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纳税担保制度研究

Research on Tax Payment Guarantee System

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## 内 容 摘 要

纳税担保是纳税人或第三人依照法律规定为纳税人应缴而未缴的税款提供的一种担保。2005年7月1日颁布实施的《纳税担保试行办法》对纳税担保的具体实施作了较为详尽、明确的规定，但也存在一定的缺陷。

与税收法律关系的公法属性相联系，纳税担保制度也存在明显的公法属性，但是作为公法引放私法规范的一项典型制度，纳税担保不可避免地烙上了私法属性的印记。由此，纳税担保制度应该在汲取民事担保博大精深的制度体系的基础上进行适当的制度创新。

税法对纳税担保提供的情形作了明确规定，但这些法定情形尚有一些问题需要明确，如“迹象”之把握问题、提供担保的时限问题、承担担保责任的时间问题、提供担保后出境与纵容欠税关系问题、循环担保问题、复议能否停止执行问题等等。为了充分发挥纳税担保的功能，对提供担保情形的拓展也是一个值得探讨的问题。从形式上看，纳税担保可以分为人的担保和物的担保。关于人的担保，笔者认为并无必要将担保人限定的经济组织，保证人可以是外国人，但税务人员不宜作为纳税保证人。关于物的担保，笔者认为设立物的担保是很有必要的，但动产质押并没有太大的实际意义，而担保物可以是未全部设置担保物权的财产，担保物的价值应不低于所担保的税款和滞纳金。此外，应允许提供混合形式的担保，在一定条件下应允许纳税担保变更。为充分发挥纳税担保的功能和作用，可以对纳税担保的形式作一些有益的拓展。

税务机关与纳税人之间的关系无疑是行政管理关系，而纳税人与纳税担保人之间的关系则为民事关系，但税务机关与作为第三人的纳税担保人之间的关系则呈现出复杂化的一面。一旦第三人自愿地加入到纳税担保法律关系中成为纳税担保人，则其与税务机关的关系也演变为行政上的管理与被管理关系。

纳税担保的法律责任是纳税担保制度的重要组成部分。纳税担保人承担担保责任的方式应限于连带责任，而担保责任的范围，似乎可以扩展到相关的行政罚款。对于担保责任的终止，应区别不同情形做出相应规定，不应一概以时

间为准。关于纳税担保主体违法提供纳税担保的法律责任，笔者认为现行规定在合理性和立法技巧方面均存在诸多缺陷，有待进一步完善提高。

**关键词：**纳税担保；制度研究；制度完善

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## ABSTRACT

The tax payment guarantee is one kind of guarantee which the taxpayer or the third person provide for the taxpayer that should give but not given according to the legal rule. *Tax payment Guarantee Implementation Means* which promulgated and implemented On July 1, 2005 have made exhaustively, explicit stipulation to the concrete implementation of tax payment guarantee, but also has certain flaw.

Relates with the public law attribute of tax revenue legal relationship, the tax payment guarantee system also has the obvious public law attribute, but took the public law to a civil law introduction typical system, the tax payment guarantees irons the civil law attribute mark inevitably. From this, the tax payment guarantee system should carry on the suitable system innovation in the foundation of deriving the broad and profound institutional framework of the civil guarantee.

Tax laws had stipulated explicitly the situation which provided by the tax payment guarantee, but these legal situations still had some questions need to be clear about, after like "the sign" did the assurance question, provide the guarantee time limit question, time limit question of undertaking the obligation of warranty, provides the guarantee to leave country and with tolerates to owe taxes relational question, the circulation guarantee question, whether reconsiders stops carrying out question and so on. In order to display the function of tax payment guarantee fully, the development for providing the guarantee situation also is the question which is worth discussing. Formally, the tax payment guarantee may divide into human's guarantee and the thing guarantee. About person's guarantee, the author thought it not essential to defined the guarantor the economic organization, the guarantor maybe the

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foreigner, but tax affairs personnel is unsuitable for tax payment guarantor. About the thing guarantee, the author thought the establishment guarantee is quite necessary. But the movable property pawns certainly have not too big practical significance, and the guarantee may be the property that not completely establishes the guarantee privilege, the guarantee value should not be lower than the tax money and the fine for delayed payment. In addition, should allow to provide the mix form guarantee, should permit the tax payment guarantee change under the certain condition. For the full display tax payment guarantee function, may make some beneficial development to the form of tax payment guarantee.

The relations between the tax affairs institution and taxpayer are administration relations without doubt, the relation between the taxpayer and the tax payment guarantor are the civil relations, but the relations between the tax affairs institution and the third person of tax payment guarantor present one complication side. The author believe, once the third person voluntarily joins to the tax payment guarantee legal relationship and becomes the tax payment guarantor, it 's relations with the tax affairs institution evolves in the manage and be managed relations.

The legal liability of tax payment guarantee is an important constituent of tax payment guarantee system. The way that the tax payment guarantor undertakes the obligation of warranty should be restricted in the joint and several liability, but the obligation of warranty scope, as if also may expand to the related administrative fine. Regarding the obligation of warranty termination, should distinguish the different situation to make the corresponding stipulation, should not totally take the time as standard. About the legal liability that the tax payment guarantor illegally provides the tax payment guarantee, the author



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thought the present stipulation has many flaws in the rationality and the legislation skillful aspect, waits for further consummates and enhances.

**Key word:** Tax payment guarantee; System research; System perfect

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## 引 言

纳税担保制度是现代各国税法普遍采用的一项制度，是民法的债权保障制度在税法中的引入。这种制度既有利于保障国家税收收入，同时也有利于维护纳税人的合法权益。从税收征管实践看，纳税担保制度自创设以来就罕有应用，但随着税收征管的逐步加强，税收法制的逐步完善，纳税担保日益成为税收日常征管工作的一项重要内容之一应该是一种趋势。特别是《中华人民共和国税收征收管理法》（以下简称《税收征管法》）第 88 条关于提供相应的纳税担保后即可申请复议的规定，使纳税担保应用的可能性大大增加，也对这一制度的完善提出了迫切要求。本文通过对现行担保制度的分析研究，试图对纳税担保制度的进一步完善提供一些有益的思考。



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