

## J. Y. Interpretation No.337 (February 4, 1994) \*

**ISSUE:** Is the Ministry of Finance directive consistent with the Business Tax Act and the Constitution in holding a business operator who has purchased goods liable to a fine for tax evasion as prescribed in the said Act regardless of whether he has made false entries of the tax payment on such purchases for tax evasion?

**RELEVANT LAWS:**

Article 51, Paragraph 1 and Article 51, Paragraph 1, Subparagraph 5 of the Business Tax Act (營業稅法第五十一條第一項、第五十一條第一項第五款); Article 44 of the Tax Levy Act (稅捐稽徵法第四十四條); J. Y. Interpretation No. 252 (司法院釋字第二五二號解釋); Ministry of Finance directive Tai-Tsai-Shui-Tze No. 7637376 (May 6, 1987) (財政部七十六年五月六日臺財稅字第七六三七三七六號函); Ministry of Finance in its directive (69) Tai-Tsai-Shui-Tze No. 36624 (August 8, 1980) (財政部六十九年八月八日臺財稅字第三六六二四號函) .

**KEYWORDS:**

business tax (營業稅), false entries of tax payment on purchases (虛報進項稅額), tax evasion (逃漏稅款), amount of tax evaded (漏稅額), voucher (憑證), uniform invoice (統一發票), direct purchaser/seller (直接買受人/出賣人), behavioral punishment (行為罰), punishment for tax evasion (漏稅罰), administrative objective (行政上之目的) .\*\*

---

\* Translated by Raymond T. Chu.

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

**HOLDING:** The Business Tax Act provides in Article 51, Subparagraph 5, that a taxpayer who makes false entries of tax payment on purchases shall be liable to a penalty in a sum equal to five to twenty times the amount of the tax evaded besides being required to pay the principal tax, and may additionally be ordered to discontinue his business operation. In essence, the article makes the taxpayer liable to payment of the principal tax plus penalty only if he has made false entries of tax payment on purchases and has thereby evaded the payment of tax. The Ministry of Finance directive Tai-Tsai-Shui-Tze No. 7637376 (May 6, 1987), which requires that penalty be imposed under the aforesaid clause on a business operator so long as he is found to have purchased goods regardless of whether he has made false entries of tax payment on such purchases and has thereby evaded the payment of tax, should be made no longer operative to the extent that it is inconsistent with the essence of the above article and is contrary to the purpose of the Constitution in protecting the right and interest of the people. As regards the stan-

**解釋文：**營業稅法第五十一條第五款規定，納稅義務人虛報進項稅額者，除追繳稅款外，按所漏稅額處五倍至二十倍罰鍰，並得停止其營業。依此規定意旨，自應以納稅義務人有虛報進項稅額，並因而逃漏稅款者，始得據以追繳稅款及處罰。財政部中華民國七十六年五月六日臺財稅字第七六三七三七六號函，對於有進貨事實之營業人，不論其是否有虛報進項稅額，並因而逃漏稅款，概依首開條款處罰，其與該條款意旨不符部分，有違憲法保障人民權利之本旨，應不再援用。至首開法條所定處罰標準，尚未逾越立法裁量範圍，與憲法並無牴觸。

dards of penalty set forth by the above article, we do not find that they go beyond the scope of legislative discretion or are in conflict with the Constitution.

**REASONING:** Punishment for violation of tax legislations may be imposed either because of an act of tax evasion or because of breach of duty under a tax law to act or not to act. The text of Paragraph 1 of Article 51 of the Business Tax Act states: "In any of the following circumstances, the taxpayer shall, in addition to being required to make payment of the principal tax, be liable to a penalty in a sum equal to five to twenty times the amount of the tax evaded, and may additionally be ordered to discontinue his business operation." Essentially, this is a penal provision dealing with acts of tax evasion. Therefore, to impose penalty on the ground of "making false entries of tax payment on purchases" under Subparagraph 5 of the same Article and Paragraph calls for the finding of the element where there exists such an act as a cause of the occurrence of the fact of tax evasion, and the provision is distinguishable from Arti-

