

Inland Revenue (Amendment) (No. 7) Bill 2018

**List of follow-up actions arising from the discussion
at the meeting on 30 November 2018**

The Administration is requested to:

Aligning the tax treatment of financial instruments with their accounting treatment

- (a) given that in *Nice Cheer Investment Ltd v. Commissioner of Inland Revenue* (2013) 16 HKCFAR 813, the Court of Final Appeal ("CFA") held that "profits" connoted actual or realized (not potential or anticipated) profits so that unrealized revaluation gains, i.e. increases in the value of a company's trading stock of marketable securities, were **not** assessable to tax under the existing provisions of the Inland Revenue Ordinance (Cap. 112), advise whether the proposed amendments in Part 2 of the Bill for aligning tax treatment of financial instruments with their accounting treatment would result in unrealized profits including revaluation gains being taxed on a fair value basis and in effect reversing CFA's above judgment;

Avoiding potential double non-taxation of income of visiting teachers and researchers

- (b) clarify whether the definition of "visiting teacher or researcher" under the proposed new section 8(1D) of Cap. 112 or that under the law of the visited territory with which Hong Kong has entered into a Comprehensive Avoidance of Double Taxation Agreement containing a Teachers and Researchers Article shall apply in determining whether or not a person is a visiting teacher or researcher for the purpose of avoiding potential double non-taxation of income of visiting teachers and researchers; and
- (c) provide examples to illustrate the operation of the proposed new section 8(1AB) of Cap. 112, including whether assessable income derived from services rendered by a person as a visiting teacher or researcher in the visited territory will be subject to salaries tax in Hong Kong in circumstances where tax is exempted or assessed to be nil in respect of such income in that territory.