

Press release
LCQ18: Profits tax assessments
Wednesday, December 4, 2013

Following is a question by the Hon Kenneth Leung and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (December 4):

Question:

On November 12, 2013, the Court of Final Appeal (CFA) handed down a judgement in the case of Commissioner of Inland Revenue v. Nice Cheer Investment Limited, which upheld the rulings of both the Court of First Instance and the Court of Appeal that unrealised profits arising from revaluation of unsold stock were not chargeable to profits tax. CFA held that while the amount of taxable profit must be computed and ascertained with the ordinary principles of commercial accounting, these are always subject to the overriding requirement of conformity, not merely with the express words of the statute, but with the way in which they have been judicially interpreted. In this connection, will the Government inform this Council whether the Inland Revenue Department will:

- (a) adhere to the underlying principle of taxation enunciated in the aforesaid judgement when dealing with disputed profits tax assessments in future; and
- (b) re-assess the taxable profits, in accordance with the said principle, for similar cases with undisputed profits tax assessments?

Reply:

President,

The Government is committed to maintaining clarity of the tax regime and stability of tax revenue. Taking into consideration the facts of each case, the Inland Revenue Department (IRD) will make tax assessment and deal with objection and appeal matters arising from judgments in accordance with the relevant provisions of the Inland Revenue Ordinance (IRO) and the legal principles laid down by the Court of Final Appeal (CFA). Our reply to the two parts of the question is as follows:

(a) CFA's judgment in respect of Nice Cheer Investment Limited involves legal interpretation and technical issues concerning the computation of assessable profits. On the basis of complying with the basic principles set out in the aforementioned judgment, IRD is studying the judgment in detail and examining such matters as scope of application of the relevant principles and actual practice.

(b) IRO stipulates that if a taxpayer has not raised objection to his tax assessment within the specified period (i.e. within one month after the date of the notice of assessment), the relevant assessment will become final and conclusive and generally cannot be amended or revised. A court judgment will not have retrospective effect on cases where the assessments have already become final and conclusive.

Ends