

## Taiwan's Tax System, the Two Covenants, and the Tai Ji Men Case: Six Problems

Annie Cheng

*FOWPAL (Federation of World Peace and Love), London, UK*

yawen4049@gmail.com

**ABSTRACT:** Taiwan has incorporated the two main United Nations human rights covenants, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights into its domestic legislation in 2009. However, Taiwan's laws did not fully implement the Two Covenants, particularly in the area of tax justice. Since taxes are weaponized to crack down on religious and spiritual movements the powers that be do not like, identifying the flaws in Taiwan's legal system is also important for freedom of religion or belief.

**KEYWORDS:** International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Two Covenants, Two Covenants in Taiwan, Tax Justice in Taiwan, Tai Ji Men, Tai Ji Men Case.

### *Introduction*

The Tai Ji Men case has been presented in scholarly articles, both in this and in other journals and magazines, as well as in a comprehensive book published by the movement itself (Chao et al. 2021). I do not need to summarize it again here. The purpose of my article is to ask the question how and why was it possible that the Tai Ji Men case continued unsolved for more than twenty-five years, notwithstanding Taiwan's otherwise laudable path to democracy and freedom of religion or belief. My answer is that there remain six major problems, which in part are a heritage of the authoritarian and post-authoritarian periods, that democratic Taiwan has not yet been able to get rid of.

Before examining them, I would emphasize that, despite not being a member state of the United Nations, Taiwan has incorporated the two main United

Nations human rights covenants, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights into its domestic legislation in 2009. Taiwan's compliance with the Two Covenants, which include provisions on freedom of religion or belief and economic justice, is examined periodically by reviews conducted by international independent experts. Thus, Taiwan acknowledges that it has freely assumed an obligation to respect the Two Covenants (Introvigne 2022).

However, in practice the Two Covenants are not always respected. The Tai Ji Men case is at the crossroads of freedom of religion or belief (FORB) and tax justice. More precisely, taxes have been used as a tool to discriminate against a spiritual minority, as it has happened with other religious movements as well. While other countries, including France in its fight against groups labeled as "cults," also weaponized taxes for religious discrimination (Fautré 2021a), in Taiwan the six problems I will discuss made the misuse of tax law for the purpose of FORB discrimination easier (Huang et al. 2021a, 2021b).

It may seem that the six problems I will list are technical tax law issues, and have little do with religion. But since taxes are used to limit FORB, the six issues are relevant for religious and spiritual liberty as well, and I will later mention some examples taken from the decade-old history of the Tai Ji Men case.

### *1. The One-Third Payment Rule*

A first provision in Taiwanese law that is inconsistent with the two Covenants and taxpayers' rights is the one-third payment rule. It means that when Taiwanese citizens have a dispute with the tax authorities, to stop the enforcement they should pay one third of the contested tax amount or provide an equivalent guarantee. Note that this payment is due before clarifying what the effective tax liability is. Without such guarantee, the tax authority has the discretion to impose travel bans or even detention to the taxpayer, or request the Administrative Enforcement Agency to seize the taxpayer's property.

The provision seems obviously unfair, and aimed at preventing taxpayers from challenging tax bills. When it is still unclear whether the tax liability or the amount is correct or not, why does the citizen have to pay one third just to interrupt the enforcement? While a final decision on the taxation has not been

rendered, the taxpayers are forced to deliver their funds to the tax authority just for their complaints to be considered. Besides being grossly unfair, this is against the principle that citizens should not be unjustly deprived of their property.

Article 4 of the International Covenant on Economic, Social, and Cultural Rights provides that these rights may only be subject to limitations “compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” The one-third payment rule is intrinsically incompatible with economic human rights, as it creates an excessive burden on those who want to assert their rights in a dispute with the state, and deprives them of their property on the basis of an assessment that is still contested and not final.

