

J. Y. Interpretation No.722 (June 27, 2014) *

【Case Concerning Solo Professional Practitioners to Adopt Accrual Basis Accounting to Calculate Income】

ISSUE: Is the relevant provision of Regulations Governing Business Income from Professional Practice which only permits the adoption of accrual accounting for professional joint practitioners or professional associations collecting and disbursing on behalf of members unconstitutional ?

RELEVANT LAWS:

Article 7 of the Constitution (憲法第七條) ; J.Y. Interpretation Nos. 682, 694 and 701 (司法院釋字第六八二號、第六九四號、第七〇一號) ; Article 3 and Paragraph 2, Article 10 of the Regulations Governing Business Income from Professional Practice (執行業務所得查核辦法第三條、第十條第二項) ; Ministry of Finance Directive Tai-Tsai-Shui-Tze No. 10104020320 dated June 25, 2012 (財政部中華民國一〇一年六月二十五日台財稅第一〇一〇四〇二〇三二〇號函)

KEYWORDS:

income from professional practice (執行業務所得) , solo professional practice (單獨執行業務) , professional joint practice (聯合執行業務) , revenues collected and disbursed

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by professional associations on behalf of members (公會代收轉付), accrual basis accounting (權責發生制), cash basis accounting (收付實現制), basis of accounting (會計基礎), principle of equality (平等原則)**

HOLDING: Paragraph 2, Article 10 of the Regulations Governing Business Income from Professional Practice provides: “Professional joint practitioners or professional practitioners whose revenues are collected and disbursed by their professional associations are eligible to adopt accrual basis accounting to calculate their income; provided, however, that an approval from the tax authority must be obtained at least one month prior to the commencement of the applicable fiscal year; so does any change”. Nevertheless, it does not cover solo professional practitioners who incur carry-over revenues and expenses from one fiscal year to another, run on a large scale operation and complicated accounting matters, similar to that of a corporation. As such, there is no rational connection between the differential treatment and the purpose it aims

解釋文：執行業務所得查核辦法第十條第二項規定：「聯合執行業務者或執行業務收入經由公會代收轉付者，得按權責發生制計算所得，惟須於年度開始一個月前，申報該管稽徵機關核准，變更者亦同。」未涵蓋業務收支跨年度、經營規模大且會計事項複雜而與公司經營型態相類之單獨執行業務者在內，其差別待遇之手段與目的之達成間欠缺合理關聯，在此範圍內，與憲法第七條平等原則之意旨不符。

to achieve. It is thus inconsistent with the principle of equality under Article 7 of the Constitution.

REASONING: Article 7 of the Constitution provides that people's right to equality shall be protected. Whether the stipulations of a law are in compliance with the constitutional principle of equality should hinge on whether the purpose of the differential treatment is justifiable under the Constitution, and whether between the distinctions created and the stated objective of the law there is a certain degree of connection. (*see* J.Y. Interpretations Nos. 682, 694 and 701).

Article 3 of the Regulations Governing Business Income from Professional Practice provides: "Unless otherwise provided for by the Regulations, cash basis accounting is in principle adopted as the basis of accounting to calculate income from professional practice." Paragraph 2, Article 10 of same Regulations provides: "Professional joint practitioners or professional practitioners whose revenues are collected and disbursed by their profes-

解釋理由書：憲法第七條規定人民之平等權應予保障。法規範是否符合平等權保障之要求，其判斷應取決於該法規範所以為差別待遇之目的是否合憲，其所採取之分類與規範目的之達成之間，是否存有一定程度之關聯性而定（本院釋字第六八二號、第六九四號、第七〇一號解釋參照）。

執行業務所得查核辦法第三條規定：「執行業務所得之計算，除本辦法另有規定外，以收付實現為原則。」同辦法第十條第二項規定：「聯合執行業務者或執行業務收入經由公會代收轉付者，得按權責發生制計算所得，惟須於年度開始一個月前，申報該管稽徵機關核准，變更者亦同。」（後者下稱系爭規定）其規定僅使聯合執行業務者或執行業務收入經由公會代收轉付者，得選擇權責發生制，而不適用收付實現制，

sional associations are eligible to adopt accrual basis accounting to calculate their income; provided, however, that an approval from the tax authority must be obtained at least one month prior to the commencement of the applicable fiscal year; so does any change” (hereinafter referred to as “regulations in dispute”). The regulations in dispute only permit those professional joint practitioners or professional practitioners whose revenues are collected and disbursed by their professional associations are eligible to adopt accrual, rather than cash, accounting as the basis to calculate their income from their professional practices. The regulations in dispute thus create a differential treatment resulting from whether the formation is a professional joint practice or the revenue being collected and disbursed by a professional association in terms of whether the option of accrual accounting is available in the calculation of practice income.

