

Cite as: 10 NCTU L. REV., March 2022, at 1

On the Theoretical Dispute of Subject of Taxation Revocation Litigation

Ke-Chung Ko^{*}

Abstract

The theoretical disputes about the subject of taxation revocation procedure in Taiwan are manifested in two subjects, which the first one is “subject of litigation” and the other one “procedural subject”. The dispute around “subject of litigation” is theoretical debate between dispute doctrine (also known as individualization theory) and gross doctrine (also known as settlement theory); disputes about “procedural subject” involve the administrative assessments between the original tax assessment and the review decision made through the review procedure by tax administration. The dispute doctrine originated from one administrative court’s precedent, which indicate only the taxpayer’s factual disputes raised in the review process, instead of the administrative assessment itself, as the subject of the taxation revocation litigation. Just the view of precedent has led to disputes over taxation, which cannot be resolved in one time in litigation. To resolve the problem, Taiwan’s legislators adopted the provisions of Article 21 of the Taxpayer’s Rights Protection Act, TRPA, to abandon the dispute doctrine and adopt the gross doctrine, and hope through this specification, that disputes can be resolved at one time. However,

^{*} Professor, College of Law, National Taiwan University; Ph.D. in Law, University of Cologne, Germany.

gross doctrine has its limits in its application. In terms of this country's normative situation, if there are two separate tax assessments for a single tax in the same year, it will be impossible to apply settlement theory and resolve disputes in litigation at one time. TRPA is therefore to be revised, which need the relevant supporting regulations in the Tax Collection Act and the Administrative Litigation Act. This article provides suggestions revisions in the conclusion for consideration.

Keywords: Taxation Revocation Litigation, Subject of Litigation, Procedural Subject, Dispute Doctrine, Individualization Theory, Gross Doctrine, Settlement Theory