

Case No. D32/12

Profits tax – source – interest income – gain on trading of offshore securities/derivatives/held-to-maturity debt securities – unrealized gain on overseas investments – gain on disposal of available-for-sale securities – whether long term investment – section 14(1) of the Inland Revenue Ordinance (‘the IRO’).

Panel: Albert T da Rosa, Jr (chairman), Wendy Wan Yee Ng and Wong Fung King Amy.

Date of hearing: 21 October 2011.

Date of decision: 26 October 2012.

The Appellant objects to the profits tax assessments for the years of assessment 2004/05, 2005/06 and 2007/08, and the additional profits tax assessment for the year of assessment 2006/07.

The Appellant contends that for those relevant years of assessment:

1. Interest income from other overseas investment/ overseas held-to-maturity debt securities (Equity Linked Notes (‘ELN’), Accrual Notes and Lagard Equity Linked Notes, which were loan arrangements) was sourced outside Hong Kong;
2. Gain on trading of offshore securities in overseas stock exchange was sourced outside Hong Kong;
3. Gain on trading of offshore derivatives/held-to-maturity debt securities (OTC barrier call options, derivative, unrealized gain of ELN and Accrual Note, unrealized loss of ELN written back) was sourced outside Hong Kong;
4. Unrealized gain on other overseas investments was not chargeable to profits tax until maturity;
5. Gain on disposal of available-for-sale securities held as long term investment/ capital asset was not assessable to profits tax;
6. Changes in fair value of available-for-sale securities should not be subject to profits tax because (a) the Appellant intended to hold them as long term investment and (b) they were unrealized profits.

Held:

1. The overseas investment/overseas held-to-maturity debt securities were not loan arrangement to financial institutions for interest income. The transactions were done by the Appellant with Bank D in Hong Kong. Both the Appellant and Bank D operate in Hong Kong. The contract between them was concluded in Hong Kong. The return on investment must be sourced in Hong Kong.
2. The Appellant fails to discharge the onus of proof that the securities were traded in overseas stock exchange.
3. Apart from the confirmations and statements issued by Bank D in relation to two Deliverable Currency Option transactions in 2004/05 and a Delivery Currency Option transaction in 2006/07 and that the unrealized gain and unrealized loss written back of ELN and Accrual Note were not subject to tax, the Appellant fails to discharge its onus of proof on the issue of source for the gain or loss on OTC barrier call options and derivative.
4. The Board is bound by the decision of Nice Cheer Investment Limited v Commissioner of Inland Revenue, HCIA 8/2007, that unrealized profits are not assessable to profits tax under the IRO.
5. The Board Minutes of the Appellant was not a credible piece of evidence of the Appellant's intention to hold the relevant shares for long term. The evidence of Mr B and Mr C, though honest, has not dealt with the intention of the Appellant to hold the relevant shares for long term on acquisition.
6. The Appellant has not discharged the burden of proof of intention to hold the available-for-sale securities as long term investment. Yet, the Board is bound by Nice Cheer HCIA 8/2007 that unrealized profits/ changes in fair value of available-for-sale securities are not assessable to profits tax.

Appeal allowed in part.

Cases referred to:

Commissioner of Inland Revenue v Hang Seng Bank Ltd [1991] 1 AC 306
Commissioner of Inland Revenue v HK-TVB International Ltd [1992] 2 AC 397
Lovel & Christmas, Limited v Commissioner of Taxes [1980] AC 46
Commissioner of Taxation (NSW) v Cam & Sons Ltd (1936) 36 SR (NSW) 544
Commissioner of Inland Revenue v Secan Ltd & Another (2003) 3 HKCFAR 411
Sharkey (Inspector of Taxes) v Wernher [1956] AC 58

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

Nice Cheer Investment Limited v Commissioner of Inland Revenue HCIA 8/2007,
28/06/2011

Real Estate Investments (NT) Ltd v Commissioner of Inland Revenue [2007] 1
HKLRD 198

D16/88, IRBRD, vol 3, 225

Simmons v Inland Revenue Commissioners [1980] 1 WLR 1196

Kevin Leung Chi Kwong of Mainfaith CPA Limited for the Taxpayer.
Ambrose Ho Senior Counsel and Bonnie Cheng Junior Counsel instructed by Francis Kwan,
Senior Government Counsel of the Department of Justice for the Commissioner of Inland
Revenue.

Decision:

Introduction

1. Company A ('the Appellant') objected to profits tax assessment raised on it for the years of assessment 2004/05, 2005/06, and 2007/08 and the additional profits tax assessment for the year of assessment 2006/07 raised on it by the Inland Revenue Department.

2. By the determination ('the Determination') dated 23 February 2011, the Deputy Commissioner of Inland Revenue ('the CIR') upheld the relevant profits tax assessments for the years 2004/05, 2005/06, and 2007/08 in the sums of HK\$4,996,619, HK\$3,329,324 and HK\$25,438,159 respectively and additional tax assessments for the year of assessment 2006/07 of HK\$22,615,120 and levied tax in the sums of HK\$874,408, HK\$582,631, HK\$4,426,677 and HK\$3,957,646 totalling HK\$9,341,362.

3. The CIR summarized the issues for his determination as whether:

- 3.1. the offshore gains or loss adjusted in the Company's tax computation for the years of assessment 2004/05 to 2007/08 should be accepted;
- 3.2. the adjustment for available-for-sale securities (namely the transfer from equity on disposal for the year of assessment 2007/08) and the changes in fair value of the available-for-sale securities for the years of assessment 2006/07 and 2007/08 were capital in nature; and
- 3.3. bank interest income adjusted in the Company's tax computations for the years of assessment 2006/07 and 2007/08 should be excluded from assessment.

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

4. In the Appellant's Statement of the Grounds of Appeal ('Grounds of Appeal'), the Appellant sets out its case by reference to certain state of affairs as set out in Appendix A-F of the Grounds of Appeal:

- 4.1. for the assessment for the year of 2004/05: it relied on the matters set out in Appendix D and Appendix F of the Grounds of Appeal;
- 4.2. for the additional assessment for the year 2005/06: it relied on the matters set out in Appendix A of the Grounds of Appeal;
- 4.3. for the assessment for the year of 2006/07: it relied on the matters set out in Appendix B and Appendix E of the Grounds of Appeal; and
- 4.4. for the assessment for the year of 2007/08: it relied on the matters set out in Appendix C of the Grounds of Appeal.