That the regulations in dispute differentiate business models such as professional joint practitioners or professional

以計算其執行業務所得。形成執行業務者因經營型態是否為聯合執業或執行業務收入是否經由公會代收轉付，其執行業務所得之計算有得否選擇權責發生制之差別待遇。

系爭規定以經營型態是否為聯合執業或執行業務收入是否經由公會代收轉付之不同，作為得選擇權責發生制之

practitioners whose revenues collected and remitted by their professional associations to be eligible for the adoption of accrual accounting method is based on the consideration that a professional joint practitioner more resembles a profit-seeking corporate organization, with more sizeable scale, and more complex accounting of operational revenue, expenses, and disbursement. In addition, for professional practitioners whose revenues are collected and remitted by their professional associations, they often encounter delayed collection for account receivables that cross-over two fiscal years that may not be appropriate to be entirely counted towards the revenues for the fiscal year. The regulations in dispute are thus promulgated to cover such a situation. (*see* Ministry of Finance Directive Tai-Tsai-Shui-Tze No. 10104020320 dated June 25, 2012) The objective of the regulations in dispute is to have those professional practitioners the option to adopt accrual method to adapt to the nature and operations of their businesses and is thus consistent with the Constitution.

基礎，其分類標準係基於聯合執行業務者與公司組織之營利事業較為類似，經營較具規模，業務收支及盈餘分配等會計事項較為複雜；另執行業務收入經由公會代收轉付者，常有跨年度延後收款情形，其收入不宜全於收取年度計算所得，故設系爭規定，以資兼顧（財政部中華民國一〇一年六月二十五日台財稅字第一〇一〇四〇二〇三二〇號函檢附之說明參照）。系爭規定使受其涵蓋範圍之執行業務者，有選擇權責發生制之權，以適應其事業之性質及營運，目的尚屬合憲。

The regulations in dispute bestow the option for accrual accounting on the basis of business models and method of collecting income. Nevertheless, solo practitioners may also often run businesses on a considerable scale not necessarily smaller than that of professional joint practitioners. The accounting matters for the revenues and expenses of a larger-scale solo practitioner may be just as complicated, if not more, as that of a professional joint practice. Conversely, the scale of a joint practice may not be larger than that of a solo practitioner and the accounting of the business income, expenses and the disbursement of surplus may not involve complicated accounting matters. Given that the revenue and disbursement of a solo practitioner may as well be often delayed and cross over to the next fiscal year, it is thus not suited for being accounted as revenue or expense within a given fiscal year. While the objective of the regulations in dispute is to relax the method of calculating revenues for practitioners having larger-scale operations with more complex accounting and incurring income carry over two fiscal years,

系爭規定賦予執行業務者選擇權責發生制，係以經營型態及業務收入方式為標準。然單獨執行業務亦常有相當經營規模者，並非必然小於聯合執行業務之情形。較大規模之單獨執行業務者業務收入及支出，其會計事項可能與聯合執業者有相同甚至更高之複雜程度。反之聯合執業者，其經營規模未必大於單獨執業者，且其業務收支與盈餘分配未必涉及複雜會計事項。又單獨執業者，因其業務特性或經營規模，其收款或付款亦可能常有跨年度延後，且不宜完全由收取或支出年度計算所得之情形。系爭規定之目的在放寬經營較具規模且會計事項較為複雜，以及收入有跨年度延後收款之執行業務者之所得計算方式，使其有選擇權責發生制之權。然此目的無法以經營型態及業務收入之方式作為分類而達成。系爭規定未涵蓋業務收支跨年度、經營規模大且會計事項複雜而與公司經營型態相類之單獨執行業務者在內，其差別待遇之手段與目的之達成間欠缺合理關聯，在此範圍內，與憲法第七條平等原則之意旨不符。

and to provide option for accrual accounting. However, the objective cannot be achieved by just using business models and method of revenue collection as the means to categorize. The regulations in dispute do not cover solo professional practitioners who incur carry-over revenues and expenses from one fiscal year to another, run on a large scale operation and accounting matters similar to that of a corporation. As such, there is no rational connection between the differential treatment and the purpose it aims to achieve. It is thus inconsistent with the principle of equality under Article 7 of the Constitution.

The petitioner also alleged that Article 3, Paragraph 1 of Article 10 and Subparagraph 1 of Article 31 of the Regulations Governing Business Income from Professional Practice as well as Ministry of Finance Directive Tai-Tsai-Shui-Tze No. 861907562 dated July 31, 1997, were in violation of the Constitution and therefore petitioned for interpretation. The aforementioned allegation only disputed the appropriateness of the court's finding

聲請人另指摘執行業務所得查核辦法第三條、第十條第一項、第三十一條第一款規定及財政部八十六年七月三十一日台財稅第八六一九〇七五六二號函，有違憲疑義，聲請解釋憲法部分，僅係爭執法院認事用法之當否，並未具體指摘該等規定於客觀上究有何牴觸憲法之處；又聲請人就本院釋字第三七七號解釋聲請補充解釋部分，查該號解釋並無文字晦澀或論證不周之情形，核無補充解釋之必要；是上開部分

of facts and application of laws but had not submitted concrete reasons for the formation of objective belief that the law is unconstitutional, or objective description of concrete unconstitutionality. Furthermore, the petitioner filed a petition for an additional interpretation of J.Y. Interpretation No. 377. Upon examination, there is not any ambiguity or incompleteness of the J.Y. Interpretation No. 377; thus, no supplemental interpretation is needed. As such, the above petitions do not comply with Item 2, Paragraph 1, Article 5 of the Constitutional Court Procedure Act, and should be dismissed pursuant to Item 3 of same Article. It is so indicated herein.

