

J. Y. Interpretation No.458 (June 26, 1998) *

ISSUE: Does the Directive T.T.S.T. No. 38452 of the Ministry of Finance alter tax benefits provided by law and increase the taxation of productive enterprises, thus rendering it unconstitutional?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條) ; Articles 3 and 15 of the Act of Encouragement of Investment (獎勵投資條例第三條、第十五條) ; Categories and Criteria of Productive Industries Eligible for Encouragement (生產事業獎勵項目及標準) .

KEYWORDS:

productive enterprise (生產事業) , tax privilege (賦稅優惠) , taxable income (課稅所得額) .**

HOLDING: The Directive T.T.S. T. No. 38452 of the Ministry of Finance dated December 14, 1977, states: “Except for the income generated from the products produced by a productive enterprise itself, the trading income and non-operating income, if any, of such

解釋文：財政部中華民國六十六年十二月十四日臺財稅字第三八四五二號函：「生產事業除自行生產產品所發生之所得外，如有兼營其他非自行生產產品買賣業務所發生之所得暨非營業收入者，該項買賣業務所發生之所得及非營業收入，不適用獎勵投資條例納稅

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enterprise from dealing in the products other than those produced by it shall not be eligible for the tax ceiling under the Act of Encouragement of Investment.” The said directive was made by the competent authority ex officio, in implementing Article 15 of the Act of Encouragement of Investment (hereinafter the “Act”) and the Categories and Criteria of Productive Industries Eligible for Encouragement promulgated in accordance with Article 3 of the Act, in connection with the computation of the annual taxable amount on the operating income and other income of the encouraged productive enterprise. Such directive conforms to the intent of the Act which provides that the tax deduction/exemption only applies to the income derived from the products in the category eligible for encouragement produced by the encouraged productive enterprise. It neither alters the tax benefit set by law nor increases the taxation of the productive enterprise, and it is not in conflict with the principle of taxation by law under the Constitution.

REASONING: The Act of En-

限額之規定」，係主管機關基於職權，為執行獎勵投資條例第十五條及行政院依同條例第三條授權所發布之「生產事業獎勵類目及標準」，對受獎勵之生產事業營業及其他收入計算全年課稅所得額所為之釋示，與該條例對稅捐減免優惠以受獎勵生產事業自行生產獎勵類目產品所發生之所得為限之意旨相符，並未變更法律所定稅賦優惠規定，亦未增加生產事業之租稅負擔，與憲法租稅法定主義並無牴觸。

解釋理由書：獎勵投資條例

couragement of Investment (revoked on January 30, 1991) was enacted to encourage investment activities and accelerate the nation's economic development. The privilege of tax deduction/exemption is a major encouragement to realize the legislative intent. However, the national economic development may have different needs at different stages, and the categories and criteria of productive enterprises eligible for encouragement should also be changed to cope with economic development strategies and objective environments. Article 3, Paragraph 3, and Article 15 (Article 10 of the amended Act promulgated on July 26, 1977) of the Act therefore authorize that, in connection with the categories and criteria of encouragement for the productive enterprises as specified by the Executive Yuan in accordance with Paragraph 1 of the said Articles, only those that meet such categories and criteria of encouragement can enjoy the privilege of a 20% (for important technology-based enterprises) or 25% (for productive enterprises) income tax (including surcharge) ceiling of the annual taxable income under Article 15, Paragraph 1, of

(七十九年十二月三十一日因施行期間屆滿而失效)係為獎勵投資活動，加速國家經濟發展之目的所制定，採用稅捐減免優惠為主要獎勵方法，以實現其立法意旨。惟國家經濟發展隨各個時期而有不同之需求，受獎勵之生產事業類目及標準自亦須因應經濟發展策略及客觀環境而變動。該條例第三條第三項及第十五條（六十六年七月二十六日修正公布之獎勵投資條例為第十條）遂授權行政院就各該條第一項所定之各類生產事業規定之獎勵類目及標準，須符合獎勵類目及標準者，始得享受第十五條第一項有關生產事業及重要生產事業之營利事業所得稅及附加捐總額，不得超過其全年課稅所得額百分之二十及二十五租稅優惠之規定。財政部六十六年十二月十四日臺財稅字第三八四五二號函：「生產事業除自行生產產品所發生之所得外，如有兼營其他非自行生產產品買賣業務所發生之所得暨非營業收入者，該項買賣業務所發生之所得及非營業收入，不適用獎勵投資條例納稅限額之規定」，係主管機關基於職權，為執行獎勵投資條例第十五條及行政院依同條例第三條授權所發布之「生產事業獎勵類目及標準」，對受獎勵之生產事業營業及其他收入計算全年課稅所得額所為之

the Act. The Directive T.T.S.T. No. 38452 of the Ministry of Finance dated December 14, 1977, states: "Except for the income generated from the products produced by a productive enterprise itself, the trading income and non-operating income, if any, of such enterprise from dealing in the products other than those produced by it shall not be eligible for the tax ceiling under the Act of Encouragement of Investment." The said directive was made by the competent authority ex officio, in implementing Article 15 of the Act and the Categories and Criteria of Productive Industries Eligible for Encouragement promulgated in accordance with Article 3 of the Act, in connection with the computation of the annual taxable amount on the operating income and other income of the encouraged productive enterprise. Such directive conforms to the intent of the Act which provides that the tax deduction/exemption only applies to the income derived from the products in the category eligible for encouragement produced by the encouraged productive enterprise. It neither alters the tax benefit set by law nor increases the taxation of the productive

釋示，與該條例對稅捐減免優惠以受獎勵生產事業自行生產獎勵類目產品所發生之所得為限之意旨相符，並未變更法律所定稅賦優惠規定，亦未增加生產事業之租稅負擔，與憲法租稅法定主義並無牴觸。

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