J. Y. Interpretation No.754（October 20, 2017）*

【Filing one Import Declaration Form and the Combined Penalties for Tax Evasions】

ISSUE: Does filing one import declaration form to evade import duty, commodity tax, and business tax constitute one single conduct or multiple conducts? Do the combined penalties for the tax evasions violate the principle of double jeopardy embraced by a rule-of-law nation ?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution（憲法第十五條及第二十三條）；J.Y. Interpretations Nos. 503 and 604 of the Judicial Yuan（司法院釋字第五〇三號及第六〇四號）；Paragraph 1 of Article 37 of the Customs Anti-Smuggling Act（海關緝私條例第三十七條第一項）；Article 4, Paragraph 1 of Article 16 and Paragraph 1 of Article 17 of the Customs Act（關稅法第四條、第十六條第一項及第十七條第一項）；Paragraph 2 of Article 23 and Subparagraph 10 of Article 32 of the Commodity Tax Act（貨物稅條例第二十三條第二項及第三十二條第十款）；Article 41 and Subparagraph 7 of Paragraph 1 of Article 51 of the Value-added and Non-Value-added Business Tax Act（加值型及非加值型營業稅法第四十一條

* Translated by C. Y. HUANG

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及第五十一條第一項第七款）

KEYWORDS:

the principle of double jeopardy（一行為不二罰原則）, single conduct（一行為）, multiple conducts（數行為）, number of conducts（行為數）, import duty（進口稅）, customs duty（關稅）, commodity tax（貨物稅）, business tax（營業稅）, principle of proportionality（比例原則）**

HOLDING: The second Joint Meeting of the Supreme Administrative Court in May 2011 passed the following resolution (the "Resolution"): "When filing an import declaration, the importer needs to fill in the matters concerning import duty, commodity tax and business tax and submit the form to the customs to complete the declaration of import duty, commodity tax and business tax. Therefore, there are in fact three conducts of declaration rather than one single conduct. If the importer fails to declare truthfully such that there are evasions of import tax, commodity tax and/or business tax, and such failure to declare truthfully falls within the meaning of Subparagraph 4 of Paragraph 1 of Article 37 of the Customs

解釋文：最高行政法院100年度5月份第2次庭長法官聯席會議有關：「……進口人填具進口報單時，需分別填載進口稅、貨物稅及營業稅相關事項，向海關遞交，始完成進口稅、貨物稅及營業稅之申報，故實質上為3個申報行為，而非一行為。如未據實申報，致逃漏進口稅、貨物稅及營業稅，合於海關緝私條例第37條第1項第4款、貨物稅條例第32條第10款暨營業稅法第51條第7款規定者，應併合處罰，不生一行為不二罰之問題」之決議，與法治國一行為不二罰之原則並無牴觸。

Anti-Smuggling Act, Subparagraph 10 of Article 32 of the Commodity Tax Act and Subparagraph 7 of Paragraph 1 of Article 51 of the Value-added and Non-Value-added Business Tax Act, the penalties should be combined. It will not raise concerns about double jeopardy." The Resolution is consistent with the principle of double jeopardy embraced by a rule-of-law nation.

REASONING: The petitioner Zhu, Tian-Jiang, who was the owner of the Yi-Lu Firm, filed a declaration with the Kaohsiung Directorate of Customs, Ministry of Finance (now reorganized as Kaohsiung Customs, Customs Administration, Ministry of Finance, which is the agency which made the administrative decision, hereinafter the "Agency") in 2008 for import of goods. After an audit by the Agency, the actual transaction value was found to be inconsistent with the declared amount. The Agency found that the importer submitted forged invoices, declared a false value of the cargos, and committed tax evasion. In addition to taxing the evaded import duty and the evaded busi-

