the whole tax imposition. Also he argued that decision statement should represent the real expiration date related to appeal filing for the purpose of reducing the taxpayers' disadvantage of lapse of appeal period.

You, In Ki (2002) said that National Tax Tribunal should separate or isolate judges' or investigators' status from general administrative positions so that they could perform fair work in an independent position, and argued that its local branches should be established with the object of reducing local taxpayers' inconvenience and in the long term, tax courts should be established.

Na, Suk Joo (2007) said that we should expand prior remedy system by introducing mediation system to a limited extent in the pre-taxation stage and strengthen the quasi-judicial process in a trial procedure in order to ensure the fairness of judgment of the National Tax Tribunal.

Lee, Jeon Oh (2007) says that the introduction of mediation system that resolves tax disputes promptly through negotiation or compromise is a way to enhance the credibility of the national tax administration and to help create a sound taxation climate through rational acceptance of tax disposition, which will eventually lead to desirable results satisfying all parties.

Hong, Ki Yong (2011) suggested that “Taxpayer Protection Act” should be made and “Taxpayer Protection Tribunal” should be established because the complicated tax appeal administration should be simplified and tax administration should be changed to taxpayer-centered administration.

There are a few empirical studies, one of which is the study by Cho, Jae Cheon (2007). His study was the empirical study on the tax administrative appeal system based on tax specialists' view.

He conducted empirical research through a questionnaire survey. The subject of this study was tax specialists (attorneys, certified public accountants, certified tax accountants, professors, tax experts at universities, national tax officials and accountants at companies) who were expected to have clear understanding of the tax appeal system based on theoretical knowledge and rich experience. He analyzed their view of the tax appeal system and looked for improvements to be made for desirable tax appeal system. 754 questionnaires were distributed and among recovered ones 360 questionnaires that were valid for the purpose of his study were used in statistical analysis.

In the study, the percentage of people who were satisfied or very satisfied with the current instance structure of tax appeal system was only 38.9%. According to his study, in relation to the improvement plan of instance structure of tax appeal system, the improvement plan of "『pre-assessment review』 - request for adjudgment - administrative litigation" is thought to be desirable by the most tax specialists. The improvement plan of "『pre-assessment review』 - request for adjudgment - administrative litigation" accounted for the largest percentage of respondents (50.6%), followed by the improvement plan of "『pre-assessment review』 - request for examination - request for adjudgment - administrative litigation" (26.7%).

Based on these results, he considered the unification of request for examination and request for adjudgment, and suggested the simplification of instance structure.

On the other hand, other some researches have put stress on its administrative function to control tax administration agencies.

Kim et al. (2005) says that when judgment body is not under a tax office but under a prime minister its decision may not be immediately reflected in the taxation system or tax administration, and if judgment body is under a prime minister it is necessary to establish a procedure for the tax office to challenge the decision of judgment body.

Chung, Ji-Sun & Choi, Cheun-Gyu (2012) suggested that the Tax Tribunal under Prime Minister's office should be changed into the extra-ministerial bureau under the Ministry of Strategy and Finance, pointing out the weakness of the function to control tax administrative agencies.

As we have seen above, the studies on tax administrative appeal system up to now have been made mainly from the viewpoint of science of law or administrative control (administrative responsibility) to strengthen the protection of taxpayers' right or control tax administration. It is difficult to find the relevant studies that analyze the tax administrative appeal system in terms of organization theory or functional duplication (redundancy) apparently and concretely, and propose various alternatives to it from that perspective.

### **2.3 Research Design and Analytical Framework**

This Study is going to analyze the effectiveness of the Korean administrative tax appeal system in the perspective of redundancy (functional duplication).

Tax appeal system is composed of administrative tax appeal system and judicial tax appeal system. Judicial tax appeal system means the judicial tax relief procedure that the courts handle. Administrative tax appeal system means administrative tax relief system that administrative agencies (such as the Tax Tribunal, National Tax Service) deal with.

In the administrative tax appeal system, there are ENTS, ATT, EBAI, Objections and Pre-assessment Review. Before receiving actual taxation disposition, taxpayers can file request for the pre-assessment review about advance notice of taxation. After receiving actual taxation disposition, taxpayers can file objections. People who are not satisfied with the decision of objection can use the request for examination (ENTS), the request for adjudgment (ATT) or the request for examination by the Board of Audit and Inspection (EBAI).<sup>3</sup> In the case of national tax, people who want to file a tax lawsuit must go through one procedure among three procedures such as ENTS, ATT and EBAI.

In this study, I will deal with the administrative tax appeal system about the national tax (internal tax), and in the perspective of functional duplication and especially I will study the three above procedures like ENTS, ATT and EBAI. This is because the above three procedures are the same stance procedures as selective and necessary procedures before filing lawsuit (to file a lawsuit, taxpayers must go through one of them).

In the various detail fields like purpose, organization in charge, target group and provided serve, I will analyze whether the present administrative tax appeal system shows functional duplication or not. Also, I will analyze the advantages (usefulness) and disadvantages (limitations) of the present tax appeal system in the viewpoint of redundancy (functional duplication).

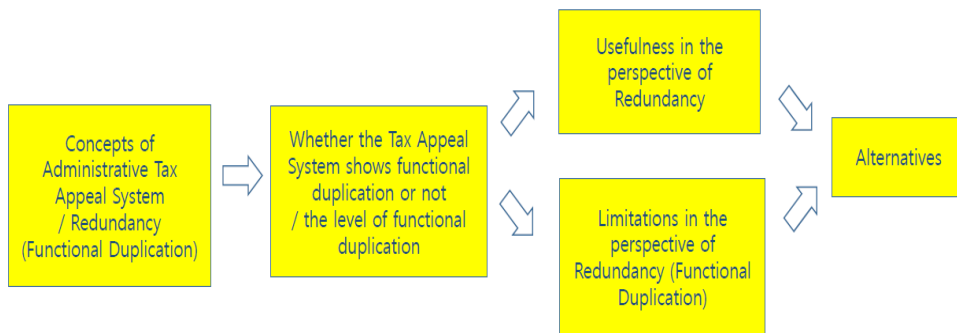
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<sup>3</sup> Of course, the objection procedure is voluntary process, and it is possible for taxpayers to use one of three procedures (ENTS, ATT, EBAI) without filing objections.

Based on the results from this, I will systematically suggest the alternatives or effectiveness plans of the current administrative tax appeal system.

Therefore, my analytical framework of this paper can be shown in the following [Figure 1].

[Figure 1] Analytical Framework



## CHAPTER 3

# ADMINISTRATIVE TAX APPEAL SYSTEM

### 3.1 Foreign Countries' Administrative Tax Appeal System<sup>4</sup>

#### 3.1.1. USA

In the case of USA, there are no tax administrative appeal procedures like Korea's ENTS and ATT. Instead, there is conference between tax authorities and taxpayers, which is prior protection (remedy) procedure before levying taxes (Chy, 2015). In the past, the federal government of USA established SAC (Special Advisory Committee) under the Treasury Department, as internal organization for tax appeal, which was prior procedure for going to BTA (the Board of Tax Appeals). BTA was in charge of tax administrative appeal function, but BTA was changed into Tax Courts later, and they did not establish a new institution to take charge of the function of BTA in the executive branch. Therefore, they did not have tax administrative appeal procedures like Korea's ENTS and ATT (Chy, 2015; Kim et al., 2005).

Taxpayers can file a lawsuit without conference, but in that case usually they need much time and cost, so normally they select conference. About 85 percent of cases come to a period through this conference procedure. The Appeal Office taking

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<sup>4</sup> This paper refers to Kim et al. (2005), Shin (2009), Chy (2015)'s studies about the advanced countries' advanced tax appeal system.

charge of conference procedure was under the Treasury Department, but became under the IRS (Internal Revenue Service) in 1995 (Chy, 2015).

If taxpayers do not come to an agreement with IRS, they can file a lawsuit to courts such as Tax Court.

### **3.1.2 UK**

In the case of UK, after presenting a request for appeal to quasi-judicial agency and receiving its decision, taxpayers can file a tax lawsuit.

Since 2009, specialized tribunal which was independent from HM Revenue and Customs has taken charge of all tax cases and various administrative appeals agencies which had been responsible for each sphere was integrated (Chy, 2015).

In the past, the General Commissioner of Income Tax and the Special Commissioner of Income Tax under Department for Constitutional Affairs, the VAT and Duties Tribunal, the Section 703 Tribunal took charge of the tax administrative appeal procedure. Those institutions had different subjects of trial (Shin, 2009). The General Commissioner of Income Tax and the Special Commissioner of Income Tax were in charge of direct tax cases, and were under Department for Constitutional Affairs, not HM Revenue and Customs (Shin, 2009). The General Commissioner of Income Tax dealt with the matter of fact, and the Special Commissioner of Income Tax handled the matter of law (Shin, 2009). The VAT and Duties Tribunal took charge of indirect tax cases.



However, the administrative appeal system of UK was changed considerably because of enforcing "Tribunals, Courts and Enforcement Act" (Chy, 2015). The past, various tax administrative appeal agencies were integrated and the UK established united tribunal such as 'First-tier Tribunal and Upper Tribunal' (Chy, 2015). People who want to file a request about the decision of the First-tier Tribunal can appeal to the Upper Tribunal, and People hoping to file a request about the decision of the Upper Tribunal can appeal to the court.

The First-tier Tribunal is composed of six Chambers, one of which is Tax Chamber. Tax Chamber is divided into Tax Section and MP Expenses Section, and Tax Section takes charge of judgment on tax appeals about the disposition of Her Majesty's Revenue and Customs (Chy, 2015). The Upper Tribunal is made up of four Chambers, one of which is the Tax and Chancery Chamber (Chy, 2015).

### **3.1.3 France**

In the case of France, before filing a tax lawsuit taxpayers should make a request for appeal to tax authorities (Shin, 2009). Taxpayers can present a request for appeal to the tax office. Taxpayers who do not satisfied with the decision by the above objection procedure can file a lawsuit to the court.

