

J. Y. Interpretation No.672 (February 12, 2010) *

ISSUE: Are the Provisions Prescribing the Custom Office to Confiscate a Traveler's Undeclared Foreign Currency with which She Carried when Crossing the Border under the Foreign Exchange Control Act and Regulations Promulgated *thereunder* in contravention of the Constitution ?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution (憲法第十五條與第二十三條); J.Y. Interpretation Nos. 313, 400, 448 and 600 (司法院大法官會議解釋釋字第三一三號、第四〇〇號、第四四八號與六〇〇號解釋); Article 3 of the Standard Act for the Laws and Rules (中央法規標準法第三條); Articles 11 and 24, Paragraph 3 of the Foreign Exchange Control Act (管理外匯條例第十一條與第二十四條第三項); Articles 154 and 157 of the Administrative Procedure Act (行政程序法第一五四條與第一五七條); Administrative Order of the Ministry of Finance, [5]-Tai-Chai-Jon-Tze, No. 925000075, March 21, 2003 (財政部中華民國九十二年三月二十一日台財融(五)字第〇九二五〇〇〇〇七五號令).

KEYWORDS:

foreign exchange (外匯), foreign currency (外幣), control (管制), cross the border (入出境), declaration (申報)

* Translated by Professor Chun-Jen Chen.

** Contents within frame, part of the original text, are added for reference purposes only.

confiscate (沒收), administrative fine (行政罰), traveler (旅客), custom office (海關), property right (財產權), principle of proportionality (比例原則), principle of clarity and definiteness of law (法律明確性原則).**

HOLDING: TArticle 11 and Article 24, Paragraph 3 of the Foreign Exchange Control Act, and the Administrative Order of the Ministry of Finance, [5]-Tai-Chai-Jon-Tze, No. 925000075 (March 21, 2003) are all stipulations which prescribe the traveler's declaration and registration requirements for the carrying of foreign currencies while crossing the national border and prescribe the custom office to confiscate those undeclared foreign currencies. Those stipulations are not in contravention of the constitutional guarantee of the protection of people's property right under Article 15 of the Constitution and the constitutional mandate of the principle of proportionality and the principle of clarity and definiteness of law under Article 23 of the Constitution.

解釋文：管理外匯條例第十一條、第二十四條第三項及財政部中華民國九十二年三月二十一日台財融(五)字第0九二五0000七五號令，關於攜帶外幣出入國境須報明登記，違反者應予沒入之規定，與憲法第十五條保障人民財產權、第二十三條之比例原則及法律明確性原則，尚無抵觸。

REASONING: Article 15 of the Constitution guarantees people's property right. The essence of this constitutional guarantee is to protect the rights of property owners to freely use, to benefit from and to dispose their properties and to protect them from the interference and infringement of the public authorities or of third parties in order to realize personal freedom, to develop personal characteristics and to maintain personal dignities. (See J. Y. Interpretation No. 400.) The Judicial Yuan has repeatedly stated that the legislative branch may enact law to restrict or limit people's property right and will not give rise to the issue of constitutionality so long as the restriction or limitation does not exceed the degree of necessity as mandated under Article 23 of the Constitution and is stipulated by statute or by regulation promulgated under the clear authorization of law. (See J.Y. Interpretation Nos. 313, 488 and 600.) The confiscation is a kind of administrative punishments which compulsorily deprive of a person's property when she breaches her duty imposed by the ad-

解釋理由書：憲法第十五條規定人民財產權應予保障，旨在確保個人依財產之存續狀態行使其自由使用、收益及處分之權能，並免於遭受公權力或第三人之侵害，俾能實現個人自由、發展人格及維護尊嚴（本院釋字第四〇〇號解釋參照）。立法機關對人民財產權之限制，如合於憲法第二十三條所定必要程度，並以法律定之或明確授權行政機關訂定法規命令者，即與上開憲法意旨無違，迭經本院解釋在案（本院釋字第三一三號、第四八八號、第六〇〇號解釋參照）。行政罰之沒入，係對人民財產不法所得或違反行政法上義務之行為，對其財產加以強制剝奪，其規定應合乎上開意旨，乃屬當然。

ministrative law or when her property is owned illegally. It goes without saying that the confiscation shall be promulgated in accordance with the foregoing constitutional guarantee and constitutional mandates.