I live in the United Kingdom, where the costs for the parties involved in tax disputes with Her Majesty Revenue & Customs are limited to legal fees. For complex cases, the High Court costs regime applies, i.e., the losing party pays the costs of the winning party; but with the caveat that the taxpayer can opt out of that regime within 28 days of the case being classified as complex. In this case, there will be no additional cost, i.e., no burden to pay for the costs of the winning party, whether the taxpayer wins or loses. The rationale behind this is that taxpayers should not be deterred from filing a complaint by excessive expenses or by the risk of having costs awarded against them—as is the case in Taiwan with the one-third payment rule.

## *2. The Original Taxation Decision Is Never Revoked*

From 9 to 13 May 2022, the third review of the implementation of the Two Covenants in Taiwan by a Review Committee consisting of nine independent experts took place in Taipei. Just before the beginning of this review process, the Control Yuan, the inspective arm of Taiwanese government, published a report where it exposed inter alia a second serious problems of Taiwan's tax system (Introvigne 2022).

When a taxpayer criticizes a tax bill, the “original taxation decision” is followed by a “review decision.” If the review decision is unfavorable to the taxpayers, they can challenge it through a court case. Assuming that the taxpayer wins, the court revokes the review decision but not the original taxation decision. The latter still stands and, armed with the court verdict, the taxpayer should

contest it and obtain a new review decision. However, if the tax authorities render a second review decision that is again unfavorable to the taxpayer, the latter should either pay or go to court and try to cancel the new review decision. Again, this would not mean that the original taxation decision is revoked. The taxpayer should seek a new review decision, and so on ad infinitum.

The parties who have successfully won the tax case will instead fall into the predicament of an infinite reincarnation of judicial relief. Under such circumstances, citizens are likely to choose to give up their right of litigation when there is no effective redress at huge cost. Not surprisingly, the Control Yuan called the system absurd. But it still stands.

### *3. Flaws in the Taxpayer Rights Protection Act*

There has been no specialized tax tribunal in the administrative court system of Taiwan until 2016, when the Taxpayer Rights Protection Act was passed. No one can acquire professional knowledge overnight, and no training on taxation rules and practices is included in the education of the judges. As a result, there are merely a few judges in the administrative courts equipped with sufficient knowledge to understand the complexity of tax rules and practice, and to form an independent view. The other judges, due to their lack of knowledge, usually accept the tax authority's statements and end up ruling in their favor.

In 2017, the long-awaited Taxpayer Rights Protection Act of 2016 came into force. According to the Act, a Taxation Special Tribunal will be set up within the administrative court system, and a Taxpayer Rights Ombudsmen task force will be set up to provide support and assistance to the taxpayers. This should have solved a number of decade-old problems. In fact, it didn't.

The first problem with the Act is the selection process of the Taxpayer Rights Ombudsmen. The ombudsmen team is selected by the Ministry of Finance and the tenure is two years. There is a potential conflict of interests because these ombudsmen are not independent third parties—as they are appointed by the Ministry of Finance—and their performance assessments are still conducted by the tax authority. The ombudsmen know that if they rule in favor of taxpayers, which means they criticize their colleagues and superiors, they will have a difficult

time when, after two years of working temporarily as ombudsmen, they will come back to their old job. Their careers will be at risk.

Another critical point is the certification of the specialized tax judges. There is no strict selection and certification process. Those who applied for the certificate were incumbent judges who had already proved that they were not skilled nor independent enough. Nonetheless, all were approved by the Judicial Yuan as qualified taxation specialists. But they are the same persons as before, and the quality of the rulings will not improve.

According to the statistics, in 2020 the success rate of administrative relief in tax cases was less than 10% and the success rate of judicial relief (i.e. through Administrative Courts) was merely 11% (Huang et al. 2021a). Lai She-Bao, a legislator, during his session of enquiry to the Minister of Finance, pointed out that citizens of Taiwan have only a 0.3% chance of winning a lawsuit against the government in the High Administrative Court. This rate is far lower than that in other democratic nations, for example, 44% in Germany, 60% in Denmark, 50% in the Czech Republic, around 50% in India (Huang et al. 2021a). Such statistics reveal that the system is unbalanced in favor of the authorities.

