J. Y. Interpretation No.687（May 27, 2011）*

ISSUE: Is it unconstitutional to impose only imprisonment sentence on the responsible person of a company for his intentional act to cause the company to evade tax ?

RELEVANT LAWS:

Article 7 of the Constitution（憲法第七條）；Article 41 (as amended on January 24, 1990)； Article 47 (as promulgated on October 22, 1976, and amended on May 27, 2009) of the Tax Collection Act（稅捐稽徵法第四十一條（79 年 1 月 24 日修正公布）第四十七條（65 年 10 月 22 日制定公布，98 年 5 月 27 日修正公布））；Supreme Court Precedents 69 *Tai Shan Tsu* No. 3068 and 73 *Tai Shan Tsu* No. 5038（最高法院 69 年台上字第 3068 號、73 年台上字第 5038 號判例）.

KEYWORDS:

nulla poena sine culpa (no culpability carries no penalty)（無責任即無處罰）, principle of equality（平等原則）, criminally illegal and culpable（刑事違法且有責）, criminally unlawful（刑事不法）, statutory sentence（法定刑）, provision stipulating the imprisonment sentence（應處徒刑之規定）, imprisonment（有期徒刑）, detention（拘役）, differential treatment（差別待遇）, judicial precedent（判例）, J.Y. Interpretation No. 371（釋字第三七一號解釋）, J.Y. Interpretation No. 572（釋字第五七二號解釋）.**

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* Translated by Chun-yih Cheng.

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HOLDING: Article 47, Item 1 of the Tax Collection Act, as promulgated on October 22, 1976, stipulates: "The provisions of this Act stipulating the imprisonment sentences which may be imposed on a taxpayer ... shall apply to the following persons: 1. The responsible person of a company as provided for under the Company Act." (It is the same as Paragraph 1, Item 1 of the same Article, as amended and promulgated on May 27, 2009.) It is designed to hold the responsible person of a company accountable for the criminally illegal and culpable act and to shoulder the criminal liability, and does not contradict the constitutional principle of "*nulla poena sine culpa* (no culpability carries no penalty)." With regard to "provision stipulating the imprisonment sentence", it contradicts the principle of equality under Article 7 of the Constitution, and shall become ineffective no later than the anniversary since the issuance of this Interpretation.

解釋文：中華民國六十五年十月二十二日制定公布之稅捐稽徵法第四十七條第一款規定：「本法關於納稅義務人……應處徒刑之規定，於左列之人適用之：一、公司法規定之公司負責人。」（即九十八年五月二十七日修正公布之同條第一項第一款）係使公司負責人因自己之刑事違法且有責之行為，承擔刑事責任，與無責任即無處罰之憲法原則並無牴觸。至「應處徒刑之規定」部分，有違憲法第七條之平等原則，應自本解釋公布日起，至遲於屆滿一年時，失其效力。

REASONING: Based on the constitutional principle of *nulla poena sine culpa* (no culpability carries no penalty),

解釋理由書：基於無責任即無處罰之憲法原則，人民僅因自己之刑事違法且有責行為而受刑事處罰，法律不

a person shall be subject to criminal penalty only for criminal violations and culpable acts. The law may not stipulate that a person assumes criminal liability for the criminally illegal act of the others. In addition, the purpose of the principle of equality stipulated under Article 7 of the Constitution is to prevent the legislators from arbitrarily setting unreasonable differential treatment among the people. Any unjustified differential treatment towards the same subject matter is contradictory to the principle of equality under Article 7 of the Constitution.

得規定人民為他人之刑事違法行為承擔刑事責任。又憲法第七條規定平等原則，旨在防止立法者恣意對人民為不合理之差別待遇。如對相同事物，為無正當理由之差別待遇，即與憲法第七條之平等原則有違。

Article 47, Item 1 of the Tax Collection Act, as promulgated on October 22, 1976, states: “The provisions of this Act stimulating the imprisonment sentences which may be imposed on a taxpayer... shall apply to persons listed as follows: 1. The responsible person of a company as provided under the Company Act.” (a Paragraph 2 was added on May 27, 2009, with the original provision adjusted as Paragraph 1, and the language “listed to the left” was amended to “listed as follows”; *hereinafter* the Disputed Provi-

