

TEI Tax Summit 2016

Asia Pacific

Hong Kong

31 August 2016



Session 1: Raising the Bar

Obtaining Tax Treaty Relief in the BEPS Era



Speakers:

Brendan T. Kelly, China

John Walker, Australia

Amy Ling, China

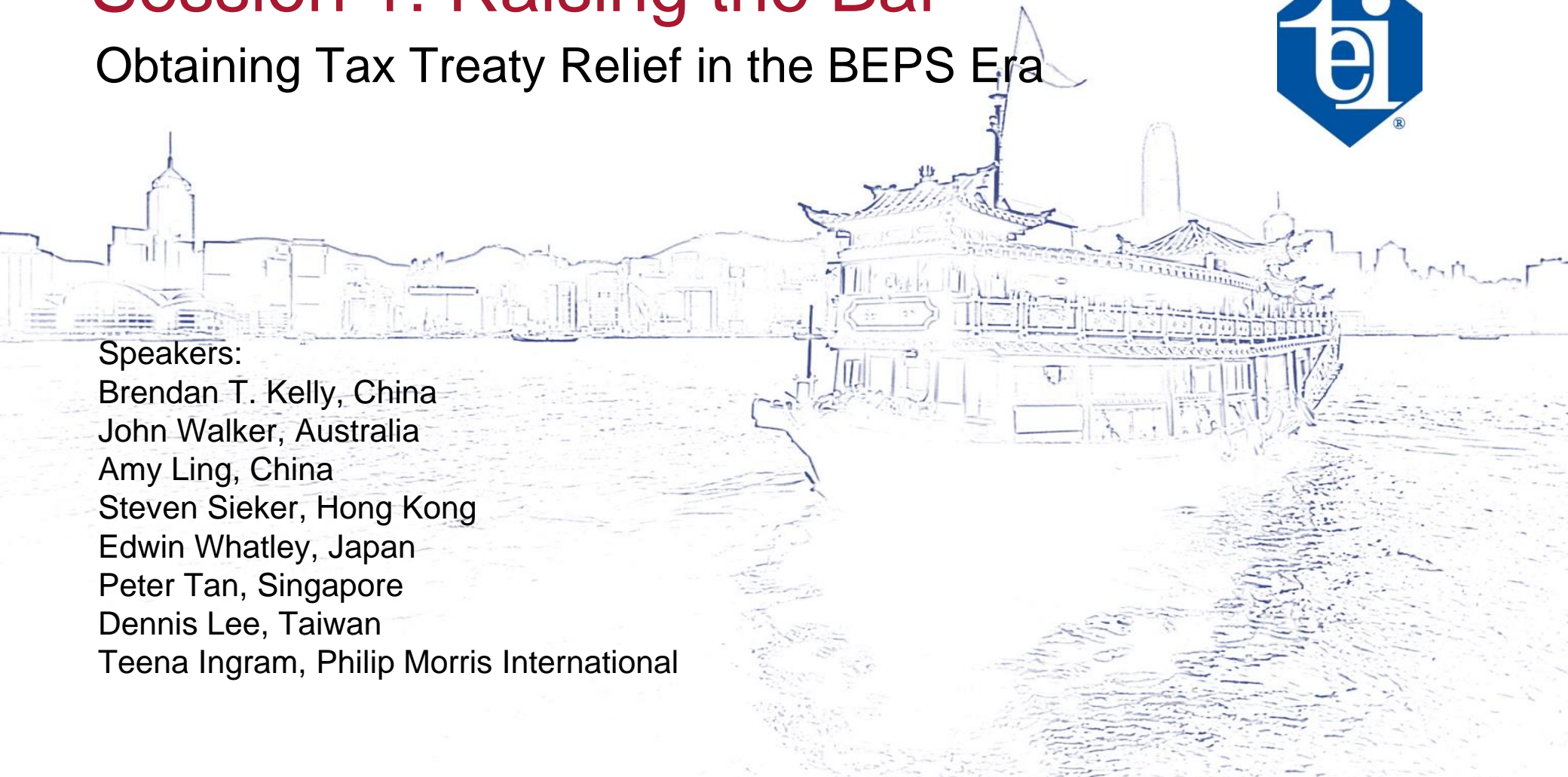
Steven Sieker, Hong Kong

Edwin Whatley, Japan