On the other hand, in France there is tax exemption request (Jurisdiction Gracieuse) system in which taxpayers request total or partial tax exemption to the tax

authorities, considering taxpayers' situation or circumstances (Shin, 2009). Besides taxpayers, tax office also can request tax exemption.

### **3.1.4 Germany**

Before 1996, there were objection (Einspruch) procedure and administrative petition (Beschwerde) procedure in administrative protection procedures (Shin, 2009). Two procedures were different in terms of subject of appeal and decision agency. However, the administrative petition procedure was abolished from 1996 because procedures were complicated due to these divided two procedures and were not particularly helpful to protection of taxpayers' rights (Shin, 2009). Therefore, administrative remedy procedures were integrated into objection procedure.

The organization taking charge of judgment and decision in the objection procedure is tax authorities (the office of disposition of tax imposition). There is the division about protection of rights (Rechtsbehelfestelle) for the judgment and decision in the tax authorities (Chy, 2015; Shin, 2009).

Tax courts handle tax lawsuit cases. Taxpayers who are not satisfied with the decision of objection procedure can appeal to tax court. In the case of first-trial, tax court in the each state take charge of the tax cases. In the case of second-trial, federal tax court is in charge of the tax case (Shin, 2009). The reason why the Germany has this system (there are the first and second trial but there is not third trial) which is different from the system of general tax lawsuit cases is that most

fact relevance gets organized in the step of procedure of administrative protection of right and chiefly legal relation remains in the courts.

### **3.1.5 Japan**

Japan's tax administrative appeal system is composed of the objection (raising of an appeal) in which taxpayers can appeal to the tax authorities that did tax disposition, and the examination request in which taxpayers can appeal to the national tax appeal tribunal (Chy, 2015). In principle, without the decision about the objection, it is impossible to make an examination request. People who want to protest against the decision about the objection can appeal to the national tax appeal tribunal by the examination request procedure. Also, people hoping to file a request about the decision of the national tax appeal tribunal can file a lawsuit to the court (Chy, 2015).

The national tax appeal tribunal is under National Tax Agency (Chy, 2015). The problems of independence and impartiality are pointed out.

### **3.1.6 The Result of Analysis**

From this analysis, we can see that each advanced country has a different tax administrative appeal system. For example, in the case of USA (federal tax), they does not have tax administrative appeal procedures like ENTS and ATT of Korea. Japan has the procedure where the administrative agency dealing with tax appeal cases is under National Tax Agency. Therefore, from that perspective, the system

of Japan is similar to ENTS of Korea. However, UK has the procedure where the administrative agencies dealing with tax appeal cases are independent agencies. Therefore, the system of UK is similar to ATT of Korea.

From the perspective of functional duplication, it is difficult to find the example of functional duplication in the many advanced countries. It is difficult to find the case that more than one tax administrative appeal agency perform the same function in the main advanced countries. In the past, UK had various administrative appeal agencies but they had different subjects of trial.

### **3.2. Administrative Tax Appeal System in Korea**

In the Korea's administrative tax appeal system, there are ENTS, ATT, EBAI, objections and Pre-assessment Review. Usually we can say the Pre-assessment Review is procedure of protection of taxpayers' rights before taxation, while the others are procedures of protection of taxpayers' rights after taxation.

In relation to Pre-assessment Review, a person who receives written notice of audit results or other advance notice of taxation prescribed by Presidential Decree may request a judgment on whether the content of notification is legal to the head of a tax office or the commissioner of a regional tax office who gave the notification concerned within 30 days from the date of its receipt.<sup>5</sup> Also, In relation to Objections, except for the cases of dispositions which are to be or to have been examined, determined or managed by the Commissioner of the National Tax

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<sup>5</sup> Article 81-15(1) of Framework Act on National Taxes

Service, an objection may be filed before a request for examination or adjudgment against such dispositions is made.<sup>6</sup> An objection shall be filed with the head of a tax office who has issued or should have issued the relevant disposition, or with the commissioner of the competent regional tax office through the head of a tax office, with the ground for protest prepared.<sup>7</sup>

As I said before, especially I am going to discuss three principal appeal procedures such as ENTS, ATT and EBAI. This is because before filing tax lawsuit, taxpayers must go through one of three procedures like ENTS, ATT and EBAI. Other procedures like Pre-assessment Review and Objections are voluntary procedures because taxpayers do not have to go through those procedures in order to file tax lawsuit.

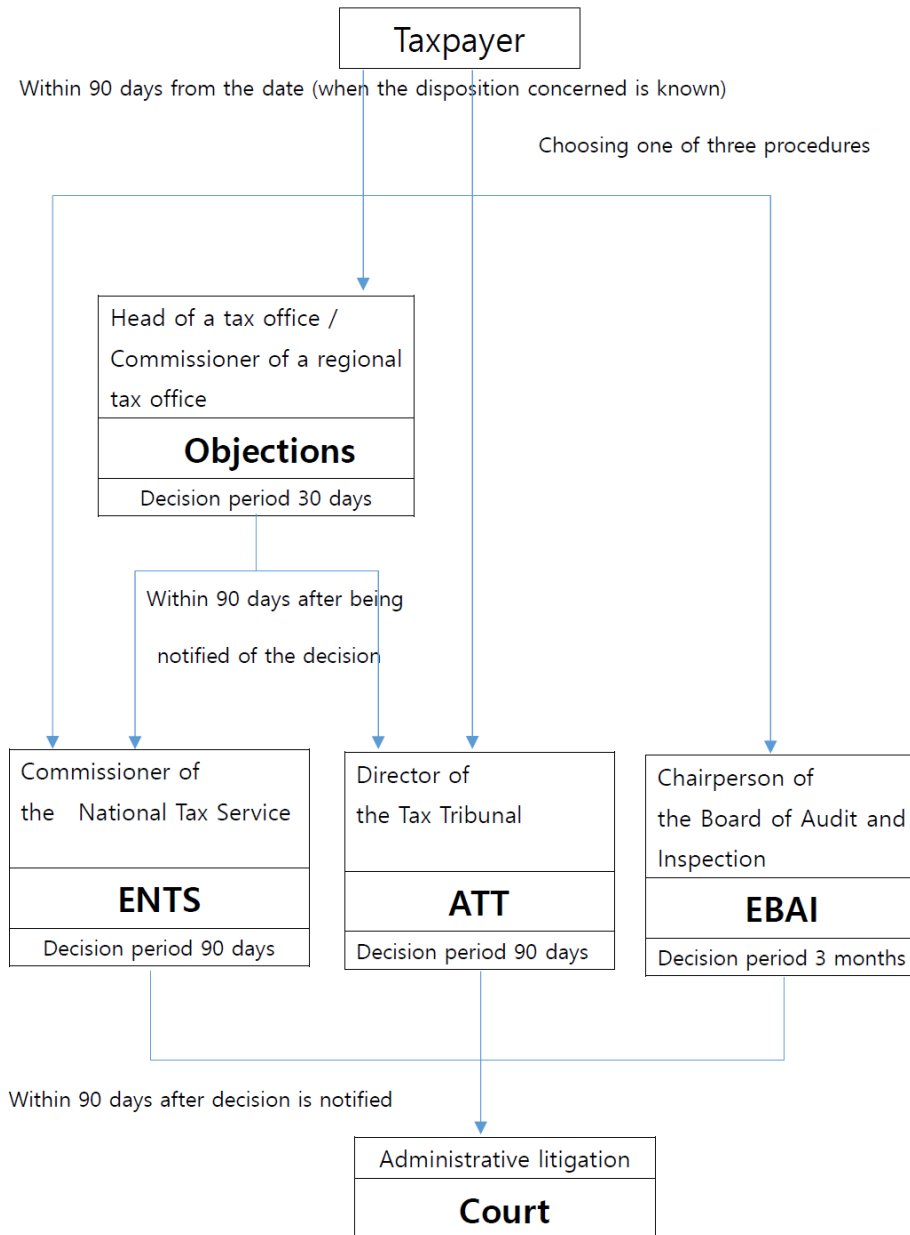
Administrative tax appeal procedure after taxation can be shown as the following [Figure 2].

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<sup>6</sup> Article 55 (3) of Framework Act on National Taxes

<sup>7</sup> Article 66 (1) of Framework Act on National Taxes

[Figure 2] Administrative Tax Appeal Procedure



Source: Chy (2015), A Study on Improvement of the Korean Tax Administrative Appeal System.

### **3.2.1 ENTS (Request for Examination by the National Tax Service)**

Any person whose rights or interests have been infringed on, by receiving an unlawful or unreasonable disposition or due to failure to receiving a required one under Framework Act on National Taxes or other tax-related Acts may request the cancellation or modification of such disposition or request other necessary disposition (Article 55 (1) of the Framework Act on National Taxes).<sup>8</sup> Any request for examination shall be filed with the Commissioner of the National Tax Service through the head of a tax office who has made or should have made the disposition in question, with the ground for protest prepared (Article 62 (1) of the Act).

Before taxpayers raise above request for examination, they can file an objection. An objection shall be filed with the head of a tax office who has issued or should have issued the relevant disposition, or with the commissioner of the competent regional tax office through the head of a tax office, with the ground for protest prepared.

Before the revision of Framework Act on National Taxes on August 31, 1999, taxpayers had to file requests for examination before filing requests for adjudgment. However, through the revision of the act, taxpayers can select one procedure between filing requests for examination and filing requests for adjudgment.

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<sup>8</sup> This paper refers to the Framework Act on National Taxes, the Enforcement Decree of the Framework Act on National Taxes and National Tax Service website ([www.nts.go.kr](http://www.nts.go.kr)) about the system content of ENTS.

The Commissioner of the National Tax Service shall, upon receiving a request for examination, decide upon it following the deliberation of the National Tax Examination Committee (Article 64 (1) of the Act). Meetings of the National Tax Examination Committee shall not be made public: However, where the chairperson of the said Committee deems it necessary, they may be open to the public (Article 64 (2) of the Act).