The hearing

5. By letter dated 1 August 2011, the parties were informed of the directions to file paginated bundles of documents and authorities on or before 20 September 2011 as regards the Appellant; and 4 October 2011 as regards the Respondent.

6. The Respondent did so but the Appellant did not. The Appellant only gave to the Clerk (which was only received on 20 October 2011 one day before the hearing) what purported to be of the joint statement of its directors Mr B and Mr C.

7. At the hearing the Appellant's representative conceded and abandoned Ground (5) and agreed to Facts (1) to (15), (17) and (19) of the Determination as shown in the Appendix hereto.

8. The Respondent did not object to the late introduction of the witness statement and both parties agreed to treat the 'joint statement' as if it were two statements made by the two respective witnesses separately with references to 'we' as having been changed to 'I' or own name of the witness making the statement as the case may be.

9. Both witnesses gave evidence on oath, Mr B in English while Mr C in Cantonese.

10. Mr B confirmed that the third paragraph of the joint statement was incorrect in that the Appellant borrowed money from the Hong Kong branch of Bank D and not the branch in City E of Country F ('City E branch') as stated in the statement.

11. The Assessor had asked the Appellant to provide certain specific information to justify its stance [Agreed Facts (8), (9), (10), (14) and (15)], that is. for tax year 04/05 [B1/310-313 and 314-315], for tax year 06/06 [B1/300-303], for tax year 07/07

[B1/304-305] and for tax year 07/08 [B1/306-309], but notwithstanding such requests, the Appellant did not adduce evidence to answer the questions except as discussed below.

Ground (1): Interest income from other overseas investment/overseas held-to-maturity debt securities

12. The Appellant claimed that the following income was interest income sourced outside Hong Kong:

12.1. 2004/05: \$3,800,949

12.2. 2005/06: \$2,719,658

12.3. 2006/07: \$3,618,158

12.4. 2007/08: \$3,681,288

See: Grounds of Appeal paragraph 1 [B1/2]

13. The Assessor had asked the Appellant to provide certain specific information to justify its stance

13.1. regarding the nature of such income as interests; and

13.2. regarding the source

but notwithstanding such requests, the Appellant did not adduce evidence to answer the questions except as discussed below.

14. For 2005/06, 2006/07 and 2007/08, the Appellant has put forward a list of the financial products that were claimed to be purchased in each year: see Appendix A paragraph 3; Appendix E paragraph 4 and Appendix C paragraph 1.

15. A similar list was not provided for 2004/05, although the Appellant claimed that the interest income in that year was 'of the same nature' to that in other years: see Appendix D paragraph 19.

16. From the list submitted, it would appear that the 'overseas investment/overseas held-to-maturity debt securities' were financial products comprising of 'Equity Linked Notes' ('ELN'), 'Accrual Notes' and 'Lagard Equity Linked Notes and others'.

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

17. In terms of documentary evidence, only the following are before the Board:
 - 17.1. the summary terms and bank statements issued by Bank D in relation to two ELN transactions in 2004/05 in Appendix D5A and Appendix D5B of the Grounds of Appeal; and
 - 17.2. the summary terms and bank statements issued by Bank D in relation to two ELN transactions in 2006/07 in Appendix E4A and Appendix E4B of the Grounds of Appeal.
18. The Appellant submits
 - 18.1. that one has to determine the nature and the source of the transactions before drawing the conclusion of the locality of the profits;
 - 18.2. that the ELN and Accrual note which are in questions are in substance a loan arrangement for lending funds to overseas financial institutions where the company seeks for a return of interest as it is a contractual arrangement in reference of time and risk of default;
 - 18.3. that the obligation of undertaking of buying shares at price higher than the market price to certain extent is just like a security in a loan agreement; and
 - 18.4. that the locality of profits of loans is determined by the 'provision of credit test'. That is the location of where the fund provided to the borrower. As per the bank statement, it clearly indicated that most of the funding of purchase of the ELN was from the bank account with City E, the ELN was kept in City E and the repayment of the principal was put into the City E branch. It logically follows that the source of the ELN and other similar financial institutions is not in Hong Kong but in City E.

Interest income

19. In so far as the Appellant's contention based on the nature of the relevant income is interest income is concerned, the Respondent drew our attention to the provisions in the 'sample transaction documents' being the term sheet on the ELN at page 83 which show that the Appellant like any person entering into such a transaction would have committed to having or purchased by use of a sum, in this case it's \$2.9 million deducted from its account and when the contract matures then it, depending on the price of the shares trading at the time of the maturity whether it reaches the strike price or not reach the strike price as the case may be, then that would be determinative of whether he is going to receive the whole nominal sum, in this case \$3 million, or whether he's going to have a lot of shares above the then trading price of the shares.

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

20. The Respondent submits that once analyzed in that fashion it really is not a question of advancing a sum of money to a financial institution for interest income.

21. We agree and reject the Appellant's contention on interest income.

Source

22. The Appellant submits that 'Notwithstanding that the Hong Kong branch is the principal of the transactions and the branch solicited the company to acquire the financial instrument, it is nothing to do with the locality of the profits. The source of income of the ELN is coming from the willingness of the company to take up the risk of the default payment of the issuer the company and scarification of other present investment opportunities. This risk is nothing to do with the principal of the transactions. As per (R1/302 and 310), the credit risk of the default of the ELN is on the insurer of the ELN rather than on the principal of the transactions. In fact, the company suffered a substantial loss in the financial tsunami.'

23. These transactions were done by the Appellant with Ms G of Bank D and her office address is in Hong Kong.

24. The Respondent submitted that the documents point towards Hong Kong as the source. Taking the ELN transaction in Appendix D5A of the Grounds of Appeal as an example, it can be observed that:

24.1. The transaction involved the purchase of the ELN by the Appellant from Bank D.

24.2. Both Appellant and Bank D were entities operating in Hong Kong. The contract between them was one concluded in Hong Kong.

25. The broad guiding principle for determining the question of source is that 'one looks to see what the taxpayer has done to earn the profit in question and where he has done it': see Commissioner of Inland Revenue v Hang Seng Bank Ltd [1991] 1 AC 306 at 322H to 323A and Commissioner of Inland Revenue v HK-TVB International Ltd [1992] 2 AC 397 at 407C-D.

