

J. Y. Interpretation No.375 (March 17, 1995) *

ISSUE: May the tax exemption provided for in Article 31 of the Agricultural Development Act apply to the situation where there is only one heir eligible to inherit the agricultural land?

RELEVANT LAWS:

Articles 15 and 172 of the Constitution (憲法第十五條、第一百七十二條) ; Article 1138 of the Civil Code (民法第一千一百三十八條) ; Articles 1, 26, 30 and 31 of the Agricultural Development Act (農業發展條例第一條、第二十六條、第三十條及第三十一條) ; Article 17, Paragraph 1, Subparagraph 5, of the Estate And Gift Taxes Act (遺產及贈與稅法第十七條第一項第五款) ; Article 21 of the Enforcement Rules of the Agricultural Development Act (農業發展條例施行細則第二十一條) .

KEYWORDS:

agricultural land (農業用地) , heir (繼承人) , inheritance tax (遺產稅) , gift tax (贈與稅) , tax exemption (免稅) .

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HOLDING: The first part of Article 31 of the Agricultural Development Act provides that, “Where the agricultural

解釋文：農業發展條例第三十一條前段規定：「家庭農場之農業用地，其由能自耕之繼承人一人繼承或承

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land in a family farm is inherited in whole or succeeded by one heir who is capable of farming on his own and who continues agricultural production on such land, the inheritance tax and gift tax shall be exempted.” This provision aims to encourage the inheritance or succession of the agricultural land by one heir when there are two or more heirs eligible to inherit the agricultural land and to prevent the overdivision of such land, thus hindering the agricultural development. However, in the case where there is only one heir, there is no concern about co-ownership of the agricultural land as a result of dividing or transferring the estate, thus it is unnecessary to provide tax exemption as encouragement. The first part of Article 21 of the Enforcement Rules of the said Act, which provides that, “The circumstance of inheritance or succession by one heir as specified in Article 31 of the Act shall be construed as the situation where there are two or more heirs in accordance with Article 1138 of the Civil Code, and they all agree to the inheritance or succession by one heir among themselves,” is in line with the aforesaid aim, within the scope of

受，而繼續經營農業生產者，免徵遺產稅或贈與稅」，其目的在於有二人以上之繼承人共同繼承農業用地時，鼓勵其協議由繼承人一人繼承或承受，庶免農地分割過細，妨害農業發展。如繼承人僅有一人時，既無因繼承而分割或移轉為共有之虞，自無以免稅鼓勵之必要。同條例施行細則第二十一條前段規定：「本條例第三十一條所稱由繼承人一人繼承或承受，指民法第一千一百三十八條規定之共同繼承人有二人以上時，協議由繼承人一人繼承或承受」，與上開意旨相符，並未逾越法律授權範圍，且為增進公共利益所必要，與憲法尚無牴觸。

delegation of authority under the Act, necessary for promoting the public interest, and is not contradictory to the Constitution.

REASONING: The legislative purposes of the Agricultural Development Act, as provided for in Article 1 thereof, are to expedite agricultural development, promote agricultural production and distribution, and increase the income of and raise the living standards of farmers. To accomplish these purposes, policies are formed actively to encourage engagement in enlarging the scale of agricultural production as well as passively to prohibit the agricultural land from being over divided or co-owned after transfer. All such policies are important measures for promoting agricultural development. Therefore, Article 26 of Paragraph 1 of the Act provides that: “The agricultural authority shall encourage and assist family farms to expand the scale of operation, or engage in large-scale agricultural production through joint operation, entrusted operation, cooperative farming or other methods of operation. Funds shall be allocated for furnish-

