

J. Y. Interpretation No.493 (October 29, 1999) *

ISSUE: Is it unconstitutional to use income ratio as the apportionment basis for costs and expenses of taxable and tax-free income?

RELEVANT:

Article 19 of the Constitution (憲法第十九條); Interpretation No. 287 (司法院釋字第二八七號解釋); Articles 4-1, 24, Paragraph 1, and 42 of the Income Tax Act (所得稅法第四條之一、第二十四條第一項及第四十二條).

KEYWORDS:

income tax (所得稅), apportionment (分攤), securities transaction tax (證券交易稅), tax burden (租稅).**

HOLDING: Article 24, Paragraph 1, of the Income Tax Act stipulates: "The amount of income of a profit-seeking enterprise shall be the net income, i.e., the gross annual income after deduction of all costs, expenses, losses and taxes." Under Article 4-1, the first sentence of the said Act, securities transaction tax shall no longer be levied commencing from January 1, 1990. According

解釋文：營利事業所得之計算，係以其本年度收入總額減除各項成本費用、損失及稅捐後之純益額為所得額，為所得稅法第二十四條第一項所明定。依所得稅法第四條之一前段規定，自中華民國七十九年一月一日起，證券交易所得停止課徵所得稅；公司投資收益部分，依六十九年十二月三十日修正公布之所得稅法第四十二條，公司組織之營利事業，投資於國內其他非受免徵

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to Article 42 of the said Act as amended on December 30, 1980, “80% of the investment earnings gained by a profit-seeking enterprise, organized as a company, from its investment in another domestic profit-seeking enterprise, whose business income is taxable, shall not be included in its taxable income.” Relevant costs and expenditure regarding the said investments, in accordance with the legislative purposes of the aforementioned laws as well as the principle of equality, shall not be deducted from other taxable income. In connection with apportionment of the costs and expenditure between taxable income and tax-free income, unless such costs and expenditure can be reasonably and clearly entered as cost of either income and shall be deducted from the income from sale of marketable securities, as both the investment income and the income from securities transactions come from the same cost input, it is difficult to use the cost input as an apportionment basis. In Explanation III in a letter of the Ministry of Finance dated February 8, 1994, Ref. No. (83)-Tai-Finance-Tax-831582472, the ratio of income is used to

營利事業所得稅待遇之股份有限公司組織者，其中百分之八十免予計入所得額課稅；則其相關成本費用，按諸收入與成本費用配合之上揭法律規定意旨及公平原則，自亦不得歸由其他應稅之收入項下減除。至應稅收入及免稅收入應分攤之相關成本費用，除可直接合理明確歸屬者得個別歸屬，應自有價證券出售收入項下減除外，因投資收益及證券交易收入源自同一投入成本，難以投入成本比例作為分攤基準。財政部八十三年二月八日台財稅第八三一五八二四七二號函說明三，採以收入比例作為分攤基準之計算方式，符合上開法條規定意旨，與憲法尚無牴觸。惟營利事業成本費用及損失等之計算涉及人民之租稅負擔，為貫徹憲法第十九條之意旨，仍應由法律明確授權主管機關訂立為宜。

calculate the apportionment basis, which conforms to the legislative purpose of the aforesaid articles of law and does not contradict the Constitution. However, since calculation of the costs, expenditure, and losses of a profit-seeking enterprise involves the taxation of the general public, it shall be prescribed by the competent authority under the express authorization of law so as to carry out the legislative purpose of Article 19 of the Constitution.

REASONING: Article 24, Paragraph 1, of the Income Tax Act stipulates: “The amount of income of a profit-seeking enterprise shall be the net income, i.e., the gross annual income after deduction of all costs, expenses, losses and taxes.” Under the principle of equality, in case the contributed costs and expenditure regarding taxable income and tax-free income cannot be clearly allocated, the apportionment shall be effected based on the ratio of income. For a profit-seeking enterprise specializing in trading marketable securities, two types of operating revenues are generated from its securities investment. One is the investment income

