

J. Y. Interpretation No.496 (December 3, 1999) *

ISSUE: Are the Ministry of Finance's Directive Ref. No. TTSF-2665 dated September 2, 1970, and No. TTS-770656151 dated May 18, 1988, which provide that "where the non-operating income is less than non-operating losses, such income shall be considered as zero," unconstitutional?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條) ; J. Y. Interpretation Nos. 420 and 493 (司法院釋字第四二〇號、第四九三號解釋) ; Act of Encouragement of Investment (獎勵投資條例) ; Income Tax Act (所得稅法) .

KEYWORDS:

duty of tax payment (納稅義務) , encouragement of investment (獎勵投資) , non-operating income (非營業收入) .**

HOLDING: Article 19 of the Constitution stipulates: "The people shall have the duty of paying taxes in accordance with law," which means that the people shall have the duty to make tax payment and the privilege to enjoy tax

解釋文：憲法第十九條規定「人民有依法律納稅之義務」，係指人民有依法律所定要件負繳納稅捐之義務或享減免繳納之優惠而言。稅法之解釋，應本於租稅法律主義之精神，依各該法律之立法目的，衡酌經濟上之意義

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reduction or exemption in accordance with the requirements set forth by law. The tax laws shall be interpreted in accordance with the legislative purpose of each of such laws based on the spirit of the principle of taxation by law, and take into consideration the economic meaning and the principle of equality in connection with substantive taxation. The Ministry of Finance issued a directive Ref. No. TTSF-26656 dated September 2, 1960, and a letter Ref. No. TTS-770656151 dated May 18, 1988, to amend the calculation formula for deducting and exempting the income tax of the profit-seeking enterprises entitled to the encouragement. The said directive/letter relates to the interpretation of the authority who integrates the relevant provisions of the Act of Encouragement of Investment and the Income Tax Act to facilitate the operation of both the tax levying agency and taxpayer. In the said interpretation, it was stated that “where the non-operating income is less than non-operating losses, the balance shall be considered as zero.” This is to avoid the consequence that the income from non tax-free products is also exempt

及實質課稅之公平原則為之。財政部中華民國五十九年九月二日台財稅發第二六六五六號令及七十七年五月十八日台財稅第七七〇六五六一五一號函，核發修正獎勵減免營利事業所得稅計算公式，乃主管機關為便利徵納雙方徵繳作業，彙整獎勵投資條例及所得稅法相關規定所為之釋示，其中規定「非營業收入小於非營業損失時，應視為零處理」，係為避免產生非免稅產品所得亦不必繳稅之結果，以期符合該條例獎勵項目之產品其所得始可享受稅捐優惠之立法意旨。惟相關之非營業損失，如可直接合理明確定其歸屬者，應據以定其歸屬外，倘難以區分時，則依免稅產品銷貨（業務）收入與應稅產品銷貨（業務）收入之比例予以推估，始符合租稅公平原則。有關機關應依本解釋意旨從速檢討修正相關法令，併此指明。

from tax so as to conform to the legislative intent that only the income from goods meeting the criteria of encouragement is entitled to tax benefits. However, in connection with related non-operating losses, those that can be directly categorized in a reasonable and clear manner shall be so categorized. If it is difficult to make a distinction, the calculation shall be made based on the ratio of sales revenue from tax-free goods (business) to the sales revenue from taxable goods (business) so as to comply with the principle of taxation fairness. The relevant authorities shall promptly review and amend relevant laws and regulations in accordance with the intent of this Interpretation.

REASONING: Article 19 of the Constitution stipulates that the people shall have the duty of paying taxes in accordance with the law, which means that the people have the duty of tax payment or the privilege of tax deduction or exemption in accordance with the subject of tax payment, tax item, tax rate, tax payment method, and tax deduction/exemption prescribed by law. The laws involving taxa-

解釋理由書：憲法第十九條規定，人民有依法律納稅之義務，係指人民有依法律所定之納稅主體、稅目、稅率、納稅方法及稅捐減免等項目，負繳納稅捐之義務或享受減免稅捐之優惠而言。涉及租稅事項之法律，其解釋應本於租稅法律主義之精神，依各該法律之立法目的，衡酌經濟上之意義及實質課稅之公平原則為之，業經本院釋字第四二〇號解釋在案。主管機關雖得基於職

tion shall be interpreted in accordance with the legislative purpose of each of such laws based on the spirit of the principle of taxation by law, and take into consideration the economic meaning and the principle of equality in connection with substantive taxation. The above has been interpreted per this Yuan Interpretation No. 420. Though the competent authority may make necessary interpretation ex officio for the enforcement of taxation laws, it is a matter of course that the principles of law first mentioned above should be met.