26. Further, in

26.1. Lovel & Christmas, Limited v Commissioner of Taxes [1908] AC 46 at 51 to 53

26.2. Commissioner of Taxation (NSW) v Cam & Sons Ltd (1936) 36 SR (NSW) 544 at 549

the Court found that the source in question was the place where the contract that generated the profits to the taxpayer was made.

27. We find that the Appellant earned the return on investment it called ‘interest income’ by concluding a contract with Bank D in Hong Kong for the purchase of the ELN. In the premises, the return on investment must be sourced in Hong Kong.

Conclusion on Ground (1)

28. The Board therefore dismisses this ground of appeal.

Ground (2): Gain on trading of offshore securities

29. The Appellant claimed that the following gains from the trading of securities represented profits sourced outside Hong Kong:

29.1. 2004/05: \$43,093

29.2. 2005/06: \$1,073,080

29.3. 2006/07: \$928,532

29.4. 2007/08: \$851,061

See: Grounds of Appeal, paragraph 2.

30. It asserts

30.1. By the case law and the departmental note of the Inland Revenue, the locality of profits of trading securities is determined by the location of the stock exchange of the securities. As per pages 7, 31, 93 and 127 in Bundle B1, all of the underlying securities are principally not trading in the stock exchange of Hong Kong.

30.2. The bank statement as at 31 December 2005, the securities of ‘Company 1’ and ‘Company 2’ were held by City E branch and the currency of these shares is the United States Dollars which ‘indicated’ that they are not securities traded in Hong Kong Stock Exchange.

30.3. In the bank statement as at 31 December 2004, the securities of ‘Company 3’ and ‘Company 4’ were held by City E branch and the currency of these shares is the United States Dollars which ‘indicated’ that they are not securities traded in Hong Kong Stock Exchange.

31. The Appellant's claim that the securities were traded in overseas stock exchange is a bare assertion unsupported by any evidence. No evidence was advanced as to the mechanics of such trading. As observed by the Respondent in submission, theoretically, it is not impossible that Bank D in Hong Kong sells shares it holds or holds for its other clients to the accountholder which would then be onshore transaction. We are not persuaded that the 'indications' are sufficient to discharge the Appellant's onus of proof.

32. For each of the above years of assessment, the Appellant has put forward a list of the securities which it claimed were traded in each year: see Letter dated 19 October 2009 paragraph (2); Appendix A paragraph 4 of the Grounds of Appeal; Appendix E paragraphs 1 to 3 and Appendix C paragraphs 13 of the Grounds of Appeal. However, no evidence was produced to verify the said lists of securities or to substantiate the Appellant's claim that the gains derived from those securities were sourced outside Hong Kong, notwithstanding the request made by the Assessor as in paragraph 13.2 herein.

33. As the Appellant has failed to discharge the onus of proof, Ground (2) of the Grounds of Appeal cannot stand and we reject this ground of appeal.

Ground (3): Gain on trading of offshore derivatives / held-to-maturity debt securities

34. The Appellant claimed that the following gains represented profits sourced outside Hong Kong:

34.1. 2004/05: \$1,585,880 gain or loss on OTC barrier call options

34.2. 2005/06: \$2,628,192 gain or loss on OTC barrier call options

34.3. 2006/07: \$4,123,116 comprising

(a) \$592,430 gain or loss on OTC barrier call options

(b) \$316,602 gain on derivative

(c) \$2,102,543 unrealized gain of ELN and Accrual Note

(d) \$1,111,441 unrealized loss of ELN in 2005 written back

34.4. 2007/08: \$644,040 gain or loss on OTC barrier call options.

See: Grounds of Appeal, paragraph 3.

35. For 2004/05, 2005/06, 2007/08 and 2008/09, the Appellant has listed out the derivatives that were claimed to be traded in each year: see Letter dated 19 October 2009 paragraph A; Appendix A paragraph 4; Appendix C paragraph 14 and Appendix E paragraph 1 of the Grounds of Appeal.

36. The Appellant has also put forward a list of what it claimed to be the relevant overseas investments for each of the two years 2004/05 and 2005/06: see Appendix F1 and Appendix A paragraph 5 of the Grounds of Appeal.
37. In terms of documentary evidence, only the following are before the Board:
- 37.1. The confirmations and bank statements issued by Bank D in relation to two Deliverable Currency Option transactions in 2004/05: see Appendix D1A and Appendix D1B of the Grounds of Appeal.
- 37.2. The confirmation issued by Bank D in relation to a Delivery Currency Option transaction in 2006/07: Appendix E3A of the Grounds of Appeal.
38. The analysis in paragraphs 25, 26 and 27 herein are equally applicable.
39. Apart from those in paragraph 37 herein, the Appellant has not produced any evidence to verify the above information on the derivatives or the said lists of investments or to substantiate its claim that the gains derived from trading such derivatives or the investments were sourced outside Hong Kong.
40. The Appellant tried to slip in for the sums in Ground (3) arguments on whether they represent unrealized gains and therefore not taxable. We agree with the submission of the Respondent that Ground (3) of the Notice of Appeal as framed does put the relevant items as unrealized gains and hence not subject to tax. Pursuant to section 66(3), we therefore disallow any such argument under this Ground (3).

Conclusion on Ground (3)

41. We find that the Appellant has failed to discharge its onus of proof on the issue of source.
42. The Board therefore dismisses this ground of appeal based on arguments on source.

Ground (4): Unrealized gain on other overseas investments

43. The Appellant claimed that the following amounts are not chargeable to profits tax because they could not be realized until the maturity of the investments after the end of the financial year.
- 43.1. 2004/05: \$51,681
- 43.2. 2005/06: \$416,000

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

See: Grounds of Appeal, paragraph 4

44. In other words, the Appellant claims that even if they were sourced in Hong Kong they were unrealized gain and not taxable.

45. In the course of the hearing the Appellant also tried to make the contention that the \$1,111,441 unrealized loss of ELN in 2005 written back in 2006/07 should also be allowed. We agree and uphold the Respondent's challenge that it was not in the Grounds of Appeal and the Appellant is not allowed to bring in this argument at such late stage.