解釋理由書：營利事業所得之計算，係以其本年度收入總額減除各項成本費用、損失及稅捐後之純益額為所得額，為所得稅法第二十四條第一項所明定。免稅所得與應稅所得之投入成本及費用若無法明確劃分歸屬者，依公平原則，自應以收入比例作為分攤之基準。以有價證券買賣為專業之營利事業，其經營有價證券投資業務產生之營業收入計有二種。一為有價證券未出售前因持有有價證券而獲配股息及紅利所取得之投資收益收入，一為因出售有價證券而產生之證券交易收入。投資收益部分，依所得稅法第四十二條規定，公司組織之營利事業，投資於國內其他非受免徵營利事業所得稅待遇之股份有限

from dividends and bonus of marketable securities held before sale. The other is the income from sale of marketable securities. Under Article 42 of the Income Tax Act, 20% of the investment income received by a profit-seeking enterprise organized as a company from its investment in another domestic profit-seeking enterprise which is not exempt from business income tax shall be taxable, and the related operating costs and interest expenditure shall be allowed to be deducted within such taxable scope. For the remaining 80% tax-free portion, the related operating costs and interest expenditure shall be deducted from investment income. In connection with trading of securities, under Article 4-1 of the Income Tax Act, securities transaction income tax shall no longer be levied commencing from January 1, 1990, and the related operating costs and interest expenditure shall be deducted from income from securities trading. As a result, in the case of an enterprise specializing in trading marketable securities, the operating costs and interest expenditure shall be allotted respectively as cost of investment income and cost of

公司組織者，百分之二十為應稅所得，其相關營業費用及利息支出，應在該課稅範圍內准予列支，其餘百分之八十免稅部分，其相關營業費用及利息支出，應配合自投資收益收入項下減除。證券交易部分，依所得稅法第四條之一規定，自七十九年一月一日起，證券交易所停止課徵所得稅，其相關營業費用及利息支出，應配合自證券交易收入項下減除。從而以買賣有價證券為專業之公司，其營業費用及利息支出，即需分別攤歸投資收益及證券交易收入負擔。至分攤方式，除可直接合理明確歸屬者得個別歸屬，應自有價證券出售收入項下減除外，因投資收益及證券交易收入源自同一投入成本，難以投入成本比例作為分攤基準。財政部八十三年二月八日台財稅第八三一五八二四七二號函說明：「三、以有價證券買賣為專業之營利事業，其營業費用及借款利息，除可合理明確歸屬者得個別歸屬認列外，應按核定有價證券出售收入、投資收益、債券利息收入及其他營業收入比例，計算有價證券出售部分應分攤之費用及利息，自有價證券出售收入項下減除」，係採以收入比例作為分攤基準之計算方式，符合上開立法意旨，與憲法尚無牴觸。惟營利事業成本費用及損失等之計

securities trading income. For the apportionment method, unless the costs and expenditure can be reasonably and clearly entered as cost of either income and shall be deducted from the income from sale of marketable securities, as both the investment income and the income from securities transactions come from the same cost input, it is difficult to use the cost input as an apportionment basis. The letter of the Ministry of Finance dated February 8, 1994, Ref. No. (83)-Tai-Finance-Tax-831582472, stated: "III. In connection with the operating costs and interest payments for loans, unless they can be reasonably and clearly entered under specific items, an enterprise specializing in trading of securities shall calculate the expense and interest allocable for sale of marketable securities in proportion to the income from sale of marketable securities, investment returns, interest income from bonds, and other operating revenues, and deduct such from the income from sale of marketable securities." The calculation of apportionment is based on the ratio of income. This conforms to the legislative purpose of the aforesaid articles of law

算涉及人民之租稅負擔，為貫徹憲法第十九條之意旨，仍應由法律明確授權主管機關訂立為宜。又聲請人以其課稅事實發生於七十九年度，而主管稽徵機關竟引用財政部八十三年所為計算方法之函釋，有違法令不溯及既往原則一節，查行政主管機關就行政法規所為之釋示，係闡明法規之原意者，應自法規生效之日起有其適用，業經本院釋字第二八七號解釋釋示在案，不生牴觸憲法問題。

and does not contradict the Constitution. However, since calculation of the costs, expenditure, and losses of a profit-seeking enterprise involves the taxation of the general public, it shall be prescribed by the competent authority under express authorization of law so as to carry out the legislative purpose of Article 19 of the Constitution. Furthermore, the applicant contended that the fact of taxation occurred in 1990, while the competent authority in charge of tax levy cited the 1994 letter of the Ministry of Finance regarding the calculation method, which violated the principle that the law does not apply retroactively. However, if the interpretation of administrative laws and regulations by the relevant administrative competent aims to interpret the legislative purpose of the laws and regulations concerned, such interpretation shall be applicable upon the relevant laws and regulations taking effect. This has been interpreted per this Yuan Interpretation No. 287, and there is no contradiction with the Constitution.