

Content

Title : Administrative Directions for Estate Tax or Gift Tax Offset In Kind [Ch](#)

Date : 2019.04.29

Legislative : 1. Stipulation and promulgation in accordance with Letter No. Tai-Cai-Chan-(I)-zi-76017183 dated November 4, 1987 from the Ministry of Finance (MOF)
2. Amendment in accordance with Letter No. Tai-Cai-Chan-(I)-zi-86020061 dated August 22, 1997 from the Ministry of Finance (MOF)
3. Amendment in accordance with Letter No. Tai-Cai-Chan-Jie-zi-8900022843 dated August 25, 2000 from the Ministry of Finance (MOF)
4. Amendment in accordance with Letter No. Tai-Cai-Chan-Guan-zi-0910017161 dated July 12, 2002 from the Ministry of Finance (MOF)
5. Amendment in accordance with Order No. Tai-Cai-Chan-Jie-zi-09730010621 dated December 23, 2008 from the Ministry of Finance (MOF)
6. Amendment in accordance with Order No. Tai-Cai-Chan-Jie-zi-10130001290 dated March 3, 2012 from the Ministry of Finance (MOF)
7. Amendment in accordance with Order No. Tai-Cai-Chan-Jie-zi-10230005450 dated June 28, 2013 from the Ministry of Finance (MOF)
8. Amendment in accordance with Order No. Tai-Cai-Chan-Jie-zi-10430004162 dated August 14, 2015 from the Ministry of Finance (MOF)
9. Amendment in accordance with Order No. Tai-Cai-Chan-Jie-zi-10630002890 dated September 14, 2017 from the Ministry of Finance (MOF)
10. Amendment in accordance with Order No. Tai-Cai-Chan-Jie-zi-10830000970 dated April 29, 2019 from the Ministry of Finance (MOF)

Content : Article 1

These *Administrative Directions* are stipulated to manage the estate tax or gift tax offset in kind (hereinafter referred to as “tax offset in kind”), while strengthening ties between the relevant agencies.

Article 2

It is the power and responsibility of the tax collection authority to review and approve applications from the public for estate tax or gift tax offset in kind, whereas each branch (hereinafter referred to as the ‘handling authority’) of the National Property Administration (NPA) is responsible for taking over and handling the tax offset in kind.

Article 3

Where real property constitutes the tax offset in kind in a tax offset application accepted by the tax collection authority, the handling authority shall cooperatively institute a joint survey and provide opinions of managerial disposition.

For cases of tax offset in kind approved by the tax collection authority, the details of the tax offset in kind and notice of any money transfer shall be provided to the handling authority.

Where a real property constitutes the tax offset in kind, the tax collection authority shall attach the following supplementary documents:

- (I) Original copy of the affidavit issued upon the government’s announcing the compensation for the land expropriation, which shall be provided by the taxpayer and received by the handling authority prior to the completion of registration of the national property;
- (II) Land zoning information shall be attached if the real property is situated in an urban planning area;
- (III) Relevant contract documents shall be attached if a lease or a joint management agreement is involved; and any statutory lease relationship, if existing, as stated in the provisions of Article 425-1 of the *Civil Code*, shall be disclosed; and

(IV) Relevant information and files of photos taken during the site survey.

Where the value of the tax offset in kind exceeds the tax payable, and the excess part is handled by way of division, the tax collection authority and the taxpayer shall determine the location of the division through mutual coordination, and the taxpayer shall complete the registration of the division.

Article 4

Where the right in rem of a real property constitutes the tax offset in kind, the tax collection authority shall provide the taxpayer or the taxpayer's agent with the supporting document of approved tax offset in kind, to be used by the handling authority for affixing a chop on the registration application form as well as indicating a remark of "Exemption from issuing the certificate of land ownership" on the registration application, in accordance with the provisions of land registration rules. Then, the registration application shall be forwarded to the registration authority for registration of inheritance and transfer of land ownership, after declaring the land value increment tax and deed tax.

The handling authority shall notify the tax collection authority after receiving from the taxpayer or the taxpayer's agent the transcript of the completed national property registration or the dismissal notification of registration application by the registration authority.

Article 5

For tax offset in kind other than the right in rem of real property, when the transfer of such tax offset in kind is necessary, the handling authority shall go through the transfer formalities based on the supporting document of tax offset approved by the tax collection authority, and notify the tax collection authority of the result of the transfer.