Peter Tan, Singapore

Dennis Lee, Taiwan

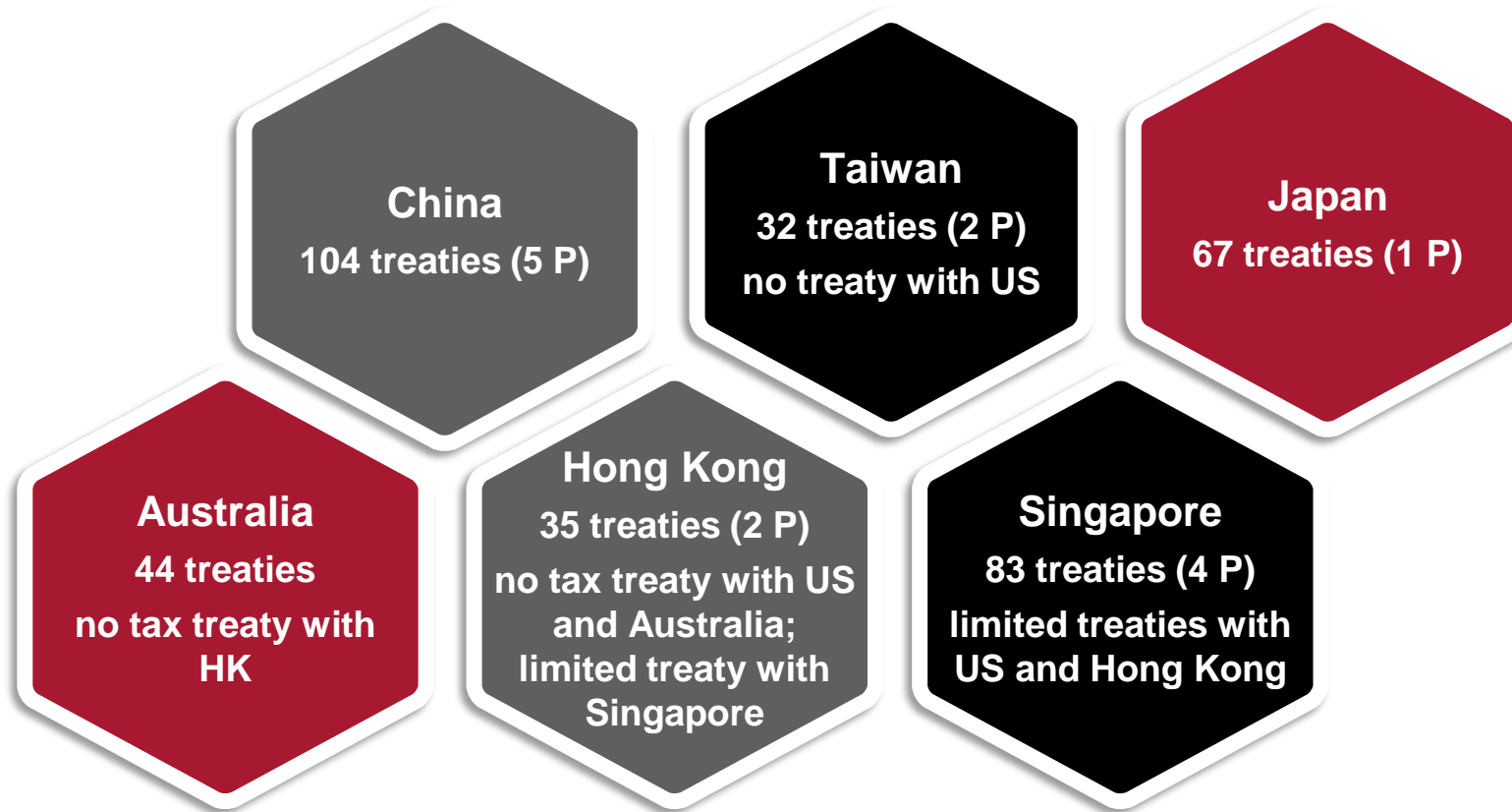
Teena Ingram, Philip Morris International



Agenda

- Treaty network
- Procedural rules for claiming tax treaty benefits
- Beneficial ownership vs. tax residency
- Challenges to get a tax residency certificate (TRC)
- Anti-abuse rules

