

J. Y. Interpretation No.696 (January 20, 2012) *

- ISSUE:**
1. Is the Income Tax Act provision constitutional in requiring a taxpayer and his/her spouse to file a joint tax return for their aggregate non-salary income ?
 2. Is the Directive issued by the Ministry of Finance in 1987 constitutional in requiring the share of tax liability that a party of a separated couple must bear to be apportioned based on the ratio of the party's income to the couple's aggregate income ?

RELEVANT LAWS:

Articles 7, 15 and 23 of the Constitution (憲法第七條、第十五條、第二十三條) ; J.Y. Interpretation Nos. 318, 547, 554, 584, 596, 605, 614, 647, 648, 666, 682 and 694 (司法院釋字第三一八號、第五四七號、第五五四號、第五八四號、第五九六號、第六〇五號、第六一四號、第六四七號、第六四八號、第六六六號、第六八二號、第六九四號解釋) ; Article 15, Paragraph 1, of the Income Tax Act (as amended on December 30, 1989 and June 25, 2003) (所得稅法第十五條第一項 (中華民國七十八年十二月三十日修正公布、九十二年六月二十五日修正公布)) ; Article 15, Paragraph 2, of the Income Tax Act (as amended on December 30, 1989 and June 25, 2003) (所得稅法第十五條第二項前段 (中華民

* Translated by Ya-Wen Yang/ Ching-Yuan Huang.

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國七十八年十二月三十日修正公布、九十二年六月二十五日修正公布)) ; The Directive Reference No. TTS-7519463 as issued by the Ministry of Finance on March 4, 1987 (財政部七十六年三月四日台財稅第七五一九四六三號函) ; The Directive Reference No. TTS-770653347 as issued by the Ministry of Finance on March 25, 1988 (財政部七十七年三月二十五日台財稅第七七〇六五三三四七號函) 。

KEYWORDS:

non-salary income of a married couple (夫妻非薪資所得), jointly filing tax return and paying tax liability (合併報繳), joint computation of tax liability (合併計算), joint tax return (合併申報), separate computation of tax liability (單獨計算稅額), progressive tax rate (累進稅率), principle of equality (平等原則), principle of equal taxation (租稅公平), differential treatment (差別待遇), marital relationship (婚姻關係), marriage and family (婚姻與家庭), free development of character (人格自由), institutional safeguard (制度性保障), substantial relation (實質關聯), cost of taxation (稽徵成本), fiscal revenue (財政收入), household unit (家計單位), separation (分居), joint tax liability (全部應繳納稅額), individual consolidated income (個人所得總額), a couple's aggregate income (夫妻所得總額).**

HOLDING: Article 15, Paragraph 1, of the Income Tax Act as amended on December 30, 1989 provided

解釋文: 中華民國七十八年十二月三十日修正公布之所得稅法第十五條第一項規定:「納稅義務人之配偶,及

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that, where the spouse of a taxpayer and/or a dependent whose support deduction may be made in accordance with Article 17 of this Act has any income as provided in the preceding Article, the taxpayer shall include such income in his/her income tax return. (It was later amended on June 25, 2003, although the requirement that a married couple files a tax return and pays the tax liability jointly was not amended.) Insofar as the said provision requires that tax is imposed on the basis of such a joint return, if a taxpayer's liability as computed in conjunction with the nonsalary income of his or her spouse exceeds the amount payable if it were separately computed, thereby increasing his or her taxation, the situation is contrary to the principle of equality as provided by Article 7 of the Constitution. The said provision shall cease to apply no later than two years after this Interpretation is made public.

