

J. Y. Interpretation No.705 ( November 21, 2012 ) \*

【The Standard of Assessment in Tax Declarations for the Amount to be deducted for the Donation of Land】

**ISSUE:** Is the order requiring that the amount to be deducted for the donation of land in tax declarations be assessed on the basis of the standards prescribed by the Ministry of Finance unconstitutional ?

**RELEVANT LAWS:**

Article 19 of the Constitution ( 憲法第十九條 ) ; Articles 13 and 17, Paragraph 1, Subparagraph 2, Item 2-1 of the Income Tax Law ( 所得稅法第十三條、第十七條第一項第二款第二目之1 ) ; Ministry of Finance 1993.6.3 Tai-Tsai-Suei (TTS) No.0920452464 Order, 1994.5.21 TTS No.0930451432 Order, 1995.2.18 TTS No.09404500070 Order, 1996.2.15 TTS No.09504507680 Order, 1997.2.7 TTS No.09604504850 Order, and 1998.1.30 TTS No. 09704510530 Order ( 財政部中華民國九十二年六月三日發布之台財稅字第0九二0四五二四六四號令。九十三年五月二十一日發布之台財稅字第0九三0四五一四三二號令。九十四年二月十八日發布之台財稅字第0九四0四五000七0號令。九十五年二月十五日發布之台財稅字第

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\* Translated by Dr. Ching-Yuan Huang and Dr. Hsin-Yang Wu of Tsar & Tsai Law Firm.

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

0九五0四五0七六八0號令。九十六年二月七日發布之台財稅字第0九六0四五0四八五0號令。九十七年一月三十日發布之台財稅字第0九七0四五一0五三0號令)；J.Y. Interpretation Nos 650 and 657(司法院釋字第六五0號、第六五七號解釋)。

**KEYWORDS:**

principle of taxation by law (租稅法律主義), amount to be deducted for donation (捐贈列舉扣除額), land reserved for public facilities (公共設施保留地), sixteen percent of the government-declared value of the land (土地公告現值之百分之十六)。\*\*

**HOLDING:** The Ministry of Finance proclaimed Tai Cai Shui Zi No. 0920452464 Order, Tai Cai Shui Zi No. 0930451432 Order, Tai Cai Shui Zi No. 09404500070 Order, Tai Cai Shui Zi No. 09504507680 Order, Tai Cai Shui Zi No. 09604504850 Order, and Tai Cai Shui Zi No. 09704510530 Order on June 3, 1993, May 21, 1994, February 18, 1995, February 15, 1996, February 7, 1997, and January 30, 1998 respectively. These Orders are to the effect that the calculation of the amount to be deducted for donation shall be assessed in accordance with the standard determined by the Ministry of

**解釋文：**財政部中華民國九十二年六月三日、九十三年五月二十一日、九十四年二月十八日、九十五年二月十五日、九十六年二月七日、九十七年一月三十日發布之台財稅字第0九二0四五二四六四號、第0九三0四五一四三二號、第0九四0四五000七0號、第0九五0四五0七六八0號、第0九六0四五0四八五0號、第0九七0四五一0五三0號令，所釋示之捐贈列舉扣除額金額之計算依財政部核定之標準認定，以及非屬公共設施保留地且情形特殊得專案報部核定，或依土地公告現值之百分之十六計算部分，與憲法第十九條租稅法律主義不符，均應自本解

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Finance, and that regarding the amount to be deducted for land not reserved for public facilities yet with special conditions attached, an application may be filed with the Ministry of Finance for assessment on a special case basis, or at sixteen percent of the government-declared value of the land. These Orders violate the principle of taxation by law of Article 19 of the Constitution and shall not be applied from the date of proclamation of this Interpretation.

