

J. Y. Interpretation No.713 (October 18,2013) *

【Case regarding penalty for belated filing of tax withholding statement】

ISSUE: Is it unconstitutional to impose a 1.5 fold penalty on tax withholders who fail to file the tax withholding statement in the same way as on those who fail to withhold money for taxation ?

RELEVANT LAWS:

Articles 15 and 23 of the Constitution (憲法第十五條、第二十三條) ; Article 6 Section 1 Paragraph 2 of the Standards for Reducing Penalties in Cases of Tax Violations (revised and promulgated on 20 June 2002, revised and repealed on 27 May 2011) (稅務違章案件減免處罰標準第六條第一項第二款 (中華民國九十一年六月二十日修正發布,一〇〇年五月二十七日修正刪除)) ; Article 48-3 of the Tax Collection Act (稅捐稽徵法第48條之3 (一〇六年一月十八日修正公布)) ; J. Y. Interpretations Number 399, Nos 582, 622, 675 and 698 (司法院釋字第三九九號、第五八二號、第六二二號、第六七五號、第六九八號解釋) ; Article 5 Section 1 Paragraph 2 and Section 3 of the Constitutional Interpretation Procedure Act (司法院大法官審理案件法第五條第一項第二款及第三項 (八十二年二月三日修正公布)) .

* Translated by John Chia-Chieh Cheng.

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KEYWORDS:

duty to withhold money for taxation (扣繳義務), tax withholding statement (扣繳憑單), principle of proportionality (比例原則), to impose a penalty (罰鍰制裁), weighing the merit of each case (斟酌個案情節輕重), other appropriate measures (另為適當處置).**

HOLDING: Article 6 Section 1 Paragraph 2 of the Standards for Reducing Penalties in Cases of Tax Violations (revised and promulgated by the Ministry of Finance on 20 June 2002) provides: "In cases falling under Article 114 Paragraph 1 of the Income Tax Act the penalty may be reduced or exempted under one of the following circumstances: ... 2. A tax withholder, who has subsequently paid up in full the tax that should have been withheld but was not or insufficiently withheld, and who has not within the given time limit filed a tax withholding statement but prior to the imposition of penalty truthfully submitted a supplement, shall be subject to a 1.5 fold penalty of the insufficient amount (revised and repealed on 27 May 2011). The amount of penalty has exceeded the degree of necessity and to this

解釋文: 財政部中華民國九十一年六月二十日修正發布之稅務違章案件減免處罰標準第六條第一項第二款規定:「依所得稅法第一百十四條第一款規定應處罰鍰案件,有下列情事之一者,減輕或免予處罰:……二、扣繳義務人已於期限內補繳應扣未扣或短扣之稅款,未在期限內補報扣繳憑單,於裁罰處分核定前已按實補報者,按應扣未扣或短扣之稅額處一·五倍之罰鍰」(一〇〇年五月二十七日修正刪除),關於裁處罰鍰數額部分,已逾越必要程度,就此範圍內,不符憲法第二十三條之比例原則,與憲法第十五條保障人民財產權之意旨有違,應自本解釋公布之日起不再適用。

extent is not consistent with the principle of proportionality under Article 23 of the Constitution. It violates Article 15 of the Constitution protecting people's property right and therefore shall be inapplicable upon publication of this Judicial Interpretation.

REASONING: The petitioner has filed for constitutional interpretation on grounds of possible unconstitutionality of Article 6 Section 1 Paragraph 2 of the Standards for Reducing Penalties in Cases of Tax Violations as applied by the Highest Administrative Court in Decision No. 1000 of the year 2008 (hereinafter referred to as the affirmed final decision). Article 6 Section 1 Paragraph 2 of the Standards for Reducing Penalties in Cases of Tax Violations issued by the Ministry of Finance on 20 June 2002 provides: "In cases falling under Article 114 Paragraph 1 of the Income Tax Act the penalty may be reduced or exempted under one of the following circumstances: ... 2. A tax withholder, who has subsequently paid in full the tax that should have been withheld but was not or insufficiently withheld, and