46. As regards the unrealized gain, the Respondent submits that:

46.1. In Commissioner of Inland Revenue v Secan Ltd & Another (2003) 3 HKCFAR 411 at 419, the Court of Final Appeal ('CFA') held that the profits of a taxpayer must be ascertained in accordance with the ordinary principles of commercial accounting as modified to conform with the IRO.

46.2. Where the taxpayer's financial statements are properly drawn in accordance with the ordinary principles of commercial accounting and in conformity with the IRO, no modifications are required or permitted, and the Revenue is both entitled and bound to ascertain the assessable profits on the accounting basis the taxpayer has chosen to adopt: see Secan at 419.

46.3. Having treated the unrealized gains as profits in its financial statements¹, it is not open to the Appellant now to argue that those profits should not be assessable.

46.4. There is nothing in the IRO that prohibits the inclusion of unrealized gains as assessable profits. The concept of notional profits had been recognized long ago in Sharkey (Inspector of Taxes) v Wernher [1956] AC 58.

46.5. The Respondent reserved its position in relation to the decision of Nice Cheer Investment Limited v Commissioner of Inland Revenue HCIA 8/2007, 28/06/2011, where the Court of First Instance held that unrealized profits are not assessable to profits tax under the IRO. The Board is invited to note that the said decision will be the subject of an appeal.

¹ 2004/05; 2005/06.

47. Be that as it may, this Board is bound by Nice Cheer HCIA 8/2007, 28/06/2011 and as conceded by the Respondent, the factual matrix of the present ground are not distinguishable from those in Nice Cheer case.

48. The Board therefore allows this basis of appeal and for the following years, the following sums shall be adjusted and deducted from the assessable income:

48.1. 2004/05: \$51,681

48.2. 2005/06: \$416,000

Ground 5

49. This ground has been conceded by the Appellant.

50. There is no Ground (6) in the Grounds of Appeal.

Ground (7)²: Available-for-sale securities: transfer from equity on disposal

51. The Appellant claimed that the amount of HK\$2,738,942 was derived from the disposal of securities held as long term investment in 2007/08: see Grounds of Appeal, paragraph 7.

52. The Appellant claimed that the following are the securities in question: see Appendix C paragraphs 2 to 4 of the Grounds of Appeal

52.1. Company 5 (acquired in 2003 and 2004)

52.2. Company 6 (acquired in 2006)

52.3. Company 7 (acquired in 2006)

53. The burden is on the Appellant to prove that each and every one of the relevant securities was held as a capital asset: see Real Estate Investments (NT) Ltd v Commissioner of Inland Revenue [2007] 1 HKLRD 198 at paragraph 67.

54. The Appellant has put forward a set of board minutes dated 2 January 2006 at Appendix B2 ('the Board Minutes') as purported evidence of its intention in relation to those securities.

55. The Respondent drew our attention to the following:

55.1. The number of Company 5 shares as stated on the Board Minutes does not tally with the number stated in Appendix C paragraphs 2 to 4 of the

² There is no Ground (6) in the Grounds of Appeal.

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

Grounds of Appeal. One cannot ascertain whether or not the Company 5 shares referred to in Appendix C paragraphs 2 to 4 of the Grounds of Appeal formed part of those stated on the Board Minutes.

55.2. The shares of Company 6 and Company 7 were not referred to in the Board Minutes. There is nothing to support the Appellant's claim about its intention in relation to them, apart from its own assertion: see Appendix E paragraph 5(e) of the Grounds of Appeal.

56. The Respondent therefore further submitted that

56.1. the Board Minutes is not a credible piece of evidence and no weight should be attached to it:

- (a) It is a self-serving statement by the Appellant of its change of intention: see D16/88, IRBRD, vol 3, 225 at 229 to 230.
- (b) It referred to a changed investment strategy of Appellant but contained absolutely no explanations for that.

56.2. events subsequent to the Board Minutes, which cast further doubts on the Appellant's claim about its intention:

- (a) The Company 6 and Company 7 shares, both of which were acquired in 2006, were sold in 2007.³ The short period of their retention casts doubt on the Appellant's professed intention to hold them as long-term investments.
- (b) The Company 5 shares, acquired in 2003 and 2004, were sold on various dates in 2007: see Appendix B1 of the Grounds of Appeal. The span of time between the alleged change of intention (on 2 January 2006) and disposal was short. Also, by disposing of the Company 5 shares, the Appellant was clearly acting in breach of its own resolution on the Board Minutes that the shares were not to be sold before 31 December 2008.

56.3. The Appellant has put forward two inconsistent explanations for its disposal of the above securities: see Appendix B paragraph 4 and Appendix C paragraph 12 of the Grounds of Appeal. Neither of them was substantiated by evidence.

57. However, there is the evidence of the two witnesses. We find them to be generally honest though not articulate as to details.

³ The Appellant did not provide the exact date(s) of disposal.

58. In Simmons v Inland Revenue Commissioners [1980] 1 WLR 1196 at 1199 Lord Wilberforce observed:

‘ ... Trading requires an intention to trade: normally the question to be asked is whether this intention existed at the time of acquisition of the asset. Was it acquired with the intention of disposing of it at a profit or was it acquired as a permanent investment? ... ’

59. In this connection, the Respondent submitted that since we are dealing with the question of whether the ‘shares’ are held for long term, the relevant time would be the time the acquisition of the ‘shares’ and not the time of the ‘ELN contracts’. The Respondent further submitted that here the very short point is: Yes, Mr B and Mr C came up and vaguely and obliquely talked about, ‘We entered into these ELN contracts, carefully choosing the underlying shares because they are blue chip stocks’ or whatever it is ‘and we intend to hold them for long term’. That’s not the relevant question, nor is it a relevant time that we should consider.

60. The Respondent sums up the effect of the evidence of the witnesses succinctly in that what their evidence amounted to is ‘Well, yes, we choose our stocks carefully - we choose the underlying stocks carefully before we enter into the ELN contracts’ but they did not say, ‘Now, having received these shares now we are going to hold them for long term’. What the Appellant originally intended may be neither here nor there because the Appellant may not even want to receive these shares originally contracted for.

