

J. Y. Interpretation No.196 (June 14, 1985) *

ISSUE: Are the relevant provisions of the Enforcement Rules of the Land Tax Act regarding the calculation of the total amount of increased value of land unconstitutional?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條) ; Articles 28,32,34,49 and 58 of the Land Tax Act (土地稅法第二十八條、第三十二條、第三十四條、四十九條及第五十八條) .

KEYWORDS:

legalism on taxation (租稅法律主義) , fair rent taxation (租稅公平原則) , land value increment tax (土地增值稅) , total incremental value of land calculated (土地漲價總數額之計算) .**

HOLDING: Article 34 of the Enforcement Rules of the Land Tax Act stipulates: "Where the total incremental value of land is calculated based on Article 32 of this act, the base shall be the original provided land price adjusted in accordance with the latest monthly publicly announced general wholesale price

解釋文：土地稅法施行細則第三十四條規定：「依本法第三十二條規定計算土地漲價總數額時，應按土地權利人及義務人向當地地政事務所申報移轉現值收件當時最近一個月已公告之一般躉售物價指數調整原規定地價及前次移轉時核計土地增值稅之現值」，旨在使土地漲價總數額之計算，臻於公平

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index during the time of acceptance by the competent land administration office in which the landowner and obligor declared their current transfer value and the current value of the land value increment tax assessed during previous transfer". The objective is to ensure the fair and reasonable calculation of the total incremental value of land and thus there is no contradiction to Article 19 of the Constitution.

REASONING : When a seller sells an unsorted and unsubdivided parcel of land, there are no limitation rules to follow concerning the application of rights modification registration and declaration of current transfer value for payment of the land value increment tax where the land has been handed over to the buyer for use. If after the land is sorted and subdivided by the competent land administration authority, and before the buyer files for modification of rights registration, the government-declared current value of the land has increased, then the proceeds arising from the natural incremental value shall neither be the proceeds acquired by the seller nor by the original

合理，與憲法第十九條並無抵觸。

解釋理由書：土地出賣人出賣未經整理劃分之土地，無從依限申請權利變更登記及申報移轉現值，繳納土地增值稅，而已將土地交付買受人使用，俟地政機關整理劃分完畢，可辦土地權利變更登記時，土地公告現值提高，其因自然漲價所生之利益，既非出賣人即原納稅義務人所獲得，而為買受人所享有。該部分之土地增值稅，依本院大法官會議釋字第一八〇號解釋，應於其後有法定徵收原因時，向獲得該項利益者徵收，始合於租稅公平之原則。

taxpayer, but those enjoyed by the buyer. Such portion of the land value increment tax shall, according to the explanation of the High Court Conference of our Yuan Interpretation No.180, be levied on the beneficiary only when there is a subsequent legal expropriation reasoning to conform with the principle of fair rent taxation.

After the land ownership is transferred, the land value increment tax shall be levied based on the total incremental value of land (See Article 28 of the Land Tax Act). Where there is a change in the general whole price index, the total incremental value of land in accordance with the provision of Article 32 of the Land Tax Act, the original provided land price and the current value of the land value increment tax determined during the previous transfer shall be calculated based on the adjusted wholesale price index announced by the government. This is done to lessen the land increment value which has only been formally increased due to inflation, and to make the total incremental value of land consistent with the

土地所有權移轉時，土地增值稅應按其土地漲價總數額徵收之（土地稅法第二十八條），遇一般物價有變動時，土地漲價總數額，依土地稅法第三十二條規定，原規定地價及前次移轉時核計土地增值稅之現值，均應按政府發布之物價指數調整後計算之，期在消除因通貨膨脹所虛增之土地增值，使土地漲價總數額，能與實情相符合。而土地稅法施行細則，係依土地稅法第五十八條所訂定，其第三十四條規定：「依本法第三十二條規定計算土地漲價總數額時，應按土地權利人及義務人向當地地政事務所申報移轉現值收件當時最近一個月已公告之一般躉售物價指數調整原規定地價及前次移轉時核計土地增值稅之現值」，所稱收件當時，係指土地稅法第四十九條所規定之時期而言，旨在

actual matter. Article 34 of the Enforcement Rules of the Land Tax Act, which is in accordance with Article 58 of the Land Tax Act, states: “Where the total incremental value of land is calculated based on Article 32 of this act, the base shall be the original provided land price adjusted in accordance with the latest monthly publicly announced general wholesale price index during the time of acceptance by the competent land administration office in which the landowner and obligor declared their current transfer value and the current value of the land value increment tax assessed during previous transfer”. The term “during the time of acceptance” refers to the time period as provided for in Article 49 of the Land Tax Act, the objective of which is to ensure the fair and reasonable calculation of the total incremental value of land. Thus, there is no contradiction to Article 19 of the Constitution.

使土地漲價總數額之計算，臻於公平合理，與憲法第十九條並無牴觸。