

J. Y. Interpretation No.287 (December 13, 1991) \*

**ISSUE:** What is the force and effect of a finalized administrative measure taken in accordance with a directive issued by an administrative agency prior to the issuance of a second directive by the same agency when the second directive is inconsistent with the first one?

**RELEVANT LAWS:**

Article 19 of the Constitution (憲法第十九條), Article 28 of the Tax Levy Act (稅捐稽徵法第二十八條), Directive T.T.S.T. No. 7530447 dated March 21, 1986, of the Ministry of Finance (財政部七十五年三月二十一日臺財稅字第七五三〇四四七號函) .

**KEYWORDS:**

an inconsistency between a prior and later interpretation (前後釋示不一致), stability of the legal order (法律秩序之安定), taxpayers (納稅義務人), the taxation decree (課稅處分) .\*\*

**HOLDING:** Generally, interpretation of administrative statutes by an administrative governing agency is to elucidate the original legislative intent of the

**解釋文：**行政主管機關就行政法規所為之釋示，係闡明法規之原意，固應自法規生效之日起有其適用。惟在後之釋示如與在前之釋示不一致時，在

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\* Translated by Professor Wen-Yeu Wang.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

administrative statutes. Hence, the interpretation shall be applicable from the respective effective date of the relevant statutes. However, in the situation where there is an inconsistency between a prior and later interpretation, any administrative actions executed based on the prior interpretation before the release of the later interpretation shall be allowed to stand unaffected by the later interpretation if the prior interpretation is not contrary to law and not obviously wrong. This is to maintain the stability of the legal order. Directive T.T.S.T. No. 7530447 dated March 21, 1986, of the Ministry of Finance, which states: "No alteration shall be made to cases of business entities that had their payment of for-profit-business income tax determined before the announcement of this decree. Those business entities whose cases have not been determined, or have been determined but with unsettled or uncollected payment shall make good without penalty the shortfall in tax in accordance with this decision" adheres to the above stated principle and hence is consistent with the Constitution.

前之釋示並非當然錯誤，於後釋示發布前，依前釋示所為之行政處分已確定者，除前釋示確有違法之情形外，為維持法律秩序之安定，應不受後釋示之影響。財政部中華民國七十五年三月二十一日臺財稅字第七五三〇四四七號函說明四：「本函發布前之案件，已繳納營利事業所得稅確定者，不再變更；尚未確定或已確定而未繳納或未開徵之案件，應依本函規定予以補稅免罰」，符合上述意旨，與憲法並無牴觸。

**REASONING:** Administrative governing agencies derive their authority from law. Hence, an interpretation of an administrative statute is to elucidate the original legislative intent of such statute. It is not an independent administrative decree by nature and thus shall be applicable from the respective effective date of the relevant statutes. However, in the situation where there is an inconsistency between a prior and later interpretation and where the prior interpretation is not obviously wrong, any administrative actions executed based on the prior interpretation before the release of the later interpretation and which had been determined through administrative proceedings shall only be subject to rehearing based on statutory rehearing causes. For cases determined other than by administrative proceedings, subject to the exceptions of the prior interpretation being contrary to law, thus injuring the right and interest of the people and which must be altered by the governing agency, the later interpretation shall have no effect on maintaining the stability of the legal order. Directive T.T.S.T. No. 7530447 dated March 21,

**解釋理由書：**行政機關基於法定職權，就行政法規所為之釋示，係闡明法規之原意，性質上並非獨立之行政命令，固應自法規生效之日起有其適用。惟對同一法規條文，先後之釋示不一致時，非謂前釋示當然錯誤，於後釋示發布前，主管機關依前釋示所為之行政處分，其經行政訴訟判決而確定者，僅得於具有法定再審原因時依再審程序辦理；其未經訴訟程序而確定者，除前釋示確屬違法，致原處分損害人民權益，由主管機關予以變更外，為維持法律秩序之安定，應不受後釋示之影響。財政部中華民國七十五年三月二十一日臺財稅字第七五三〇四四七號函說明四：「本函發布前之案件，已繳納營利事業所得稅確定者，不再變更，尚未確定或已確定而未繳納或未開徵之案件，應依本函規定予以補稅免罰」，符合上述意旨，與憲法並無牴觸。又稅捐稽徵法第二十八條之規定，係指適用法令錯誤或計算錯誤溢繳稅款者，納稅義務人得於五年之法定期間內，申請退還。故課稅處分所依據之行政法規釋示，如有確屬違法情形，其已繳稅款之納稅義務人，自得依此規定申請退還。惟若稽徵機關作成課稅處分時，適用當時法令並無錯誤，則已確定之課稅處分，自不因

1986, of the Ministry of Finance, which states: “No alteration shall be made to cases of business entities that had their payment of for-profit-business income tax determined before the announcement of this decision; those business entities whose cases have not been determined, or have been determined but with unsettled or uncollected payment shall make good without penalty the shortfall in tax in accordance this decision” adheres to the above stated principle and hence is consistent with the Constitution. Similarly, Article 28 of the Tax Levy Act states that taxpayers who had overpaid tax due to either erroneous application of statutes or errors in calculation can apply for a refund within the 5-year statutory limitation period. Hence, if the interpretation of the administrative statute which the taxation decree was based on was indeed contrary to the law, those taxpayers who have paid the tax can apply for a refund in accordance with this statute. However, if there was no erroneous application of statutes at the time the tax collecting agency executed the relevant taxation decrees, those taxation decrees which had been deter-

嗣後法令之改變或適用法令之見解變更而受影響，應無上開規定之適用，乃屬當然。至財政部中華民國六十九年三月二十八日發布之臺財稅字第三二五五二號函，並非本件確定終局裁判所適用之法律或命令，聲請人當時繳納稅款，亦因未請求行政救濟，行政法院無從就該函為應否適用之判斷，故不在本件解釋範圍。

mined shall not be affected by any subsequent changes in the statute or its interpretation. The said statute naturally has no application in this later scenario. Directive T.T.S.T. No. 32552 is not an applicable law or decree with respect to this present final award determination. As the applicant had paid the tax and had not applied for administrative remedy, the Administrative Court is unable to determine the application of that decision. Hence, it is not covered by this present interpretation.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋劉大法官鐵錚提出不同意見書。