解釋理由書：聲請人以最高行政法院九十七年度判字第一〇〇〇號判決（下稱確定終局判決）所適用之財政部九十一年六月二十日修正發布之稅務違章案件減免處罰標準第六條第一項第二款：「依所得稅法第一百四條第一款規定應處罰鍰案件，有下列情事之一者，減輕或免予處罰：……二、扣繳義務人已於期限內補繳應扣未扣或短扣之稅款，未在期限內補報扣繳憑單，於裁罰處分核定前已按實補報者，按應扣未扣或短扣之稅額處一·五倍之罰鍰」（下稱系爭規定，嗣於一〇〇年五月二十七日修正刪除）有違憲疑義，聲請解釋憲法。查確定終局判決雖未明載系爭規定，然由其所持法律見解，可判斷係以系爭規定為判決之部分基礎，應認確定終局判決實質上業已適用系爭規定，系爭規定自得作為憲法解釋之客體（本院釋字第三九九號、第五八二號、

who has not within the given time limit filed a tax withholding statement but prior to the imposition of penalty truthfully submitted a supplement, shall be subject to a 1.5 fold penalty.” (hereinafter referred to as disputed clause, subsequently repealed on 27 May 2011). An affirmed final decision, though not in direct reference to the disputed clause, should be viewed as applying such clause in essence and may be an object for constitutional interpretation if the disputed clause may be regarded as forming the partial basis of the decision (see Judicial Yuan Interpretations Number 399, Number 582, Number 622, Number 675 and Number 698).

Tax withholders are obliged to withhold tax and to file tax withholding statements. Violations of these two obligations apparently cause different degrees of harm to national revenues and the maintenance of public interest in taxation.

If a tax withholder who has subsequently paid up in full the tax that should have been withheld but was not or insufficiently withheld and only fails to duly file

第六二二號、第六七五號及第六九八號解釋參照)。

扣繳義務人之扣繳義務，包括扣繳稅款義務及申報扣繳憑單義務，二者之違反對國庫稅收及租稅公益之維護所造成之損害，程度上顯有差異。如扣繳義務人已於限期內補繳應扣未扣或短扣之稅款，僅不按實補報扣繳憑單者，雖影響稅捐稽徵機關對課稅資料之掌握及納稅義務人之結算申報，然因其已補繳稅款，所造成之不利影響較不補繳稅款為輕，乃系爭規定就此部分之處罰，與同標準第六條第一項第三款所定未於限

the tax withholding statement, the damages incurred by such late payment of withholding tax, though affecting the Revenue Service Authorities' data management regarding tax liability and taxpayer's tax return filings, are less severe than in cases where taxes have not been subsequently paid up. The fact that the penalty imposed by the disputed clause for the late full payment by a tax withholder prior to the administrative ruling of penalty is the same 1.5 fold amount as for insufficient withholding taxes, denies any discretion to Revenue Service Authorities to take into account the merits of each individual case when determining the amount of penalty. It obviously exceeds the necessary extent and is inconsistent with the proportionality principle under Article 23 of the Constitution and Article 15 protecting people's property right and shall be inapplicable upon the date of publication of this Judicial Interpretation. It should also be pointed out that all concerned authorities shall consider the weight of each individual case where a tax withholder has subsequently paid up in full his tax withholding liability yet fails to file tax

期內補繳應扣未扣或短扣之稅款，於裁罰處分核定前已按實補繳者之處罰等同視之，一律按應扣未扣或短扣之稅額處一·五倍之罰鍰，未許稅捐稽徵機關得參酌具體違章狀況，依情節輕重裁量罰鍰之數額，其處罰顯已逾越必要程度，不符憲法第二十三條之比例原則，與憲法第十五條保障人民財產權之意旨有違，應自本解釋公布之日起不再適用。有關機關對未於限期內補報扣繳憑單，於裁罰處分核定前已按實補報之案件，應斟酌個案情節輕重，並依稅捐稽徵法第四十八條之三之規定，另為符合比例原則之適當處置，併予指明。

withholding statement before a penalty is imposed, and adequate measures shall be taken in accordance with Article 48-3 Tax Collection Act and the Proportionality Principle.