**REASONING:** Article 19 of the Constitution specifies that people shall have the duty of paying taxes in accordance with law, which means when the State imposes a tax on, or provides preferential tax deductions or exemptions for, its people, it shall clearly specify, in the law or regulations clearly authorized by a given law, the conditions of tax, *inter alia*, the taxpaying entity, the object taxed, the connection between the taxpayer and the object taxed, the tax base, the tax rate, and how and when the tax is to be paid. The tax collecting authority may promulgate any other required regulations only

釋公布之日起不予援用。

**解釋理由書：**憲法第十九條規定人民有依法律納稅之義務，係指國家課人民以繳納稅捐之義務或給予人民減免稅捐之優惠時，應就租稅主體、租稅客體、租稅客體對租稅主體之歸屬、稅基、稅率、納稅方法及納稅期間等租稅構成要件，以法律或法律具體明確授權之法規命令定之；若僅屬執行法律之細節性、技術性次要事項，始得由主管機關發布行政規則為必要之規範（本院釋字第六五〇號、第六五七號解釋參照）。

for detailed or technical secondary matters necessary for the enforcement of the law (see J. Y. Interpretation Nos. 650 and 657).

Article 17, Paragraph 1, Subparagraph 2, Item 2-1 of the Income Tax Law provides as below regarding the amount to be deducted for donation: “[f]or the taxpayer, his (her) spouse and dependent(s), contributions and donations made to educational, cultural, public welfare or charitable organizations or associations in a total amount not in excess of 20 percent of the total amount of the gross consolidated income are deductible. However, there is no limit to the amount of donations or contributions made for the support of national defense or entertainment for the troops or contributions to the government”. If the objects donated are tangible properties, such as land, the Income Tax Law does not explicitly specify what the standard for calculating and listing the amount to be deducted is, nor does it specifically or clearly authorize the competent authority to prescribe such a standard. The Ministry of Finance

所得稅法第十七條第一項第二款第二目之1固就捐贈之列舉扣除額規定：「納稅義務人、配偶及受扶養親屬對於教育、文化、公益、慈善機構或團體之捐贈總額最高不超過綜合所得總額百分之二十為限。但有關國防、勞軍之捐贈及對政府之捐獻，不受金額之限制。」惟所捐贈者若為實物，例如土地，究應以何標準計算認列減除之扣除額度，所得稅法未有明文，亦未具體明確授權主管機關以命令定之。財政部中華民國九十二年六月三日台財稅字第0九二0四五二四六四號令：「三、個人以購入之土地捐贈未能提具土地取得成本確實證據或土地係受贈取得者，其捐贈列舉扣除金額之計算，稽徵機關得依本部核定之標準認定之。該標準由本部各地區國稅局參照捐贈年度土地市場交易情形擬訂，報請本部核定。」九十三年五月二十一日台財稅字第0九三0四五一四三二號令：「個人以繼承之土地捐贈，……，其綜合所得稅捐贈列舉扣除金額之計

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1993.6.3 Tai Cai Shui Zi No. 0920452464 Order provides: “3. if an individual donates a piece of purchased land without submitting any actual evidence of the cost of procurement, or if the donated land was acquired through a gift, the tax collection authority may conduct the calculation of the amount to be deducted of the donation in accordance with the standard determined by this Ministry. The standard is to be drafted with reference to the transaction situation of the land market in the year of donation by the National Tax Administration of each district and filed with this Ministry for approval.” The 1994.5.21 Tai Cai Shui Zi No. 0930451432 Order provides: “if an individual donates a piece of land acquired in heritage..... the calculation of the amount of the gross consolidated income to be deducted is to be assessed on the basis of the standard set forth in the third point of the 1993.6.3 Tai Cai Shui Zi No. 0920452464 Order of this Ministry.” The 1995.2.18 Tai Cai Shui Zi No. 09404500070 Order and the 1996.2.15 Tai Cai Shui Zi No. 09504507680 Order both provide that: “if an individual donates a piece of pur-