61. We believe the two witnesses were honest as regards their intention in their evidence. However, unfortunately their evidence has not dealt with their intention at the relevant time – the exact time when the relevant shares were acquired and not just contracted for.

62. We therefore reject Ground (7).

Ground (8): Changes in fair value of available-for-sale securities

63. The Appellant claimed that the following changes in fair value of available-for-sale securities should not be subject to profits tax because (a) the intention of the Appellant was to hold them as long term investment and (b) they are unrealized profits.⁴

63.1. 2006/07: \$13,662,031

63.2. 2007/08: \$22,748,159

⁴ The Appellant also claimed that an amount of \$5,778,286 for 2007/08 represented profits sourced outside Hong Kong: see Grounds of Appeal, paragraph 8(c). This claim is however unsupported by any evidence and has not been accepted by this Board.

See: Grounds of Appeal, paragraph 8.

64. For each of the above two years, the Appellant has put forward a list of the available-for-sale securities it claimed to have generated the said changes in fair value: see Appendix E6; Appendix G1 and Appendix G2 of the Grounds of Appeal. The Respondent contends that the Appellant has not produced any evidence to verify such information.

65. The amount of change in fair value is stated in the accounts of the Appellant and forms the basis for which the Respondent made its additional assessment and assessment.

66. Similar to Ground (4), this Board is bound by Nice Cheer HCIA 8/2007, 28/06/2011 and we therefore allow Ground (8) based for unrealized profits.

67. However, if we are wrong, we will deal with the other aspects of this Ground (8) as follows:

67.1. We find that the Appellant's claim about its intention to hold the said securities as long term investment is again a bare assertion.

67.2. We agree with the Respondent's similar submissions as in paragraph 56 herein and find that the Board Minutes is not a credible piece of evidence of the Appellant's intention.

67.3. We also find that since most of the securities in question were disposed of in either 2007 or 2008: see Appendix B1 of the Grounds of Appeal, the short period of their retention militated against the Appellant's professed intention to hold them as long term investments.

Ground (9): Adjustments to subsequent years

68. Finally, it is claimed that if the Appellant's appeal under Ground (4) fails and the unrealized gains of \$61,681 and \$416,000 are found to be taxable, adjustments should be made to subsequent years of assessment when the corresponding gains were realized and included in the assessable profits: see Grounds of Appeal, paragraph 9.

69. Given our decision in favour of the Appellant for Ground (4) in paragraphs 43 to 48 herein it is not necessary to decide this point.

70. However, in the event that we are wrong in our decision regarding the unrealized profit point, we find that the Appellant has not discharged the burden of proof.

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

Conclusions

71. We dismiss Grounds (1), (2), (3), (5) and (7) and allow Grounds (4) and (8). There is no Ground (6) in the Grounds of Appeal and we find that we need not deal with Ground (9).

72. We reduce the assessment by the following amounts but otherwise affirm the assessment in the Determination:

72.1. Under Ground (4)

(a) 2004/05: \$51,681

(b) 2005/06: \$416,000

72.2. Under Ground (8):

(a) 2006/07: \$13,662,031

(b) 2007/08: \$22,748,159

73. Thus the assessment (or additional assessment as the case may be) and the tax payable for each of the relevant years of assessment shall be as follows:

Year	Original Assessment HK\$	Downward Adjustment HK\$	New Assessment HK\$	Tax HK\$
2004/05 (assessment)	4,996,619	51,681	4,944,938	865,364
2005/06 (assessment)	3,329,324	416,000	2,913,324	509,831
2006/07 (additional assessment)	22,615,120	13,662,031	8,953,089	1,566,791
2007/08 (assessment)	25,438,159	22,748,159	2,690,000	468,106
Total	56,379,222	36,877,871	19,501,351	3,410,092

**Appendix
(Agreed Facts)**

- (1) Company A ('the Company') has objected to the profits tax assessments for the years of assessment 2004/05, 2005/06 and 2007/08, and the additional profits tax assessment for the year of assessment 2006/07 raised on it. The Company claims that the assessments were not made in accordance with its tax returns submitted.
- (2) (a) The Company was incorporated in Hong Kong as a private company in 1976. At the relevant times, the Company's business address was Address H.
- (b) The Company's directors were as follows:
Mr B
Mr C
Ms J (deceased in 2005)
- (c) In its reports of directors, the Company described its principal activities as follows:
- | | | |
|------------------------------|---|--|
| <u>Year ended</u> | - | <u>Principal activities</u> |
| 31-12-2004, 2005
and 2006 | | Investment holding and provision of
management services |
| 31-12-2007 | | Investment holding, property holding and
provision of management services |
- (d) The Company closed its accounts on 31 December annually.
- (3) The Company failed to furnish its profits tax returns for the years of assessment 2005/06 and 2007/08 within the stipulated time. In the absence of the tax returns, the Assessor raised on the Company the following estimated profits tax assessments:

	<u>2005/06</u>	<u>2007/08</u>
	\$	\$
Assessable profits	<u>690,000</u>	<u>30,000</u>
Tax payable thereon (after tax reduction, if any)	<u>120,750</u>	<u>1,312</u>

- (4) The Company, through its tax representatives, objected to the profits tax assessments in Fact (3) on the ground that the estimated profits exceeded the actual assessable profits.
- (5) (a) On divers dates, the Company submitted its profits tax returns for the years of assessment 2004/05 to 2007/08 together with audited financial statements and

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

tax computations. Copies of the respective tax returns, financial statements and tax computations are at Appendices A, B, C and D. In its tax returns, the Company declared the following assessable profits and adjusted losses:

	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>
	\$	\$	\$	\$
Assessable profits/(adjusted loss)	<u>649,061</u>	<u>(2,232,568)</u>	<u>22,831</u>	<u>(5,623,589)</u>

- (b) The assessable profits and adjusted losses in Fact(5)(a) were arrived at after making, inter alia, the following adjustments to the profits in Fact(5)(c):