解釋理由書：聲請人朱田江即一路通商行於中華民國 97 年向財政部高雄關稅局（現改制為財政部關務署高雄關，下稱原處分機關）報運進口貨物，經原處分機關稽核發現該批貨物之實際交易價格，與報單申報內容不符，有繳驗偽造發票、虛報所運貨物價值及逃漏稅款情事，原處分機關除追繳所漏進口稅、營業稅外，另依海關緝私條例第 37 條第 1 項第 2 款，按所漏進口稅額處 2 倍罰鍰新臺幣（下同）328 萬 1,708 元，並依行為時加值型及非加值型營業稅法（下稱營業稅法）第 51 條，按所漏營業稅額處 1.5 倍罰鍰 73 萬 8,380 元。聲請人對上開處分提起行政救濟，高雄高等行政法院以 101 年度訴字第 148 號判決駁回，聲請人不服，

ness tax, the Agency also imposed a fine equivalent to two times the amount of the import duty evaded, which amounted to NT$ 3,281,708 according to Subparagraph 2 of Paragraph 1 of Article 37 of the Customs Anti-Smuggling Act, and a fine equivalent to 1.5 times of the amount of the business tax evaded, which amounted to NT$ 738,380 according to Article 51 of the Value-added and Non-Value-added Business Tax Act (hereinafter the "Business Tax Act"). The petitioner brought an administrative action against the foregoing administrative decision. The petitioner's action was dismissed by the Kaohsiung High Administrative Court Judgment 101 Su-Zi No. 148 (2012). The petitioner appealed to the Supreme Administrative Court, but the appeal was again dismissed by Supreme Administrative Court Judgment 101 Pan-Zi No. 1037 (2012) (hereinafter the "Final Judgment") because of a lack of legal grounds. As to the part relating to the fine, the Final Judgment cited the following passage of the Resolution as the basis of its decision: "Customs duty is an import duty imposed on cargos imported from abroad. Commodity tax

提起上訴，經最高行政法院101年度判字第1037號判決（下稱確定終局判決）以其上訴為無理由而駁回。就其中罰鍰部分，確定終局判決援用同法院100年度5月份第2次庭長法官聯席會議決議（下稱系爭決議）：「關稅係對國外進口貨物所課徵之進口稅；貨物稅乃對國內產製或自國外進口之貨物，於貨物出廠或進口時課徵之稅捐；營業稅則為對國內銷售貨物或勞務，及進口貨物所課徵之稅捐，三者立法目的不同。依關稅法第16條第1項、貨物稅條例第23條第2項暨加值型及非加值型營業稅法（下稱營業稅法）第41條規定，進口稅、貨物稅及營業稅均採申報制，且貨物進口時，應徵之貨物稅及營業稅，由海關代徵。雖為稽徵之便，由進口人填具一份進口報單，再由海關一併依法課徵進口稅、貨物稅及營業稅。但進口人填具進口報單時，需分別填載進口稅、貨物稅及營業稅相關事項，向海關遞交，始完成進口稅、貨物稅及營業稅之申報，故實質上為3個申報行為，而非一行為。如未據實申報，致逃漏進口稅、貨物稅及營業稅，合於海關緝私條例第37條第1項第4款、貨物稅條例第32條第10款暨營業稅法第51條第7款規定者，應併合處罰，不生一行

is a tax imposed on commodities manufactured domestically or imported from abroad when they leave the factory or are imported. Business tax is a tax imposed on domestic goods or services or imported commodities. The three have different legislative purposes. According to Paragraph 1 of Article 16 of the Customs Act, Paragraph 2 of Article 23 of the Commodity Tax Act, and Article 41 of the Business Tax Act, import duty, commodity tax and business tax are levied based on the importer's declaration. The amount of business tax and commodity tax payable when goods are imported shall be levied by the customs. Although, for the convenience of taxation, the importer shall make a single import declaration for the customs to levy the import duty, commodity tax and business tax together, the importer shall fill in matters concerning import duty, commodity tax and business tax when filing the import declaration form and shall submit the form to the customs to complete the declaration of import duty, commodity tax and business tax. Therefore, there are in fact three conducts of declaration rather than one single conduct. If the importer

