

## J. Y. Interpretation No.198 ( August 30, 1985 ) \*

**ISSUE:** Is the Income Tax Act constitutional in defining, under Article 7, Paragraph 2, that a person who has a domicile and regularly resides in the Republic of China is an “individual residing within the republic of China” for the purpose of filing final tax return?

**RELEVANT LAWS:**

Article 19 of the Constitution (憲法第十九條) ; Article 2, Paragraph 1; Article 7, Paragraph 2; and Article 71 of the Income Tax Act (所得稅法第二條第一項、第七條第二項、第七十一條) .

**KEYWORDS:**

total annual consolidated income ( 全年綜合所得 ) , domicile ( 住所 ) , taxable year ( 課稅年度 ) .\*\*

**HOLDING:** Paragraph 2 of Article 7 of the Income Tax Act is intended to define the term “an individual residing within the Republic of China” used in said Act to make it easy for taxpayers to file final tax return as required by law, and is in agreement with the principle of taxation

**解釋文：**所得稅法第七條第二項，係明定同法所稱「中華民國境內居住之個人」之意義，以便利納稅義務人依法自行辦理結算申報，符合租稅法律主義，與憲法第十九條並無牴觸。

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\* Translated by Raymond T. Chu.

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

by law. It is hence not contradictory to Article 19 of the Constitution.

**REASONING:** The Constitution provides in Article 19 that “the people shall have the duty to pay tax in pursuance of law,” whereby the principle of “the principle of taxation by law” is enunciated. The Income Tax Act is a legislation by which the state levies upon the people tax on their income. Under Article 2, Paragraph 1, and Article 71 of the Act, every individual residing within the Republic of China is required to file final tax return for his total annual consolidated income or business income. Article 7, Paragraph 2, of the same Act provides: “The term ‘individual residing within the Republic of China’ used in this Law denotes: (1) a person who has a domicile within the Republic of China and regularly resides within the Republic of China; and (2) a person who has no domicile within the Republic of China but has resided within the Republic of China for a total of 183 days or more during a particular taxable year.” The standard for determining which one of the two categories an

**解釋理由書：**按憲法第十九條規定「人民有依法律納稅之義務」，乃揭示「租稅法律主義」之原則。所得稅法係規定國家對於人民課徵所得稅之法律，依同法第二條第一項及第七十一條規定，凡中華民國境內居住之個人，均應就其全年綜合所得或營利事業所得，辦理結算申報。又同法第七條第二項規定：「本法稱中華民國境內居住之個人，指左列二種：一、在中華民國境內有住所，並經常居住中華民國境內者。二、在中華民國境內無住所，而於一課稅年度內在中華民國境內居留合計滿一百八十三天者」，乃以納稅義務人在中華民國境內有無住所為標準，分別就「中華民國境內居住之個人」乙詞所設定義，兩款情形不同，不容彼此混淆。故依第一款規定，祇須納稅義務人在中華民國境內有住所，並有經常居住之事實，縱於一課稅年度內未居住屆滿一百八十三天，亦應認其為「中華民國境內居住之個人」，從而該項規定與租稅法律主義並無違背。

“individual residing within the Republic of China” belongs in under such definition is whether he or she has a domicile within the Republic of China. The conditions under the two subparagraphs cited above are different and should not be confused. Thus, under Paragraph 1 (1), insofar as a taxpayer has a domicile within the Republic of China, and there exists the fact of his regularly residing therein, he is deemed to be an “individual residing within the Republic of China” although he may not have lived in this country for 183 days. This provision is not contrary to the principle of taxation by law.

In conclusion, we hold that Paragraph 2 of Article 7 of the Income Tax Act is intended to define the term “individual residing within the Republic of China” used in said Act to make it easy for taxpayers to file final tax return as required by law, and is in agreement with the fundamentals of the principle of taxation by law. It is hence not contradictory to Article 19 of the Constitution.

綜上所述，所得稅法第七條第二項係明定同法所稱「中華民國境內居住之個人」之意義，以便利納稅義務人依法自行辦理結算申報，符合租稅法律主義本旨，與憲法第十九條並無牴觸。