#### *4. Endoprocessual Disqualification*

In democratic countries it is generally agreed that to protect the citizen's right to effective remedy stemming from the Two Covenants, judges who have participated in a decision on the same matter in a previous trial should disqualify themselves from the new trial. They have an "endoprocessual" incompatibility, as opposed to an "extra-processual" one that may derive, for example, from the fact that they are relatives or business partners of one of the parties.

Such mechanism exists to protect the right to a fair trial. In case of an appeal, fresh eyes should review the case, not the same old eyes. In Taiwan, rules about endoprocessual disqualification are not strict.

The Tai Ji Men case offers a somewhat extreme example of this problem. Three judges should have disqualified themselves, but a blatant case concerns Judge Huang Shu-Ling (Chao et al. 2021, 118). She participated in four Tai Ji Men trials at the High Administrative Court of Taichung, and heard again a Tai Ji Men

case after she had been transferred to the Supreme Administrative Court. In the end, she was involved in Tai Ji Men cases at different levels thirty-three times.

Not surprisingly, she was not inclined to renege her previous decisions, and became responsible for the anomaly concerning the year 1992. Those familiar with the Tai Ji Men tax case know that it is about the nature of the content of the so-called red envelopes that *dizi* (disciples) give to their *Shifu* (Grand Master) in certain occasions, as happens in many other Chinese martial arts, qigong, and self-cultivation groups. It is generally agreed that these are non-taxable gifts. However, in the Tai Ji Men case it was argued that they are taxable tuition fees for a so-called cram schools, i.e., a school that impart quick teaching on a subject, normally for preparing exams.

What happened in 1992 was not different from what happened in all the other years. Yet, for 1992, and only for 1992, it was decided that the content of the red envelopes was taxable, which created the contradiction at the core of the Tai Ji Men case (Chao et al. 2021, 117). The movement refused to pay what it regarded as an unreasonable tax bill, and the execution by auctioning off (unsuccessfully) and then confiscating its sacred land followed, generating the *dizi*'s massive protests.

While this is generally known to those who have studied the Tai Ji Men case, I want to point out that the real difference between 1992 and the other years was Judge Huang. Had she disqualified herself rather than insisting on ruling on the 1992 tax issue, 1992 would have been ultimately treated as all the other years, and the Tai Ji Men case would have been solved long ago.

### *5. Parties Cannot Access Evidence*

In a truly democratic judicial and administrative system, the parties have a right to access the evidence used against them. This is not necessarily the case in Taiwan.

Again, I will use an example from the long Tai Ji Men saga. After several requests from the Administrative Appeal Committee of the Ministry of Finance, in 2002 the National Taxation Bureau (NTB) finally agreed to conduct a survey to clarify the nature of the content of the red envelopes. The NTB designed the form and selected the sample, and sent out 206 questionnaires to *dizi*. Tai Ji Men

believe that all the 206 responses, although with different language, confirmed that the red envelopes included gifts.

However, Zheng Sheng-He, the then Director of NTB Taipei and Hsu Yu-Zhe, the then Director of NTB Central Area, concealed the evidence and prevented the interested parties from accessing the survey results. Both Directors claimed that only nine and five respondents respectively stated that the content of the red envelopes consisted of gifts (Chao et al. 2021, 99–101). In 2009, Ling Chung-Yuan, the then Director of NTB Taipei, in her response to the Control Yuan, claimed again that none of the 206 responses had indicated that the monetary donations were gifts. Tai Ji Men *dizi* believe that this is the contrary of the truth (Chao et al. 2021, 131).

