

## J. Y. Interpretation No.315 ( March 12, 1993 ) \*

**ISSUE:** Are the ordinances of the Executive Yuan and the Ministry of Finance contrary to the constitutional principle of taxation by law in denying tax exemption to non-productive enterprises for premium on stocks issued above par value?

**RELEVANT LAWS:**

Article 19 of the Constitution (憲法第十九條) ; Article 25 of the Act of Encouragement of Investment (獎勵投資條例第二十五條) ; Articles 3, 4, and 24, Paragraph 1 of the Income Tax Act (所得稅法第三條、第四條、第二十四條第一項) ; Articles 238, 239, Paragraph 1, proviso, and Article 241 of the Company Act (公司法第二百三十八條、第二百三十九條第一項但書、第二百四十一條) ; Executive Yuan Ordinance Tai-Ching-Tze No. 9494 (December 7, 1967) (行政院五十六年十二月七日台經字第九四九四號令) ; Ministry of Finance Ordinance Tai-Tsai Shui-Fa-Tze No. 13055 (December 10, 1967) (財政部五十六年十二月十日台財稅發字第一三〇五五號令) .

**KEYWORDS:**

premium (溢價、溢額) , face value (票面金額) , productive enterprise (生產事業) , surplus (公積) , tax-exempt ; tax exemption (免稅) , capital surplus (資本公積) , doctrine of taxation per legislation (租稅法律主義) .\*\*

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\* Translated by Raymond T. Chu.

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

**HOLDING:** Whether the income from the premium received by a corporation through the issuance of stocks above the face value may be exempt from tax and the extent of exemption, if any, are problems subject to reasonable discretion to be made by the legislature under the principle of taxation by law. Article 25 of the Act of Encouragement of Investment provides merely: "Where the premium realized by a productive enterprise through the issuance of stocks above the face value is set aside as surplus under the Company Act, such premium may be excluded from its income amount." As interpreted by the Executive Yuan Ordinance Tai-Ching-Tze No. 9494 (December 7, 1967) and the Ministry of Finance Ordinance Tai-Tsai-Shui-Fa-Tze No. 13055 (December 10, 1967), there being no law granting businesses other than productive enterprises tax exemption on such premium, it is not tax exempt. And we do not find such ordinances contrary to the principle of taxation by law.

**REASONING:** All business enterprises operating inside the territory of

**解釋文：**關於公司超過票面金額發行股票之溢額所得，應否免稅及免稅之範圍如何，立法機關依租稅法律主義，得為合理之裁量。獎勵投資條例第二十五條僅規定：「生產事業依公司法規定，將發行股票超過票面金額之溢價作為公積時，免予計入所得額」，行政院中華民國五十六年十二月七日臺經字第九四九四號令及財政部同年月十日臺財稅發字第一三〇五五號令乃釋示，非生產事業之上述溢額所得並無免稅規定，不在免稅之列，與憲法所定之租稅法律主義尚無牴觸。

**解釋理由書：**依所得稅法第三條第一項及第四條規定，凡在中華民國

the Republic of China are liable under the Income Tax Act to payment of business income tax for all categories of income earned thereby with the exception of income for which tax is exempted by law. Inasmuch as the income from the premium received by a corporation through the issuance of stocks above the face value, when viewed by taking into account the provisions of the Income Tax Act, Article 24, Paragraph 1, and the Company Act, Article 239, Paragraph 1, proviso, and Article 241 as a whole, is what has exceeded the registered capital of the corporation and may accumulate to form the capital surplus, which in turn may be applied to the issuance of new stocks, it should be categorized as income of the corporation, and the legislature is certainly entitled to exercise reasonable discretion with respect to the issue of whether it should be tax exempt and, if yes, the extent of such exemption. Article 25 of the Act of Encouragement of Investment provides merely: "Where the premium obtained by a productive enterprise through the issuance of stocks above the face value is set aside as surplus under

境內經營之營利事業，其各項所得，除法律有免稅之規定外，應依所得稅法課徵營利事業所得稅。公司超過票面金額發行股票所得之溢額，就所得稅法第二十四條第一項及公司法第二百三十九條第一項但書、第二百四十一條規定綜合觀之，既超出公司登記資本額之範圍，而彙積為資本公積，此項公積又可供發給新股之用，應屬公司之所得。立法機關自得就其應否免稅及免稅之範圍如何，為合理之裁量。獎勵投資條例第二十五條僅規定：「生產事業依公司法規定，將發行股票超過票面金額之溢價作為公積時，免予計入所得額」，行政院中華民國五十六年十二月七日臺經字第 九四九四號令及財政部同年月十日臺財稅發字第一三〇五五號令釋示：「公司法第二百三十八條對資本公積，並無免稅之規定，至其他法律如獎勵投資條例對某類事業某種所得有免稅條款者，方得據以免稅」，符合上開意旨，與憲法第十九條所定租稅法律主義尚無牴觸。至其後公布之促進產業升級條例，將免稅範圍擴大至不以生產事業為限，係配合經濟發展之新情勢而為之立法裁量，亦不得因而認在前之立法裁量為違憲。

the Company Act, such premium may be excluded from its income amount.” As interpreted by the Executive Yuan Ordinance Tai-Ching-Tze No. 9494 (December 7, 1967) and the Ministry of Finance Ordinance Tai-Tsai-Shui-Fa-Tze No. 13055 (December 10, 1967), “Article 238 of the Company Act being silent with respect to tax exemption for capital surplus, it may be tax exempt only if there is a clause in any other law such as the Act of Encouragement of Investment allowing tax exemption to a specific type of business for a specific category of income.” And we hold that said ordinances are consistent with what we have just stated above and are not contrary to the principle of taxation by law as embodied in Article 19 of the Constitution. As to the subsequent broadening of the scope of tax exemption under the Act for Upgrading Industries to include businesses other than productive enterprises, it is the result of legislative discretion exercised to meet the contemporary situation of economic development, and should not be taken to render the previous legislative discretion unconstitutional.

Justice Chien-Tsai Cheng filed concurring opinion.

Justice Zu-Zan Yang filed concurring opinion.

Justice Chien-Hua Yang filed dissenting opinion, in which Justice Chih-Peng Lee, Justice Rui-Tang Chen, Justice Tieh-Cheng Liu and Justice Geng Wu joined.

本號解釋鄭大法官健才、楊大法官日然分別提出協同意見書；楊大法官建華、李大法官志鵬、陳大法官瑞堂、劉大法官鐵錚與吳大法官庚共同提出不同意見書。