

J. Y. Interpretation No.218 (August 14, 1987) *

ISSUE: Are the Ministry of Finance directives in conflict with the Constitution and inconsistent with the Income Tax Act in fixing an invariable percentage of tax upon income from the sale of a house by an individual who fails to produce proof to show the actual price of the deal?

RELEVANT LAWS:

Article 19 of the Constitution (憲法第十九條) ; Article 71, Paragraph 1, first sentence, Article 76, Paragraph 1, Article 79, Paragraph 1, Article 80, Paragraph 1 and Article 83, Paragraph 1 of the Income Tax Act (所得稅法第七十一條第一項前段、第七十六條第一項、第七十九條第一項、第八十條第一項、第八十三條第一項) ; Ministry of Finance Directive (67) Tai-Tsai-Shui-Tze No. 32252 (April 7, 1978) (財政部六十七年四月七日(六七)台財稅字第三二二五二號函) ; Ministry of Finance Directive (69) Tai-Tsai-Shui-Tze No. 33523 (May 2, 1980) (財政部六十九年五月二日(69)台財稅字第三三五二三號函) ; Taiwan Provincial Tax Bureau Directive (67) Shui-Yi-Tze No. 596 (February 3, 1978) (台灣省稅務局六十七年二月三日(六七)稅一字第五九六號函) .

KEYWORDS:

method of assessment by imputation (推計核定方法) , taxing authority (稅捐稽徵機關) , assessed value (評定價)

* Translated by Raymond T. Chu.

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

格)，income from property transaction（財產交易所得），actual price of the deal（實際成交價格），actual cost（實際成本），original acquisition（原始取得），principle of fair taxation（租稅公平原則）。**

HOLDING: That the people have the duty to pay tax under law is explicitly provided by Article 19 of the Constitution. When the state levies income tax under law, every taxpayer shall have the duty to file a tax return on his own initiative and present all account books, documents and vouchers that serve as proof of his income to enable the taxing authority to carry out tax audit and assessment. Where a taxpayer fails to file a tax return or to present documentary evidence, the taxing authority may determine his income on the basis of information obtained upon investigation or the standard profits made by others in the same trade. This method of assessment by imputation does not contradict the purpose of the constitutional provision working on an estimate of the income by the method of imputation, the taxing authority must exert all possible efforts to make an objective and reason-

解釋文：人民有依法律納稅之義務，憲法第十九條定有明文。國家依法課徵所得稅時，納稅義務人應自行申報，並提示各種證明所得額之帳簿、文據，以便稽徵機關查核。凡未自行申報或提示證明文件者，稽徵機關得依查得之資料或同業利潤標準，核定其所得額。此項推計核定方法，與憲法首開規定之本旨並不牴觸。惟依此項推計核定方法估計所得額時，應力求客觀、合理，使與納稅義務人之實際所得相當，以維租稅公平原則。至於個人出售房屋，未能提出交易時實際成交價格及原始取得之實際成本之證明文件者。財政部於六十七年四月七日所發⁽⁶⁷⁾臺財稅字第三二二五二號及於六十九年五月二日所發⁽⁶⁹⁾臺財稅字第三三五二三號等函釋示：「一律以出售年度房屋評定價格之百分之二十計算財產交易所得」，不問年度、地區、經濟情況如何不同，概按房屋評定價格，以固定不變之百分比，推計納稅義務人之所得額自難切近

able estimation closely corresponding to the actual income of the taxpayer so as to safeguard the principle of fair taxation. As regards the situation where an individual having sold a house fails to produce documents to prove the actual price of the deal at the time of conclusion of the transaction and the actual cost of the original acquisition thereof, the Ministry of Finance Directives (67) Tai-Tsai-Shui-Tze No. 32252 issued on April 7, 1978, and (69) Tai-Tsai-Shui-Tze No. 33523 issued on May 2, 1980, state: "The income from a property transaction shall be computed at 20% of the assessed value of the house in the year during which the house was sold." In other words, the amount of the taxpayer's income is imputed at a fixed percentage of the assessed value of the house regardless of any variation due to year, location, and economic conditions. The resulting figure can hardly be expected to come close to the actual price and is unfair as well as unreasonable. Such a method is also inconsistent with the meaning of assessment by imputation as contemplated by the Income Tax Act and must cease to be operative within six

實際，有失公平合理，且與所得稅法所定推計核定之意旨未盡相符，應自本解釋公布之日起六個月內停止適用。

months from the date of issue of this interpretation.

