

J. Y. Interpretation No.190 (November 2, 1984) *

ISSUE: Is the Equalization of Land Rights Act constitutional in providing that the competent authority may levy land tax based upon the government-assessed (or publicly notified) value if the parties concerned failed to declare the transfer value within the specified period or the declared value is lower than the assessed value?

RELEVANT LAWS:

Articles 15, 19 and 143 of the Constitution (憲法第十五條, 第十九條及第一百四十三條); Article 48 of the Equalization of Land Rights Act (平均地權條例第四十八條); J.Y. Interpretation No.180 (司法院釋字第一八〇號解釋).

KEYWORDS:

declaration (申報), land value tax (土地增值稅), taxpayer (納稅義務人), sharing increments with the people in common (漲價歸公).**

HOLDING: Article 48, Paragraph 2, of the Equalization of Land Rights Act seeks to ensure timely payment of tax by taxpayers and to prevent false declaration, so as to achieve the aim

解釋文：平均地權條例第四十八條第二款之規定，旨在促使納稅義務人按期納稅，防止不實之申報，以達漲價歸公之目的，與憲法第十五條、第十九條及第一百四十三條第三項各規定，

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of sharing the increment with the people in common. This does not contravene provisions in Articles 15 and 19 and 143, Paragraph 3, of the Constitution.

REASONING: Article 48 of the Equalization of Land Rights Act stipulates: “Upon a transfer of land title, the following shall become applicable if, within a specified period, no application is filed for a change of registration and no declaration of the land value at the time of transfer is submitted: 1) the competent authority shall notify the landowner and taxpayer, in writing, to submit such application and declaration within ten days; and 2) if the landowner and taxpayer fail to comply with the foregoing paragraph, or if their declared land value at the time of transfer is lower than the government assessed land value at that time, the competent authority shall notify the parties to adopt the government assessed land value as the land value at the time of transfer, and to levy land value tax.” The aforementioned provision seeks to ensure timely payment of tax by taxpayers and to prevent false declaration, so as to achieve

均無牴觸。

解釋理由書：平均地權條例第四十八條「土地所有權移轉時，未於規定期限內申請權利變更登記並申報土地移轉現值者，依左列規定處理：一、由主管機關以書面通知權利人及義務人，限於十日內補行申請申報。二、權利人及義務人不依前款之規定辦理，或其申報之土地移轉現值，低於當期之公告土地現值者，主管機關應通知當事人以公告土地現值為其土地移轉現值，徵收土地增值稅」之規定，乃在促使納稅義務人按期納稅，防止不實之申報，以達漲價歸公之目的，與憲法第一百四十三條第三項所定「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」之本旨相符，亦無牴觸憲法第十五條、第十九條可言。至未依規定期限報稅，經主管機關核課土地增值稅，其因自然漲價所生之差額利益，應向獲得該項利益者徵收，業經本院釋字第一八〇號解釋有案，併予說明。

the aim of sharing the increment with the people in common. This is consistent with the objective in Article 143, Paragraph 3, of the Constitution which provides: "If the value of a piece of land has increased, but not through the exertion of labor or employment of capital, the State shall levy thereon an increment tax, the proceeds of which shall be enjoyed by the people in common," and does not contravene Articles 15 and 19 of the Constitution. If no declaration of tax is made within the specified period, the land value tax, being a profit resulting from the natural increase of land value, assessed by the governing authority should be levied upon the beneficiaries of the said profit. The foregoing has been explained in this Yuan's Interpretation No.180.