National Tax Examination Committee established in the National Tax Service shall be comprised of 31 members or less, including one chairperson (Article 53 (2) of the Enforcement Decree of the Framework Act on National Taxes). The Deputy Commissioner of the National Tax Service shall be the chairperson of the National Tax Examination Committee established in the National Tax Service (Article 53 (3) of the Enforcement Decree). Ten persons or less appointed by the Commissioner of the National Tax Service from among public officials under his/her control and 20 persons or less commissioned by the Commissioner of the National Tax Service from among persons of abundant knowledge and experience in the field of law or accounting shall be the members of the National Tax Examination Committee established in the National Tax Service (Article 53 (4) of the Enforcement Decree).

The meetings of A National Tax Examination Committee established in the National Tax Service shall be formed with the chairperson and 10 persons designated by the chairperson for the meeting, and the majority of such persons shall be private sector members (Article 53 (10) of the Enforcement Decree). The meetings of the National Tax Examination Committee shall open with the



attendance of the majority of the members, and adopt resolutions by the affirmative vote of the majority of members present (Article 53 (12) of the Enforcement Decree).

Because National Tax Examination Committee is a consultative body, resolution of the committee does not bind the Commissioner of the National Tax Service down.

On the other hand, the following [Table 1] shows the statistical data of the cases in relation to ENTS. On the whole, the number of cases requested or settled by ENTS has been changed about between 500~1,000 cases a year, and As years go by, overall, that number of cases requested or settled has been decreased.

[Table 1] Statistical Data of ENTS

(Unit : case)

	Number of cases to be settled			Number of cases settled (4)
	sub-total (1=2+3)	Carried over (2)	Requested (3)	
2010	1,084	157	927	896
2011	995	188	807	876
2012	937	119	818	788
2013	895	149	746	757
2014	862	138	724	703
2015	710	159	551	597
2016	662	113	549	543

Source: National Tax Service. (2016). Statistical Yearbook of National Tax 2016

National Tax Service. (2015). Statistical Yearbook of National Tax 2015

National Tax Statistics website (<http://stats.nts.go.kr>)

### **3.2.2 ATT (Request for Adjudgment by the Tax Tribunal)**

Any person whose rights or interests have been infringed on, by receiving an unlawful or unreasonable disposition or due to failure to receiving a required one under Framework Act on National Taxes or other tax-related Acts may request the cancellation or modification of such disposition or request other necessary disposition through request for adjudgment to the Director of the Tax Tribunal (Article 55 (1) and 69 (1) of the Framework Act on National Taxes).<sup>9</sup>

General procedure of ATT including the subject of protest is the same as that of ENTS, but to raise fairness and prudence ATT procedure has institutional devices close to quasi-judicial procedure and it has decision institution that is independent from the tax office, which is different from ENTS.

The past institution dealing with request for adjudgment was the National Tax Tribunal under the Minister of Finance and Economy, but through the revision of the Framework Act of National Taxes in 2008 the Tax Tribunal under the Prime Minister has handled the request for adjudgment.

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<sup>9</sup> This paper refers to the Framework Act on National Taxes, the Enforcement Decree of the Framework Act on National Taxes and Tax Tribunal website ([www.tt.go.kr](http://www.tt.go.kr)) about the system content of ATT.

The Tax Tribunal shall have the commissioner and tax judges. The commissioner and regular tax judges shall be appointed by the President with the recommendation of the Prime Minister among public officials in general service belonging to the Senior Civil Service, and non-regular tax judges shall be commissioned, as prescribed by Presidential Decree (Article 67 (3) of the Framework Act on National Taxes). The tax judges shall have expertise and experience in the fields of tax, law, and accounting, as well as qualifications prescribed by Presidential Decree.

The tax judges shall hold office for a term of three years, and may be reappointed only once; and no tax judge shall be removed from office against his/her will, unless a tax judge is sentenced to imprisonment without prison labor or heavier punishment, or a tax judge is unable to perform his/her duties due to a prolonged mental or physical illness (Article 67 (5) of the Act). However, the above rule shall not apply to a tax judge who is the director.

The Director of the Tax Tribunal shall, upon request for adjudgment, designate a chief tax judge and two or more associate tax judges in order to take charge of investigation and examination on the request, and require them to form the Council of Tax Judges (Article 72 (1) of the Act). The chief tax judge shall preside over the Council of Tax Judges, and the chairperson shall assume the overall control over the affairs of the relevant adjudgment case (Article 72 (2) of the Act). However, where the chief tax judge is unable to perform his/her duties due to unavoidable reasons, the Director of the Tax Tribunal shall designate one to act for the chairperson, from among associate tax judges.

The Council of Tax Judges shall convene with the attendance of two thirds or more of tax judges, and adopt resolutions by the affirmative vote of the majority of tax judges present (Article 72 (3) of the Act). Meetings of the Council of Tax Judges are not open to the public. However, where the chairperson of the Council of Tax Judges deems it necessary, they may be open to the public.

Where the Director of the Tax Tribunal receives a request for adjudgment, the Council of Tax Judges shall decide thereon upon deliberation. However, if the object of such request for adjudgment is a small amount less than that prescribed by Presidential Decree or any minor matter, or if such request is made after a period of request expires, the chief tax judge may examine and make a decision without undergoing deliberation by the Council of Tax Judges (Article 78 (1) of the Act).

In the case of ENTS, National Tax Examination Committee is a consultative body and the resolution of the committee does not bind the Commissioner of the National Tax Service down. However, in the case of ATT, the Council of Tax Judges is a decision body.

If the resolution of Council of Tax Judges falls under any of some cases (where the interpretation of the tax-related Acts is an issue and there is not Tax Tribunal's decision related to the issue, the resolution changes the former Tax Tribunal's interpretations or application of the tax-related Acts, consistency in decisions between the Councils of Tax Judges is needed to be maintained, or there are other

matters such as those prescribed by the Presidential Decree, which are expected to have a serious effect on the national tax administration or taxpayers' rights and duties), and the Director of the Tax Tribunal deems it necessary to examine and decide at the Joint Session of Tax Judges, a Joint Session of Tax Judges shall examine and make a decision.

The Joint Session of Tax Judges shall be comprised of the Director of the Tax Tribunal, all of standing tax judges, and non-standing tax judges designated by the Director of the Tax Tribunal in the same number as that of standing tax judges or more (Article 78 (3) of the Act).

Meanwhile, the following [Table 2] shows the statistical data of the cases in relation to ATT. On average, the number of cases requested or settled by ATT has been changed about between 4,000~6,000 cases a year, which is much more cases than those of ENTS or EBAI. Also, it seems that the number of cases has increased over time although it has showed some fluctuations.

[Table 2] Statistical Data of ATT

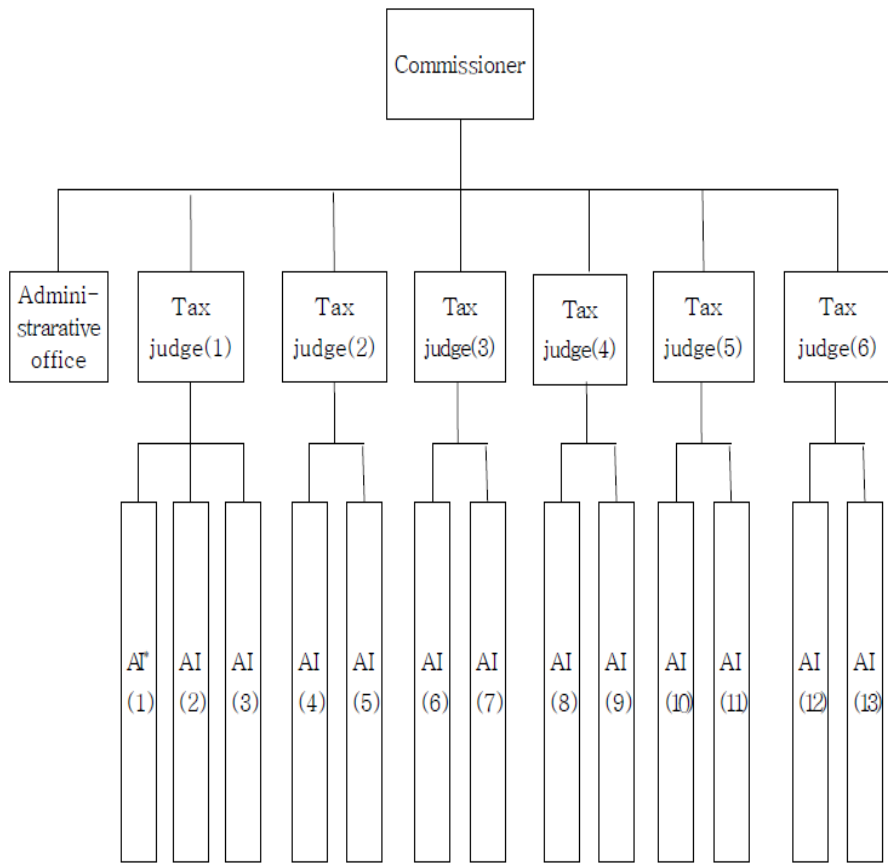
(Unit : case)

	Number of cases to be settled			Number of cases settled (4)
	sub-total (1=2+3)	Carried over (2)	Requested (3)	
2010	5,486	1,405	4,081	4,088
2011	6,589	1,398	5,191	5,233
2012	6,749	1,356	5,393	5,064
2013	6,720	1,685	5,035	4,746
2014	7,847	1,974	5,873	6,246
2015	7,490	1,601	5,889	5,999
2016	5,891	1,491	4,400	4,741

Source: Tax Tribunal. (2017). Statistical Yearbook of Tax Tribunal 2016

On the other hand, the organization of Tax Tribunal can be expressed as [Figure 3] below. There are an administrative office and six tax judge offices under the commissioner of Tax Tribunal, and there are two or three adjudication investigator offices in the each tax judge office.

