

J. Y. Interpretation No.180 (May 6, 1983) *

ISSUE: Are the relevant provisions of the Equalization of Land Rights Act and the Land Tax Act regarding the collection of land value increment tax and the calculation of the total amount of increased value of land unconstitutional?

RELEVANT LAWS:

Articles 15,19 and 143 of the Constitution (憲法第十五條、第十九條、第一百四十三條); Article 47 of the Equalization of Land Rights Act (平均地權條例第四十七條); Article 30 of the Land Tax Act (土地稅法第三十條) .

KEYWORDS:

fair rent taxation (租稅公平原則), share the increment of land with people in common (漲價歸公), land value increment tax (土地增值稅), total calculated incremental value of land (土地漲價總數額之計算), government-declared current value (公告現值), actual transfer current value (移轉現值) .**

HOLDING: Article 47, Paragraph 2, of the Equalization of Land Rights Act and Article 30, Paragraph 1, of the Land Tax Act, regarding the rules

解釋文：平均地權條例第四十七條第二項、土地稅法第三十條第一項關於土地增值稅徵收及土地漲價總數額計算之規定，旨在使土地自然漲價之利

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on the expropriation of the land value increment tax and the calculation of the total incremental value of land, state that the objective is to share the natural increment of land value with the people in common, and such purpose does not contravene Articles 15, 19 and 143 of the Constitution. Nevertheless, since it is a matter of tax account, to be consistent with the principle of equality in taxation, the tax should be levied on the person who benefited from the natural increment of land value.

REASONING: Article 143, Para-graph 4, of the Constitution clearly states that where the value of land has increased not through the exertion of labor or employment of capital, the State shall levy thereon a land value increment tax, the proceeds of which shall be enjoyed by the people in common. The land value increment tax shall be calculated in accordance with the total natural incremental value, and shall be levied upon the person who obtained the proceeds to be consistent with the basic national policy of sharing increments with the people in

益歸公，與憲法第十五條、第十九條及第一百四十三條並無牴觸。惟是項稅款，應向獲得土地自然漲價之利益者徵收，始合於租稅公平之原則。

解釋理由書：按土地價值非因施以勞力資本而增加者，應由國家徵收土地增值稅，歸人民共享之，憲法第一百四十三條第三項揭示甚明。是土地增值稅應依照土地自然漲價總數額計算，向獲得其利益者徵收，始符合漲價歸公之基本國策及租稅公平之原則。

common and the principle of equality of taxation.

Article 47, Paragraph 1, of the Equalization of Land Rights Act provides: “Whenever the ownership of any parcel of land is transferred or a right of dien is created over land, the obligee and the obligor shall apply for registration of change in land rights or for registration of the creation of a right of dien, with a copy of the contract and other relevant documents attached to the application, within one month from the day when they have signed the contract. At the same time, they shall declare the current transaction value of the said land. Where there is no obligor, the obligee may solely declare the current transaction value of the said land.” Paragraph 2 of the same article also provides: “If the current transaction value declared in the preceding paragraph by the reporter is lower than the government-declared current land value” after examination, the competent authorities may purchase the land at the current transaction value declared by the reporter, or levy the land value increment tax according to “the

平均地權條例第四十七條第一項規定：「土地所有權移轉或設定典權時，權利人及義務人應於訂定契約之日起一個月內，檢同契約及有關文件共同申請土地權利變更或設定典權登記，並同時申報其土地移轉現值，無義務人時，由權利人申報之」，同條第二項規定：「前項申報人所申報之土地移轉現值，經主管機關審核，其低於申報當期之公告土地現值者，得照其申報之移轉現值收買，或照公告土地現值徵收土地增值稅，其不低於申報當期之公告土地現值者，照申報移轉現值徵收土地增值稅」。從而土地所有權人移轉土地所有權或設定典權時，於訂定契約之日起一個月內聲請登記，並申報其土地移轉現值，經主管機關審核，低於當期公告土地現值者，得照價收買或照公告土地現值徵收土地增值稅；其不低於當期公告土地現值者，則照申報移轉現值徵收土地增值稅，與土地之自然漲價，藉課徵土地增值稅以達收歸公用之目的並無違背。又土地稅法第三十條第一項規定：「土地漲價總數額之計算，以納稅義務人及權利人申請移轉或申報設定典權