Article 11 of the Foreign Exchange Control Act stipulates that, “Travelers or service crew personnel of transportation vehicles, vessels or airplanes who carry foreign currencies while crossing national border shall declare to and register with the custom office. The relevant regulations will be promulgated jointly by the Ministry of Finance and the Central Bank of the Republic of China (Taiwan).” On March 21, 2003, the Ministry of Finance issued the Administrative Order of the Ministry of Finance, [5]-Tai-Chai-Jon-Tze, No. 925000075(March 21, 2003) stipulated that, “Any traveler or service crew personnel of transportation vehicles, vessels or airplanes who carry foreign currencies while crossing national border that exceed USD\$10,000.00 or its equivalent shall declare to and register

管理外匯條例第十一條規定：「旅客或隨交通工具服務之人員，攜帶外幣出入國境者，應報明海關登記；其有關辦法，由財政部會同中央銀行定之。」財政部九十二年三月二十一日台財融(五)字第0九二五0000七五號令：「旅客或隨交通工具服務之人員，攜帶外幣出、入國境超過等值壹萬美元者，應報明海關登記。」同條例第二十四條第三項規定：「攜帶外幣出入國境，不依第十一條規定報明登記者，沒入之；申報不實者，其超過申報部分沒入之。」上開關於申報與沒入之規定(下稱系爭規定)，係為平衡國際收支，穩定金融(同條例第一條參照)，兼有防制經濟犯罪之作用，其目的洵屬正當。

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with the custom office.” Besides, Article 24, Paragraph 3, of the Foreign Exchange Control Act stipulates that, “The custom office shall confiscate those foreign currencies carried by anyone who crosses the national border and fails to declare to and register with the custom office pursuant to Article 11 of this Act. When anyone files a false declaration of his carried foreign currency, the custom office shall confiscate the portion of foreign currency carried exceeding the declared amount.” These statutory provisions and relevant administrative order (*hereinafter* referred to as “the provisions at issue”) are enacted and promulgated in order to balance international payments and to stabilize national finance (*See* Article 1 of the Foreign Exchange Control Act.) while also carrying the function of preventing economic crimes. The provisions at issue were enacted and promulgated with a just legislative purpose.

The declaration system on the trafficking of foreign currencies, as prescribed by the provisions at issue, solely

系爭規定之出入國境申報外幣制度，僅對攜帶超過等值壹萬美元外幣之旅客或隨交通工具服務之人員，課予申

imposes the obligation of declaration and registration upon those travelers or service crew personnel of transportation vehicles, vessels or airplanes who carry foreign currencies while crossing national border exceeding USD\$ 10,000.00 or its equivalent. When there is a truthful declaration, there shall be no violation of the provisions at issue. The declaration system is of great convenience to those travelers who are subject to the obligation of declaration and registration, to those travelers who are not subject to the obligation of declaration and registration, and to the custom office as well. The declaration requirement is important to the agency-in-charge to monitor the statuses and movements of foreign currencies in and out of the nation and to enable the agency-in-charge to take timely and necessary measures to stabilize the national finance and national economy, while also preventing economic crimes. Therefore, the declaration requirement is a necessary means to control foreign currencies.

報義務，一經依法申報即不違反系爭規定，對於依規定應申報者、無須申報者及執行機關均有其便利性。此申報之規定，有助於主管機關掌握外匯資金進出與外匯收支動態，並得適時採取必要之因應措施，以穩定金融及經濟，並防制經濟犯罪，係管理外匯之必要手段。

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In order to ensure the compliance and the effectiveness of the declaration requirement, it is indeed necessary to impose compulsory measures or penalties on those people who fail to file a declaration or fail to declare truthfully. With respect to the question what compulsory measures or penalties shall be adopted, it shall be more suitable for the legislative branch to make the appropriate decision, taking into account both the policy of foreign exchange control and the protection of people's rights. The stipulation of confiscation under Article 24, Paragraph 3 of the Foreign Exchange Control Act is an administrative penalty against anyone who carries foreign currency exceeding USD\$10,000.00 and fails to declare and register truthfully. The penalty is administrative in nature and is adopted with a view to prompt voluntary and truthful declaration and is less severe than its criminal counterpart. Taking into account the frequency and characteristics of travelers or service crew personnel of transportation vehicles, vessels or airplanes who carry foreign currencies in and out of the