Later, the survey was repeated on a larger scale. Its results were announced in 2012, and it came out that all the 7,401 respondents had manifested their belief that the content of the red envelopes should be considered as gifts (Chao et al. 2021, 137–38). But the damage had been done, and the famous decision about the year 1992 mentioned the alleged results of the 2002 survey. Tai Ji Men *dizi* know that the results of the 2002 survey announced by the tax bureaucrats cannot conceivably be true. After all, *they* answered the question. However, they cannot prove that such is the case because to this very day they have been refused full and unrestricted access to the material of the 2002 survey.

## *6. Lack of Accountability*

Another problem that emerged in the Tai Ji men case is that, despite the numerous misconducts and violations of laws by the prosecutor who started the case and the tax officers, none of the unscrupulous bureaucrats has been held accountable. The government agents acted against the rule of law knowing there was no effective mechanism to punish their wrongdoings (Huang et al. 2021b).

Indeed, government agents are fully aware of such deficit in the administrative system, and take advantage of it. Things get even worse in the tax administration, where an improper bonus structure exists. NTB officers are awarded bonuses for issuing tax bills, which is a powerful incentive to issue as many as possible. The contradiction is that rogue tax bureaucrats may profit from the bonuses but would not be held accountable for issuing wrong or arbitrary tax bills (Fautré 2021b).

## Conclusion

Of course, these six problems affect all Taiwanese citizens, not Tai Ji Men *dizi* only. They show that when it comes to tax justice the Two Covenants have not been fully implemented in Taiwan. These flaws in the system allow bureaucrats to use the tax weapon to try to destroy groups they do not like. The flaws offer ample potential to crack down on groups for ideological or religious reasons, as it happened with Tai Ji Men (Jacobsen 2020). It is a perennial temptation of governments and bureaucrats to use taxes as sticks to repress those who think independently.

Tai Ji Men is not the first spiritual group that found itself at the receiving end of a tax stick used for repression. *Dizi*, however, hope it will be the last, at least in Taiwan. But this requires a solution for the six structural problems I have listed.

## References

- Chao, Kai-Hsin, Chang Mei-Ying, Yu Yi-Sheng, and Ann Chen. 2021. *Who Stole Their Youth? 24 Years of Persecution: A Battle for Human Rights & Tax Justice in Taiwan*. Taipei: Grand Justice Publishing.
- Fautré, Willy. 2021a. "Taiwan: Comparative study on the persecution of religious minorities through taxation France-Taiwan (I)." *Human Rights Without Frontiers*, August 11. <https://bit.ly/3QQY7Er>.
- Fautré, Willy. 2021b. "Taiwan: Corruption, Human Rights and the Tai Ji Men Case." *Human Rights Without Frontiers*, December 13. Accessed June 24, 2022. <https://bit.ly/3QOxCQ6>.
- Huang, Chun-Chieh, Chuck Cheng, Xu Xiao-Huan and Daisy Liu. 2021a. "Abusive Taxation: The Tax and Legal Reform League Makes Constructive Proposals, Part 1." *Human Rights Without Frontiers*, June 22. Accessed June 24, 2022. <https://bit.ly/3y0JtC9>.
- Huang, Chun-Chieh, Chuck Cheng, Xu Xiao-Huan and Daisy Liu. 2021b. "Abusive Taxation: The Tax and Legal Reform League Makes Constructive Proposals, Part 2." *Human Rights Without Frontiers*, June 26. Accessed June 24, 2022. <https://bit.ly/39SSJ2W>.

- Introvigne, Massimo. 2022. "An International Review of the Implementation of the Two Covenants in Taiwan: A Missed Opportunity?" *Bitter Winter*, May 19. Accessed June 24, 2022. <https://bit.ly/39T9sU2>.
- Jacobsen, Kenneth A. 2020. "Abrogating the Rule of Law: The Tai Ji Men Tax Case in Taiwan." *The Journal of CESNUR* 4(5):101–20. DOI: 10.26338/tjoc.2020.4.5.6.