The Directive Reference No. TTS-7519463 as issued by the Ministry of Finance on March 4, 1987 (hereinafter the "Directive at issue") stipulated as follows: The husband and wife of a separated cou-

合於第十七條規定得申報減除扶養親屬免稅額之受扶養親屬，有前條各類所得者，應由納稅義務人合併報繳。」（該項規定於九十二年六月二十五日修正，惟就夫妻所得應由納稅義務人合併報繳部分並無不同。）其中有關夫妻非薪資所得強制合併計算，較之單獨計算稅額，增加其稅負部分，違反憲法第七條平等原則，應自本解釋公布之日起至遲於屆滿二年時失其效力。

財政部七十六年三月四日台財稅第七五一九四六三號函：「夫妻分居，如已於綜合所得稅結算申報書內載明配偶姓名、身分證統一編號，並註明已分居，分別向其戶籍所在地稽徵機關辦理

ple may each file a consolidated tax return with the tax authority at the place of each one's household registration, stating therein the name and ID No. of the spouse and the fact that they are separated. In this event, the ratio of a party's tax liability to the couple's joint tax liability shall be computed based on the percentage that the party's consolidated income represents as compared to the couple's aggregate consolidated income. Upon either party's application, a separate tax assessment notice for each one's outstanding tax liability (*i.e.* the individual's tax liability minus the amounts withheld and paid) may be issued. The formula promulgated therein about how the joint tax liability is to be apportioned between the separated husband and wife violates fairness of taxation and hence shall be no longer applicable.

REASONING: The principle of equality prescribed by Article 7 of the Constitution does not mean absolute and mechanical equality in formality, but is for the protection of substantive equal status under the law, which requires matters identical in nature be treated and handled

結算申報，其歸戶合併後全部應繳納稅額，如經申請分別開單者，准按個人所得總額占夫妻所得總額比率計算，減除其已扣繳及自繳稅款後，分別發單補徵。」其中關於分居之夫妻如何分擔其全部應繳納稅額之計算方式規定，與租稅公平有違，應不予援用。

解釋理由書：憲法第七條所揭示之平等原則非指絕對、機械之形式上平等，而係保障人民在法律上地位之實質平等，要求本質上相同之事物應為相同之處理，不得恣意為無正當理由之差別待遇（本院釋字第五四七號、第五八四號、第五九六號、第六〇五號、

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identically without being subjected to differential treatment arbitrarily or for no proper justification. (See J.Y. Interpretation Nos. 547, 584, 596, 605, 614, 647, 648, 666 and 694.) For a statute or regulation to meet the equal protection requirement, the purpose of the differential treatment must be constitutional, and a sufficient degree of nexus must exist between the classification set out in the regulation and the objectives that the regulation seeks to achieve. (See J.Y. Interpretation Nos. 682 and 694.)

Article 15, Paragraph 1, of the Income Tax Act as amended on December 30, 1989 (hereinafter “the provision at issue”) provided that, where the spouse of a taxpayer and/or a dependent whose support deduction may be made in accordance with Article 17 of this Act has any income as provided in the preceding Article, the taxpayer shall include such income in his/her income tax return. (The provision at issue was later amended on June 25, 2003, although the requirement that a married couple files a tax return and pays the tax liability jointly was not

第六一四號、第六四七號、第六四八號、第六六六號、第六九四號解釋參照)。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、第六九四號解釋參照）。

中華民國七十八年十二月三十日修正公布之所得稅法第十五條第一項規定：「納稅義務人之配偶，及合於第十七條規定得申報減除扶養親屬免稅額之受扶養親屬，有前條各類所得者，應由納稅義務人合併報繳。」（該項規定於九十二年六月二十五日修正，惟就夫妻所得應由納稅義務人合併報繳部分並無不同；下稱系爭規定）第二項前段規定：「納稅義務人之配偶得就其薪資所得分開計算稅額，由納稅義務人合併報繳。」（九十二年六月二十五日修正為：「納稅義務人得就其本人或配偶之薪資所得分開計算稅額，由納稅義務人合併

amended.) The anterior of Article 15, Paragraph 2, of the Income Tax Act, as amended on December 30, 1989, provided that the tax liability on the salary income of a taxpayer's spouse may be computed separately and then a tax return filed and the tax paid jointly by the taxpayer. (On June 25, 2003, this provision was further amended as follows: the tax liability on the salary income of a taxpayer or his/her spouse may be computed separately and then a tax return filed and paid jointly by the taxpayer.) Based on the above provisions, a married couple must file a joint tax return therein stating the husband and wife's aggregate non-salary income and compute the joint tax liability accordingly.