為不二罰之問題。」（其中營業稅法第51條第7款部分於100年1月26日修正公布時改列為第51條第1項第7款）為判決依據，聲請人認為系爭決議對單一不實申報行為強行割裂為3個申報行為，並予數罰，顯已構成過度處罰，牴觸憲法第23條比例原則，侵害人民受憲法第15條所保障之財產權，違反司法院釋字第503號及第604號解釋所揭櫫一行為不二罰之原則，向本院聲請解釋憲法。

fails to declare truthfully such that there are evasions of import tax, commodity tax and/or business tax, and such failure to declare truthfully falls within the meaning of Subparagraph 4 of Paragraph 1 of Article 37 of the Customs Anti-Smuggling Act, Subparagraph 10 of Article 32 of the Commodity Tax Act and Subparagraph 7 of Article 51 of the Business Tax Act, the penalties should be combined. It will not raise concerns about double jeopardy." The Resolution is consistent with the principle of double jeopardy embraced by a nation of rule-of-law." (Subparagraph 7 of Article 51 of the Business Tax Act was moved to Subparagraph 7 of Paragraph 1 of Article 51 in the amendment dated 26 January 2011.). The petitioner argued that the Resolution, which forcibly severs one untruthful declaration into three declaration conducts and imposes multiple penalties, constitutes excessive punishment in violation of the principle of proportionality provided for in Article 23 of the Constitution, the property rights protected by Article 15 of the Constitution, and the principle of double jeopardy affirmed in Judicial Yuan Interpretations No. 503 and

No. 604. The petitioner therefore petitioned for an interpretation by the Honorable Justices.

According to Subparagraph 2 of Paragraph 1 of Article 5 of the Constitutional Court Procedure Act, when an individual, a legal entity, or a political party, whose constitutional right was infringed upon and remedies provided by law for such infringement had been exhausted, has questions on the constitutionality of the statute or regulation relied thereupon by the court of last resort in its final judgment, a petition for interpretation of the Constitution may be made. And a resolution of the Supreme Administrative Court, if and when cited by a judge in rendering a judgment, should be regarded as equivalent to an order, and thus qualifies as a subject of constitutional interpretation (*see* J.Y. Interpretations Nos. 374, 516, 620 and 622). Since the Final Judgement in the present case cited the Resolution and dismissed the petitioner's appeal because of a lack of legal grounds, the subject of this petition for constitutional interpretation shall be the Resolution. Hence, the

按司法院大法官審理案件法（下稱大審法）第 5 條第 1 項第 2 款規定，人民、法人或政黨於其憲法上所保障之權利，遭受不法侵害，經依法定程序提起訴訟，對於確定終局裁判所適用之法律或命令發生有牴觸憲法之疑義者，得聲請解釋憲法。次按最高行政法院決議如經法官於裁判上援用，應認其與命令相當，得為憲法解釋之客體（本院釋字第 374 號、第 516 號、第 620 號及第 622 號解釋參照）。查確定終局判決援用系爭決議，以上訴為無理由駁回聲請人之上訴，是本件聲請，應以系爭決議為審查客體，故聲請人就系爭決議所為解釋憲法之聲請，核與大審法第 5 條第 1 項第 2 款規定之要件相符，應予受理。爰作成本解釋，理由如下：

petitioner's petition for interpretation of the Constitution concerning the Resolution complies with the requirements under Subparagraph 2 of Paragraph 1 of Article 5 of the Constitutional Court Procedure Act, and the petition shall be granted. Therefore, this interpretation is made and the reasoning is as follows:

When acts against tax obligations involve several penal statutory provisions, they could be sanctioned separately if there are substantially multiple conducts. To ascertain the number of conducts, factors such as the constituent elements of the laws and regulations, the legal interests to be protected, and the purposes of the sanction shall be taken into consideration as a whole. Import duty is a tax imposed on goods imported from abroad. Commodity tax is a tax imposed on commodities manufactured domestically or imported from abroad when they leave the factory or are imported. Business tax is a tax imposed on domestic goods or services or imported commodities. Hence, imported goods may simultaneously involve levy of import duty, commodity

違反租稅義務之行為，涉及數處罰規定時，如係實質上之數行為，原則上得分別處罰之。至行為數之認定，須綜合考量法規範構成要件、保護法益及處罰目的等因素。進口稅係對國外進口貨物所課徵之稅捐；貨物稅乃對國內產製或自國外進口之貨物，於貨物出廠或進口時課徵之稅捐；營業稅則為對國內銷售貨物或勞務及進口貨物所課徵之稅捐。是進口貨物可能同時涉及進口稅、貨物稅及營業稅等租稅之課徵。立法者為使主管機關正確核課租稅，並衡諸核課之相關事實資料多半掌握於納稅義務人手中，關稅法第 17 條第 1 項規定：「進口報關時，應填送貨物進口報單、並檢附發票、裝箱單及其他進口必須具備之有關文件。」貨物稅條例第 23 條第 2 項規定：「進口應稅貨物，納稅義務人應向海關申報，並由海關於徵收關

tax and business tax. To ensure that the competent authority can levy taxes correctly, and considering that the facts and information relevant to levy of taxes are mostly held in the hands of the duty-payers, the legislators so enacted Paragraph 1 of Article 17 of the Customs Act, Paragraph 2 of Article 23 of the Commodity Tax Act and Article 41 of the Business Tax Act to expressly require that people who import goods declare relevant taxes truthfully according to the laws. Paragraph 1 of Article 17 of the Customs Act provides: "Upon declaration of importation, an import declaration form shall be filled out and submitted along with a bill of invoice, packing list and relevant documents required for importation." Paragraph 2 of Article 23 of the Commodity Tax Act provides: "For imported taxable commodities, taxpayers should file with the custom offices, and the commodity tax shall be collected by the custom office together with the custom duties." Article 41 of the Business Tax Act provides: "The amount of business tax payable on imported goods shall be levied by customs. With respect to the collection procedures

稅時代徵之。」營業稅法第 41 條規定：「貨物進口時，應徵之營業稅，由海關代徵之；其徵收……程序準用關稅法及海關緝私條例之規定辦理。」明定人民於進口應稅貨物時，有依各該法律規定據實申報相關稅捐之義務。納稅義務人未據實申報，違反各該稅法上之義務，如致逃漏進口稅、貨物稅或營業稅，分別合致海關緝私條例第 37 條第 1 項、貨物稅條例第 32 條第 10 款及營業稅法第 51 條第 1 項第 7 款之處罰規定，各按所漏稅額處罰，3 個漏稅行為構成要件迥異，且各有稅法專門規範及處罰目的，分屬不同領域，保護法益亦不同，本得分別處罰。至於為簡化稽徵程序及節省稽徵成本，除進口稅本由海關徵收（關稅法第 4 條參照）外，進口貨物之貨物稅及營業稅亦由海關代徵，且由納稅義務人填具一張申報單，於不同欄位申報 3 種稅捐，仍無礙其為 3 個申報行為之本質，其不實申報之行為自亦應屬數行為。

and administrative relief of business tax, the provisions of the Customs Act and the Customs Anti-Smuggling Act shall apply mutatis mutandis." If the duty-payer fails to declare truthfully, thereby violating the obligations under such tax laws and leading to evasion of import duty, commodity tax or business tax, such an untruthful declaration shall trigger the penalties under Subparagraph 4 of Paragraph 1 of Article 37 of the Customs Anti-Smuggling Act, Subparagraph 10 of Article 32 of the Commodity Tax Act and Subparagraph 7 of Paragraph 1 of Article 51 of the Business Tax Act; the duty-payer shall be sanctioned based on the evaded amount. The constituent elements of the three tax-evasion conducts are different, and these conducts are specifically regulated by different tax regulations for which the purposes of sanction, legislative fields, and protected interests vary. These conducts essentially could be sanctioned separately. Only for simplifying the procedure of taxation and saving the cost thereof, not only is import duty levied by the customs (*see* Article 4 of the Customs Act), but the commodity tax and business tax of