The Act of Encouragement of Investment (becoming void upon expiration on December 31, 1990) was enacted for the purposes of encouraging investment activities and accelerating the national economic development. Tax deduction was adopted as a major encouragement measure to realize the legislative purpose. To ensure that all the productive enterprises and profit-seeking enterprises falling within the encouragement scope are equally benefited, and that improper acquisition of tax deduction/exemption

權，就稅捐法律之執行為必要之釋示，惟須符合首開意旨，乃屬當然。

獎勵投資條例（已於七十九年十二月三十一日因施行期間屆滿失效）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。而為期符合獎勵範圍之各種生產事業及營利事業均能公平同霑其利，並防止以迴避租稅行為獲取不正當減免稅捐優惠，規定有各種享受獎勵之條件，必須合於獎勵類目及獎勵標準者，始得享有稅捐減免之優惠。財政部五十九年九月二日台財稅發第二六六五六號令及七十七年五月十八日台財稅第七七〇六五六一五一號

privileges through circumvention of taxes may be prevented, various conditions for the entitlement to the encouragement were prescribed, and only those who meet the encouragement categories and criteria can enjoy the tax deduction/exemption privileges. The Ministry of Finance issued a directive Ref. No. TTSF- 26656 dated September 2, 1960, and a letter Ref. No. TTS-770656151 dated May 18, 1988, to amend the calculation formula for deducting and exempting the income tax of the profit-seeking enterprises entitled to the encouragement. The said directive/letter relates to the interpretation of the competent authority who integrates the relevant provisions of the Act of Encouragement of Investment and the Income Tax Act to facilitate the operation of both the tax levying agency and taxpayer. In the said interpretation, it was stated that “where the non-operating income is less than non-operating losses, the balance shall be considered as zero.” This is to avoid the consequence that the income from non-tax-free products is also exempt from tax, which conforms to the legislative intent of the statute that only the income from

函，核發獎勵減免營利事業所得稅計算公式，乃主管機關為便利徵納雙方徵繳作業，彙整獎勵投資條例及所得稅法相關規定所為之釋示，其中規定「非營業收入小於非營業損失時，應視為零處理」，係為避免產生非免稅產品所得亦不必繳稅之結果，與該條例對稅捐減免優惠以獎勵項目之產品所得為限之立法意旨相符。

goods meeting the criteria of encouragement is entitled to tax deduction / exemption privileges.

As stated in the explanations of the said directive/letter of the Ministry of Finance, with respect to the balance of “non-operating income” less “non-operating losses,” if the “non-operating losses” are more than the “non-operating income,” thus resulting in a non-operating deficit, the balance shall be considered as zero. However, there are numerous non-operating loss items, such as interest expenditure, exchange loss, inventory loss from tax-free goods, or losses resulting from disasters. Therefore, in connection with non-operating losses related to business items, those that can be directly categorized in a reasonable and clear manner shall be specifically categorized. If it is difficult to make a distinction, the calculation shall be made based on the ratio of sales revenue from tax-free goods (business) to the sales revenue from taxable goods (business) so as to comply with the principle of taxation fairness (See this Yuan Interpretation No. 493). The rele-

上開財政部令函說明固謂：計算公式中「非營業收入」減「非營業損失」之餘額，若「非營業損失」大於「非營業收入」而發生營業外虧損時，應視為零處理。惟查相關之非營業損失項目繁多，如利息支出、兌換損失、免稅產品盤損或發生災害之損失等皆屬之。故與營業項目相關之非營業損失，如可直接合理明確定其歸屬者，應具體定其歸屬外，倘難以區分時，則依免稅產品銷貨（業務）收入與應稅產品銷貨（業務）收入之比例予以推估，始符合租稅公平原則（參照本院釋字第四九三號解釋）。有關機關應依本解釋意旨從速檢討修正相關法令，併此指明。

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