為確保申報制度之實效，對於違反申報義務者，施以強制或處罰，實有必要。至其強制或處罰之措施應如何訂定，宜由立法者兼顧外匯管理政策與人民權利之保護，為妥適之決定。管理外匯條例第二十四條第三項之規定，係對於攜帶外幣超過等值壹萬美元而未申報者，予以沒入，以督促主動誠實申報，較科處刑罰之方式為輕，且鑑於旅客或隨交通工具服務人員攜帶外幣出入國境之動態與特性，上開處罰規定尚未抵觸憲法第二十三條之比例原則，而與憲法保障人民財產權之意旨無違。且系爭規定對出入國境旅客或隨交通工具服務之人員課予申報義務，其有關違反時之處罰規定，尚屬明確，並未抵觸法律明確性之要求。

nation, the provisions at issue are not in contravention of the constitutional mandate of the principle of proportionality under Article 23 of the Constitution and are not in contravention of the constitutional guarantee of the protection of people's property right. In addition, the provisions at issue clearly impose the obligation of declaration on travelers or service crew personnel of transportation vehicles, vessels or airplanes and clearly delineate the penalties against the violators; therefore, the provisions at issue are not in contravention of the constitutional mandate of the principle of clarity and definiteness of law (*Rechtsbestimmtheitprinzip*).

The second half of Article 11 of the Foreign Exchange Control Act stipulates that, "The relevant regulations will be promulgated jointly by the Ministry of Finance and the Central Bank of the Republic of China (Taiwan)." This is a statutory authorization which authorizes the agencies-in-charge to promulgate jointly regulations to govern the procedure, process and other relevant matters closely related

管理外匯條例第十一條規定，外幣申報之「有關辦法，由財政部會同中央銀行定之」，係授權主管機關共同就申報之程序、方式及其他有關事項訂定法規命令，其訂定並應遵循中央法規標準法及行政程序法之相關規定。惟上開財政部令，既未以辦法之名稱與法條形式，復未履行法規命令應遵循之預告程序，亦未會銜中央銀行發布，且其內容僅規定超過等值壹萬美元者應報明海

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to the declaration. It goes without saying that the regulation shall be promulgated in accordance with the relevant provisions of the Standard Act for the Laws and Rules and the Administrative Procedure Act. However, the foregoing Administrative Order issued by the Ministry of Finance was neither promulgated under the name and the provisional format of an administrative regulation, nor in compliance with the public notice requirement for the implementation of a regulation. Further, the Ministry of Finance failed to promulgate the regulations jointly with the Central Bank of the Republic of China (Taiwan). Furthermore, the Administrative Order issued by the Ministry of Finance only prescribed that the traveler or service crew personnel who carry foreign currencies while crossing the national border exceeding USD\$10,000.00 shall declare to the custom office, and is silent on the procedure and process of the declaration. Hence, the Administrative Order is inconsistent with Article 11 of the Foreign Exchange Control Act, Articles 154 and 157 of the Administrative Procedure Act, and

關登記之意旨，對於申報之程序、方式等事項則未規定，與管理外匯條例第十一條之授權意旨、行政程序法第一百五十四條、第一百五十七條及中央法規標準法第三條等規定不符，應由有關機關儘速檢討修正。

Article 3 of the Standard Act for the Laws and Rules, and shall be reviewed and revised by the relevant agencies as soon as possible.

Justice Mao-Zong Huang filed concurring opinion, in which Justice PaiHsiu Yeh joined.

Justice Shin-Min Chen filed dissenting opinion.

Justice Chun-Sheng Chen filed dissenting opinion

EDITOR'S NOTE:

Summary of Facts:I. Petition for Interpretation by Petitioner A

A. In April, 2007, before Petitioner A boarded an airplane, the custom office discovered that he carried ¥40,000,000.00 (Japanese Yen). Because Petitioner A failed to declare the carried foreign currencies truthfully under Article 11 of the Foreign Exchange Control Act, the custom office returned the exempted amount of ¥1,200,000.00, approximately USD\$ 10,000.00, to Petitioner A on the scene and confiscated ¥38,800,000.00 pursuant

本號解釋黃大法官茂榮、葉大法官百修共同提出協同意見書；陳大法官新民提出不同意見書；陳大法官春生提出不同意見書。

編者註：

事實摘要：（一）A 聲請案

1. 聲請人 A 於民國（下同）96 年 4 月間擬搭機出境時，被查獲攜帶日幣 4,000 萬元。因聲請人未依管理外匯條例第 11 條規定據實申報，經財政部臺北關稅局依財政部 92 年 3 月 21 日台財融（五）字第 0925000075 號令意旨，當場發還免申報等值美金 10,000 元之日幣外，其餘未依規定申報之日幣現鈔 3,880 萬元，依管理外匯條例第 24 條第 3 項規定沒入。

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to the Administrative Order of the Ministry of Finance, [5]-Tai-Chai-Jon-Tze, No. 925000075, March 21, 2003 and Article 24, Paragraph 3, of the Foreign Exchange Control Act.

