

HONG KONG TAX ALERT

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***Nice Cheer Investment Limited v CIR* – further developments**

The Inland Revenue Department (IRD) has just issued an update subsequent to the decision of the Court of Final Appeal in the *Nice Cheer* case.

In the *Nice Cheer* case, the Commissioner of Inland Revenue lost his appeal to the Court of Final Appeal. The Court found that unrealised profits are not chargeable to tax, notwithstanding that, in accordance with international accounting standards, they have been recognised in the taxpayer's financial statements. The case was previously reported in [Tax alert issue 18 – November 2013](#).

Following the Court's judgment, the IRD has been requested by a number of taxpayers to accept financial statements prepared on a fair value basis for tax reporting for Profits Tax returns for the year of assessment 2013/14. This reflects the fact that they will incur substantial costs if profits computed on a fair value basis are required to be recomputed on a realisation basis.

The Financial Services and Treasury Bureau and the IRD are currently studying the judgment, in particular to consider whether there should be a change in law to allow continuation of the mark-to-market practice (generally the process of daily revaluation of a security to reflect its current market value instead of its acquisition price or book value).

As an interim administrative measure, the IRD has advised that it has agreed to accept Profits Tax returns for 2013/14 in which assessable profits are computed on a fair value basis. The IRD notes that this is an interim administrative measure pending the outcome of the above review.

The IRD will also agree to re-compute the assessable profits for 2013/14 computed on a fair value basis if the realisation basis is subsequently adopted. Requests to revise assessments are required to be made within the time limits laid down in the Inland Revenue Ordinance.

Comment

Financial institutions generally prepare their accounts on a fair value basis and will welcome this announcement by the IRD, as it will allow them to file their Profits Tax returns more efficiently without the need to specifically trace unrealised gains. That said, going forward, it will be important for the tax treatment to be clarified to ensure that taxpayers do not file their Profits Tax returns on a basis that is inconsistent with the law.



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