	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>
	\$	\$	\$	\$
<u>Non-allowable deduction</u>				
(i) Unrealized loss on trading of offshore securities	392,057	163,597	-	-
(ii) Unrealized loss on trading of offshore derivatives	741,988	1,111,441	-	-
<u>Non-taxable gain and income</u>				
(iii) Bank interest income	126,404	314,085	283,283	398,258
(iv) Interest income from other overseas investments/overseas held-to-maturity debt securities	3,800,949	2,719,658	3,618,158	3,681,288
(v) Gain on trading of offshore securities	43,093	1,073,080	928,532 ^[1]	-
(vi) Gain on trading of offshore derivatives	1,585,880	2,628,192	-	-
(vii) Gain on trading of offshore held-to-maturity debt securities	-	-	4,123,116 ^[2]	-
(viii) Unrealized gain on other overseas investments	51,681	416,000	-	-
(ix) Net realized and unrealized gain on trading securities and held-to-maturity debt securities	-	-	-	1,495,101 ^[3]
(x) Available-for-sale securities: transfer from equity on disposal	-	-	-	2,738,942 ^[4]

Notes:

1. It was claimed that the amount represented the gain on trading securities listed in overseas exchange.
2. It was claimed that the amount represented the gain on trading of held-to-maturity debt securities and derivatives through Bank D in various overseas exchanges.
3. It was claimed that the amount represented the net realized and unrealized gain on trading of trading securities and held-to-maturity debt securities and derivatives through Bank D in various

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

overseas exchanges.

4. It was claimed that the amount represented the gain on disposal of available-for-sale securities for long-term investment purposes and was of capital nature.

- (c) The Company's detailed income statements showed, inter alia, the following particulars:

	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>
For the year ended	31-12-2004	31-12-2005	31-12-2006	31-12-2007
	\$	\$	\$	\$
Turnover:				
Dividend income	394,255	924,135	1,678,380	2,809,159
Management fee income	720,000	60,000	60,000	60,000
Bank interest income [Fact(5)(b)(iii)]	126,404	314,085	283,283	398,258
Interest income from other overseas investments/overseas held-to-maturity debt securities [Fact(5)(b)(iv)]	3,800,949	2,719,658	3,618,158	3,681,288
Rental income	-	-	-	156,000
	5,041,608	4,017,878	5,639,821	7,104,705
Other net income:				
Gain on disposal of trading securities and derivatives/ trading securities and held-to-maturity debt securities	1,583,608	4,090,986	3,334,005	-
Unrealized gain on trading securities and derivatives	145,079	-	-	-
Unrealized gain on other overseas investments/ trading securities and held-to-maturity debt securities [Fact(5)(b)(viii)]	51,681	416,000	4,767,508	-
Net realized and unrealized loss on trading securities	-	-	-	(907,258)
Available-for-sale securities: transfer from equity on disposal [Fact(5)(b)(x)]	-	-	-	2,738,942
Written back of provision of imputed interest ⁽¹⁾	-	-	-	12,672,946
Exchange gain/(loss) on deposit placed in offshore bank	-	-	1,680,746	(108,487)
Sundry income	5,214	250	-	-
	<u>1,785,582</u>	<u>4,507,236</u>	<u>9,782,259</u>	<u>14,396,143</u>
	6,827,190	8,525,114	15,422,080	21,500,848

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

	<u>2004/05</u> 31-12-2004	<u>2005/06</u> 31-12-2005	<u>2006/07</u> 31-12-2006	<u>2007/08</u> 31-12-2007
	\$	\$	\$	\$
For the year ended				
Valuation gain/(loss) on investment property	-	<u>(459,537)</u>	<u>(340,000)</u>	<u>330,000</u>
	6,827,190	8,065,577	15,082,080	21,830,848
Less: Operating and administrative expenses				
Exchange loss on deposit placed in offshore bank	884,619	2,455,694	-	-
Unrealized loss on trading securities and derivatives	-	1,874,484	-	-
Impairment loss on available-for-sale securities	-	-	-	160,992
Others	1,058,685	1,203,950	1,417,179	1,514,590
	<u>1,943,304</u>	<u>5,534,128</u>	<u>1,417,179</u>	<u>1,675,582</u>
	4,883,886	2,531,449	13,664,901	20,155,266
Less: Finance costs				
Bank overdraft and loan interest	249,360	875,922	1,692,719 ^[2]	1,895,210 ^[2]
Imputed interest ^[1]	-	11,114,453	1,558,493	-
	<u>249,360</u>	<u>11,990,375</u>	<u>3,251,212</u>	<u>1,895,210</u>
	<u>4,634,526</u>	<u>(9,458,926)</u>	<u>10,413,689</u>	<u>18,260,056</u>

Notes:

1. \$11,114,453 + \$1,558,493 = \$12,672,946
2. The bank loans of the Company were secured by an investment property of the Company with carry value of \$3,630,000 and \$3,960,000 as at 31 December 2006 and 2007 respectively, floating charges over held-to-maturity debt securities, available-for-sale equity securities, trading securities and bank fixed deposits of the Company with an aggregate carrying value of \$111,622,220 and \$140,416,266 as at 31 December 2006 and 2007 respectively and guarantee from related parties.

(d) The Company's balance sheets showed, inter alia, the following particulars:

	<u>2004/05</u> 31-12-2004	<u>2005/06</u> 31-12-2005	<u>2006/07</u> 31-12-2006	<u>2007/08</u> 31-12-2007
	\$	\$	\$	\$
As at				
<u>Non-current assets</u>				
Held-to-maturity debt securities:				
Unlisted outside Hong Kong	27,650,681	34,835,084	8,965,845	23,221,976
Available-for-sale equity securities:				
- Listed in Hong Kong	1,033,500 ^[1,2]	1,583,400 ^[2]	58,229,228 ^[2]	72,627,267 ^[2]
- Listed in overseas	-	-	9,907,716 ^[2]	22,303,210 ^[2]
	<u>1,033,500</u>	<u>1,583,400</u>	<u>68,136,944^[3]</u>	<u>94,930,477</u>
	<u>28,684,181</u>	<u>36,418,484</u>	<u>77,102,789</u>	<u>118,152,453</u>