[Figure 3] Organization of Tax Tribunal



\* AI : Adjudication Investigator

Source: Tax Tribunal website ([www.tt.go.kr](http://www.tt.go.kr))

### **3.2.3 EBAI (Request for Examination by the Board of Audit and Inspection)**

Any person who has an interest in a disposition or other activity concerning the duties of a person subject to inspection of the Board of Audit and Inspection may request the Board of Audit and Inspection to examine it (Article 43 (1) of the Board of Audit and Inspection Act).<sup>10</sup> A request for examination shall be made by filing an application for examination which includes the purport and reasons for the request pursuant to the Board of Audit and Inspection Regulations and be presented through the head of the agency who has taken the causal disposition or action for such request ("related agency") (Article 43 (2) of the Act). If the head of the related agency who has received an application does not deliver it to the Board of Audit and Inspection within one month after the receipt, a request for examination may be made to the Board of Audit and Inspection without going through the related agency (Article 43 (3) of the Act).

Therefore, any person whose rights or interests have been infringed on by receiving an unlawful or unreasonable tax disposition or due to failure to receiving a required tax disposition may request the Board of Audit and Inspection to examine it.

Any interested party shall request an examination within 90 days from the date when he/she has found the causal action for a request for examination, and within 180 days from the date when such action has been taken (Article 44 (1) of the Act).

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<sup>10</sup> This paper refers to the Board of Audit and Inspection Act and Board of Audit and Inspection website ([www.bai.go.kr](http://www.bai.go.kr)) about the system content of EBAI.



A decision shall be made within three months from the date of receipt of the request, unless there exists any special ground to the contrary (Article 46 (3) of the Act).

The head of the agency concerned shall, upon receipt of the decision requiring correction or other necessary measures, take measures according to the decision (Article 47 of the Act).

With respect to any disposition made by the head of an administrative agency, which has gone through the request for examination and the decision, the requesting person may institute administrative litigation against the agency which has made such disposition as a party thereto within 90 days from the date of receipt of the notification of such decision (Article 46-2 of the Act).

The Board of Audit and Inspection shall be composed of seven Commissioners, including the Chairperson of the Board of Audit and Inspection. Matters concerning decisions on requests for examination shall be decided by the Council of Commissioners (10 of Article 12 (1) of the Act). The Council of Commissioners shall be composed of all Commissioners, including the Chairperson, and the Chairperson shall preside over meetings of the Council. The Council of Commissioners shall make decisions by an affirmative vote of a majority of the Commissioners on the register (Article 11 (2) of the Act).

On the whole, the number of cases requested or settled by EBAI has been changed irregularly about between 100~400 cases a year. EBAI has settled the smallest tax cases among the above three systems

[Table 3] Statistical Data of EBAI

(Unit : case)

	Number of cases to be settled			Number of cases settled (4)
	sub-total (1=2+3)	Carried over (2)	Requested (3)	
2010	172	38	134	96
2011	269	76	193	132
2012	369	137	232	176
2013	369	193	176	144
2014	339	226	113	195
2015	309	143	166	194
2016	569	115	454	430

Source: The Board of Audit and Inspection. (2017). Yearbook of Audit and Inspection 2016

The above three systems (ENTS, ATT, EBAI) can be summarized as shown in the [Table 4] below.

[Table 4] Summary of Three Appeal Systems

	ENTS	ATT	EBAI
Organization	National Tax Service	Tax Tribunal (under Prime Minister)	Board of Audit and Inspection
Role	Administration control and protection of right	Protection of right and administration control	Administration control and protection of right
Applicable Act	Framework Act on National Taxes	Framework Act on National Taxes	Board of Audit and Inspection Act
Period of the request	Within 90 days	Within 90 days	Within 90 days
Parties directly involved	Applicant (claimant), disposition agency	Applicant (claimant), disposition agency	Applicant (claimant), disposition agency
Trial (examination) procedure	Documentary examination and oral trial	Documentary examination and oral trial	Documentary examination and oral trial
Decision body	Commissioner of the National Tax Service	Council of Tax Judges (or Joint Session of Tax Judges)	Council of Commissioners
Deliberative body (or decision body) / composition of meetings	National Tax Examination Committee (deliberative body) / chairperson and 10 persons	Council of Tax Judges (decision body) / chief tax judge and two or more associate tax judges	Council of Commissioners (decision body) / 7 Commissioners including the Chairperson
Resolving	Adopting resolutions by the affirmative vote of the majority of members present	Adopting the resolutions by the affirmative vote of the majority of tax judges present	Making decisions by an affirmative vote of a majority of the Commissioners on the register

Decision period	90 days	90 days	3 months
Average annual number of cases requested (2012~2016)	677.6	5318.0	228.2
Average annual number of cases settled (2012~2016)	677.6	5359.2	227.8

Source: Referring to Park (2007)'s study, Framework Act on National Taxes, Enforcement Decree of the Act, Board of Audit and Inspection Act, Statistical Yearbook of National Tax 2016, National Tax Statistics website (<http://stats.nts.go.kr>), Statistical Yearbook of Tax Tribunal 2016 and Yearbook of Audit and Inspection 2016

# **CHAPTER 4**

## **ANALYSIS OF KOREAN ADMINISTRATIVE TAX**

### **APEAL SYSTEM**

#### **4.1 Whether the Appeal System Shows Functional Duplication or not**

Three main procedures like ATT, ENTS and EBAI perform the function related to the remedy of taxpayers' rights. Regarding whether there is functional duplication in the administrative tax appeal system or not, the following criteria can be utilized: target group (tax items), subject of trial, and provided service (decision type). Also, from the broader perspective, we can consider intent (purpose), and organization in charge related to those procedures.

##### **4.1.1 Target Group (Tax Items)**

Target group (tax items) signifies what tax items or what disposition each procedure (ATT, ENTS, EBAI) deals with.<sup>11</sup> Generally, taxes are composed of national tax (internal tax, customs duty) and local tax. ATT and EBAI take charge of national tax (internal tax and customs duty) cases and local tax cases. ENTS is in

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<sup>11</sup> On the other hand, in terms of administrative action that each appeal procedure deals with, ENTS and ATT handle disposition and nonfeasance (Na, 2007) and EBAI can deal with the disposition, nonfeasance and other administrative actions including the contracts under public law [the Board of Audit and Inspection website ([www.bai.go.kr](http://www.bai.go.kr))]. However, it cannot be denied that in the very most cases in the administrative tax appeal procedures tax dispositions are the objects of appeal.

charge of national tax (internal tax) cases only. According to the Statistical Yearbook of Tax Tribunal 2016 (Tax Tribunal, 2017), in terms of the number of cases settled by ATT, national tax (internal tax) cases account for about 72% of all cases settled. Also, for the number of cases settled by EBAI in 2016, national tax (internal tax) cases account for about 78% of all tax cases (internal tax cases, customs duty cases and local tax cases) (the Board of Audit and Inspection, 2017). On the other hand, ENTS deals with only national tax (internal tax) cases, and most of the cases covered by ATT and EBAI (among tax cases) is the national tax (internal tax) cases.

This paper is focusing on the internal tax, and from the perspective of national tax (internal tax), the above three systems all deal with the same tax items (internal tax). On the other hand, in the case of local tax, when taxpayers want to file a lawsuit related to local tax they don't have to go through ATT or EBAI procedure and they can directly file a lawsuit without going through (preceding) appeal procedures.

#### **4.1.2 Subject of trial**

Subject of trial signifies whether the above each procedure deals with the matter of fact, the matter of law, or both of them. The example of the matter of fact is to determine what a business operator's amount of purchase or sales is, and the matter of law is related to the interpretation of tax law.

In Korea, three systems (ENTS, ATT and EBAI) examine the facts that taxpayers or stakeholders assert and apply relevant statutes to the facts, interpreting related laws.

Therefore, they not only deal with the matter of fact, but also handle the matter of law at the same time.

#### **4.1.3 Provided service**

Provided service represents the types of decisions which taxpayers receive from each procedure (ATT, ENTS, EBAI) of administrative tax appeal system.

In the case of ENTS, when the request for examination is unlawful or is filed after the period of request has elapsed, or when any supplementation or correction has not been complete within the period of supplementation or correction after the request for examination (ENTS) was filed, a decision to reject such request shall be rendered (1 of Article 65 (1) of the Framework Act on National Taxes). When the request for examination is deemed groundless, a decision to dismiss such request shall be rendered (2 of Article 65 (1) of the Act). On the other hand, when the request for examination is deemed reasonable, a decision for cancellation or correction of the disposition against which the request is rendered, or other necessary disposition shall be rendered (3 of Article 65(1) of the Act).

A decision on request for examination (ENTS) shall be made within 90 days after the request for examination is received (Article 65 (2) of the Act). When a decision

is rendered, it shall be notified to the person who has filed the request, by a written decision with the reasons stated therein, within the period for decision.

The above content is also applied to the ATT (Article 81 of the Act). For example, when the request for adjudgment is deemed reasonable, a decision for cancellation or correction of the disposition against which the request is rendered, or other necessary disposition shall be rendered. A decision on request for adjudgment also shall be made within 90 days after the request for adjudgment is received.

In the case of EBAI, when a request does not satisfy certain requirements and procedures including period of exclusion, the Board of Audit and Inspection shall reject the request for examination (Article 65 (1) of the Board of Audit and Inspection Act). Also, when the Board of Audit and Inspection deems that a request for examination (EBAI) is well-grounded, it shall request the head of the related agency to make a correction or to take other necessary measures, and if it deems that a request for examination (EBAI) is groundless, it shall dismiss it (Article 65 (2) of the Act). A decision shall be made within three months from the date of receipt of the request, unless there exists any special ground to the contrary.