The petitioner also claims possible violation of the Constitution, thus requesting an interpretation of Article 8 Paragraph 11 of the Income Tax Act: “The term “income from sources in the Republic of China” used in this Act refers to income of the following categories: ... 11. Any other income obtained within the territory of the Republic of China.” . As to the claim that the definition of the term 「income from sources in the Republic of China」 violates the principle of clarity and definiteness of law, we find no clear and objective violation of the Constitution. Petitioner furthermore claims that the mentioned provision violates the principle of equality, as the affirmed final decision inappropriately considers the payment of satellite transmission fees to a foreign organization to be 「income from sources in the Republic of China」 . Since the admission of facts and application of

聲請人另以所得稅法第八條第十一款規定：「本法稱中華民國來源所得，係指左列各項所得：……十一、在中華民國境內取得之其他收益」有違憲疑義，聲請解釋。惟查其指摘前揭「中華民國來源所得」之定義過於模糊，有違法律明確性部分，尚難謂已具體敘明前揭規定於客觀上有何抵觸憲法之處；至其指摘該款規定違反平等原則部分，乃爭執確定終局判決將聲請人支付國外機構之衛星傳送費，認定為「中華民國來源所得」之見解不當，核屬關於法院認事用法之爭執，均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，併此指明。

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laws are determined by the courts, this issue is not within the scope of Article 5 Section 1 Paragraph 2 of the Constitutional Interpretation Procedure Act and therefore should be dismissed according to Section 3 of that Article.

Justice Mao-Zong Huang filed concurring opinion.

Justice Shin-Min Chen filed concurring opinion.

Justice Chang-Fa Lo filed concurring opinion in part and dissenting opinion in part.

Justice Dennis Te-Chung Tang filed dissenting opinion in part.

Justice Si-Yao Lin filed dissenting opinion, in which Justice Ming Chen and Justice Hsi-Chun Huang joined.

EDITOR'S NOTE:

Summary of facts: Summary of facts: The petitioner A was the responsible person at TVBS Company from 2000 to 2003 and therefore the tax withholder under the Tax Law. In the preceding year the Company paid satellite transmission fees to a foreign enterprise but failed to with-

本號解釋黃大法官茂榮提出協同意見書；陳大法官新民提出協同意見書；羅大法官昌發提出部分協同部分不同意見書；湯大法官德宗提出部分不同意見書；林大法官錫堯提出，陳大法官敏、黃大法官璽君加入不同意見書。

編者註：

事實摘要：聲請人 A 於 89 至 92 年度為 B 製作公司負責人，係稅法所定扣繳義務人。該公司於上揭年度給付國外機構衛星傳送費，因未依所得稅法第 88 條規定扣繳 20% 稅款，經財政部臺北市國稅局限期責令補繳「應扣未扣稅款」並補報各年度之「扣繳憑單」。

hold 20% tax in accordance with Article 88 of the Income Tax Act. The National Taxation Bureau of Taipei, Ministry of Finance, ordered him to pay up the insufficient withholding amount and to file the withholding statements of the respective years. The petitioner has subsequently paid up the insufficient withholding amount but did not within the given time limit file the tax withholding statements. The National Taxation Bureau of Taipei therefore imposed a 1.5 fold penalty of more than NTD\$ 20,000,000 according to Article 114 Paragraph 1 Income Tax Act and Article 6 Section 1 Paragraph 2 of the Standards for Reducing Penalties in Cases of Tax Violations. The petitioner did not accept this ruling of penalty and initiated administrative litigation. Upon affirmation of the decision he filed petition for Judicial Interpretation on the constitutionality of the aforementioned Standards for Reducing Penalties in Cases of Tax Violations.

嗣聲請人依限補繳稅款，惟未在期限內補報扣繳憑單，臺北市國稅局乃依所得稅法第 114 條第 1 款及稅務違章案件減免處罰標準第 6 條第 1 項第 2 款規定，處聲請人該稅款 1.5 倍之罰鍰，計 2 千餘萬元。聲請人不服，循序提起行政訴訟，經判決確定，爰主張前揭處罰標準規定等違憲，聲請解釋。