

A Study of the Consolidated Return System

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Consolidated return system is classified into a profit and loss totaling type or a profit and loss transfer type. It is assumed that the consolidated return system of Japan is the totaling type. However, the consolidated return system of Japan has mixed the totaling type and the transfer type, because the removal of internal profit and loss is limited partially in the consolidated return system of Japan. Nevertheless, the Tax Commission did not discuss the transfer type from the top. Therefore, this dissertation revisits the consolidated return system of Japan by the conducting research of the "Organschaft" system of Germany that is the transfer type.

The "Organschaft" system in the German corporation tax law arose as a common law. Therefore, the theory "Organtheorie" as the legal basis of this system arose and developed. However, when the judicial precedent accumulated, a federal financial court in Germany (BFH) came to request grounds of belonging of profit and loss from the subsidiary company to the parent company only from the profit delivery contract. The theories criticized such a composition of the theory by the BFH. Therefore, the German corporation tax act made provisions for this system in 1969. When the system of Germany and Japan are compared, this regulation of Germany resembles the system of Japan in the handling of donation and internal profit and loss.

In addition, the possibility that the scope of consolidation can be expanded in Japan is pointed out. In the system of Germany, parent company should pay amends money to minority stockholders of subsidiary company, because minority stockholder's equity etc. are violated by all the profit and loss of subsidiary company being delivered to parent company. On the other hand, subsidiary company doesn't deliver profit and loss to parent company in the system of Japan. Therefore, the infringement of right to minority shareholders whom Tax Commission assumed doesn't exist even if the system of Japan expands the scope of consolidation. Moreover, it has been assumed that there is no economic unity in the parent and subsidiary company if parent company doesn't own 100% of the stocks of subsidiary company in Japan. However, it is discussed that there is the economic unity if the parent company owns the stocks of subsidiary company as the certificate of incorporation can be changed alone. Therefore, the scope of consolidation in Japan need not be limited to 100% subsidiary company.