Insofar as the procedure for filing the joint return is concerned, J.Y. Interpretation No. 318 has pointed out that the provisions are essential to the furtherance of the public interest and are not in conflict with the Constitution. Nevertheless, when tax is imposed on the basis of such a joint return, if the tax payable by a taxpayer as computed in conjunction with the income of his or her spouse and other

報繳。」)是夫妻非薪資所得應由納稅義務人及其配偶合併申報且合併計算其稅額。

按合併申報之程序，係為增進公共利益之必要，與憲法尚無抵觸，惟如納稅義務人與有所得之配偶及其他受扶養親屬合併計算課稅時，較之單獨計算稅額，增加其稅負者，即與租稅公平原則不符，業經本院釋字第三一八號解釋在案。茲依系爭規定納稅義務人及其配偶就非薪資所得合併計算所得淨額後，適用累進稅率之結果，其稅負仍有高於分別計算後合計稅負之情形，因而形成

dependents exceeds the amount payable if it were separately computed, thereby increasing his or her taxation, the situation is contrary to the principle of fair taxation. Under progressive marginal tax rates, the tax liability computed based on a married couple's aggregate net non-salary income, as requested by the provision at issue, would exceed the sum of each party's separate tax liabilities computed individually based on each party's non-salary income. In this respect, the provision at issue constitutes tax discrimination based on marital status.

Marriage and family serve as the foundation on which our society takes its shape and develops and are thus institutionally protected by the Constitution (See J.Y. Interpretation No. 554.) Tax discrimination based on marital status, which imposes heavier economic burdens on married couples, is equivalent to a marriage penalty and thus contravenes the intent of the Constitution to protect the institutions of family and marriage. For this reason, whether such discrimination under the provision at issue violates

以婚姻關係之有無而為稅捐負擔之差別待遇。

按婚姻與家庭植基於人格自由，為社會形成與發展之基礎，受憲法制度性保障（本院釋字第五五四號解釋參照）。如因婚姻關係之有無而為稅捐負擔之差別待遇，致加重夫妻之經濟負擔，則形同對婚姻之懲罰，而有違憲法保障婚姻與家庭制度之本旨，故系爭規定所形成之差別待遇是否違反平等原則，應受較為嚴格之審查，除其目的須係合憲外，所採差別待遇與目的之達成間亦須有實質關聯，始合於平等原則。查系爭規定之立法目的旨在忠實反映家計單位之節省效果、避免納

the principle of equality shall be subject to stricter scrutiny. For the discrimination to comply with the principle of equality, it must aim at constitutional objects and bear a substantial relation to the accomplishment of such objects. The objects of the provision at issue are, inter alia, to reflect the saving effect of a household unit, to avoid illegitimate income splitting, to lower the cost of taxation and to generate sufficient fiscal revenue. (See the Legislative Yuan Gazettes, 79th Session, Vol. 59, p. 28 and p. 31, opinions of delegates of the Taxation Agency, Ministry of Finance, before this Court on September 21, 2010 and the Ministry of Finance Letter Reference No. TTS-10000190810 dated May 30, 2011, p 13.) However, the saving effect of a household unit, if any, does not necessarily occur when a couple live together, since people's life styles and spending habits vary. Even if there is such a saving effect, it is not a legitimate basis to impose heavier income tax liability. Moreover, although the legislature might adopt a joint taxation scheme to prevent the husband and wife from illegitimate income splitting, for such a scheme to have

