

## J. Y. Interpretation No.296 ( March 27, 1992 ) \*

**ISSUE:** Is the directive of the Ministry of Finance, prescribing that, in calculating the taxable income derived from property transaction due to an auction, the cost and expenses will be deducted from the proceeds of the auction before the balance thereof is added to other income for taxation purposes, in violation of the Constitution?

**RELEVANT LAWS:**

Article 19 of the Constitution (憲法第十九條) ; Articles 2 and 14, Paragraph 1(7) of the Income Tax Act (所得稅法第二條、第十四條第一項第七類) ; The Directive T.T.S.T. No. 37365 dated December 2, 1977, of the Ministry of Finance (財政部六十六年十一月二日臺財稅字第三七三六五號函) .

**KEYWORDS:**

an auction sale ordered by the courts (法院所為之拍賣) , income derived from the trading of property (財產交易所得) , the duty to pay tax (納稅之義務) .\*\*

**HOLDING:** Proceeds from an auction sale ordered by the courts under the Compulsory Enforcement Act shall, after the deduction of cost expenditures,

**解釋文：**法院依強制執行法所為之拍賣，其賣得之價金應依所得稅法第十四條第一項第七類規定，減除成本费用後計算財產交易所得，併同其他

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

be calculated as income derived from the trading of property and subject to income tax assessment together with other income in accordance with Article 14, Paragraph 1(7) of the Income Tax Act. The Directive T.T.S.T. No. 37365 dated December 2, 1977, of the Ministry of Finance is *intra vires* the provisions of the Income Tax Act and not contrary to Article 19 of the Constitution.

**REASONING:** Article 19 of the Constitution provides that everyone has the duty to pay tax in accordance with law. Article 2, Paragraph 1, of the Income Tax Act expressly provides that any persons whose source of income is the Republic of China shall be subject to consolidated income tax assessment on such income derived in the Republic of China in accordance with the provisions of the Income Tax Act. Similarly, Article 14, Paragraph 1, of the Income Tax Act expressly provides that any income derived from the trading of property or entitlement shall be calculated towards the total individual composite income and be subject to consolidated income tax assessment.

各項所得課稅，財政部中華民國六十六年十一月二日臺財稅字第三七三六五號函釋尚未逾越所得稅法之規定，與憲法第十九條並不牴觸。

**解釋理由書：**憲法第十九條規定，人民有依法律納稅之義務。凡有中華民國來源所得之個人，應就其中華民國來源所得，依所得稅法之規定，課徵綜合所得稅；又財產及權利因交易而取得之所得，應計入個人之綜合所得總額，課徵綜合所得稅，所得稅法第二條第一項及第十四條第一項，分別著有明文。法院依強制執行法對債務人之財產所為之拍賣，其賣得之價金，於減除原始取得之成本，及因取得、改良及移轉該項資產而支付之一切費用後，如有餘額，仍為財產交易所得，自應依所得稅法第十四條第一項第七類之規定，計入債務人之綜合所得總額，課徵綜合所得稅。財政部中華民國六十六年十一月二日臺財稅字第三七三六五號函，以房屋

When a debtor's property is auctioned by order of the courts under the Compulsory Enforcement Act, the proceeds shall, after the deduction of the original acquisition cost and other expenditures incurred in the acquisition, improvement and transfer of the said property, be deemed as income derived from the trading of property. Any surplus after the deduction shall be calculated towards the total composite income of the debtor and subject to consolidated income tax assessment in accordance with Article 14, Paragraph 1(7) of the Income Tax Act. The Directive T.T.S.T. No. 37365 dated December 2, 1977, of the Ministry of Finance stipulates that proceeds from the auction of property seized by the courts shall nevertheless be subject to the provisions of the Income Tax Act and that the auction price shall, after the deduction of cost expenditures, be calculated as income derived from the trading of property and subject to income tax assessment together with other income. This is intra vires the provisions of the Income Tax Act and not contrary to Article 19 of the Constitution.

為法院查封拍賣，仍應依稅法規定，依拍賣之價額，減除成本費用後計算財產交易所得，併同其他各項所得課稅，尚未逾越所得稅法之規定，與憲法第十九條並不牴觸。