六十五年十月二十二日制定公布之稅捐稽徵法第四十七條第一款規定：「本法關於納稅義務人……應處徒刑之規定，於左列之人適用之：一、公司法規定之公司負責人。」（九十八年五月二十七日增訂第二項，原條文移列為第一項，並修正「左列」為「下列」；下稱系爭規定）所稱「本法關於納稅義務人……應處徒刑之規定」，經查立法紀錄，係指同法第四十一條行政院原草案之規定「納稅義務人故意以詐欺或其他不正當方法逃漏稅捐者，處六月以上五年以下有期徒刑」。立法院審議時認為

sion). Having consulted with the legislative records, "the provisions of this Act stimulating the imprisonment sentences" refers to the Executive Yuan's draft Article 41 of the same Act, "[a] taxpayer who intentionally evades tax payment by fraud or other unjustified means is subject to the imprisonment of no less than 6 months and no more than 5 years." During the review sessions, the Legislative Yuan considered that "as far as the circumstances of the crime are concerned, tax evasion is more or less compatible with the crimes of fraud under Article 339, Paragraph 2 and forgery of documents under Articles 210 and 214 of the Penal Code. By references to the sentences of each respective provision, the basic penalty is set to be no more than 5 years imprisonment, and may be imposed jointly with detention or fine so that the court may take into account the totality of circumstances, pay attention to the respective factor stipulated under Article 57 of the Penal Code, weigh in and determine the appropriate sentence to avoid severity and in the hope to be adequate." Thus the statutory sentence of the Executive Yuan's draft stated above was

「按逃漏稅捐行為，就其犯罪情狀言，多與刑法第三三九條第二項之詐欺罪及第二一0條、第二一四條偽造文書罪相當。茲參照各該條所定刑度，規定最重本刑為五年以下有期徒刑，並得科處拘役、罰金。俾法院得就逃漏稅捐行為之一切情狀，注意刑法第五十七條所定各事項，加以審酌，從而量定適當之刑，以免失之過嚴，而期妥適」，乃將上開行政院原草案法定刑修正為「處五年以下有期徒刑、拘役或科或併科一千元以下罰金」（立法院公報第六十五卷第六十六期第四頁至第五頁、同卷第七十九期第八五頁至第八六頁及同卷第八十二期第一一頁參照；其中罰金部分於七十九年一月二十四日修正公布為新臺幣六萬元以下罰金），惟系爭規定並未隨之更改文字，所謂「應處徒刑之規定」，即限於「處五年以下有期徒刑」。

amended as "no more than 5 years imprisonment, detention, fine or jointly with fine of no more than 1,000 Yuan." (*see* the Legislative Yuan Gazette, vol. 65, No. 66, pp. 4-5, vol. 65, No. 79, pp. 85-86, the same volume, No. 82, p. 11; the fine was amended to no more than NT$ 60,000 on January 24, 1990). However, for the language not amended in the Disputed Provision, the so-called "the provisions stipulating the imprisonment sentences" is then limited to "no more than 5 years imprisonment".

In accordance with the Disputed Provision, if the responsible person of a company should intentionally instruct, participate in the implementation or fail to prevent the act of tax evasion, he shall be subject to criminal penalty. Therefore, the Disputed Provision is to have the responsible person of a company bear the criminal liability for the criminally illegal and culpable acts of his own. It does not make the responsible person of a company criminally liable for the criminally illegal and culpable acts of the others, which does not contradict the principle

依據系爭規定，公司負責人如故意指示、參與實施或未防止逃漏稅捐之行為，應受刑事處罰。故系爭規定係使公司負責人因自己之刑事違法且有責之行為，承擔刑事責任，並未使公司負責人為他人之刑事違法且有責行為而受刑事處罰，與無責任即無處罰之憲法原則並無牴觸。

of *nulla poena sine culpa* (no culpability carries no penalty) .

In addition, the imposition of criminal sanctions on the responsible person of a company who intentionally instructs, participates in or fails to prevent tax evasion, and resulting in the shortage of tax payment by the company, is to maintain tax equity and safeguard the revenue of the public treasury. Once the responsible person of a company is subject to the penalty of the Disputed Provision, the substantive conditions to constitute the criminal act and the statutory sentences have all been stipulated under Article 41 of the Tax Collection Act. The target of the penalties is the act of fraud or other unjustified means to evade taxes, and the statutory sentences include imprisonment, detention and fine. They are the evaluation of the legislators on such criminal unlawfulness as intentionally falsify tax returns that results in levy shortage. Given that the Disputed Provision penalizes the responsible person of a company bases on the same tax evasion act but separately limits the scope of those subject to im-

又公司負責人有故意指示、參與實施或未防止逃漏稅捐之行為，造成公司短漏稅捐之結果時，系爭規定對公司負責人施以刑事制裁，旨在維護租稅公平及確保公庫收入。查依系爭規定處罰公司負責人時，其具體構成要件行為及法定刑，均規定於上開稅捐稽徵法第四十一條。該規定所處罰之對象，為以詐術或其他不正當方法逃漏稅捐之行為，所設定之法定刑種類包括有期徒刑、拘役及罰金，係立法者對於故意不實申報稅捐導致稅捐短漏之行為，所為刑事不法之評價。系爭規定既根據同一逃漏稅捐之構成要件行為，處罰公司負責人，竟另限定僅適用有期徒刑之規定部分，係對同一逃漏稅捐之構成要件行為，為差別之不法評價。故系爭規定「應處徒刑之規定」部分，係無正當理由以設定較為嚴厲之法定刑為差別待遇，有違憲法第七條之平等原則，應自本解釋公布日起，至遲於屆滿一年時，失其效力。

prisonment, they are differential evaluations of unlawfulness out of the same tax evasion act. Therefore, the Disputed Provision that "provision stipulating imprisonment sentence" is the imposition of a more severe statutory sentence is a differential treatment without proper justification and contradicts the principle of equality under Article 7 of the Constitution, and shall become ineffective no later than the anniversary since the issuance of this Interpretation.

