

J. Y. Interpretation No.480 (April 16, 1999) *

ISSUE: Does the 6-month period for application for a completion certificate under Article 32-1, Paragraph 2, Subparagraph 8, of the Enforcement Rules of the Act for Upgrading Industries exceed the scope of the enabling statute, thus violating Articles 19 and 23 of the Constitution?

RELEVANT LAWS:

Articles 19 and 23 of the Constitution (憲法第十九條、第二十三條) ; Article 16 of the Act for Upgrading Industries (促進產業升級條例第十六條) ; Article 21 of the Tax Levy Act (稅捐稽徵法第二十一條); Article 38 of the Business Accounting Act (商業會計法第三十八條) ; Articles 32-1 and 34 of the Enforcement Rules of the Act for Upgrading Industries (促進產業升級條例施行細則第三十二條之一、第三十四條) .

KEYWORDS:

undistributed earnings (未分配盈餘) , capital increase (增資) , income tax (所得稅) , application period (申請期間) , extension period (延展期間) .**

HOLDING: Article 16, Subparagraph 2, of the Act for Upgrading

解釋文：促進產業升級條例第十六條第二款規定，公司以其未分配盈

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Industries (hereinafter the “Act”) provides that, where a company has re-invested its undistributed earnings to repay the loan borrowed or account payable for addition or updating of machinery and equipment or transportation facilities as referred to in Subparagraph 1 of the same Article, the registered stocks newly issued to and acquired by its shareholders shall not be included in the taxable consolidated income earned in the then current year by an individual shareholder, or in the taxable profit-seeking enterprise income earned in the then current year by a corporate shareholder. The company satisfying the said provision shall complete repayment within the approved term of the capital increase to repay the loan or account payable, and shall, within six months after completion of repayment, submit a photocopy of the repayment certificate or the document certifying the repayment duly audited and certified by a certified public accountant to the government authority approving and recording the original expansion plan for issuance of a completion certificate in accordance with Article 32-1, Paragraph 2, Subparagraph 8, of the

餘增資償還因增置或更新同條第一款所定之機器、設備或運輸設備之貸款或未付款者，其股東因而取得之新發行記名股票，免予計入該股東當年度綜合所得額；其股東為營利事業者，免予計入當年度營利事業所得額課稅。適用上開條文之公司應依中華民國八十二年十月二十七日修正發布之同條例施行細則第三十二條之一第二項第八款（現行細則第三十八條第二項第八款）規定，於核定本次增資償還計畫之期限內完成償還貸款或未付款，並於完成後六個月內檢具清償證明影本或經會計師查核簽證之清償證明文件，向原核備機關申請核發完成證明。如因實際需要得依同細則第三十四條第二項（現行細則第四十四條第二項）規定，於原核備完成期限前向原計畫核備機關申請展延至四年。上開施行細則有關六個月申請期間之規定，對納稅義務人而言，雖屬較短之期限，惟原計畫已准其有一定完成之期限，茲復有四年延展期間之設，如無一定申請期間之限制，稅捐核課之目的即難以落實。而此等期間之規定，除已斟酌適用本條例之公司之實際需要外，並係兼顧稅捐稽徵法第二十一條租稅核課期間及商業會計法第三十八條會計憑證保存期限而設，為執行母法及相關法律所必

Enforcement Rules of the Act (hereinafter the “Enforcement Rules”) (Article 38, Paragraph 2, Subparagraph 8, of the current Enforcement Rules). However, if there is actual need, the company may apply, prior to the originally approved completion date, for an extension of the term for completion of the expansion plan with the authority originally granting the approval in accordance with Article 34, Paragraph 2, of the Enforcement Rules (Article 44, Paragraph 2, of the current Enforcement Rules). The said 6-month period requirement referred to in the said Enforcement Rules is shorter for the taxpayer. However, as a specified completion period has been granted for the original plan, and as there is a 4-year extension period, if no restriction on the application period is imposed, the tax purpose cannot be satisfied. In addition to the actual needs of the company to which the Act is applicable, the provision of the said period also takes into account the taxation period under Article 21 of the Tax Levy Act and the period for keeping accounting documents under Article 38 of the Business Accounting Act, and such provision is

要。是上開細則有關六個月之規定，符合立法意旨且未逾越母法之限度，與憲法第十九條及第二十三條並無牴觸。

required for the enforcement of the mother law and relevant laws. Therefore, the provision of a six-month period under the Enforcement Rules meets the legislative intent and does not exceed the scope of the mother law, and it does not contradict Articles 19 and 23 of the Constitution.

