

提供稅務資訊之研究

——兼論稅捐稽徵法第三十三條第三項規定

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摘 要

本論文在探討稅捐機關提供資訊的基礎和容許性，分析提供資訊的類型、提供資訊的合法性原則、提供資訊行使的形式要件與組織、提供資訊的拘束力等問題，並對我國提供稅務資訊制度加以探討。

立法者就個人自主控制個人資料之資訊隱私權或資訊自決權而言，應保障人民決定是否揭露其個人資料、及在何種範圍內、於何時、以何種方式、向何人揭露之決定權，並保障人民對其個人資料之使用有知悉與控制權及資料記載錯誤之更正權等程序上與組織上必要之防護措施。但因納稅義務人有申報及繳納稅捐之協力義務，個人稅務資料具有私密性，稅捐機關對於資訊隱私權或資訊自決權之保障，負有保密義務。

最後，希望藉由行政程序法第一百六十八條規定，來建立一般的提供資訊程序；提供資訊本身故不具有法律上拘束力，但因其畢竟是行政行為，仍可能因誠實信用和信賴保護原則受到拘束；提供資訊之功能，在建立事前的溝通管道，對納稅義務人具有權利保護作用；及資訊隱私權的保護方式，可加以限制，但應視所保護之法益而定，並要符合公益及比例原則、法律保留與法律明確性原則。

關鍵字：提供資訊、提供諮詢、承諾、拘束力、資訊隱私權、資訊自決權、
資訊自由權

Research of providing tax-information—with discussing Article 33 III of the Tax Collection Act

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Abstract

This Research is to discuss about the foundation and permission of the tax collection authority to provide information, to analyse the types, principles of legitimacy, form status and organization, binding power of providing information. And to discuss the system of how Taiwan's authority provide tax information.

The legislators, as far as the right of information privacy or information self-determination is concerned, which regards the self-control of personal information, they intend to guarantee that people have the right to decide whether or not to disclose their personal information, and, to what extent, including when and why, in what manner and to whom such information will be disclosed. They are also designed to guarantee that people have the right to know and control how their personal information will be used, as well as the right to correct any inaccurate entries contained in their information, and all necessary protective measures both organizationally and procedurally. But taxpayers are obliged to assist the tax collecting authority by reporting the required information and to pay tax, and personal taxing-information as well as privacy, the tax collection authority should guarantee that information privacy or information self-determination, have duty to protect privacy.

Finally, I wish to by the Article 168 of the Administrative Procedure Act, establish the general procedure of providing information. Providing information itself has no legal binding power, but being one of Administrative act, it maybe bound of the Principles of Honesty and Goodwill and Legitimate Expectation. The function of providing information is to establish in advance a way of negotiation, and protection of the right taxpayers. The protecting manner of information privacy can be limited, but through the way to protect of legitimate interests, and should satisfy the requirement of the principles of public interests, proportionality, legal reservation and legal clarity.

Key words : provide information, consult, promise, binding power, privacy of information, self-determination of information, freedom of information.