

J. Y. Interpretation No.210 (October 17, 1986) *

ISSUE: Does Article 23, Paragraph 3, of the Act of Encouragement of Investment amended on December 30, 1984, regarding certain types of interest exempted from income tax include interest on loans raised among private persons?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條); Article 23, Paragraph 3, Subparagraph 1 of the Act of Encouragement of Investment (獎勵投資條例第二十三條第三項第一款); Article 27 of the Enforcement Rules of the Act of Encouragement of Investment (獎勵投資條例施行細則第二十七條).

KEYWORDS:

interests (利益), loans (借款), exemption (免稅額), income tax (所得稅), principle of taxation by law (租稅法律主義). **

HOLDING: Article 23, Paragraph 3, Subparagraph 1 of the Act of Encouragement of Investment, as amended and promulgated on December 30, 1980, regarding certain types of interests exempt from income tax refers to a variety of

解釋文：中華民國六十九年十二月三十日修正公布之獎勵投資條例第二十三條第三項第一款，關於限額免納所得稅之利息，係規定「除郵政存簿儲金及短期票券以外之各種利息」，並未排除私人間無投資性之借款利息，而中

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interests other than those of postal service savings accounts and short-term securities. It does not exclude the interests on non-investment loans raised among private persons. However, Article 27 of the Enforcement Rules of the Act of Encouragement of Investment promulgated on August 31, 1981, describes the above subparagraph as “the so-called variety of interests include the interests on government bonds, incorporation debts, financial debentures, savings in financial institutions and loans raised by industrial and commercial enterprises.” Ordinance T.C.S.T. No. 37930 issued by the Ministry of Finance in 1981 also considers that “the interests on loans raised among private persons are not included.” Although the above observation is in accordance with the purpose of the encouragement of investment, it is decreed only by an administrative regulation and is in contradiction to the then-valid provision regarding “a variety of interests” mentioned above, and therefore violates the basic intention of the principle of taxation by law under Article 19 of the Constitution.

華民國七十年八月三十一日發布之獎勵投資條例施行細則第二十七條認該款「所稱各種利息，包括公債、公司債、金融債券、金融機構之存款及工商企業借入款之利息」，財政部（七〇）台財稅字第三七九三〇號函並認「不包括私人間借款之利息。」縱符獎勵投資之目的，惟逕以命令訂定，仍與當時有效之首述法條「各種利息」之明文規定不合，有違憲法第十九條租稅法律主義之本旨。

REASONING: Article 19 of the Constitution clearly states that the people have the duty by law to pay tax. The so-called “paying tax by law” means that paying tax and being exempt from tax as well shall be in accordance with the terms prescribed by law. The enforcement rule enacted by a competent supervising authority can only regulate the matters regarding the implementation of their mother law. To comply with the basic intention of the principle of taxation by law mentioned above under the Constitution, the enforcement rules should still be in accordance with the provisions of law if matters of paying tax and being exempt from tax are involved.

Article 23, Paragraph 3, Subparagraph 1 of the Act of Encouragement of Investment, as amended and promulgated on December 30, 1980, regarding certain types of interests exempt from income tax refers to a variety of interests other than those of postal service saving accounts and short-term securities. It does not exclude the interests on non-investment loans raised among private persons. How

解釋理由書：按人民有依法律納稅之義務，為憲法第十九條所明定，所謂依法律納稅，兼指納稅及免稅之範圍，均應依法律之明文。至主管機關訂定之施行細則，僅能就實施母法有關事項而為規定，如涉及納稅及免稅之範圍，仍當依法律之規定，方符上開憲法所示租稅法律主義之本旨。

中華民國六十九年十二月三十日修正公布之獎勵投資條例第二十三條第三項第一款，關於限額免納所得稅之利息，係規定「除郵政存簿儲金及短期票券以外之各種利息」，並未排除私人間無投資性之借款利息，而中華民國七十年八月三十一日發布之獎勵投資條例施行細則第二十七條認該款「所稱各種利息，包括公債、公司債、金融債券、金融機構之存款及工商企業借入款之利

ever, Article 27 of the Enforcement Rules of the Act of Encouragement of Investment promulgated on August 31, 1981, describes the above subparagraph as “the so-called variety of interests that include the interests on government bonds, incorporation debts, financial debentures, savings in financial institutions and loans raised by industrial and commercial enterprises.” Ordinance T.C.S.T. No. 37930 issued by the Ministry of Finance in 1981 also considers that “the interests on loans raised among private persons are not included.” Although the above observation is in accordance with the purpose of encouragement of investment, it is decreed only by an administrative regulation and is in contradiction to the then-valid provision regarding “a variety of interests” mentioned above, and therefore violates the basic intention of the principle of taxation by law under Article 19 of the Constitution. After Article 23, Paragraph 3, of the Act of Encouragement of Investment amended on December 30, 1984, regarding certain types of interests exempt from income tax adopted the type of enumerative provision, the interests on loans raised

息」，財政部（七〇）財稅字第三七九三〇號函並認「不包括私人間借款之利息。」縱符獎勵投資之目的，惟逕以命令訂定，仍與當時有效之前述法條「各種利息」之明文規定不合，有違憲法第十九條租稅法律主義之本旨。至獎勵投資條例第二十三條第三項，於中華民國七十三年十二月三十日修正，關於限額免納所得稅之利息，改採列舉規定後，已不包括私人間其他借款之利息，上述施行細則第二十七條關於免稅利息範圍之規定，亦已修正刪除，該財政部函自不再適用，由於本院釋字第一七七號解釋文第二項明示「本院依人民聲請所為之解釋，對聲請人據以聲請之案件，亦有效力」，本件聲請人據以聲請之行政訴訟確定終局裁判所適用之法令，雖已失效，仍有解釋之必要，併此說明。

among private persons were not included in its terms. Article 27 of the Enforcement Rules mentioned above regarding the scope of interests exempt from tax has also been eliminated. Thus, the Ordinance issued by the Ministry of Finance shall no longer be applicable. In addition, since the Holding of Interpretation No. 177 promulgated by this Yuan clearly states that “The Interpretation decided by this Yuan based on a petition of the people is effective in the case for which the petition is made by the petitioner,” the regulation applied by the final judgment in the administrative proceeding for which the petition is made by the petitioner has already been invalidated, though it still needs to be interpreted.