REASONING: It is expressly provided in Article 23 of the Constitution that the restriction on the people's freedom and rights shall be imposed by law to the extent necessary. However, the contents of law cannot be comprehensive enough to govern everything. The law may authorize the competent authority to prescribe the details and technical matters through orders to facilitate the enforcement of the law. The enforcement rules or orders meeting the legislative intent without exceeding the scope of the mother law promulgated by the administrative agency based on the said authorization is permitted by the Constitution, and such intent has been repeatedly interpreted by this Yuan. Under the general authorization of the mother law, whether the enforcement

解釋理由書：國家對人民自由權利之限制，應以法律定之且不得逾必要程度，憲法第二十三條定有明文。但法律內容不能鉅細靡遺，一律加以規定，其屬細節性、技術性之事項，法律自得授權主管機關以命令定之，俾利法律之實施。行政機關基於此種授權，在符合立法意旨且未逾越母法規定之限度內所發布之施行細則或命令，自為憲法之所許，此項意旨迭經本院解釋在案。惟在母法概括授權情形下，行政機關所發布之施行細則或命令究竟是否已超越法律授權，不應拘泥於法條所用之文字，而應就該法律本身之立法目的，及其整體規定之關聯意義為綜合判斷。

rules or orders promulgated by an administrative agency exceed the authorization of law should be judged based on the legislative intent, rather than the letter, of the law and the related meaning of the overall provision.

Article 16, Subparagraph 2, of the Act provides that, where a company has re-invested its undistributed earnings to repay the loan borrowed or account payable for addition or updating of machinery and equipment or transportation facilities as referred to in Subparagraph 1 of the same Article, the registered stocks newly issued to and acquired by its shareholders shall not be included in the taxable consolidated income earned in the then current year by an individual shareholder, or in the taxable profit-seeking enterprise income earned in the then current year by a corporate shareholder. To enforce the said provision of law, it is expressly provided in Article 32-1, Paragraph 2, Subparagraph 8, of the Enforcement Rules (Article 38, Paragraph 2, Subparagraph 8, of the current Enforcement Rules) amended and promulgated by the compe-

促進產業升級條例第十六條第二款規定，公司以其未分配盈餘增資償還因增置或更新同條第一款所定之機器、設備或運輸設備之貸款或未付款者，其股東因而取得之新發行記名股票，免予計入該股東當年度綜合所得額；其股東為營利事業者，免予計入當年度營利事業所得額課稅。為執行上開條文之規定，主管機關於八十二年十月二十七日修正發布之同條例施行細則第三十二條之一第二項第八款（現行細則第三十八條第二項第八款）明定，適用該條例之公司於核定本次增資償還計畫之期限內完成償還貸款或未付款，並於完成後六個月內檢具清償證明影本或經會計師查核簽證之清償證明文件，向原核備機關申請核發完成證明。如因實際需要得依同細則第三十四條第二項（現行細則第四十四條第二項）規定於原核備完成期限前向原計畫核備機關申請展延至四年。上開施行細則有關六個月申請期間

tent authority on October 27, 1993, that the company satisfying the said provision shall complete repayment within the approved term of the capital increase to repay the loan or account payable, and shall, within six months after completion of repayment, submit a photocopy of the repayment certificate or the document certifying the repayment duly audited and certified by a certified public accountant to the government authority approving and recording the original expansion plan for issuance of a completion certificate. However, if there is actual need, the company may apply, prior to the originally approved completion date, for an extension of the term for completion of the expansion plan with the authority originally granting the approval in accordance with Article 34, Paragraph 2, of the Enforcement Rules (Article 44, Paragraph 2, of the current Enforcement Rules). The said 6-month period requirement referred to in the said Enforcement Rules is shorter for the taxpayer. However, as a specified completion period has been granted for the original plan, and as there is a 4-year extension period, if no restriction on the

之規定，對納稅義務人而言，雖屬較短之期限，惟原計畫已准其有一定完成之期限，茲復有四年延展期間之設，如無一定申請期間之限制，稅捐核課之目的即難以落實。而此等期間之規定，除已斟酌適用本條例之公司之實際需要外，並係兼顧稅捐稽徵法第二十一條租稅核課期間及商業會計法第三十八條會計憑證保存期限而設，為執行母法及相關法律所必要。是上開細則有關六個月期間之規定，符合立法意旨且未逾越母法之限度，與憲法第十九條及第二十三條並無牴觸。

application period is imposed, the tax purpose cannot be satisfied. In addition to the actual needs of the company to which the Act is applicable, the provision of the said period also takes into account the taxation period under Article 21 of the Tax Levy Act and the period for keeping accounting documents under Article 38 of the Business Accounting Act, and such provision is required for the enforcement of the mother law and relevant laws. Therefore, the provision of a six-month period under the Enforcement Rules meets the legislative intent and does not exceed the scope of the mother law, and it does not contradict Articles 19 and 23 of the Constitution.