稅義務人不當分散所得、考量稽徵成本與財稅收入等因素（參照立法院公報第七十九卷第五十九期第二十八頁及第三十一頁、財政部賦稅署代表於九十九年九月二十一日到本院之說明及財政部一〇〇年五月三十日台財稅字第一〇〇〇〇一九〇八一〇號函第十三頁）。惟夫妻共同生活，因生活型態、消費習慣之不同，未必產生家計單位之節省效果，且縱有節省效果，亦非得為加重課徵所得稅之正當理由。又立法者固得採合併計算制度，以避免夫妻間不當分散所得，惟應同時採取配套措施，消除因合併計算稅額，適用較高級距累進稅率所增加之負擔，以符實質公平原則。再立法者得經由改進稽徵程序等方式，以減少稽徵成本，而不得以影響租稅公平之措施為之。至於維持財政收入，雖攸關全民公益，亦不得採取對婚姻與家庭不利之差別待遇手段。綜上所述，系爭規定有關夫妻非薪資所得強制合併計算，較之單獨計算稅額，增加其稅負部分，因與上述立法目的之達成欠缺實質關聯，而與憲法第七條平等原則有違。

been in line with the principle of substantial fairness, the legislator should have taken auxiliary measures to eliminate the additional burden of computing the tax payable based on a couple's aggregate income, on which a higher tax bracket would apply. Also, the object of reducing taxation costs could be achieved by improving taxation procedures. In any event, measures that would impair tax equality must not be an option for the legislature to lower taxation costs. Finally, maintaining the desired level of fiscal revenue is indeed crucial to the public interest. Yet, such a goal must not be met through disfavored differential treatment of marriage and family. Conclusively, insofar as tax is imposed on the basis of such a joint return, if a taxpayer's liability as computed in conjunction with the non-salary income of his or her spouse exceeds the amount payable if it were separately computed, thereby increasing his or her taxation, the situation is contrary to the principle of equality as provided by Article 7 of the Constitution, since the tax burden thereby increased bears no substantial relation to the achievement of the aforesaid objects.

It would take an extensive period of time for the competent authority to redress the aforesaid unconstitutional provisions, given the wide impact of the amendment of such law and the complexity of taxation schemes. Under such circumstances, the unconstitutional provisions must cease to apply no later than two years after this Interpretation is made public.

The Directive Reference No. TTS-7519463 as issued by the Ministry of Finance on March 4, 1987 (hereinafter the "Directive at issue") stipulated as follows: The husband and wife of a separated couple may each file a consolidated tax return with the tax authority at the place of each one's household registration, stating therein the name and ID No. of the spouse and the fact that they are separated. In this event, the ratio of a party's tax liability to the couple's joint tax liability shall be computed based on the percentage that the party's consolidated income represents as compared to the couple's aggregate consolidated income. Upon either party's application, a separate tax assessment notice

上述違憲部分，考量其修正影響層面廣泛，以及稅捐制度設計之繁複性，主管機關需相當期間始克完成，應自本解釋公布之日起至遲於屆滿二年時失其效力。

財政部七十六年三月四日台財稅第七五一九四六三號函規定：「夫妻分居，如已於綜合所得稅結算申報書內載明配偶姓名、身分證統一編號，並註明已分居，分別向其戶籍所在地稽徵機關辦理結算申報，其歸戶合併後全部應繳納稅額，如經申請分別開單者，准按個人所得總額占夫妻所得總額比率計算，減除其已扣繳及自繳稅款後，分別發單補徵。」（下稱系爭函；該函依財政部九十八年九月十四日台財稅字第0九八0四五五八六八0號令不再援用）系爭函係主管機關為顧及分居中夫妻合併報繳之實際困難，而在申報程序上給予若干彈性，並以分別發單補徵之方式處理。查該函關於分居之夫妻如何分擔其全部應繳納稅額之計算方式規

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for each one's outstanding tax liability (i.e. the individual's tax liability minus the amounts withheld and paid) may be issued. (The Directive at issue is no longer valid according to the Directive Reference No. TTS-09804558680 as issued by the Ministry of Finance on September 14, 2009.) By allowing a separate tax notice, the Directive at issue was meant by the authority incharge to be a flexible solution for separated couples' practical difficulty in filing a joint return and paying the tax together. However, as to how the joint tax liability is to be apportioned between the separated husband and wife, the formula promulgated in the Directive was based on the proportion of one party's individual consolidated income as compared to the couple's aggregate consolidated income. If the husband and wife's incomes are disparate, the party earning less income will bear tax liability disproportionate thereto. In this regard, the Directive did not comply with tax equality and shall not be applicable.