解釋理由書：農業發展條例係為加速農業發展，促進農業產銷，增加農民所得，提高農民生活水準而制定，此為該條例第一條所明示。為達成此目的，乃有積極獎勵從事擴大規模農業生產及消極禁止農地細分及移轉為共有之政策，要均為促進農業發展之重要方法，是以有同條例第二十六條第一項「農業主管機關應獎勵輔導家庭農場，擴大經營規模，或以共同經營、委託經營、合作農場及其他經營方式，從事擴大規模農業生產；並籌撥資金協助貸款或補助」及第三十條前段「每宗耕地不得分割及移轉為共有」等規定。同條例第三十一條復規定，家庭農場之農業用地，其由能自耕之繼承人一人繼承或承受，而繼續經營農業生產者，免徵遺產稅或贈與稅，並自繼承或承受之年起，免徵田賦十年，其需以現金補償其他繼承人者，由農業主管機關協助辦理十五年貸款。又修正前之遺產及贈與稅法第十七條第一項第五款規定：「遺產中之農業用地，由繼承人或受遺贈人，繼續

ing loans or subsidies in such respect.” Further, the first part of Article 30 of the Act provides that “No piece of agricultural land can be divided or co-owned after transfer.” Article 31 of the Act also provides that where the agricultural land in a family farm is in whole inherited or succeeded by one heir who is capable of farming on his own and who continues agricultural production on such land, the inheritance tax and the gift tax shall be exempted. In addition, the agricultural land tax shall be exempted for ten years commencing from the year of inheritance or succession. In the event any money is needed to compensate other heirs, the agricultural authority shall assist in arranging a loan with a term of fifteen years. Moreover, Article 17, Paragraph 1, Subparagraph 5, of the Estate And Gift Taxes Act, prior to its revision, provided that, “Where the heirs or devisees continue to operate agricultural production on the agricultural land within the estate, half of the value of such land shall be exempt from the inheritance tax and thus shall be deducted from the total value of the estate. However, if such land is in whole inher-

經營農業生產者，扣除其土地價值之半數。但由能自耕之繼承人一人繼承，繼續經營農業生產者，扣除其土地價值之全數」，此種自遺產總額中扣除其土地價值之半數或全數免徵遺產稅之規定，亦為配合加速發展農業政策所增列。此等租稅優惠之措施，其目的無非在於有二人以上之繼承人共同繼承或承受農業用地時，鼓勵其儘可能協議由繼承人一人繼承或承受，庶免農地因分割過細而妨害農業發展，此就上開各法條綜合對照觀之，事理甚明。如繼承人僅有一人時，並無因繼承而分割或移轉為共有之可言，自無此一免稅規定之適用。同條例施行細則第二十一條前段規定，本條例第三十一條所稱由繼承人一人繼承或承受，指民法第一千一百三十八條規定之共同繼承人有二人以上時，協議由繼承人一人繼承或承受。此與同條例之立法意旨與法條真義正相符合，並未逾越法律授權之範圍，且為增進公共利益所必要，與憲法尚無牴觸。

ited by one heir who is capable of farming on his own and who continues agricultural production on such land, the total value of such land shall be deducted.” This provision regarding the exemption of the inheritance tax by deducting half or the total value of the land from the total value of the estate is stipulated in response to the policy of expediting agricultural development. In view of the aforesaid provisions, it is clear that such tax incentives are offered with an aim to encourage agreement to the inheritance or succession of the agricultural land by one heir when there are two or more heirs eligible to inherit the agricultural land, and to prevent the overdivision of agricultural land, thus hindering the agricultural development. In the case where there is only one heir, no issue of co-ownership of the agricultural land as a result of dividing or transferring the estate exists, and therefore the tax exemption shall not apply. The first part of Article 21 of the Enforcement Rules of the Act, which provides that the circumstance of inheritance or succession by one heir as specified in Article 31 of the Act shall be construed as the situation where

there are two or more heirs in accordance with Article 1138 of the Civil Code, and they all agree to the inheritance or succession by one heir among themselves, is in accordance with the legislative intent and the meaning of the statutory provision. It is within the scope of the delegation of authority under the Act, necessary for promoting the public interest, and is not contradictory to the Constitution.