

## J. Y. Interpretation No.359 ( July 15, 1994 ) \*

**ISSUE:** Is the directive of the Ministry of Finance, providing to the effect that a fine equivalent to the total amount of land value increment tax free of collection will be imposed on a farmland transferred to a non-self-tilling farmer or used for non-agricultural purposes without authorization, in line with the Constitution?

**RELEVANT LAWS:**

Articles 39 and 55-2 of the Land Tax Act ( 土地稅法第三十九條、第五十五條之二 ) ; Articles 27 and 30 of the Agricultural Development Act ( 農業發展條例第二十七條、第三十條 ) .

**KEYWORDS:**

land tax ( 土地稅 ) , agricultural development ( 農業發展 ) , land value increment tax ( or capital gain tax ) ( 土地增值稅 ) . \*\*

**HOLDING:** The Ministry of Finance issued Ordinances Tai-Tsair-Shuey-Dih No. 780437911 on March 15, 1990, Tai-Tsair-Shuey-Dih No. 800128161 on April 20, 1991, and Tai-Tsair-Shuey-Dih

**解釋文：**財政部中華民國七十九年三月十五日台財稅字第七八〇四三七九一一號、八十年四月二十日台財稅字第八〇〇一二八一六一號及同年六月四日台財稅字第八〇〇一七四〇四一號

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

No. 800174041 on June 4, 1991, based on its jurisdiction as the authority-in-charge to elaborate the method for assessment of fines stipulated in Article 55-2 of the Land Tax Act. Said Ordinances coincide with the essence of the said Article to prohibit the unlawful conversion of agricultural land, are deemed necessary to promote the public welfare, and hence, are not in violation of the Constitution.

**REASONING:** In order to maintain and enhance the scale of farming operations, the government provides the incentive to exempt the capital gain tax for agricultural land to be transferred and cultivated by farmers/transferees themselves within the period when the agricultural land is lawfully assigned for agricultural use. This has been explicitly prescribed in Article 27 of the Agricultural Development Act and Article 37 of the Land Tax Act. However, for the agricultural land which is transferred to farmers not cultivating by themselves or is unlawfully converted for the usage of any non-agricultural purpose, Article 55-2 of the Land Tax Act imposes a fine of twice the

等函，係基於主管機關之職權對於土地稅法第五十五條之二罰鍰數額之計算所為之釋示，符合該法條規定之意旨，為遏阻違法使用農地，以增進公共利益所必要，與憲法並無牴觸。

**解釋理由書：**國家為達成維持及擴大農場經營規模之目的，對於將農業用地在依法作農業使用期間，移轉與自行耕作之農民繼續耕作者，設有免徵土地增值稅之獎勵，農業發展條例第二十七條及土地稅法第三十九條之二規定甚明。但對再移轉與非自行耕作農民或非依法令變更為非農業用地使用者，土地稅法第五十五條之二亦有處以原免徵土地增值稅額二倍罰鍰之明文。而農業發展條例第三十條定有每宗耕地不得分割之原則，其非依法以耕地之一部，改為非農業用地使用，自亦為法所不許。財政部中華民國七十九年三月十五日臺財稅字第七八〇四三七九一一號、八十年四月二十日臺財稅字第八〇〇一二八一六一號及同年六月四日臺財稅字第八

amount of the exempted capital gain tax. Article 30 of the Agricultural Development Act further provides that no lot of agricultural land shall be subdivided nor shall conversion of any part of agricultural land for non-agricultural use be allowed by law. The Ministry of Finance issued Ordinances Tai-Tsair-Shuey-Dih No. 780437911 on March 15, 1990, Tai-Tsair-Shuey-Dih No. 800128161 on April 20, 1991, and Tai-Tsair-Shuey-Dih No. 800174041 on June 4, 1991, to elaborate that the method for assessment of the above fines shall be based on the exempted land value increment tax [or capital gain tax] imposed on the whole lot of land in question, rather than based on the percentage of the portion of the said agricultural land which has been unlawfully converted. This elaboration in dealing with the method for assessment of fines as prescribed in Article 55-2 of the Land Tax Act founded on the jurisdiction of the authority-in-charge coincides with the essence of the said Article and is deemed necessary to prohibit illegal usage of agricultural land and to promote the public welfare; hence, it is not in violation of the

○○一七四○四一號等函，就上述罰鍰之計算，謂應以全部土地原免徵土地增值稅額為準，而不按非依法令變更使用面積與該宗耕地面積之比例計算，係基於主管機關之職權對於土地稅法第五十五條之二罰鍰數額之計算所為之釋示，符合該法條規定之意旨，為遏阻違法使用農地，以增進公共利益所必要，與憲法並無牴觸。惟非依法令變更使用之農地，應否分別情節輕重，科以額度不同之罰鍰，仍應由主管機關予以檢討，併此指明。

Constitution. Note that, however, it is subject to review by the authority-in-charge on the merit of whether or not the amounts of fines imposed in various cases of violation regarding the unlawful conversion of agricultural land should be different.