The Petitioner also petitioned for an interpretation of Article 47, Items 2-4 of the Tax Collection Act, as promulgated on 22 October 1976. Based on the description under the Petition, the abovestated provisions were not the applicable laws for the case the petition derives from. Separately, with regard to the petition for an interpretation of Supreme Court precedents 69 *Tai Shan Tsu* No. 3068 and 73 *Tai Shan Tsu* No. 5038, since judicial precedents are the expression of legal opinions of that Court to unify the views on laws and regulations, they are different from law and are not the subject

聲請人併聲請解釋六十五年十月二十二日制定公布之稅捐稽徵法第四十七條第二款至第四款規定部分，依聲請意旨所述，上開條款並非本件原因案件應適用之規定；另聲請解釋之最高法院六十九年台上字第三０六八號、七十三年台上字第五０三八號判例部分，因判例乃該院為統一法令上之見解，所表示之法律見解，與法律尚有不同，非屬法官得聲請解釋之客體。上開二聲請解釋部分，均核與本院釋字第三七一號及第五七二號解釋所定之聲請解釋要件有所不合，應不予受理，併此敘明。

matters that a judge may file petition for an interpretation. The above two parts in the petition do not meet the requirements for interpretation in accordance with J.Y. Interpretation Nos. 371 and 572, and are hereby denied.

Justice Sea-Yau Lin filed concurring opinion.

Justice Ching-You Tsay filed concurring opinion.

Justice Mao-Zong Huang filed concurring opinion.

Justice Shin-Min Chen filed dissenting opinion.

Justice Yu-hsiu Hsu filed concurring opinion in part.

Justice Yeong-Chin Su filed concurring opinion in part, in which Justice Pi-Hu Hsu joined.

Justice Tzong-Li Hsu filed dissenting opinion in part, in which Justice Tzu-Yi Lin joined.

Justice Chi-Ming Chih filed dissenting opinion in part.

Justice Chen-Shan Li filed dissenting opinion in part.

本號解釋林大法官錫堯提出協同意見書；蔡大法官清遊提出協同意見書；黃大法官茂榮提出協同意見書；陳大法官新民提出不同意見書；許大法官玉秀提出部分協同意見書；蘇大法官永欽、徐大法官璧湖共同提出部分協同、部分不同意見書；許大法官宗力提出，林大法官子儀加入之部分不同意見書；池大法官啟明提出部分不同意見書；李大法官震山提出部分不同意見書。

EDITOR'S NOTE:

Summary of facts: The petitioner, Judge Chien Ron Chien of the Taiwan Taoyuan District Court, while reviewing a case on the violation of Business Accounting Act by defendant Chiu Kun Fon (the responsible person of Mei Chien Corporation), believed that while the applicable Article 47, Item 1 of the Tax Collection Act is limited to "shall be subject to imprisonment," it was apparently a legislative error and was not that the defendant cannot apply it analogically in his favor, thus believed that the responsible person of a company may be subject to detention or fine under Article 41 of the same Act as well.

However, the Supreme Court precedents 69 *Tai Shan Tsu* No. 3068 and 73 *Tai Shan Tsu* No. 5038 were of the opinions that the Disputed Provision may impose only imprisonment, but no detention or fine on the responsible person of a company. The petitioner thus argued that the Disputed Provision and the above two Supreme Court precedents infringe upon the judge's discretionary power on decid-

編者註：

事實摘要：聲請人臺灣桃園地方法院法官錢建榮，於審理被告X（A公司負責人）違反商業會計法案件時，認為所應適用之稅捐稽徵法第47條第1款，條文雖限於「應處徒刑」，然而觀察立法過程，其限於「應處徒刑」顯係立法疏漏，而並非不能對被告為有利之類推適用，乃認為公司負責人亦得科處同法第41條規定之拘役、罰金刑罰。

但最高法院69年台上字第3068號、73年台上字第5038號二則判例要旨則認為，系爭規定僅得對公司負責人處以有期徒刑，不得科處拘役或罰金。聲請人因而認為系爭規定及上開二則最高法院判例，侵害法官適用法律選擇刑罰種類之裁量權，違背憲法之平等原則及比例原則，爰依本院釋字第371號解釋，裁定停止訴訟程序，聲請解釋。

ing the applicable laws and selection of penalty types, and contradicts the principle of equality and proportionality under the Constitution. The judge thus ordered to stay the proceedings and petition for an interpretation in accordance with J.Y. Interpretation No. 371.