

J. Y. Interpretation No.167 ( March 13, 1981 ) \*

**ISSUE:** Is a company which has changed its organization from a limited company to a company limited by shares required to pay deed tax for its immovable property?

**RELEVANT LAWS:**

Articles 106, 156, 411, and 415 of the Company Act ( 公司法第一百零六條、第一百五十六條、第四百十一條及第四百十五條 ) ; Article 2 of the Deed Tax Act ( 契稅條例第二條 ) .

**KEYWORDS :**

change of organization ( 變更組織 ) , right on immovable property ( 不動產權利 ) .\*\*

**HOLDING:** When a limited company changes its organization into a company limited by shares in accordance with the Company Act, the existence and continuity of its status as a juristic person is not affected. When the company's right on immovable property is changed to the name of the company limited by shares, principle of taxation by law, no deed tax

**解釋文：**有限公司依公司法規定變更其組織為股份有限公司，其法人人格之存續不受影響，就該公司之不動產權利變更為股份有限公司之名義時，無契稅條例第二條第一項之適用，依租稅法律主義，自不應課徵契稅。但非依法變更組織者，其不動產權利之移轉，不在此限。

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

shall be levied. However, this is not applicable to the transfer of the right on immovable property of a company which changes its organization without following the law.

**REASONING:** The petition for Interpretation was filed before the amendment of the Company Act on May 9, 1980. However, as far the applicability of the provisions regarding change of organization of a limited company is concerned, the interpretation is still necessary, and the petition is accepted.

As expressly provided in Paragraph 1 of Article 2 of the Deed Tax Act, any purchaser and acceptor of a dien, exchange, donation and partition of immovable property, and any acquirer of ownership thereof by virtue of possession shall procure and use official deed forms and pay deed taxes. For a limited company that changes its organization to a company limited by shares, the change of its rights on immovable property to the name of the company limited by shares is not within the scope of tax payment under the said

**解釋理由書：**本件聲請，雖在公司法於六十九年五月九日修正前，惟涉及有限公司變更組織規定適用疑義，仍有解釋之必要，故予受理，合先說明。

查不動產之買賣、承典、交換、贈與、分割或因占有而取得所有權者，均應購用公定契紙，申報繳納契稅，契稅條例第二條第一項定有明文。有限公司依公司法規定變更組織為股份有限公司者，其不動產權利變更為股份有限公司之名義，並非該條所定應申報納稅之範圍。蓋有限公司依公司法第一百零六條、第一百五十六條第三項、第四百十一條及第四百十五條規定，變更組織為股份有限公司，僅係有限公司為鼓勵大眾投資，促進經濟發展，而改變其組織形態而已，並非另行設立新公司，故其

provision of law. The purpose of a limited company that changes its organization in accordance with Article 106, Paragraph 3, of Article 156, Article 411, and Article 415 of the Company Act is to encourage the public to make investments and to promote economic development rather than set up a new company. Therefore, the existence and continuity of its status as a juristic person is not affected. The rights and obligations originally belonging to the limited company are to be enjoyed or assumed by the company limited by shares after change. It does not make any difference even if such rights are related to immovable property. This is crystal clear in view that when the Company Act was amended on May 9, 1980, the substantive requirements for a limited company to change its organization were not amended; such change was deleted from the reasons for dissolution of a limited company; the provisions for merger of companies no longer apply *mutatis mutandis*; and amendment registration was expressly required so as to eliminate the concerns in practice. Therefore, when a limited company changes its organization

法人人格之存續，不受影響，原屬有限公司之權利或義務，自應由變更後之股份有限公司繼續享有或負擔，即使其權利係與不動產有關，亦無不同。此種情形，觀之公司法於六十九年五月九日修正時，就上列有限公司變更其組織為股份有限公司之實質要件，未予修正，僅刪除此項變更為有限公司之解散原因，亦不再準用公司合併之規定，並明定應辦理變更登記，以澄清實務上之疑義，甚為顯然。因之有限公司依公司法規定變更其組織為股份有限公司時，就該公司之不動產權利變更為股份有限公司之名義，無契稅條例第二條第一項之適用，依租稅法律主義，自不應課徵契稅。但非依法變更，而有不動產權利移轉之事實者，仍應依法處理。

into a company limited by shares, Paragraph 1 of Article 2 of the Deed Tax Act does not apply to the change of the company's right on immovable property to the name of the company limited by shares. Pursuant to the principle of taxation by law, no deed tax shall be levied. However, if the change is not made according to law and if the right on immovable property is transferred, such situation shall still be handled according to law.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Wei-Kuang Yiau filed dissenting opinion.

本號解釋陳大法官世榮、姚大法官瑞光分別提出不同意見書。