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

As at	<u>2004/05</u> 31-12-2004 \$	<u>2005/06</u> 31-12-2005 \$	<u>2006/07</u> 31-12-2006 \$	<u>2007/08</u> 31-12-2007 \$
<u>Current assets</u>				
Trading securities:				
Equity securities, at fair value				
- Listed in Hong Kong	18,275,096	32,447,487	7,563,278	15,819,874
- Listed outside Hong Kong	<u>8,054,451</u>	<u>2,183,780</u>	<u>5,337,316</u>	<u>1,651,455</u>
	<u>26,329,547</u>	<u>34,631,267</u>	<u>12,900,594^[3]</u>	<u>17,471,329</u>
Deposits with bank	<u>12,078,485^[1]</u>	<u>1,876,814</u>	<u>22,868,511^[4]</u>	<u>11,485,677^[4]</u>
Current liabilities				
Bank loans - secured	<u>29,235,842</u>	<u>30,276,809</u>	<u>34,310,180^[5]</u>	<u>34,614,197^[5]</u>

Notes:

- Restated/ Comparative figure as per the financial statements for the year ended 31 December 2005.
 - Market value of listed investment securities.
 - In Notes 9 and 11 to the financial statements for the year ended 31 December 2006, it was stated that on 2 January 2006, certain trading securities of the Company with carrying value of \$30,933,085 had been reclassified as available-for-sale equity securities because the management of the Company had changed its intention to hold the securities as long-term investment rather than for trading purpose.
 - Certain deposits with bank have pledged to bank for granting banking facilities of the Company and a related company.
 - Note 2 to Fact (5)(c).
- (e) The Company's statements of changes in equity showed, inter alia, the following particulars.

For the year ended	<u>2004/05</u> 31-12-2004 \$	<u>2005/06</u> 31-12-2005 \$	<u>2006/07</u> 31-12-2006 \$	<u>2007/08</u> 31-12-2007 \$
Total equity as at 1 January	119,941,269 ^[1]	124,774,470	111,605,857	135,681,577
Net income recognized directly in equity:				
Realization of valuation surplus of investment valuation reserve upon receipt of dividends				
	(58,240)	-	-	-
Written back for impairment loss on investment				
	-	(4,259,587)	-	-
Changes in fair value of available-for-sale securities				
	370,500 ^[1,2]	549,900 ^[2]	13,662,031	22,748,159
	312,260	(3,709,687)	13,662,031	22,748,159
	<u>4,520,941</u>	<u>(9,458,926)</u>	<u>10,413,689</u>	<u>18,260,056</u>
	<u>124,774,470</u>	<u>111,605,857</u>	<u>135,681,577</u>	<u>176,689,792</u>

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

Notes:

1. Restated figure as per the financial statements for the year ended 31 December 2005.

2. Balance sheets as at	31-12-2003	31-12-2004	31-12-2005
	\$	\$	\$
Available-for-sale equity securities, at cost – Listed in Hong Kong	<u>24,536</u>	<u>24,536</u>	
Market value of above listed securities	<u>663,000</u>	<u>1,033,500</u>	<u>1,583,400</u>
Changes in fair value of available-for-sale securities		<u>370,500</u>	<u>549,900</u>

(6) Based on the profits tax return for the year of assessment 2006/07, the Assessor raised the following 2006/07 profits tax assessment on the Company:

Assessable profits [Fact(5)(a)]	\$ <u>22,831</u>
Tax payable thereon	<u>3,995</u>

The Company did not object to the above assessment. The assessment became final and conclusive in terms of section 70 of the Inland Revenue Ordinance ('the Ordinance').

- (7) By a letter dated 1 December 2008 (Appendix E), the Assessor requested the Company to provide certain information in relation to its account and the adjustments made in the tax computation, in particular to the items of non-taxable gain and income, for the year of assessment 2004/05.
- (8) By a letter dated 1 December 2008 (Appendix F), the Assessor requested the Company to provide certain information in relation to its accounts and the adjustments made in the tax computation, in particular to the items of non-taxable gain and income, for the year of assessment 2005/06.
- (9) By a letter dated 22 July 2009 (Appendix G), the Assessor requested the Company to provide certain information in relation to the change of its intention to hold certain securities as long-term investment rather than for trading purpose during the year of assessment 2006/07 [Note 3 to Fact(5)(d)].
- (10) By a letter dated 12 November 2008 (Appendix H), the Assessor requested the Company to provide certain information in relation to its accounts and the adjustments made in the tax computation, in particular to the items of non-taxable gain and income, for the year of assessment 2007/08.

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

- (11) In the absence of the Company's reply to the Assessor's enquires in Facts(7) and (9), the Assessor raised the following Profits Tax assessments on the Company:

	<u>2004/05</u>	<u>2006/07</u>
	Original	Additional
	\$	\$
Profits per return [Fact(5)(a)]	649,061	22,831
<u>Add:</u> Interest income from other overseas investments/overseas held-to-maturity debt securities [Fact(5)(b)(iv)]	3,800,949	3,618,158
Gain on trading of offshore securities [Fact (5)(b)(v)]	43,093	928,532
Gain on trading of offshore derivatives [Fact(5)(b)(vi)]	1,585,880	-
Gain on trading of offshore held-to-maturity debt securities [Fact(5)(b)(vii)]	-	4,123,116
Assessable profits	<u>6,078,983</u>	8,692,637
<u>Less:</u> Profits previously assessed [Fact(6)]		22,831
Additional assessable profits		<u>8,669,806</u>
Tax payable thereon	<u>1,063,822</u>	<u>1,517,216</u>

- (12) The Company, through Mainfaith CPA Limited ('the Representative'), objected to the profits tax assessments in Fact (11) on the ground that the assessed profits exceeded the reported profits.

- (13) In support of the objection for the year of assessment 2004/05, the Representative provided the following information in response to the Assessor's enquiry at Appendix E [Fact(7)]:

- (a) The breakdown of the gain on disposal of trading securities and derivatives amounted to \$1,583,608 per accounts [Fact (5)(c)] was as follows:

	\$
Premium received for currency option transactions	6,969,358
Premium paid for currency option transactions	<u>(2,859,980)</u>
	4,109,378
Net loss of foreign exchange on exercising the currency option transactions	<u>(2,523,498)</u>
Gain on trading of offshore derivatives [Fact(5)(b)(vi)]	1,585,880 ^[1]
Loss on disposal of securities trading in Hong Kong stock exchange	(45,365) ^[2]
Gain on disposal of securities trading in overseas stock exchange [Fact(5)(b)(v)]	<u>43,093^[3]</u>
	<u>1,583,608</u>

Notes:

1. The contracts of the currency option transactions were entered into with Bank D which was incorporated in Country K. Therefore, the gain should not be subject to tax in Hong Kong.
2. The loss should be deductible as the securities were classified as trading securities and purchased for trading purpose. The loss was computed as follows:

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

Name of securities	Quantity	Cost \$	Sales proceeds \$	Gain/(Loss) \$
Company 8	68,947	1,472,018	1,528,082	56,064
Company 9	1,011,126	3,000,000	3,123,031	123,031
Company 10	400,400	2,000,000	2,074,482	74,482
Company 5	28,000	3,314,243	3,082,800	(231,443)
Company 11	29,920	1,922,360	1,854,861	<u>(67,499)</u>
				<u>(45,365)</u>

3. The gain should not be taxable as the securities were traded in overseas stock exchange and of offshore nature. The gain was computed as follows:

Name of securities	Quantity	Cost \$	Sales proceeds \$	Gain/(Loss) \$
Company 12	1,923	770,519	801,436	30,917
Company 13	243	777,789	786,970	9,181
Company 14	2,173	780,000	789,331	9,331
Company 15	6,892	779,957	773,621	<u>(6,336)</u>
				<u>43,093</u>

- (b) The breakdown of the unrealized gain on trading securities and derivatives amounted to \$145,079 per accounts [Fact(5)(c)] was as follows:

	\$
Unrealized gain on trading securities listed in Hong Kong stock exchange	1,279,124
Unrealized loss on trading securities listed in overseas stock exchange [Fact(5)(b)(i)]	(392,057)
Unrealized loss on trading of offshore derivatives [Fact(5)(b)(ii)]	<u>(741,988)</u>
	<u>145,079</u>

- (c) (i) The interest income from overseas investments of \$3,800,949 per accounts [Fact(5)(b)(iv) and (5)(c)] was derived from the equity-linked notes and accrual notes issued by various overseas financial institutions through Bank D. The financial institutions did not have any relationship with the Company in terms of its shareholding and directorship.
- (ii) The interest was the difference between the discounted price of the equity-linked notes and the repayment amount at maturity. The discounted amount was based on the prevailing interest rate and the risk of price fluctuation of the relevant securities linked to the financial instruments.
- (iii) All of the financial instruments were purchased through Bank D.
- (iv) As the issuing banks of the equity-linked notes and accrual notes were situated in overseas, the initial funds should be received by the banks

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

outside Hong Kong. Hence, the interest income should not be subject to tax in Hong Kong.

- (14) By a letter dated 21 December 2009 (Appendix I), the Assessor requested the Company to provide further information in relation to the gain on disposal of trading securities and derivatives [Fact(13)(a)], and the interest income from overseas investments [Fact(13)(c)] for the year of assessment 2004/05.
- (15) By a letter dated 25 August 2010 (Appendix J), the Assessor requested the Company to provide the information required at Appendix G [Fact(9)] and the information in relation to its accounts and the adjustments made in the tax computation, in particular to the items of non-taxable gain and income, and details of the equity securities classified as available-for-sale, for the year of assessment 2006/07.
- (16) By the letter dated 10 December 2012 (Appendix K), copied to the Representative, the Assessor invited the Company to make comments on the Fact (1) to (16) above and also asked it to provide:
- (a) information concerning the unrealized gain on other overseas investments of \$51,681 for the year of assessment 2004/05 [Facts(5)(b)(viii) and (5)(c)];
 - (b) the amount of bank overdraft and loan interest in respect of which the loans were secured by bank fixed deposits, and the amount of those deposits for the years of assessment 2006/07 and 2007/08 [Fact(5)(c)]; and
 - (c) a reply to the enquiries for the years of assessment 2004/05, 2005/06, 2006/07 and 2007/08 in Facts (8), (9), (10), (14) and (15).
- (17) The Assessor now proposes the profits tax assessments for the years of assessment 2004/05 to 2007/08 be revised as follows:

	<u>2004/05</u>	<u>2005/06</u>	<u>2006/07</u>	<u>2007/08</u>
	Original	Original	Additional	Original
	\$	\$	\$	\$
Profit/(Loss) per return [Fact(5)(a)]	649,061	(2,232,568)	22,831	(5,623,589)
Add: Interest income from other overseas Investments/ overseas held-to-maturity debt securities [Fact(5)(b)(iv)]	3,800,949	2,719,658	3,618,158	3,681,288
Gain on trading of offshore securities [Fact(5)(b)(v)]	43,093	1,073,080	928,532	-
Gain on trading of offshore derivatives [Fact(5)(b)(vi)]	1,585,880	2,628,192	-	-
Gain on trading of offshore held-to-maturity debt securities [Fact(5)(b)(vii)]	-	-	4,123,116	-
Unrealized gain on other overseas investments [Fact (5)(b)(viii)]	51,681	416,000	-	-

(2012-13) VOLUME 27 INLAND REVENUE BOARD OF REVIEW DECISIONS

	<u>2004/05</u> Original \$	<u>2005/06</u> Original \$	<u>2006/07</u> Additional \$	<u>2007/08</u> Original \$
Net realized and unrealized gain on trading securities and held-to-maturity debt securities [Fact(5)(b)(ix)]	-	-	-	1,495,101
Available-for-sale securities: transfer from equity on disposal [Fact(5)(b)(x)]	-	-	-	2,738,942
Changes in fair value of available-for-sale securities [Fact(5)(e)]	-	-	<u>283,283</u>	<u>398,258</u>
Bank interest income [Fact(5)(b)(iii)]	<u>6,130,664</u>	<u>4,604,362</u>	<u>22,637,951</u>	<u>25,438,159</u>
Less: Unrealized loss on trading of offshore securities [Fact(5)(b)(i)]	392,057	163,597	-	-
Unrealized loss on trading of offshore derivatives [Fact(5)(b)(ii)]	<u>741,988</u>	<u>1,111,441</u>	-	-
Assessable profits	<u>4,996,619</u>	<u>3,329,324</u>	<u>22,637,951</u>	<u>25,438,159</u>
Less: Profits already assessed [Fact(6)]			<u>22,831</u>	
Additional assessable profits			<u>22,615,120</u>	
Tax payable thereon (after tax reduction, if any)	<u>874,408</u>	<u>582,631</u>	<u>3,957,646</u>	<u>4,426,677</u>