**解釋理由書：**違反稅法之處罰，有因逃漏稅捐而予處罰者，亦有因違反稅法上之作為或不作為義務而予處罰者，營業稅法第五十一條第一項本文規定：「納稅義務人有左列情形之一者，除追繳稅款外，按所漏稅額處五倍至二十倍罰鍰，並得停止其營業。」依其意旨，乃係就漏稅行為所為之處罰規定，因之，對同條項第五款之「虛報進項稅額者」加以處罰，自應以有此行為，並因而發生漏稅之事實為處罰要件，此與稅捐稽徵法第四十四條僅以未給付或未取得憑證為處罰要件，不論其有無虛報進項稅額並漏稅之事實者，尚有不同。財政部七十六年五月六日臺財稅字第七六三七三七六號函未明示上述意旨，對於有進貨事實之營業人，不論是否有虛報進項稅額，並因而逃漏稅款，概依首開條款處罰，其與該條款意旨不符部分有違憲法保障人民權利之意旨，應不再援用。至營業稅法第五十一條之處罰，乃在防止漏稅，以達正確課稅之目的，其處罰標準，尚未逾越立法

cle 44 of the Tax Levy Act, whereby the element required for imposition of penalty is merely the failure to deliver to or obtain from others vouchers regardless of whether there is any false entry of the tax payment on purchase as a cause of tax evasion. The Ministry of Finance directive Tai-Tsai-Shui-Tze No. 7637376 (May 6, 1987), which, without explicitly stating to such effect, requires that penalty be imposed under the aforesaid clause on a business operator so long as he is found to have purchased goods regardless of whether he has made false entries of tax payment on such purchases and has thereby evaded the payment of tax, should be made no longer operative to the extent that it is inconsistent with the essence of the above article and is contrary to the purpose of the Constitution in protecting the right and interest of the people. As regards the standards of penalty set forth by Article 51 of the Business Tax Act, being designed for the purpose of preventing tax evasion and insuring correct taxation, we do not find that they go beyond the scope of legislative discretion or are in conflict with the Constitution.

裁量範圍，與憲法尚無牴觸。

A business entity that has sold goods but failed to issue a uniform invoice to the direct purchaser is punishable under Article 44 of the Tax Levy Act. This is the opinion adopted by the Ministry of Finance in its directive (69) Tai-Tsai-Shui-Tze No. 36624 (August 8, 1980) and has been held to be constitutional by this Yuan in our J. Y. Interpretation No. 252. By the same legal rationale, that a business operator who has purchased goods but failed to obtain a uniform invoice from the direct seller should be held liable for penalty under Article 44 of the Tax Levy Act is consistent with the essence of the Interpretation mentioned above. Such a behavioral punishment differs from a punishment for tax evasion in the purposes of as well as the prerequisites for the punishment, the former being a sanction against the commitment of the act and the latter being a punishment conditioned upon the existence of the fact of tax evasion, which are not necessarily the same thing. It is opportune for us to make it clear here that where the act of breach of duty precedes the occurrence of tax evasion and where the imposition of a

營利事業銷售貨物，不對直接買受人開立統一發票，應依稅捐稽徵法第四十四條規定論處，財政部六十九年八月八日（六九）臺財稅字第三六六二四號函所採之見解，業經本院大法官會議釋字第二五二號解釋，認與憲法並無牴觸。營業人買受貨物，不向直接出賣人取得統一發票，依同一法理，適用稅捐稽徵法第四十四條處罰，與上開解釋意旨相符。此項行為罰與漏稅罰，其處罰之目的不同，處罰之要件亦異，前者係以有此行為即應處罰，與後者係以有漏稅事實為要件者，非必為一事。其違反義務之行為係漏稅之先行階段者，如處以漏稅罰已足達成行政上之目的，兩者應否併罰，乃為適用法律之見解及立法上之問題，併予說明。

penalty for tax evasion is sufficient for meeting of the administrative objective, whether both should be made subject to punishment is a legislative issue as well as a question of opinions on the application of law.

Justice Geng Wu filed dissenting opinion in part.

本號解釋吳大法官庚提出一部不同意見書。