算，依本部九十二年六月三日台財稅字第 0920452464 號令第 3 點規定之標準認定之。」九十四年二月十八日台財稅字第 09404500070 號令及九十五年二月十五日台財稅字第 09504507680 號令，均以：「個人以購入之土地捐贈而未能提示土地取得成本確實證據，或土地係受贈或繼承取得者，除非屬公共設施保留地且情形特殊，經稽徵機關研析具體意見專案報部核定者外，其綜合所得稅捐贈列舉扣除金額依土地公告現值之 16% 計算。」九十六年二月七日台財稅字第 09604504850 號令及九十七年一月三十日台財稅字第 09704510530 號令分項說明，意旨相同。以上六令（下併稱系爭令），就個人捐贈土地如何計算列舉扣除金額，上述九十二年、九十三年令僅概括規定由稽徵機關依財政部核定之標準認定，九十四年令進而確定認定標準，九十五年、九十六年及九十七年令則採取與九十四年令相同之認定標準。

chased land without submitting any actual evidence of the cost of procurement, or if the donated land was acquired through a gift or in heritage—except for land not reserved for public facilities yet with special conditions attached, and where the tax collection authority has conducted research and made concrete proposals for approval by this Ministry—the amount of the gross consolidated income to be deducted is to be calculated at 16 percent of the government-declared value of the donated land.” The itemized interpretations of the 1997.2.7 Tai Cai Shui Zi No. 09604504850 Order and the 1998.1.30 Tai Cai Shui Zi No. 09704510530 Order are to the same effect. The above six Orders (hereinafter referred to as “the Orders at issue”) regulate how to calculate the amount to be deducted of a piece of land donated by an individual. The above 1993 and 1994 Orders only generally regulate that the tax collection authority shall assess the amount to be deducted according to the standards determined by the Ministry of Finance, and the 1995 Order further determines the standards to be applied, while the 1996, 1997, and 1998 Orders

adopt the same standards as those of the 1995 Order.

Article 13 of the Income Tax Law states: "Consolidated income tax of an individual shall be levied on the amount of his net consolidated income which shall be the gross consolidated income minus the amount of tax-exempt income, and various deductions." The interpretative rules and the standards of discretion issued by a superior authority to its lower units or its subordinate officers, for the purpose of unifying the interpretation of laws and regulations, the findings of facts, and the exercise of the power of discretion, are, by their nature, administrative rules (with reference to Article 159 of the Administrative Procedure Law) which may only regulate the detailed or technical secondary matters required for the enforcement of the law when necessary. The Orders at issue, which are aimed at a piece of donated land which was purchased without submitting any actual evidence of the cost of procurement or which was acquired through a gift or in heritage, are supplementary regulations issued for the

所得稅法第十三條規定：「個人之綜合所得稅，就個人綜合所得總額，減除免稅額及扣除額後之綜合所得淨額計徵之。」上級機關為協助下級機關或屬官統一解釋法令、認定事實、及行使裁量權，而訂頒之解釋性規定及裁量基準，性質上屬行政規則（行政程序法第一百五十九條參照），其僅得就執行法律之細節性、技術性之次要事項為必要之規範。系爭令針對所捐獻之土地原係購入但未能提示土地取得成本確實證據，或原係受贈或繼承取得者，如何依前揭所得稅法第十七條第一項第二款第二目之1規定認列所得稅減除之扣除額，所為之補充規定。惟其所釋示之捐贈列舉扣除額金額之計算依財政部核定之標準認定，以及非屬公共設施保留地且情形特殊得專案報部核定，或依土地公告現值之百分之十六計算，皆涉及稅基之計算標準，攸關列舉扣除額得認列之金額，並非僅屬執行前揭所得稅法規之細節性或技術性事項，而係影響人民應納稅額及財產權實質且重要事項，自應以法律或法律具體明確授權之命令定之。是系爭令上開釋示部分與憲法第

purpose of determining the amount of the gross consolidated income to be deducted according to the aforementioned provision of Article 17, Paragraph 1, Subparagraph 1, Item 2-1 of the Income Tax Law. However, the interpretations which state that the calculation of the amount of the donation to be deducted is to be assessed on the basis of standards determined by the Ministry of Finance, and that, for land not reserved for public facilities yet with special conditions attached, a particular proposal can be submitted to the Ministry of Finance for approval, or the amount may be calculated at 16 percent of the government-declared value of the donated land, all involve the calculation of standards of the tax base and the amount to be deducted. As such, these regulations are not merely detailed or technical matters for the enforcement of the aforementioned Income Tax Law but are material and significant matters involving both the amount of tax payable by the people and their property rights. Such matters shall be specified by a law or regulations having the clear authorization of a given law. Therefore, the above sections of the