National Tax Service Commissioner or Tax Tribunal is able to make cancellation or correction of the related disposition directly, but the Board of Audit and Inspection itself does not make cancellation or correction of the relevant disposition directly. However, in the EBAI, the head of the related agency cannot help making cancellation or correction of the relevant disposition (or taking other necessary measures) by the relevant decision of the Board of Audit and Inspection



that requests the head of the related agency to make a correction or take necessary measures.

#### **4.1.4 Intent (purpose)**

ENTS can be for appropriateness of the tax law interpretation and unified administration of the national tax administration through the National Tax Service Commissioner (the highest executive body of national tax)'s comprehensive examination of national tax dispositions because national tax dispositions are nationwide, massive, technical and complex, and therefore ENTS may be regarded as an appeal procedure that focuses on the higher administrative authority's reconsidering tax disposition and correcting its illegality or unjustness rather than relieving taxpayers' rights (Park, 2007).

On the other hand, ATT is intended to relieve the rights of the people easily and expeditiously through supplementing the deficiencies of judicial review system, and also it has an incidental aspect that it is the means of self-control of public administration or administrative supervision, which have been established for administrative authority to autonomously ensure the legitimacy and suitability for purpose in the public administration (Kim, 1989).

EBAI tries to exercise the right to audit (or inspect) administrative institutions (which are subject to inspection by the Board of Audit and Inspection Act) and improve the administration, and focuses on correcting illegal or unjustified disposition rather than relieving taxpayers' rights (Park, 2007).

If a request for examination by the Board of Audit and Inspection (EBAI) is made, it shall be considered as the request for examination by the National Tax Service (ENTS) or the request for adjudgment by the Tax Tribunal (ATT) under the Framework Act on National Taxes (Article 56 (5) of the Framework Act on National Taxes), and therefore taxpayers who went through the procedure of EBAI can also file a lawsuit. Taxpayers who want to appeal against illegal or unjustified national tax dispositions can select one procedure among ATT, ENTS and EBAI.

Meanwhile, in the ENTS and EBAI it is difficult to deny that protection of taxpayers' rights can be achieved as a result of correction of unlawful or unreasonable dispositions by the decisions of decision-making bodies based on the supervision or audit (inspection) authority. Also, it can be said that ENTS where a higher executive body is a decision body is a more effective appeal system in terms of taxpayer rights relief than objections where disposition authorities can be decision bodies (Na, 2007). In addition, it is able to be said that ATT cannot escape the essence of administrative appeal system to secure the proper administration of the tax administration ultimately by correcting the illegality or unjustness of dispositions on its own within the executive branch (Na, 2007).

#### **4.1.5 Organization in Charge**

Organizations in charge of ATT, ENTS and EBAI are different.

In the case of ENTS, taxpayers can file the request for examination to the Commissioner of the National Tax Service, and the Commissioner of the National Tax Service decides upon it following the deliberation of the National Tax Examination Committee (Article 64 (1) of the Framework Act on National Taxes). National Tax Examination Committee established in the National Tax Service shall be comprised of 35 members or less, including one chairperson (Article 53(2) of the Enforcement Decree of the Framework Act on National Taxes). The Deputy Commissioner of the National Tax Service shall be the chairperson of the National Tax Examination Committee established in the National Tax Service (Article 53(3) of the Enforcement Decree).

In the case of ATT, taxpayers can file request for adjudgment to the Director of the Tax Tribunal (Article 69 (1) of the Framework Act on National Taxes). There are the Councils of Tax Judges in the Tax Tribunal in order to decide about tax adjudgment cases. The Director of the Tax Tribunal shall, upon request for adjudgment, designate a chief tax judge and two or more associate tax judges in order to take charge of investigation and examination on the request, and require them to form the Council of Tax Judges (Article 72 (1) of the Act).

In the case of EBAI, taxpayers can request the Board of Audit and Inspection to examine tax disposition (Article 43 (1) of the Board of Audit and Inspection Act). Matters concerning decisions on requests for examination are decided by the Council of Commissioners (10 of 12(1) of the Act). The Board of Audit and Inspection shall be composed of seven Commissioners, including the Chairperson of the Board of Audit and Inspection. The Council of Commissioners shall be

composed of all Commissioners, including the Chairperson, and the Chairperson shall preside over meetings of the Council. The Council of Commissioners shall make decisions by an affirmative vote of a majority of the Commissioners on the register.

#### **4.1.6 Analysis Summary and Result**

As previously stated, the organizations in charge in relation to the above three procedures are different (National Tax Service, Tax Tribunal, Board of Audit and Inspection). In terms of target group (tax items) ENTS deals with national tax (internal tax) and ATT and EBAI deal with national tax and local tax, but when we focus on the national tax (internal tax), they all deal with this tax. Also, in the perspective of subject of trial, they handle matter of fact and matter of law.

In terms of provided service (decision type), National Tax Service Commissioner or Tax Tribunal can make cancellation or correction of the related disposition directly. However, the Board of Audit and Inspection itself does not make cancellation or correction of the relevant disposition directly. Despite the fact, in the EBAI, the head of the related agency cannot help making correction of the relevant disposition or taking other necessary measures by the relevant decision of the Board of Audit and Inspection. Of course, three procedures all can make the decisions that reject or dismiss the request.

When we consider the intent or purpose of the procedures, we can say that the main purpose of ENTS and EBAI is (tax) administration control while the main purpose

of ATT is protection of taxpayers' rights. However, in the cases of ENTS and EBAI the protection of taxpayers' rights can be made in the process of administration control (correction of unlawful or unreasonable dispositions) and in the case of ATT the procedure can secure the proper tax administration by the decisions of canceling or correcting the unlawful or unreasonable dispositions.

These analysis results can be shown like the following [table 5].

[Table 5] Analysis Results about Functional Duplication

	ENTS	ATT	EBAI
Target group (tax items)	National tax (internal tax)	National tax and local tax	National tax and local tax
Subject of trial	Matter of fact and matter of law	Matter of fact and matter of law	Matter of fact and matter of law
Provided service (decision type)	Rejecting or dismissing the request, cancellation or correction of the disposition, other necessary disposition	Rejecting or dismissing the request, cancellation or correction of the disposition, other necessary disposition	Rejecting or dismissing the request, requesting the related agency to make a correction or to take other necessary measures
Intent (purpose)	Control of tax administration (Correcting illegality or unjustness) and protection of taxpayers' rights	Protection of taxpayers' rights and control of tax administration	Control of tax administration and protection of taxpayers' rights
Organization in charge	National Tax Service	Tax Tribunal	Board of Audit and Inspection

From these various criteria, we can say there is a strong level of functional duplication in the Korean administrative tax appeal system in the national (internal) tax.<sup>12</sup>

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<sup>12</sup> If we consider national tax cases and local tax cases together, the level of functional duplication can be somewhat decreased because ATT and EBAI deals with the cases of local tax in addition to the cases of national tax but ENTS handles only the cases of national tax (internal tax).

#### **4.1.7 Backgrounds of Current Appeal System and Comparison with Other Appeal System**

According to the revision of the Framework Act on National Taxes on August 31, 1999, taxpayers can selectively use one system between the request for examination by the National Tax Service (ENTS) and the request for adjudgment by the (National) Tax Tribunal (ATT). Prior to that revision, the procedure of the request for adjudgment (ATT) was a higher-level procedure for the request for examination by the National Tax Service (ENTS) (Han & Park, 2005), and taxpayers who went through ENTS had to go through the procedure of the request for adjudgment (ATT) in order to file a lawsuit later. Such revision in 1999 was made in order to expedite the relief of the rights of people and to prevent the waste of administrative power beyond necessity (Han & Park, 2005), but it was also pointed out that the revision was the result of a compromise between the position of the National Tax Service and the position of the Ministry of Finance and Economy because they worried about the reduction of organization (Kim et al., 2005).

Thanks to the revision in 1999, nowadays taxpayers can choose one system between ENTS and ATT, but it also may be one of reasons for the current administrative tax appeal system's duplication issue. The relevant organizations' tendency of self-interest such as survival or extension may influence that revision and the duplication issue of the current appeal system.



On the other hand, when we compare the Korean administrative tax appeal system with the foreign, advanced countries' administrative tax appeal system, the functional duplication of Korean system is very unusual. This is because it is difficult to find those cases of functional duplication in the administrative tax appeal systems of the advanced foreign countries.

Meanwhile, in Korea there is also a general administrative appeal system as typical administrative appeal system.<sup>13</sup> In relation to this system, Administrative Appeals Act has the relevant regulations. This Act intends to relieve citizens from the infringement of rights or interests caused by any illegal or unjust disposition or omission of public power by administrative agencies through the administrative appeals procedures, thereby achieving a due operation of administration (Article 1 of Administrative Appeals Act).

With respect to an administrative appeal filed against disposition or omission by the administrative agencies like the Board of Audit and Inspection of Korea, the Director of National Intelligence Service, the Secretary General of the National Assembly, the Minister of National Court Administration, the Secretary General of the Constitutional Court and the National Human Rights Commission of Korea, or its subordinate administrative agencies, an administrative appeals commission established under those administrative agencies shall review and make a ruling (Article 6 (1) of the Act). With respect to an appeal filed against disposition or omission by other administrative agencies like the head of a state administrative

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<sup>13</sup> This paper refers to Administrative Appeals Act and Anti-Corruption and Civil Rights Commission website ([www.acrc.go.kr](http://www.acrc.go.kr)) about the general administrative appeal system in Korea.

agency, or its subordinate administrative agency (other than the administrative agencies under paragraph (1)) or a Special Metropolitan City Mayor, a Metropolitan City Mayor, a Do Governor or Associations of local governments, the Central Administrative Appeals Commission established under the Anti-Corruption and Civil Rights Commission shall review and make a ruling (Article 6 (2) of the Act). Also, with respect to an appeal filed against disposition or omission by the administrative agencies like an administrative agency under the jurisdiction of a City/Do or the head of a Si/Gun/autonomous Gu located under the jurisdiction of a City/Do, an administrative appeals commission established under the jurisdiction of a Mayor/Do Governor reviews and makes a ruling (Article 6 (3) of the Act).