government-declared current land value” If the current transaction value declared by the reporter is higher than “the government-declared current land value” the current transaction value reported shall be the base for the levy of the land value increment tax. Consequently, a landowner who transfers land ownership or creates a dien shall apply for registration within one month from the day when he or she has signed the contract, and shall declare at the same the current transaction value of the said land, upon the examination of the competent authorities. If the current transaction value is lower than “the government-declared current land value” the competent authorities may purchase the land at the current transaction value, or levy the land value increment tax according to “the government-declared current land value” If the current transaction value is higher than “the government-declared current land value” the current transaction value shall be the base for the levy of the land value increment tax. Such is not contrary to the objective regarding the levy of increment tax on the natural increment value of land to share incre-

時，該土地之公告現值為計算基礎，但申報之土地實際移轉現值超過公告現值者，應以自行申報之移轉現值為計算基礎」。其所謂公告現值，係指在同法第四十九條所定期限內申請移轉或申報設定典權時之土地公告現值而言，核與上述平均地權條例第四十七條規定之意旨亦相符合。至納稅義務人及權利人未於規定期間內申請登記繳納土地增值稅，嗣後再申請登記繳納時，除依法處罰或加計利息外，如土地公告現值有不同者，其因自然漲價所生之差額利益，既非原納稅義務人所獲得，就此差額計算應納之部分土地增值稅，即應於有法定徵收原因時，另向獲得該項利益者徵收，始屬公平。如裁判上適用前開法條之見解有所不同，乃法律見解是否允洽問題，要難謂法律之規定牴觸憲法。

ment with the people in common. Additionally, Article 30, Paragraph 1, of Land Tax Act provides: “The calculation of the total land increment value is based on the government-declared current value of the land at the time the taxpayer and owner apply for transfer or declare the creation of a dien, but if the actual declared current value of the transferred land is higher than the government-declared current value, the self-declared transfer current value shall be the calculation base.” The term “government-declared current value” refers to the government-declared current land value within the time period required under Article 49 of the same act when the taxpayer and owner apply for land transfer or declare for creation of a dien, and is said to be consistent with the objective as provided under Article 47 of the above-mentioned the Equalization of Land Rights Act. Applications for registration and payments made after the time period will be subject to penalty or interest added in accordance with law, and in case the government-declared current land value has changed, any benefit of such difference from the natural increment value

shall be levied as the land value increment tax. Since the benefit is not acquired by the original taxpayer, the land value increment tax from such difference shall, under a legal expropriation cause, be levied upon the person who receives such benefit in order to be fair. In case there is a difference of interpretation on the judgment made in accordance with prior articles, this is merely a matter of appropriateness of legal interpretation, and it cannot be said that the provision of the law is contradictory to the Constitution.

In conclusion, the provisions of Article 47, Paragraph 2, of the Equalization of Land Rights Act and Article 30, Paragraph 1, of the Land Tax Act regarding the expropriation of land value increment tax and calculation of the total amount of land price increase, which objective is to share the increment on the benefit of any natural land price increase with the people in common, is not contradictory to Article 143 of the Constitution, and at the same is not contrary to the substance of Articles 15 and 19 of the Constitution. Nonetheless, it is considered a tax account and thus to

綜上所述，平均地權條例第四十七條第二項、土地稅法第三十條第一項關於土地增值稅徵收及土地漲價總數額計算之規定，旨在使土地自然漲價之利益歸公，與憲法第一百四十三條並無牴觸，亦無違反憲法第十五條及第十九條之可言。惟是項稅款，應向獲得土地自然漲價之利益者徵收，始合於租稅公平之原則。

to be consistent with the principle of equality of taxation, tax shall be levied on the person who acquires the benefit of the natural increment of land value.

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。