B. Petitioner A disagreed with the confiscation and filed an administrative appeal and instituted an administrative proceeding and lost. Petitioner A claimed that the statutory and regulatory provisions applied in the case, the Supreme Administrative Court, the Court in its Supreme Administrative Court Ruling [2009] Chai-Tze No. 128 are in contravention of the constitutional guarantee of the protection of people's property right under Article 15 of the Constitution and the constitutional mandate of the principle of proportionality and the principle of clarity and definiteness of law under Article 23 of the Constitution. Petitioner A filed the petition for interpretation to this Court.

II. Petition for Interpretation by Petitioner B

2. 聲請人不服，經訴願、行政訴訟後，認最高行政法院 98 年度裁字第 128 號裁定所適用之系爭規定，抵觸憲法第 15 條保障人民財產權、第 23 條之比例原則與法律保留原則，聲請解釋。

(二) B 聲請案

A. In October, 2008, Petitioner B flew to Taiwan and followed the green line to enter the checkpoint of the custom office. A custom officer discovered Petitioner B carried HKD\$485,100.00 and deemed Petitioner B violating Article 11 of the Foreign Exchange Control Act. The custom officer returned the exempted amount of HKD\$79,600.00, approximately USD\$ 10,000.00, to Petitioner B on the scene and confiscated HKD\$405,500.00 pursuant to Article 24, Paragraph 3, of the Foreign Exchange Control Act.

B. Petitioner B disagreed with the confiscation and filed an administrative appeal and instituted an administrative proceeding and lost. Petitioner B claimed that the statutory and regulatory provisions applied in the case, the Supreme Administrative Court Ruling [2009] Chai-Tze No. 3171 are in contravention of the constitutional guarantee of the protection of people's property right under Article 15 of the Constitution and the constitutional mandate of the principle of proportionality and the principle of clarity and

1. 聲請人 B，97 年 10 月搭乘班機入境，由綠線檯通過遭關員攔檢，查獲未依規定申報之港幣現鈔 485,100 元，認聲請人違反管理外匯條例第 11 條規定，當場發還免申報等值美金 10,000 元之港幣，其餘 405,500 元依同條例第 24 條第 3 項規定沒入。

2. 聲請人不服，經訴願、行政訴訟程序後，認最高行政法院 98 年度裁字第 3171 號裁定所適用之系爭規定，抵觸憲法第 15 條保障人民財產權及第 23 條比例原則，聲請解釋。

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definiteness of law under Article 23 of the Constitution. Petitioner B filed the petition for interpretation to this Court.

III. Petition for Interpretation by Petitioner C

A. In December, 2005, Petitioner C flew to Taiwan and followed the green line to enter the checkpoint of the custom office. A custom officer discovered Petitioner C carried undeclared cash of RMB\$20,000.00 and HKD\$ 1,600,000.00 and deemed Petitioner C violating Article 11 of the Foreign Exchange Control Act. The custom officer returned HKD\$80,000.00, approximately USD\$ 10,000.00, to Petitioner C on the scene and confiscated RMB\$20,000.00 and HKD\$1,520,000.00 pursuant to Article 24, Paragraph 3, of the Foreign Exchange Control Act.

B. Petitioner C disagreed with the confiscation and filed an administrative appeal and instituted an administrative proceeding and lost. Petitioner C claimed that the statutory and regulatory provi-

(三) C 聲請案

1. 聲請人 C 於 94 年 12 月間搭乘班機入境，由綠線檯通過遭關員攔檢，查獲人民幣現鈔 20,000 元及未依規定申報之港幣現鈔 1,600,000 元，認聲請人涉及違反管理外匯條例第 11 條之情事。當場發還免申報之等值美金 10,000 元之港幣外，其餘港幣現金共 1,520,000 元，依同條例第 24 條第 3 項規定沒入。

2. 聲請人不服，經訴願、行政訴訟程序後，認最高行政法院 97 年度裁字第 12 號裁定所適用之系爭規定，違反憲法平等原則、財產權保障及比例原則，聲請解釋。

sions applied in the case, the Supreme Administrative Court Ruling [2008] Chai-Tze No. 12 are in contravention of the constitutional guarantee of the protection of people's property right under Article 15 of the Constitution and the constitutional mandate of the principle of proportionality and the principle of clarity and definiteness of law under Article 23 of the Constitution. Petitioner C filed the petition for interpretation to this Court.