REASONING: Article 19 of the Constitution provides: “The people shall have the duty to pay tax in accordance with the law.” When the state levies income tax under the Income Tax Act, whether it be consolidated income tax payable by individuals or business income tax, every taxpayer is required to fill out an income tax return, file the form on his own initiative within the statutory time limit and present all account books, documents and vouchers that serve as proof of his income to enable the taxing authority to investigate and assess, upon receipt of the return, the amounts of income earned and the tax payable by him. Where a taxpayer fails to fill out and file a tax return within the statutory time limit or fails to present account books, documents and vouchers that serve as proof of his income during the taxing authority’s process of investigation or reinvestigation, the taxing authority may determine his income on the basis of information obtained upon such investigation or the

解釋理由書：憲法第十九條規定：「人民有依法律納稅之義務」，國家依據所得稅法課徵所得稅時，無論為個人綜合所得稅或營利事業所得稅，納稅義務人均應在法定期限內填具所得稅結算申報書自行申報，並提示各種證明所得額之帳簿、文據，以便稽徵機關於接到結算申報書後，調查核定其所得額及應納稅額。凡未在法定期限內填具結算申報書自行申報或於稽徵機關進行調查或復查時，未提示各種證明所得額之帳簿、文據者，稽徵機關得依查得資料或同業利潤標準，核定其所得額，所得稅法第七十一條第一項前段、第七十六條第一項、第七十九條第一項、第八十條第一項及第八十三條第一項規定甚明。此項推計核定所得額之方法，與憲法首開規定之本旨並不牴觸。惟依推計核定之方法，估計納稅義務人之所得額時，仍應本經驗法則，力求客觀、合理，使與納稅義務人之實際所得額相當，以維租稅公平原則。至於個人出售房屋，未能提示交易時實際成交價格及原始取得之實際成本之證明文件，致難依所得稅法第十四條第一項第七類第一

standard profits made by others in the same trade. Provisions to such effect are expressly set forth in the Income Tax Act, Article 71, Paragraph 1, first sentence; Article 76, Paragraph 1; Article 79, Paragraph 1; Article 80, Paragraph 1; and Article 83, Paragraph 1. This method of assessment by imputation does not contradict the purpose of the constitutional provision mentioned above. Nevertheless, when working on an estimate of the income by the method of imputation, the taxing authority must exert all possible efforts based on the rule of thumb (*erfahrungsmäßig*) to make an objective and reasonable estimation closely corresponding to the actual income of the taxpayer so as to safeguard the principle of fair taxation. As to the situation where an individual having sold a house fails to produce documents to prove the actual price of the deal at the time of the conclusion of the transaction and the actual cost of the original acquisition thereof, making it difficult to compute his income in the manner as specified in the Income Tax Act, Article 14, Paragraph 1, Category 7 (1), the Ministry of Finance Directives (67)

目計算所得額者，財政部於六十七年四月七日所發⁽⁶⁷⁾台財稅字第三二二五二號及於六十九年五月二日所發⁽⁶⁹⁾台財稅字第三三五二三號等函釋示：「一律以出售年度房屋評定價格之百分之二十計算財產交易所得」，此時既不以發見個別課稅事實真相為目的，而又不問年度、地區、經濟情況如何不同，概按房屋評定價格，以固定不變之百分比，推計納稅義務人之所得額，自難切近實際，有失公平合理，且與所得稅法所定推計核定之意旨未盡相符，應自本解釋公布之日起六個月內停止適用。

Tai-Tsai-Shui-Tze No. 32252 issued on April 7, 1978, and (69) Tai-Tsai-Shui-Tze No. 33523 issued on May 2, 1980, state: “The income from property transaction shall be computed at 20% of the assessed value of the house in the year during which the house was sold.” In other words, the amount of the taxpayer’s income is imputed at a fixed percentage of the assessed value of the house regardless of any variation due to year, location, and economic conditions. Nor is such formula designed for the purpose of discovering the true facts of the particular tax case. The resulting figure can hardly be expected to come close to the actual price and is unfair as well as unreasonable. Such a method is also inconsistent with the meaning of assessment by imputation as contemplated by the Income Tax Act and must cease to be operative within six months from the date of issue of this interpretation.

Incidentally, the contents of the Taiwan Provincial Tax Bureau Directive (67) Shui-Yi-Tze No. 596 dated February 3, 1978, are covered by the above Ministry

台灣省稅務局於六十七年二月三日所發(67)稅一字第596號函，已為上開財政部函所涵蓋，無庸另行解釋，併予敘明。

of Finance directives and need no separate interpretation by this Court.

Justice Tieh-Cheng Liu filed dissenting opinion.

本號解釋劉大法官鐵錚提出不同意見書。