Therefore, Administrative Appeals Commissions are different according to administrative agencies, and they do not share target group (object of trial). As a result, general administrative appeal system does not show the functional duplication, which is different from the case of administrative tax appeal system.

## **4.2 Usefulness of Present Administrative TAX Appeal System**

Present administrative appeal system has the following advantages in the perspective of redundancy or functional duplication.

### **4.2.1 Opportunity to Choose Tax Appeal Agency**

Under present administrative tax appeal system, taxpayers can be given the right to choose tax appeal agency (Han & Park, 2005). Three tax appeal procedures (ENTS, ATT, EBAI) can have different decisions in the similar issues or situations. Taxpayers can file a complaint by selecting a tax appeal agency that makes the most favorable decisions about their situation. Of course, in this process there can be transaction cost related to investigation of decisions of three tax appeal agencies.

In addition, taxpayers may choose the tax appeal agency that is the most convenient to access geographically, considering the locations of tax appeal agencies and taxpayers themselves.

### **4.2.2 Reduction of Errors of Performing Wrong Decisions**

Present administrative tax appeal system can contribute to reducing the errors of performing wrong decisions.

Among tax appeal cases, there are the cases that have similar issues. There is a possibility that each procedure of the three systems (ENTS, ATT, EBAI) may

perform wrong decision. However, it is very unlikely that all of the three appeal procedures will perform wrong decisions.

Even though two procedures of the three systems (ENTS, ATT, EBAI) make wrong decisions, the other procedure may make the right decision.

### **4.2.3 Competition to Provide Better Service**

Furthermore, under the current system, the national tax appeal agencies can compete with each other to provide better service to taxpayers.

Some institutions which are favorable to taxpayers can be introduced to any one of the three tax appeal agencies. In that case, other tax appeal agencies also can want to introduce such institutions so that those tax appeal agencies can be more selected by taxpayers.

As a result, this competition among national tax appeal agencies can contribute to taxpayers' receiving better service in the national tax appeal administration.

### **4.3 Limitations of Present Administrative Tax Appeal System**

Present administrative tax appeal system has the following limitations in the perspective of redundancy or functional duplication.

#### **4.3.1 Waste of Budget**

In the perspective of whole country, the functional duplication can cause waste of budget. In the global economic crisis and financial crisis, control on the expenditure side of the government is very important. In the viewpoint of efficient allocation of limited resources, appropriate level of budget should be allocated to suitable field, and we should minimize the unnecessary government expenditure. The functional duplication can be connected to the excessive budget unnecessarily.

It is problematic in view of the efficiency of tax appeal administration that we have duplicated national tax appeal organizations by maintaining both ‘request for examination’ and ‘request for adjudgment’ (Lim, 2012).

#### **4.3.2 Lack of Consistency**

Functional duplication makes it difficult to deal with tax appeal cases consistently. Even though the content of tax appeal cases are almost the same, ENTS, ATT and EBAI can make a different or even conflicting decisions about them. Eventually, this can be connected to the failure of tax appeal administration and lower the people's trust about overall tax appeal administration.

Actually, as I said before, as the case of different decisions among agencies, there is the case of food providing service in the funeral hall, in which the Board of Audit and Inspection judged that the food providing service (before certain time) in the place was value added tax – exempt item. However, the Tax Tribunal judged that food providing service (before certain time) in the funeral hall was an object of taxation of value added tax.

There are many cases in which the National Tax Service and the Tax Tribunal had different view about nearly the same fact. For example, in the capital gains tax it was questioned whether the cost for evacuation of real estate could be recognized as a necessary expense or not. National Tax Service did not recognize the cost for evacuation (claimant's cost related to paying moving fee to the tenant of the real estate) as a necessary expense to be deducted from the transfer value when calculating gains on transfer.<sup>14</sup> However, Tax Tribunal recognized the cost for evacuation of real estate (which was paid to the tenant of the real estate) as a necessary expense.<sup>15</sup>

Also, in the case of a claimant making a request for correction of the original tax base and the amount of taxes of the national tax for later occurring reasons like lawsuit, it was questioned whether a relevant lawsuit must be filed within the 'period of exclusion from imposition of national taxes'. National Tax Service determined that litigation regarding transactions which forms the basis of calculation of the tax base and the amount of taxes must be filed within the 'period

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<sup>14</sup> Simsayangdo2011-0069, 2011.6.7.

<sup>15</sup> Josim 2017joong1156, 2017.5.12.

of exclusion from imposition of national taxes' (for it to be recognized as later occurring reasons according to the law) (because allowing taxpayers to make a request for correction even when the 'period of exclusion from imposition of national taxes' was over is contrary to the intention of the 'period of exclusion from imposition of national taxes' to stabilize the tax law relation promptly).<sup>16</sup> However, the Tax Tribunal determined that it is possible to make a request for correction for later occurring reasons (when the transaction was determined to be different by a judgment of the lawsuit) even though the 'period of exclusion from imposition of national taxes' has elapsed.<sup>17</sup>

Furthermore, there was a question of whether to impose the value added tax to the formal business operator (whose name was printed on business registration) or to impose the tax to the actual business operator. National Tax Service determined that unless there were any unusual circumstances, taxation office could not help but impose the value added tax to the formal business operator, regarding the formal business operator as the actual business operator.<sup>18</sup> However, National Tax Tribunal determined that the value added tax levied to claimant (formal business operator) was wrong taxation because there was a real business operator.<sup>19</sup>

### **4.3.3 Confusion Cost**

In the perspective of clients of tax administrative appeal system, the functional duplication can lead to following negative result.

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<sup>16</sup> Simsabeobin2010-0023, 2010.6.14.

<sup>17</sup> Josim 2015joong1347, 2015.7.2.; Josim 2013jeon4443, 2014.1.23.

<sup>18</sup> Simsabuga2007-0345, 2007.12.24.

<sup>19</sup> Kooksim 2006joong1270, 2006.10.30.

When relevant organizations make different decisions, search cost or confusion cost of the clients can increase. Taxpayers themselves should search for the decisions of the all tax administrative appeal agencies. Taxpayers will be confused about different decisions of the different agencies.

When a taxpayer who received the decision of dismissal in an administrative appeal agency see the decisions of acceptance in the same content cases about other taxpayers by other tax appeal agency, he or she may resent the tax administrative appeal system itself.

#### **4.3.4 Hindering Fairness or Leading to Conflict**

On the other hand, competition among the tax appeal agencies can lead to the competition of acceptance ratio among them. There is a possibility that being conscious of the acceptance ratio of other appeal agency, tax appeal agencies can compete to increase the acceptance ratio (related to accepting taxpayers' opinions), which may damage the principle of no taxation without law and fair judgment principles (Lim, 2012).

Also, functional duplication in the administrative tax appeal system can lead to the conflict or noncooperation among relevant institutions. If conflict or noncooperation due to the functional duplication deepens, competence of tax appeal institutions can be undermined.



#### **4.4 Implications in the Perspective of Redundancy.**

Redundancy can be needed because it can ensure adaptability (Landau, 1969) and reduce the errors of performing wrong policy (Heimann, 1993). The division of power, checks and balances, and bicameral system can be the phenomenon of redundancy (Landau, 1969).

The current Korean administrative tax appeal system shows redundancy and functional duplication, and that system can reduce the errors of performing wrong decisions, allow taxpayers to choose the preferred procedure, and make three appeal agencies compete to provide better service.

However, redundancy or functional duplication can increase the inefficiency, become the source of conflict between institutions, make it difficult to form consistent policies, and lead to confusion because of the inconsistency (Kim et al., 2007; Yoon, 2013).

The functional duplication in current Korean administrative tax appeal system leads to the waste of budget, makes it difficult to deal with the tax appeal cases consistently (even makes conflicting decisions among three procedures), and makes taxpayers pay search cost and be confused about different decisions.

Duplication or overlapping is thought to be necessary in organization survival because they ensure the reliability and adaptability, but the duplication or overlapping is not thought to be always desirable. According to Paik, W. K. (2009),

problems happen in the justification of redundancy when its cost is greater than its utility or several organizations provide the same services to the same group or exercise the same authority.

Before the revision of the Framework Act on National Taxes in 1999, ENTS and ATT (the procedure of request for adjudgment) showed the relationship like first trial and second trial, but after the revision two procedures show the selective relationship. Taxpayers can select one of procedures among ENTS, ATT and EBAI before filing an administrative litigation related to national tax (internal tax). In this administrative tax appeal procedure, by making cancellation or correction of unlawful or unreasonable dispositions or requesting the related agency to make correction or take necessary measures about the dispositions, ENTS, ATT and EBAI all can consequently protect the taxpayers' rights and interests. Accordingly, in fact, we can say that from the perspective of protecting the taxpayers' rights, three procedures (ENTS, ATT, and EBAI) provide nearly the same services to the same group in terms of national tax (internal tax). Because of this, Korean administrative tax appeal system can show big problems such as inconsistency of decisions among procedures and taxpayers' confusion as I said before.

Felsenthal(1980) suggested the total negative redundancy concept in which the functions of the two entities are so essentially same that removing the duplicated entity has absolutely no effect on enough operation of the total system and the partial redundancy concept related to partially overlapping functions. In the Korean three appeal procedures (ENTS, ATT, EBAI), ENTS and EBAI emphasize administrative control function while ATT stresses the function of protection of

rights, but it is difficult to deny that three procedures all contribute to the protection of taxpayers' rights and administrative control. Therefore, I think the administrative tax appeal system shows the redundancy level between the partial redundancy and the total negative redundancy.

In the following chapter, I am going to present some effectiveness plans to overcome the limitations of current administrative tax appeal system which result from its functional duplication. From a short-term perspective I will propose the ways of strengthening horizontal cooperation (coordination) and vertical coordination and from a long-term perspective I will suggest the measures for adjustment of function.