With regard to the Petitioner's claim that the Directive Reference No. TTS-

定，係依個人所得總額占夫妻所得總額之比率計算，以致在夫妻所得差距懸殊之情形下，低所得之一方須分擔與其所得顯然失衡之較重稅負，即與租稅公平有違，應不予援用。

關於聲請人指摘財政部七十七年三月二十五日台財稅第七七〇六五三

770653347 as issued by the Ministry of Finance on March 25, 1988 violates Articles 7, 15 and 23 of the Constitution, it is found that the said Directive was only mentioned by the Taipei High Administrative Court decision No. 90-Su-Tzu-1982 in the summary of facts without being applied in the judgment. Hence, this part of the petition is not in conformity with Article 5, Paragraph 1, Sub-paragraph 2 of the Constitutional Interpretation Procedure Act and is hereby dismissed in accordance with Sub-paragraph 3 of the same Article.

Justice Pai-Hsiu, Yeh filed concurring opinion in part.

Justice Mao-Zong, Huang filed concurring opinion.

Justice Beyue, Su Chen filed concurring opinion.

Justice Chang-Fa, Lo filed concurring opinion.

Justice Dennis Te-Chung, Tang filed concurring opinion.

Justice Yeong-Chin, Su filed dissenting opinion in part.

Justice Ching-You, Tsay filed dis-

三四七號函違反憲法第七條、第十五條及第二十三條部分，查臺北高等行政法院九十六年度訴字第一九八二號判決僅於事實概要中述及該函，並未援用該函為裁判，是此部分聲請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。

本號解釋葉大法官百修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；羅大法官昌發提出協同意見書；湯大法官德宗提出協同意見書；蘇大法官永欽提出部分不同意見書；蔡大法官清遊提出部分不同意見書；陳大法官新民提出不同意見書。

senting opinion in part.

Justice Shin-Min, Chen filed dissenting opinion.

EDITOR'S NOTE:

Summary of facts: In filing the tax return for the taxable year of 2000, the petitioner did not include her spouse's income and interest of more than NT\$40 million in her consolidated income as required under Article 15, Paragraph 1, of the Income Tax Act (the "provision at issue"). The petitioner's said tax return was later found to be illegal. When being fined for the violation, the petitioner claimed that she had no knowledge of her spouse's financial affairs, as they had been separated for several years. The Ministry of Finance thus agreed to issue a separate supplemental tax assessment notice pursuant to the Directive Reference No. TTS-770653347 dated March 25, 1988, and computed the applicant's outstanding tax liability in accordance with the formula applicable to a separated married couple as set forth in the Directive Reference No. TTS-7519463 dated March 4, 1987 ("Directive at issue"). As a result, despite

編者註：

事實摘要：聲請人於 89 年度綜合所得稅結算申報，未依所得稅法第 15 條第 1 項規定（下稱系爭規定），合併申報其配偶所得及利息所得 4 千餘萬元，遭查獲裁罰。聲請人主張與配偶分居多年，不知悉其財務狀況。財政部乃依 77 年 3 月 25 日台財稅第 770653347 號函規定，准予分別開單補徵，並依 76 年 3 月 4 日台財稅第 7519463 號函（下稱系爭函）所示分居夫妻之稅額計算方式，計算其應納稅額，扣除前已繳稅額後，補徵稅額 541,598 元。聲請人不服，循序提起行政訴訟，遭駁回確定，爰認確定終局判決所適用之系爭規定、系爭函及 77 年函，使夫妻併計結果，收入較少一方仍適用較高之累進稅率，有牴觸憲法疑義，聲請解釋。

the amount of tax that the petitioner had paid, she remained liable for NT\$541,598 of tax. The applicant disagreed with the assessment and proceeded with administrative litigation, which was rejected by the court's final binding judgment. The petitioner filed this petition claiming that the provision at issue, Directive at issue and the Directive of 1988, on the basis of which the final binding judgment was rendered, were not constitutional, because, under a progressive income tax, when a married couple's tax liability is computed based on their aggregate income, the party with less income would be subject to the higher marginal tax rate applicable to the couple's aggregate income.