Justice Dennis Te-Chung TANG filed an opinion concurring in part.

Justice Mao-Zong HUANG filed a concurring opinion.

Justice Beyue SU CHEN filed a concurring opinion.

Justice Sea-Yau LIN filed an opinion dissenting in part.

Justice Chi-Ming CHIH and Justice Ming CHEN jointly filed an opinion dissenting in part.

核與司法院大法官審理案件法第五條第一項第二款規定不合，依同條第三項規定，應不受理，併此指明。

本號解釋湯大法官德宗提出部分協同意見書；黃大法官茂榮提出協同意見書；陳大法官碧玉提出協同意見書；林大法官錫堯提出部分不同意見書；池大法官啟明、陳大法官敏共同提出部分不同意見書；羅大法官昌發提出部分不同意見書；黃大法官璽君提出、陳大法官敏加入不同意見書。

Justice Chang-Fa LO filed an opinion dissenting in part.

Justice Hsi-Chun HUANG, filed a dissenting opinion, in which Justice Ming CHEN, joined.

EDITOR'S NOTE:

Summary of facts: The Income Tax Act adopts accrual and cash method as the basis for accounting. Article 22 provides that corporate income tax shall, in principle, adopt the former basis, whereas individual income tax shall adopt the latter, as confirmed by J.Y. Interpretation No. 377. With respect to “income derived from professional practice”, Category 2, Paragraph 1, Article 14 of Income Tax Act authorizes the Ministry of Finance to prescribe the “Regulations Governing Income from Professional Practice” (the “Regulations”) and Article 3 of the Regulations provides: “Unless otherwise provided by the Regulations, cash basis accounting is in principle applied as the basis of accounting to calculate income from professional practice”; whereas Paragraph 2, Article 10 provides that only those “professional joint practitioners” or

編者註：

事實摘要：所得稅法採用之會計基礎有「權責發生制」及「收付實現制」二種。第 22 條規定，營利事業所得稅原則上採用前者；個人綜合所得稅採用後者，則為釋字第 377 號解釋所肯認。惟對於計入個人綜合所得分類中之「執行業務所得」，同法第 14 條第 1 項第 2 類規定授權財政部訂定「執行業務所得查核辦法」，該辦法第 3 條規定，執行業務所得之計算，除該辦法另有規定外，以收付實現為原則；第 10 條第 2 項復規定，僅「聯合執行業務者」或「執行業務收入經由公會代收轉付者」經申報核准後，得按權責發生制計算所得。

“professional practitioners whose income from professional practice are collected and remitted through and by their professional associations on their behalf”, are eligible to adopt accrual basis to calculate income once being approved.

The petitioner, Chang, Huan Chen, who was in charge of Landseed Hospital obtained an approval in 1998 to adopt accrual basis accounting to calculate income. He filed his 1999 individual income tax return based on the accrual basis method and listed NT\$0 income from his professional practice earned from the hospital. In 2002, National Taxation Bureau of the Northern District opined that the petitioner was not eligible to adopt accrual basis to calculate his income because he is neither in joint practice nor a solo practitioner whose income being collected and disbursed by his professional association under Article 10, Paragraph 2 of the Regulations. Consequently, his income should be calculated by adopting cash basis accounting pursuant to Article 3 of the Regulations. National Taxation Bureau of the Northern District thus re-

聲請人張煥禎係壠新醫院負責人，於87年間獲准以權責發生制記帳，其據以申報88年度綜合所得稅列報取自醫院之執行業務所得為新臺幣（下同）0元。91年間北區國稅局認，聲請人非執行業務所得查核辦法第10條第2項所定之聯合執行業務者或執行業務收入經由公會代收轉付者，其所得計算本不得採權責發生制，而應依同辦法第3條收付實現制之規定辦理，乃撤銷核准，改依收付實現制重予計算，核定聲請人88年度之執行業務所得為26,388,247元。聲請人不服提起行政爭訟，經最高行政法院98年判字第738號判決駁回確定，爰認上開查核辦法規定及財政部相關函釋違憲，聲請解釋；併就釋字第377號解釋，聲請補充解釋。

voked its previous approval, and adopted cash basis method to have recalculated the petitioner's income from professional practice in 1999 at NT\$26,388,247. The petitioner, for relief, had filed an administrative litigation which was finally and conclusively overruled by Supreme Administrative Court decision No. 98-Pan-Tzu-738. Consequently, the petitioner asserted that the regulations in dispute and relevant directives of the Ministry of Finance were unconstitutional and petitioned for interpretation, together with a request for a supplemental interpretation on J.Y. Interpretation No. 377.