## **CHAPTER 5**

# **PLAN FOR EFFECTIVENESS OF KOREAN ADMINISTRATIVE TAX APPEAL SYSTEM**

### **5.1 Strengthening Horizontal Cooperation and Coordination**

If horizontal cooperation and coordination among relevant institutions are strengthened, different decisions among them will diminish, and taxpayers' confusion cost can decrease too.

Specifically, we can think of the following ways to strengthen horizontal cooperation and coordination among relevant institutions.

#### **5.1.1 Forming a Consultative Group among Institutions**

There are legal interpretation differences among three administrative tax appeal institutions. Through forming a consultative group among relative agencies, they can hold talks about different legal interpretation, and find common ground. This is able to contribute to enhancing consistency in the tax appeal administration.

#### **5.1.2 Empowering External Cooperation Function Section**

Each tax appeal institutions should raise interest or concerns about external cooperation function, and grant enough power to the person or department taking

charge of external cooperation function. These measures can help to enhance cooperation among tax appeal institutions and contribute to reducing institutional conflicts.

### **5.1.3 Making Business Agreement**

Tax appeal institutions can make business agreement about carrying out duplicated function cooperatively and fulfill the agreement. In this process mutual understanding among tax appeal institutions can be promoted.

### **5.1.4 Promoting Personnel Exchanges**

In the past the National Tax Tribunal was under the Minister of Finance and Economy, but current Tax Tribunal has been under the Prime Minister since 2008, and the need for personnel exchanges among relevant institutions can be increased more.

Tax appeal cases require highly specialized knowledge such as tax law and accounting. Due to the expertise and complexity related to the tax appeal cases, qualification requirements of tax judges or investigators are established in the relevant statute, and it may be difficult to recruit a public official in the Prime Minister's Office if the tax judge or investigator is vacant because of the difficulty of satisfying those qualification requirements (Chung et al., 2012).

Promoting personnel exchanges among relevant institutions can help them to understand the opinion and view of other institution and improve the consistency of tax law interpretation.

### **5.1.5 Construction of Information Sharing System**

Three tax appeal institutions themselves need to notify new interpretation of tax laws to other institutions. Also, through the integrated computer system among relevant institutions, they can share information of tax law interpretation.

The sharing of various information related to the interpretation of tax law by using the integrated information system can help decisions of tax administrative appeal procedures be made more appropriately, contribute to reducing discrepancies in interpretation of laws by members' recognizing and referencing the interpretation of laws of other institutions (Chy, 2015).

Also, this method can contribute to maximizing usefulness (like the reduction of errors of performing wrong decisions) related to functional duplication of the current administrative tax appeal system as well as overcoming its limitations.

### **5.1.6 Strengthening Formal or Informal Exchanges**

Tax appeal institutions can co-host a workshop or symposium and strengthen cooperation. Also, they can take advantage of informal mechanisms such as athletic meeting or joint club activities actively.

These activities can promote mutual understanding among the members of the tax appeal institutions and can help resolve conflicts among those institutions.

## **5.2 Vertical Coordination**

### **5.2.1 Prioritizing Legal Interpretations**

If we prioritize legal interpretations of three institutions, we can think that interpretation of the Tax Tribunal under Prime Minister is upper standards and the interpretation of National Tax Service is lower standards.

However, because ATT and ENTS have the same position in the current tax administrative appeal system, there is a difficulty in prioritizing legal interpretations (Chy, 2015).

### **5.2.2 Adjustment or Modification by Higher Body**

In the case that there are legal interpretation differences among three administrative tax appeal institutions, we can think of adjustment or modification by higher bodies such as the Prime Minister. Actually, under the Prime Minister, Tax Tribunal is established. In this case, the interpretation of the Tax Tribunal can have a great impact. However, it is difficult for the Prime Minister to coordinate the decisions of Board of Audit and Inspection under the current government organization system.

On the other hand, we can think of modification of the Board of Audit and Inspection, but because the decision of the Tax Tribunal is carried out through quasi-judicial procedure and EBAI has the same position as ENTS and ATT, that modification can be thought to be inappropriate (Chy, 2015).

## **5.3 Adjustment of Function**

### **5.3.1 Mutual Transfer of Function.**

Currently, many taxpayers use ATT procedure, compared to other procedures such as ENTS and EBAI. Usually the larger the amount asked of request for examination or adjudgment is, the more complicated the cases are likely to be. In the cases where that amount is large there can be more controversial issues compared to the cases in which that amount is small, and the fact that the larger the size of tax amount request is the longer the average days for settlement of cases in the Tax Tribunal indirectly shows that the larger the amount asked of request for adjudgment is the more complicated the cases are.

For example, according to Statistical Yearbook of Tax Tribunal 2016 (Tax Tribunal, 2017), the average days for settlement of the national tax (internal tax) cases whose size of tax amount requested is less than 30 million won are 105 days, the days of the cases whose that size is between 30 million won and 100 million won are 120 days, the days of the cases whose that size is between 100 million won



and 500 million won are 165 days, and the days of the cases whose that size is between 500 million won and 1 billion won are 223 days.

As example of mutual transfer of function among tax appeal institutions, we can think a way that ENTS and EBAI deal with the tax cases of small amount asked while ATT handles the tax cases of large amount asked (for instance, 30,000,000 won or more).<sup>20</sup> This is because the tax cases of large amount asked are more complicated cases and Tax Tribunal is independent from taxation institution and more specialized institution in the tax appeal administration.

On the other hand, in the past the UK had diverse tax appeal institutions such as the General Commissioner of Income Tax, the VAT and Duties Tribunal and the Section 703 Tribunal. They had different subjects of trial. Like the idea of the past UK, we can think of other example of mutual transfer of function in which ENTS and EBAI deal with indirect tax cases while ATT handles direct tax cases. In this example, even though it is difficult to distinguish the matter of fact from the matter of law, ENTS can deal with tax cases related to the matter of fact because National Tax Service as taxation institution is likely to better know the facts of cases than other institutions, and EBAI can handle the tax cases related to the matter of law.

Mutual transfer of function is under the premise of current organization system. Mutual transfer of function can lead to marginal change depending on the level of mutual transfer. If the level of mutual transfer of function increases, the possibility

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<sup>20</sup> According to An(2017), in the case of ATT, the larger the amount asked is, the higher the acceptance ratio is, and in the case of the large amount asked the acceptance ratio in the ATT is higher than the acceptance ratio in the ENTS.

of settlement of functional duplication may grow but the feasibility of that transfer can decrease.

### **5.3.2 Organization Integration and Reorganizing**

Integration of relevant organizations can be a measure to solve the functional duplication fundamentally from the long-term perspective.

Of course, the present administrative tax appeal system can have advantages such as opportunity to choose tax appeal agency and competition. However, the functional duplication of the present tax appeal system leads to a lot of problems such as conflicting decisions, taxpayers' confusion and decrease of the trust in tax appeal administration. In the tax appeal administration what taxpayers want most will be the tax appeal agencies' decisions that accept their opinions. However, in fact it is impossible to accept all taxpayers' opinions.<sup>21</sup> Then taxpayers will want the fairness highly in the tax appeal administration. Even though the decisions do not accept their opinions, taxpayers may accept or acknowledge those decisions when very fair procedures are guaranteed. Therefore, we can consider integration to the system (organization) which can guarantee the most fair procedure and decision and is very preferred by taxpayers.

Firstly, it may be desirable to abolish EBAI because especially there are following problems in EBAI. Due to the fact that the Board of Audit and Inspection is an agency exercising administrative audit functions for state agencies it may be not

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<sup>21</sup> According to Statistical Yearbook of Tax Tribunal 2016 (Tax Tribunal, 2017), acceptance ratio of ATT in 2016 was 25.3%.

appropriate for the Board of Audit and Inspection to deal with tax relief procedure whose core is the remedy of taxpayers' rights, there is a doubt about (tax-related) professional knowledge and experience of personnel being in charge of BAI, and the number of EBAI cases requested or settled is very small compared to other systems' cases (Na, 2007; Cho, 2007; Chy, 2015).

Then, should other two procedures (ENTS, ATT) be integrated or not? There is an opinion that the system of the request for examination (ENTS) and the system of the request for adjudgment (ATT) can be kept intact without integration (Han & Park, 2005). According to them, if relevant institutions are integrated into one institution, there remains a real problem of resistance of the abolished institution. Also, they said that it would be better to keep the existing the system of the request for examination and the system of the request for adjudgment (while improving self-correction function of the tax office in the former and enhancing the independence from the tax office in the latter), rather than the extreme prescription in which we would abolish one institution (Han & Park, 2005).

Of course, there can be resistance against the integration. However, if the problems of the present system are large and the benefits gained from the reforms (integration) are greater, it may be more desirable to achieve the reforms through persuasion of the relevant organization.

In the present tax appeal administration the large problems such as lack of consistency, taxpayers' confusion and waste of budget are actually occurring due to the functional duplication. Even though there can be the problem of resistance, the

organizational integration may be an alternative when considering those large problems of functional duplication, and through this we can eliminate the functional duplication because in this case only one system will be in charge of (necessary) tax appeal procedure before administrative lawsuit.

In relation to the integration of tax appeal procedures, we can think of the plan of integrating ATT into ENTS and establishing an integrated decision body of tax appeal under the National Tax Service and other plan of integrating ENTS into ATT and establishing an integrated decision body under Prime Minister.

The view which emphasizes ENTS and says that the integrated body should be placed at National Tax Service has the following reasons (Lim, 2012). Many advanced countries place the institution dealing with tax appeal at the tax office, and if the integrated decision body of tax appeal is not located in the tax office (National Tax Service) we cannot secure the function of administrative appeal to grant an opportunity for self-reflection to the disposition agency. Also, if the integrated decision body is not placed in the tax office (National Tax Service), but is placed under the Ministry of Strategy and Finance or the Prime Minister, the contents of the decision cannot be immediately reflected in the system of taxation or tax administration.

