

## J. Y. Interpretation No.217 ( July 17, 1987) \*

**ISSUE:** Is the Ministry of Finance directive constitutional in instructing tax collection offices to assess and collect, based on information obtained from a land administration office, income tax from a creditor on interest agreed with the debtor on loans secured by mortgage recorded with such office?

**RELEVANT LAWS:**

Articles 15 and 19 of the Constitution (憲法第十五條、第十九條) ; Article 758 of the Civil Code (民法第七百五十八條) ; Article 43 of the Land Act (土地法第四十三條) ; Article 14, Paragraph 1, Category 4 of the Income Tax Act (所得稅第十四條第一項第四類) ; Ministry of Finance Directive (72) Tai-Tsai-Shui-Tze No. 31229 (February 24, 1983) (財政部中華民國七十二年二月二十四日(七二)台財稅字第三一二二九號函) .

**KEYWORDS:**

taxpaying bodies (納稅主體) , tax denominations (稅目) , tax rates (稅率) , methods of tax payment (納稅方法) , cause of taxation (課稅原因) , degree of proof (證明力) , principle of taxation by law (租稅法律主義) , income from interest (利息所得) , burden of proof (舉證責任) , rebuttal evidence (反證) , land administration office (地政機關) , tax collection office (稽徵機關) , rule of income and disbursement realization (收付實現原則) .\*\*

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\* Translated by Raymond T. Chu.

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

**HOLDING:** The provision of Article 19 of the Constitution that the people shall have the duty to pay tax in accordance with law is intended to point out that the people have the duty to pay tax pursuant to the prescriptions in respect of taxpaying bodies, tax denominations, tax rates, methods of tax payment, and time of tax payment as set forth by law. Whether there are any facts to support the cause of taxation and the degree of proof of the relevant evidence are questions of fact beyond the sphere of the principle of taxation by law. The Ministry of Finance Directive (72) Tai-Tsai-Shui-Tze No. 31229 (February 24, 1983) issued to its subordinate financial and tax agencies instructs to the effect that income from interest earned by a creditor on his right secured by a mortgage with an agreed interest expressly stipulated may be assessed and taxed according to the information recorded at the land administration office on the creation and cancellation of the mortgage and that if the party alleges that he has received no interest, he must assume the burden of proof to support his allegation. Inasmuch as this

**解釋文：**憲法第十九條規定人民有依法律納稅之義務，係指人民僅依法律所定之納稅主體、稅目、稅率、納稅方法及納稅期間等項而負納稅之義務。至於課稅原因事實之有無及有關證據之證明力如何，乃屬事實認定問題，不屬於租稅法律主義之範圍。財政部中華民國七十二年二月二十四日（七二）臺財稅字第三一二二九號函示所屬財稅機關，對於設定抵押權為擔保之債權，並載明約定利息者，得依地政機關抵押權設定及塗銷登記資料，核計債權人之利息所得，課徵所得稅，當事人如主張其未收取利息者，應就其事實負舉證責任等語，係對於稽徵機關本身就課稅原因事實之認定方法所為之指示，既非不許當事人提出反證，法院於審判案件時，仍應斟酌全辯論意旨及調查證據之結果，判斷事實之真偽，並不受其拘束。尚難謂已侵害人民權利，自不牴觸憲法第十五條第十九條之規定。

directive constitutes merely an instruction to tax collection offices with respect to their method of identifying the fact to support the cause of taxation rather than prohibiting the party concerned from producing rebuttal evidence, and is not binding upon the court, which, when hearing a case, has in any event the duty to consider the contents of all arguments and the results of investigation of evidence and to judge whether the fact is true, it can not be said to be an encroachment upon the right of the people or in conflict with Articles 15 and 19 of the Constitution.

**REASONING:** The provision of Article 19 of the Constitution that the people shall have the duty to pay tax in accordance with law is meant to proclaim the “principle of taxation by law.” It is basically intended to point out that the people have the duty to pay tax pursuant to the prescriptions in respect of taxpaying bodies, tax denominations, tax rates, methods of tax payment, and time of tax payment as set forth by law. While it is true that no tax may be levied against the above principle, whether there are any

**解釋理由書：**憲法第十九條規定，人民有依法律納稅之義務，乃在揭示「租稅法律主義」，其主要意旨係指人民僅依法律所定之納稅主體、稅目、稅率、納稅方法及納稅期間等項而負納稅之義務，課徵租稅固不得違反上述意旨，惟關於個別事件課稅原因事實之有無及有關證據之證明力如何，則屬事實認定問題，不屬於租稅法律主義之範圍。

facts to support the cause of taxation and the degree of proof of the relevant evidence are questions of fact beyond the sphere of the principle of taxation by law.

The Ministry of Finance Directive (72) Tai-Tsai-Shui-Tze No. 31229 (February 24, 1983) issued to its subordinate financial and tax agencies states: "The recordation of a mortgage has an absolute effect under Article 758 of the Civil Code and Article 43 of the Land Act. Where a creditor who loans money to a debtor against the furnishing of real property as a security perfects the recordation of a mortgage with a land administration office, with the agreed interest expressly stipulated therein, the tax collection office may, based on the information recorded at the land office, assess the creditor's income from such interest accruable in the year before deletion of the recordation of the mortgage and levy tax thereon as a Category 4 income under Article 14, Paragraph 1, of the Income Tax Act. This is because a loan arrangement between individuals is not comparable with that between companies or firms in that the

財政部中華民國七十二年二月二十四日（七二）台財稅字第三一二二九號函提示所屬財稅機關，內載：「抵押權之設定登記，依民法第七百五十八條及土地法第四十三條規定，具有絕對效力。債權人貸款與債務人，由債務人提供不動產，向地政機關辦妥抵押權設定登記，並載明約定利息者，稽徵機關自得依該登記資料，在抵押權塗銷登記前之年度，依法核計利息所得，依所得稅法第十四條第一項第四類規定課稅，因私人借貸非公司行號可比，其無支付利息之帳冊可稽，無法適用收付實現之原則，當憑其登記文件作有按期收取利息之認定，當事人如主張其未收取利息者，應就其事實負舉證責任，所提出之證據，必須具體且合於一般經驗法則，如僅由債務人私人出具之證明，要不得採認」等語，縱有未盡妥洽之處，惟係對於稽徵機關本身就課稅原因事實之認定方法所為之指示，既非不許當事人提出反證，法院於審判案件時，仍應斟酌全辯論意旨及調查證據之結果，判斷事

unavailability of account books to show the receipt or payment of interest thereon makes it impossible to assess such income by the rule of income and disbursement realization, and thus it is only natural that the income from such interest is deemed to have been periodically received as it is stipulated in the documents recorded. If the party alleges that he has received no interest, he must bear the burden of proof to support his allegation, and the evidence produced must be concrete and acceptable under the ordinary rule of thumb (*erfahrungsmäßig*). A documentary proof executed by an individual as the debtor will be inadmissible.” Inasmuch as this directive, albeit not totally satisfactory and appropriate, constitutes merely an instruction to tax collection offices with respect to the method of identifying the fact to support the cause of taxation rather than prohibiting the party concerned from producing rebuttal evidence, and is not binding upon the court, which, when hearing a case, has in any event the duty to consider the contents of all arguments and the results of investigation of evidence and to judge whether the fact is true, it can not be

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