

On the legal Significance of Taiwan's Constitutional Interpretation on Equal Treatment of Marriages and Same-Sex Couples and Its Influence on Taiwan's Taxation Legal System: Compared with German Laws and Decisions of German Federal Constitutional Court

*Ke-Chung Ko**

Abstract

Interpretation No. 748 of Taiwan's Constitutional Court (Judicial Yuan) declared that same-sex couples have the same rights to marriage under the Article 22 of the Constitution, the right to freedom of marriage, and the right to equality under Article 7, providing the possibility for amending or enacting legal provisions to protect the rights of same-sex couples, which is really a constitutional milestone. In the face of the upcoming new system, whether married spouses and same-sex couples should be equally treated in the tax law, is a legal question. First, we must examine whether Taiwan's current tax laws related to marriage and marriage partners include the legal norms of marriage promotion obligation. The answer is, however, obviously negative. The income tax law obligating the husband and his wife to jointly file income tax is a law that discriminates marriage partners and against marriage. This law makes taxpayers and spouses under marriage extremely unprofitable in taxation. The German personal income tax law, which was similar to Taiwan's current system, was declared unconstitutional by the German Federal Constitutional Court as early as 1957. However, the interpretations No. 318 and No. 696, still insists that husband and wife obligated to jointly file income tax is constitutional. Therefore, it is exactly the opposite of what commentor generally believes, Taiwan's income tax

* Associate Professor of Law, College of Law, National Taiwan University
E-mail: kcko5602@ntu.edu.tw

law is not a regulation that promotes marriage and favors the marriage spouse. The current income tax law is a kind of tax discrimination without reasonable justification. In addition, the legislative values of the treatment to marriage and married spouses of Taiwan's estate tax and gift tax law are not consistent with the income tax law, even contradictory. Therefore, Taiwan's taxation legislation must first cope with its own problems in order to face the new issue of legislation for protecting same-sex couples' rights based on the principle of equality.

Keywords: same-sex couple, equal right to marriage, principle of equal treatment, freedom of marriage, institutional guarantee, decision of value, Constitutional Interpretation No. 748, discounted half-two taxation system, prohibition of discrimination, commandment of promotion