十九條租稅法律主義不符，均應自本解釋公布之日起不予援用。

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interpretation of the Orders at issue do not comply with the principle of taxation by law of Article 19 of the Constitution, and shall not be applied from the date of proclamation of this Interpretation.

Justice Chen-Shan, Li filed concurring opinion.

Justice Mao-Zong, Huang filed concurring opinion.

Justice Chang-Fa, Lo filed concurring opinion.

Justice Yeong-Chin, Su filed dissenting opinion.

Justice Si-Yao, Lin filed dissenting opinion.

Justice Ming, Chen filed dissenting opinion, in which Justice Hsi-Chun, Huang joined.

Justice Shin-Min, Chen filed dissenting opinion.

**EDITOR'S NOTE:**

Summary of facts: Including 'X', there are 23 applicants, who submitted 29 requests which are reviewed together in this case. For the purpose of filing tax returns, the applicants applied for an

本號解釋李大法官震山提出協同意見書；黃大法官茂榮提出協同意見書；羅大法官昌發提出協同意見書；蘇大法官永欽提出不同意見書；林大法官錫堯提出不同意見書；陳大法官敏提出、黃大法官璽君加入之不同意見書；陳大法官新民提出不同意見書。

**編者註：**

事實摘要：本件係聲請人 X 等 23 人分別提起共 29 件聲請案併案審理。聲請人等為結算申報綜合所得稅，分別以「購入」、「繼承」或「受贈」所取得之公共設施保留地或既成道路等用

amount to be deducted on the grounds of donation to the government of lands reserved for public facilities or of existing roads particularly acquired “by purchase”, “in heritage”, or “through a gift”. The tax collection authority determined that only 16 percent of the government-declared value of the lands could be deducted according to (1) the 1993.6.3 Tai Cai Shui Zi No. 0920452464 Order, (2) the 1994.5.21 Tai Cai Shui Zi No. 0930451432 Order, (3) the 1995.2.18 Tai Cai Shui Zi No. 09404500070 Order, (4) the 1996.2.15 Tai Cai Shui Zi No. 09504507680 Order, (5) the 1997.2.7 Tai Cai Shui Zi No. 09604504850 Order, and (6) the 1998.1.30 Tai Cai Shui Zi No. 09704510530 Order of the Ministry of Finance (among these cases, 5 of them were reassessed due to the notification of the local prosecutor’s offices, and they were changed from 16 percent to 14 percent, 20 percent, or 30 percent variously).

The applicants did not accept the assessment and thought that the Orders at issue imposed extra requirements that are

地，對政府捐獻而列報捐贈列舉扣除額。稽徵機關依財政部(1)92年6月3日台財稅字第0920452464號令、(2)93年5月21日台財稅字第0930451432號令、(3)94年2月18日台財稅字第09404500070號令、(4)95年2月15日台財稅字第09504507680號令、(5)96年2月7日台財稅字第09604504850號令、(6)97年1月30日台財稅字第09704510530號令，核定僅能減除公告土地現值之16%（其中有5件因地方檢察署通報而重行核定，由原16%更改為14%、20%、30%不等）。

聲請人等分別表示不服，咸認系爭令已增加法律所無之限制，有違租稅法律主義而違憲之疑義，而聲請解釋。

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not authorized by the law, and, as such, might violate the principle of taxation by law and might be unconstitutional. Therefore, the applicants requested an interpretation. The Grand Justices of this Yuan accepted each application in turn and reviewed the cases together because the subject matter of their assertions of unconstitutionality was identical<sup>2</sup>.

本院大法官先後受理後，以各聲請人主張違憲之標的相同，乃予合併審理。