

J. Y. Interpretation No.309 (November 27, 1992) *

ISSUE: Is Article 83-1 of the Income Tax Act constitutional in granting the taxing authority the power to investigate the net worth, funds flow and business data of a taxpayer suspected of material tax evasion?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條); Article 83-1 of the Income Tax Act (所得稅法第八十三條之一) .

KEYWORDS:

tax evasion (逃漏稅), taxing authority (稽徵機關), burden of proof (舉證責任), rebuttal evidence (反證), net asset value (資產淨值), funds flow (資金流程), irregular course of business (不合營業常規), indirect evidence (間接證據) .**

HOLDING: The Income Tax Act as amended on December 30, 1982, provides in Article 83-1: "If an officer appointed by a taxing authority or the Ministry of Finance finds in the course of investigation that the taxpayer is suspected of material tax evasion, he may, subject to approval of the Ministry of

解釋文：中華民國七十一年十二月三十日修正公布之所得稅法第八十三條之一規定：「稽徵機關或財政部指定之調查人員進行調查時，如發現納稅義務人有重大逃漏稅嫌疑，得視案情需要，報經財政部核准，就納稅義務人資產淨值、資金流程及不合營業常規之營業資料進行調查。」「稽徵機關就前項

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Finance, conduct an investigation of the net asset value, funds flow, and the business data relating to any irregular course of business of the taxpayer to the extent necessary under the circumstances of the case.” And furthermore:” Where the taxing authority, as a result of the investigation carried out under the preceding paragraph, proves that the taxpayer has committed an act of tax evasion, the taxpayer shall bear the burden of proof to show such facts as he may allege in his favor.” These provisions are intended to prescribe by law in explicit words how to conduct the investigation in case of suspicion of material tax evasion and to allow the taxpayer the opportunity to produce rebuttal evidence to protect his right and interest if the result of the investigation makes the taxing authority believe that there is sufficient evidence of tax evasion. We do not find such provisions to be in conflict with the Constitution.

REASONING: The Income Tax Act as amended on December 30, 1982 provides in Article 83-1: “If an officer appointed by a taxing authority or the

資料調查結果，證明納稅義務人有逃漏稅情事時，納稅義務人對有利於己之事實，應負舉證之責。」係對有重大逃漏稅嫌疑之案件，以法律明定其調查方法，如依調查結果，認為足以證明有逃漏稅情事時，並許納稅義務人提出反證，以維護其權益，與憲法尚無牴觸。

解釋理由書：中華民國七十一年十二月三十日修正公布之所得稅法增列第八十三條之一規定：「稽徵機關或財政部指定之調查人員進行調查時，如

Ministry of Finance finds in the course of investigation that the taxpayer is suspected of material tax evasion, he may, subject to approval of the Ministry of Finance, conduct an investigation of the net asset value, funds flow, and the business data relating to any irregular course of business of the taxpayer to the extent necessary under the circumstances of the case.” And furthermore: “Where the taxing authority, as a result of the investigation carried out under the preceding paragraph, proves that the taxpayer has committed an act of tax evasion, the taxpayer shall bear the burden of proof to show such facts as he may allege in his favor.” These provisions are intended to prescribe by law in explicit words that that the taxing authority may, in case of suspicion of material tax evasion, conduct an investigation of such indirect evidence as the net asset value, funds flow, and the business data relating to any irregular course of business of the taxpayer for the purpose of assessing and determining the income thereof, and that, if the result of the investigation, upon reasonable judgment, makes the taxing authority believe that

發現納稅義務人有重大逃漏稅嫌疑，得視案情需要，報經財政部核准，就納稅義務人資產淨值、資金流程及不合營業常規之營業資料進行調查。」「稽徵機關就前項資料調查結果，證明納稅義務人有逃漏稅情事時，納稅義務人對有利於己之事實，應負舉證之責。」係對有重大逃漏稅嫌疑之案件，以法律明定稽徵機關得就納義務人之資產淨值、資金流程及不合營業常規之營業資料等間接證據進行調查，而核算其所得額，如依調查結果，經合理之判斷，認為足以證明有逃漏稅情事時，並許納稅義務人就有利於己之事實提出反證，以維護其權益，與憲法尚無牴觸。此項規定僅為發見真實而設，不生溯及既往問題，併此指明。

there is sufficient evidence of tax evasion, the taxpayer is allowed the opportunity to produce rebuttal evidence with respect to such facts as he may allege in his favor in order to protect his right and interest. We do not find such provisions to be in conflict with the Constitution. Apropos, the provisions are designed for the purpose of finding the truth, and do not give rise to any problem of retroactive application.