Article 6

The operating procedure for taking over a tax offset in kind is shown in ANNEX 1. Under any one of the following circumstances, the tax collection authority shall conduct the handover item by item:

- (I) Chattels: Handover item by item according to relevant supporting documents
- (II) Housing: Handover on-site; and
- (III) Rights: Handover item by item according to relevant supporting documents. Where the right of credit constitutes a tax offset in kind, information about the debtor shall be provided, including the debtor's residence, household registration information, and property list in the last year. The maturity date of the right of credit shall be clearly stated.

Article 7

After being taken over by the handling authority, a tax offset in kind shall be kept, used, or disposed of, and shall generate earnings in accordance with the *National Property Act* and relevant provisions. Under any one of the following circumstances, a tax offset in kind shall be handled in accordance with the following provisions:

- (I) Real properties: Where pollution, waste discard, or other situations affecting the approval of the tax offset incurred at the real property prior to the tax offset, the tax collection authority shall be notified immediately for handling the matter, or the tax offset application shall be cancelled.
- (II) Marketable securities:
 1. TWSE-listed, TPEx-listed, and ESB securities: which shall be sold by the appropriate authority entrusted by the handling authority;
 2. Securities not listed on the TWSE or TPEx: which shall be publically sold through tendering by the handling authority or the appropriate authority entrusted by the handling authority; and
 3. Government bonds: where the principal and interest shall be paid on schedule.
- (III) Capital contribution amount of a limited company: which shall be publicly sold through tendering by the handling authority after obtaining the transfer consent on more than half of total shares from all other shareholders.
- (IV) Right of credit: which shall be claimed from the debtor by the handling authority upon the expiry

of the repayment period. Where the claim collection is impossible, the tax collection authority shall be notified.

(V) Rights: which shall be publicly sold through tendering by the handling authority or the appropriate authority entrusted by the handling authority.

When an appropriate authority is entrusted in accordance with the provisions of Subparagraphs (II) and (V) in the preceding paragraph, matters shall be handled in accordance with the relevant provisions of the *Government Procurement Act*.

Article 8

The evaluation of the disposition price of tax offset in kind shall be handled in accordance with the following provisions:

(I) Real properties and chattels: Price shall be handled in accordance with the provisions of Article 58 of the *National Property Act* and the relevant provisions for the *Evaluation Methods of National Property*.

(II) Marketable securities:

1. TWSE-listed, TPEx-listed, and ESB securities:

- (1) Price shall be based on the transaction price at the centralized exchange market or at the business office of the securities firm at the time of the sale.
- (2) Shares, newly taken over due to the distribution of stock dividends by the company, shall be sold in combination with the shares originally taken over. Where all shares originally taken over have been sold, the shares newly taken over shall be sold after the take-over, and the price shall be handled in accordance with the provisions of Item (1) of this subparagraph.

2. Securities not listed on the TWSE or TPEx:

- (1) At the first sale through tendering, the base price per share shall be calculated based on the tax offset amount per share approved by the tax collection authority. For those securities that are not sold at the first sale through tendering, their listed base price may be reduced by 20% of the original listed price. For those securities that are not sold at the second sale through tendering, their listed base price may be reduced by 20% of the previous listed price.
- (2) Where the securities cannot be sold after three rounds of sales through tendering, they shall be returned to the tax collection authority for asset revaluation, and the sale through tendering shall be restarted with the base price of the revalued net value per share. For those securities that are not sold at the first sale through tendering, their listed base price may be reduced by 20% of the revalued listed price. For those securities that are not sold at the second sale through tendering, their listed base price may be reduced by 20% of the previous listed price.
- (3) Where the securities cannot be sold after six rounds of sales through tendering, they shall be returned to the tax collection authority for asset revaluation, and the sale through tendering shall be handled in accordance with the provisions of Item(2) of this subparagraph.
- (4) Shares, newly taken over due to the distribution of stock dividends by the company, shall be sold through tendering in combination with the shares originally taken over. The base price per share of the shares newly taken over shall be calculated as the base price per share of the shares originally taken over at the sale through tendering. Where all shares originally taken over have been sold, the base price per share of the shares newly taken over shall base on the listed base price per share of the most recent sale through tendering.
- (5) Where a new net value after capital decrease is calculated by the tax collection

authority after the securities are returned to the tax collection authority for capital decrease calculation due to the capital decrease by the company, the base price per share shall be calculated based on the net value per share calculated by the tax collection authority. For those securities that are not sold at the sale through tendering, they shall be handled in accordance with the provisions of Items (1) to (3) of this subparagraph.