imported goods are also levied by the customs. In addition, the duty-payer may fill out only one single declaration form to declare three taxes. However, this does not change the fact that there are three declaration conducts. An untruthful declaration shall be of multiple conducts in nature.

In this connection, the Resolution states: "When filing the import declaration, the importer needs to fill in matters concerning import duty, commodity tax and business tax and submit the form to the customs to complete the declaration of import duty, commodity tax and business tax. Therefore, there are in fact three conducts of declaration rather than one single conduct. If the importer fails to declare truthfully such that there are evasions of import tax, commodity tax and/or business tax, and such failure to declare truthfully falls within the meaning of Subparagraph 4 of Paragraph 1 of Article 37 of the Customs Anti-Smuggling Act, Subparagraph 10 of Article 32 of the Commodity Tax Act and Subparagraph 7 of Article 51 of the Business Tax Act, the

綜上，系爭決議有關：「……進口人填具進口報單時，需分別填載進口稅、貨物稅及營業稅相關事項，向海關遞交，始完成進口稅、貨物稅及營業稅之申報，故實質上為 3 個申報行為，而非一行為。如未據實申報，致逃漏進口稅、貨物稅及營業稅，合於海關緝私條例第 37 條第 1 項第 4 款、貨物稅條例第 32 條第 10 款暨營業稅法第 51 條第 7 款規定者，應併合處罰，不生一行為不二罰之問題」部分，與法治國一行為不二罰之原則（本院釋字第 604 號解釋參照），並無牴觸。

penalties should be combined. It will not raise concerns about double jeopardy." In light of the above, the foregoing part of the Resolution does not contradict the principle of double jeopardy embraced by a rule-of-law nation (*see* J.Y. Interpretation No. 604).

To serve different purposes of regulation of tax, the state has the power to enact different laws and regulations to levy import duty, commodity tax and business tax, and sanction an individual according to the laws in a combined fashion if the individual fails to process the declaration truthfully when importing goods. However, the combination of penalties in any specific case shall not pose excessive burdens on the person being sanctioned so as to comply with the principle of proportionality provided for in Article 23 of the Constitution.

國家基於不同之租稅管制目的，分別制定法規以課徵進口稅、貨物稅及營業稅，於行為人進口貨物未據實申報時，固得依各該法律之規定併合處罰，以達成行政管制之目的，惟於個案併合處罰時，對人民造成之負擔亦不應過苛，以符合憲法第 23 條比例原則之精神，併此指明。

Justice Sheng-Lin JAN filed an opinion concurring in part.

Justice Ming-Cheng TSAI filed a concurring opinion.

Justice Chih-Hsiung HSU, filed

本號解釋詹大法官森林提出之部分協同意見書；蔡大法官明誠提出之協同意見書；許大法官志雄提出，陳大法官碧玉、林大法官俊益、黃大法官昭元加入之協同意見書；羅大法官昌發提出

a concurring opinion, in which Justice Beyue SU CHEN, Justice Jiun-Yi LIN, Justice Jau-Yuan HWANG, joined.

Justice Chang-Fa LO filed a dissenting opinion.

Justice Dennis Te-Chung TANG filed a dissenting opinion.

Justice Horng-Shya HUANG filed a dissenting opinion.

Justice Jui-Ming HUANG filed a dissenting opinion.

之不同意見書；湯大法官德宗提出之不同意見書；黃大法官虹霞提出之不同意見書；黃大法官瑞明提出之不同意見書。