On the other hand, we can consider other option of integrating ENTS into ATT and establishing the integrated institution under Prime Minister. According to An (2003), the function of 'request for examination' (ENTS) should be integrated into the function of 'request for adjudgment'(ATT). As the reasons for this, An (2003)

says that the procedures of ‘request for adjudgment are well provided in the law and taxpayers have a high preference for ‘request for adjudgment.’

Among those plans, I think integrating ENTS into ATT (establishing the integrated body under Prime Minister) can be somewhat more desirable. This is because that way have the following advantages.

ATT has more quasi-judicial procedures which can contribute to improving impartiality compared to other systems. In terms of that quasi-judicial procedure, ATT has regulations related to taxpayers’ right to state opinion (orally in the council of tax judges) in the grounds law (Article 58 of Framework Act on National Taxes) and exclusion (tax judges falling under any of some conditions shall be excluded from participating in the adjudgment) and refrainment (where a tax judge falls under any of some conditions, he/she shall refrain himself or herself from being designated as a chief or associate tax judge) of tax judges and challenge of tax judges in charge (if a claimant deems it difficult to anticipate impartial adjudgment from tax judges in charge, he or she may challenge them) in the law (Article 73 and 74 of the Act). Also, ATT has the regulation of guarantee of status. No tax judge shall be removed from office against his/her will, unless he/she falls under any of the following conditions: where a tax judge is sentenced to imprisonment without prison labor or heavier punishment, and where a tax judge is unable to perform his/her duties due to a prolonged mental or physical illness (Article 67 (5) of the Act).

On the other hand, ENTS has regulation related to taxpayers' right to state opinion in the grounds law (Article 58 of the Act) but do not have regulations related to exclusion, refrainment and challenge of National Tax Examination members and guarantee of status of them in the law (Framework Act on National Taxes). Even though I already said that abolishing EBAI is more desirable, in terms of quasi-judicial procedures ATT is better than EBAI. EBAI has regulations related to exclusion of commissioners and guarantee of status of them in the grounds law (Article 15 and 8 of the Board of Audit and Inspection Act) but do not have regulations related to refrainment and challenge of them in the law (the Board of Audit and Inspection Act).

Actually, the number of requested cases using ATT has been about five times higher than that of requested cases using ENTS. In addition, the number of requested cases using ENTS has been about five times higher than that of requested cases using EBAI. The reason of that is not very clear, but we can surmise that the level of quasi-judicial procedures can have some impact on that.

Furthermore, ATT is an appeals procedure where adjudgment body which is completely separate or independent of the tax office deals with (determines) the tax cases in the position of a third party and focuses on the remedy of taxpayers' rights (Park, 2007). It is different from ENTS where National Tax Service itself handles the tax cases.

In addition, through integrating ENTS into ATT, the National Tax Service can more concentrate on other appeal procedures such as Objections and Pre-

assessment Review, and the Tax Tribunal can more focus on settling tax disputes before an administrative litigation.

According to the empirical study on the administrative tax appeal system based on tax specialists' view, Cho (2007) conducted empirical research through a questionnaire survey and the subject of this study was tax specialists such as attorneys and certified tax accountants. He analyzed their view of the tax appeal system and looked for improvements to be made for desirable tax appeal system. In this study, the percentage of people who were satisfied or very satisfied with the current instance structure of tax appeal system was only 38.9%, and the improvement plan of "『pre-assessment review』 - request for judgment - administrative litigation" showed the largest percentage of respondents (50.6%), followed by the improvement plan of "『pre-assessment review』 - request for examination - request for judgment - administrative litigation" (26.7%).

On the other hand, this alternative of integration should consider overcoming resistance to that. That alternative can need proper management after integration of relevant organizations because there can be some problems in the performance achievement of integrated institution due to the conflict resulted from different organization cultures. Therefore, appropriate management related to this should be performed.

## **CHAPTER 6**

### **CONCLUSION**

Functional duplication in the public sector can be tolerated or regarded as necessary in the perspective of redundancy, but it also is perceived as a waste or thing to be settled, resulted from function maximization or budget maximization in the perspective of pursuit of self-interest. In the administrative tax appeal system, there is functional duplication among three main procedures (ENTS, ATT, and EBAI) in the national tax (internal tax) when we analyze it from various criteria such as target group, subject of trial, provided service, intent (purpose) and organization in charge. That redundancy (functional duplication) have some usefulness because taxpayers can choose favorable one of them, the appeal system can reduce the errors of performing wrong decisions and tax appeal agencies can compete to provide better service. However, that functional duplication shows various problems in the tax appeal administration. It makes it difficult to handle the tax appeal cases consistently even making conflicting decisions among three procedures, makes taxpayers confused, leads to the conflict or noncooperation among relevant institutions, causes waste of budget and inefficiency, and reduces the trust in tax appeal administration. When I compare Korean administrative appeal system with the foreign, advanced countries' administrative tax appeal systems, it is difficult to find the functional duplication like that of our administrative tax appeal system. Also, Korean general administrative appeal system does not show the functional duplication like that of Korean administrative tax appeal system.



This study also tries to find out diverse ways to overcome the limitations of Korean administrative tax appeal system which come from its functional duplication. In the ways of strengthening cooperation and coordination, this study categorized them as those of horizontal cooperation (coordination) and those of vertical coordination. In the ways of horizontal cooperation and coordination, this research suggested forming a consultative group, granting enough power to the person taking charge of external cooperation function, making business agreement, promoting personal exchanges, strengthening formal or informal exchanges, and construction of information sharing system. In the ways of vertical coordination, this study presented prioritizing legal interpretations of three institutions and adjustment or modification of higher body. In the measures for adjustment of function, this study suggested mutual transfer of function and integration of relevant organizations or reorganization. The integration of relevant organizations or reorganization may be fundamental solution to the problems of functional duplication, but can have difficulties in terms of feasibility.

This study is meaningful in this point that it analyzed the Korean administrative tax appeal system in the perspective of organization theory, especially redundancy (functional duplication) differently than other researches of tax appeal system did, and suggested policy implications for the future tax appeal administration, through analyzing the content and results of functional duplication in the administrative tax appeal system and presenting ways of overcoming the system's limitations based on the functional duplication.

However, this study has limitations in that it does not provide a wide range of specific empirical data to support the analysis and it does not give a more concrete action plan for improving the effectiveness of the administrative tax appeal system.

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# 우리나라 행정적 조세불복제도의 유효성에 대한 연구

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박태의

정부는 비용 마련을 위해 개별적 보상 없이 법률에 의한 과세요건 하에서 강제적으로 조세라는 금전적 부담을 부과하고, 이 과정에서 위법하거나 부당한 조세부과처분이 행하여질 수 있다. 이 때 이로 인해 권익을 침해 받은 납세자가 신속하고 적절히 권리구제를 받을 수 있도록 조세불복제도가 마련되어 있다.

조세불복제도로는 행정소송과 같은 사법적 불복제도 외에 행정적 조세불복제도로 사전적 구제수단으로서 과세전적부심사청구제도와 사후적 구제수단으로서 이의신청, 국세청 심사청구, 조세심판청구 및 감사원 심사청구 제도가 있고, 이 중 특히 내국세 측면에서 행정소송을 제기하기 위해서는 먼저 국세청 심사청구, 조세심판청구 및 감사원 심사청구 중 어느 한 절차를 거쳐야 하는바, 이 연구는 이러한 행정적 조세불복제도의 유효성에 대해 기능 중복 관련 관점에서 분석한다.

내국세 측면에서의 위 주요한 세가지 행정적 조세불복제도(국세청 심사청구, 조세심판청구 및 감사원 심사청구)에 대하여 의도(목적), 조직, 대상 집단(세목), 판단 범위, 제공 서비스(결정) 등을 종합적으로 분석하여 볼 때, 세 제도는 담당 조직들이 다른 가운데 신속한 납세자 권리구제 및 과세행정에 대한 통제 등 사실상 거의 동일한 기능을 수행하고 있는 것으로 볼 수 있다.

이러한 기능중복은 납세자에게 선택 기회를 제공하고 잘못된 오류결정을 막는데 기여하며 불복기관 간 경쟁을 통한 납세자 서비스 확대의 효과를 기대할 수도 있으나, 이로 인해 제한된 자원의 효율적 배분 측면에서 효율성이 저하되고 조세불복기관들 사이에 다르거나 심지어 상치되는 결정들을 통해 조세불복행정에 있어 사건들의 일관성 있는 처리를 어렵게 하며 납세자에게 혼란을 초래하고 조세불복행정에 대한 신뢰를 저하시키게 된다.

따라서, 이러한 기능중복의 문제점을 해결하기 위한 대안 마련이 요구되고 그 방안들로서 수평적 조정이나 수직적 조정을 강화하는 방안과 기능 자체를 조정하는 방안을 들 수 있다. 수평적 조정 강화방안으로는 기관간 협의체 구성, 업무협약 체결, 인적 교류 증진, 공식적 또는 비공식적 교류 강화, 정보공유시스템 구축 등이 있고, 수직적 조정 강화방안으로는 법률해석의 우선순위 설정, 상위기관에 의한 조정 등을 들 수 있다.



기능 자체를 조정하는 방안으로는 상호기능이전 방안으로서 국세청 심사청구나 감사원 심사청구가 소액사건이나 간접세 사건을 담당하고 조세심판청구가 고액사건이나 직접세 사건을 담당하는 방안이 있고, 재조직 방안으로서 국세청 심사청구와 조세심판청구를 통합하고 감사원 심사청구를 폐지하는 방안을 고려할 수 있다. 통합에 있어 조세심판청구를 국세청 심사청구에 통합하는 방안과 국세청 심사청구를 조세심판청구에 통합하는 방안이 있을 수 있으며, 불복절차에 있어서의 준사법절차의 보장 및 납세자 선호 등을 감안할 때 국세청 심사청구를 조세심판청구에 통합하는 방안이 좀 더 적합한 통합대안으로 고려될 수 있다.

주요어: 조세불복제도, 심판청구, 심사청구, 기능중복

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