- (6) Where the new net value is zero or negative after the securities are returned to the tax collection authority for asset revaluation or capital decrease calculation, the securities shall continue to be kept by the handling authority, and handled at an appropriate time.
- (7) When the stocks listed in Item (6) of this subparagraph are evaluated by the handling authority for another round of sale through tendering, the stocks shall be returned to the tax collection authority for asset revaluation, and the listed base price per share for the sale through tendering shall be based on the revalued net value per share. Where the new value is zero or negative, the listed base price be calculated according to the listed base price announced in the last sale through tendering. For those stocks that are not sold at the sale through tendering, they shall be handled in accordance with the provisions related to reduction on listed base price, asset revaluation, and handling at an appropriate time, respectively, of Items (1), (2) and (6) of this subparagraph.

3. Other marketable securities: which shall be approved by the Ministry of Finance (MOF).

(III) Rights: which shall be calculated according to the tax offset amount approved by the tax collection authority. Rights are subject to public sale through tendering. For those rights that are not sold at the first sale through tendering, their listed base price may be reduced by 10% of the approved listed price. For those securities that are not sold at the successive sales through tendering, their listed base price may be successively reduced by 10% of the previous listed price, and up to 10% per price reduction.

Article 9

Where real property constituting a tax offset in kind is reserved for public facilities, for the portion attributed to national property, after the national property registration is completed, the handling authority shall immediately notify the municipal or county (city) government where the land is located to handle the appropriation. Where leasing, leasing management, or entrusted operation needs to be handled, or litigation is involved for the real property, such matters shall be handled as follows:

- (I) Where the portion attributed to national property is 20%, the portion of the national property shall be handled by the management authority owning the larger portion of the property. Relevant management fees and litigation fees shall be apportioned by each authority in proportion to their share of the real property.
- (II) Where the portion attributed to national property is 50%, and the land is located within the jurisdiction of a municipality common to multiple authorities, the portion of the national property shall be handled by the entrusted municipal government. Where the land is not located within the jurisdiction of a municipality common to multiple authorities, the portion of the national property attributed to the municipality shall be handled by the entrusted municipal government. Relevant costs, except for those litigation fees involved in the litigation, shall be apportioned by each authority in proportion to their share of the real property, and the required management fees shall not be mutually paid to each other.

Article 10

After tax-offset land and non-tax-offset national non-public use land have been merged, re-measured and merged, or rezoned, the land area of each record shall be handled with the registration

of cadastral change as follows:

- (I) Merger, or re-measurement and merger: The area shall be calculated according to the ratio of the specific land value of each record of different property sources to the total land value, and the land area of each record shall be calculated separately according to the calculation formula shown in ANNEX 2.
- (II) Rezoning: For each pre-rezoning piece of land with different property sources, the post-rezoning apportioned area shall be calculated by consulting the authority in charge of the rezoning.

Article 11

After the completion of the national property registration for tax-offset land, where the land for public facilities shall be offset or unconditionally appropriated to another authority according to law, the handling authority shall immediately notify the tax collection agency to close the case for payment pending the treasury settlement.

Where the land for public facilities that may be unconditionally appropriated to another authority in the preceding paragraph is located within the scope of zoning expropriation, and there is an excess of tax offset as clarified by the handling authority, the portion of the excess of tax offset shall be calculated, and the registration authority shall be contacted to handle the registration of the transfer of the excess of tax offset to the taxpayer.

Article 12

After the handling authority takes over the tax offset in kind, where the tax offset in kind is involved in litigation during the tax offset or transfer to national property, or other reasons are involved, thus affecting the validity of the original tax offset and property transfer, the tax collection authority shall be immediately notified of such situations.

For cases involving litigation in the preceding paragraph, the handling authority shall notify the tax collection authority of the results of judgments made by courts of each instance.

After the tax collection authority approves the payment of estate tax and gift tax in kind and has the handling authority take over the tax offset in kind, if the taxpayer applies for a case review, petition, or administrative litigation, then the tax collection authority shall immediately notify the handling authority, and the handling authority shall suspend such disposition after being so notified.

Article 13

After deducting various taxes, fees, management fees, and actual operating costs from the earnings or disposition price of a tax offset in kind, the handling authority shall transfer the balance amount to the tax collection authority in March and September of each year, according to the format of the detailed list as shown in ANNEX 3.

Where a real property constituting the tax offset in kind incurs changes in marking and area, due to land severance, merger, re-measurement, re-zoning or other matters, the marking and area, thus failing to be disposed of for any reason, such situations shall be clearly stated, and the relevant supporting documents shall be attached, upon the appropriation operation in the preceding paragraph.

Attachments : ANNEX1.pdf
ANNEX2.pdf
ANNEX3.pdf

Data Source : Ministry of Finance, R.O.C. Laws and Regulations Retrieving System