Treaty Network



P: pending ratification

Procedural Rules for Claiming Tax Treaty Benefits

Japan

Advance filing before payments; refund feasible

China

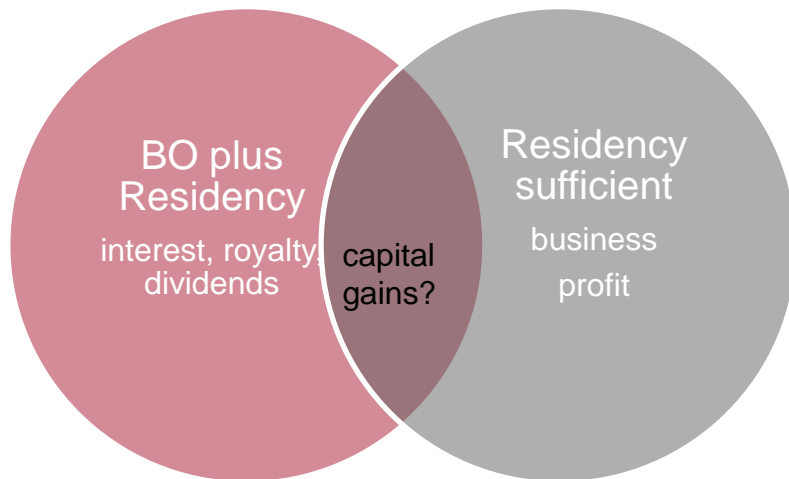
Recordal; scrutiny from tax authorities; refund?

Taiwan

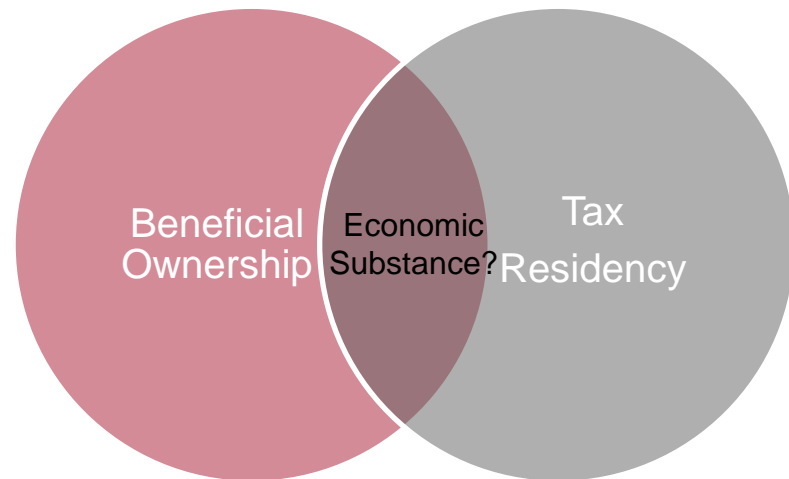
Advance approval

Beneficial Ownership vs. Tax Residency

Scope:

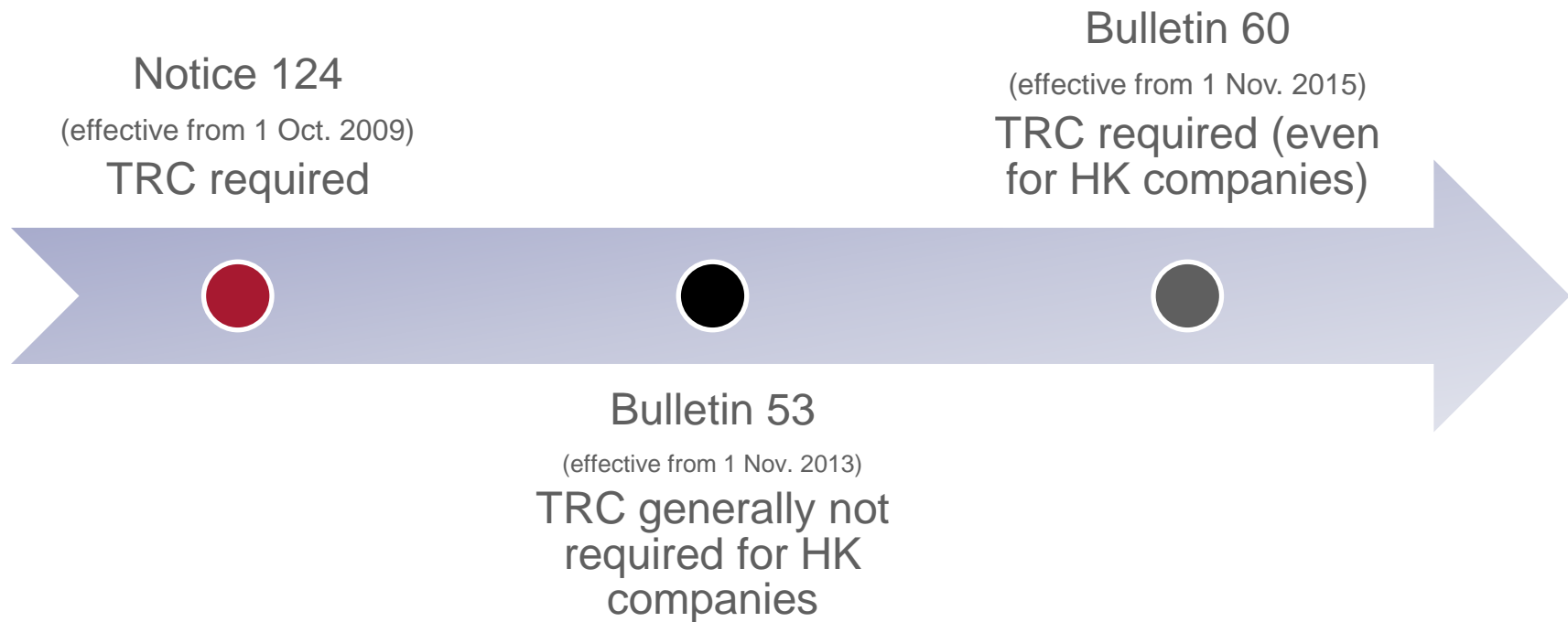


Requirements:



TRC: A Must?

A PRC example:



Challenges to Get A TRC: Singapore

Application for Certificate of Residence for Companies (For Tax Residents Only)



For paper application, the processing time is 14 working days. We encourage you to apply via myTax Portal at mytax.iras.gov.sg which will be processed within 7 working days.

The Certificate of Residence will be mailed to the company's registered address.

Note: - This Form may take you 5 minutes to fill in.

Please get ready the following information to fill in the Form:

- Company's particulars (see Part 1)
- Information pertaining to income derived from treaty country (see Part 2)

Only a one-page form



Part 1 – Company Particulars	
Name of company	<input type="text"/>
Tax reference no.	<input type="text"/>
Registered address	<input type="text"/>
Is the company a foreign-owned ¹ company?	Yes <input type="radio"/> No <input type="radio"/>
Is the company an investment holding company?	Yes <input type="radio"/> No <input type="radio"/>

Part 2 – Required Information Pertaining to Income Derived from Treaty Country	
Name of treaty country	<input type="text"/>
Nature of income derived	<input type="text"/>
Amount of income	S\$ <input type="text"/>
(If the amount of income to be remitted to Singapore cannot be ascertained, please provide an estimate of the income.)	
Name(s) of the foreign company / person paying the income	<input type="text"/>
Date(s) of remittance of income	<input type="text"/> (dd/mm/yyyy)
(Please complete Part 3 – Undertaking if the income has not been remitted to Singapore.)	
Year of Assessment for which the certificate is required	<input type="text"/>

Part 3 – Undertaking	
(To be completed only if the foreign income has not been remitted to Singapore)	
We undertake that the foreign income will be remitted and declared for Singapore Income Tax purposes. The expected year of remittance is <input type="text"/> (yyyy).	

Part 4 – Declaration	
We confirm that the control and management of the company for the whole of <input type="text"/> (yyyy) has been / will be ² exercised in Singapore.	
(Confirmation on control and management of the company is on a preceding calendar year basis. For example, if the certificate required is for Year of Assessment 2015, the year to be confirmed is 2014.)	
We confirm that the application is made for the purpose of claiming benefit under the Avoidance of Double Taxation Agreement.	
We confirm that the company is the beneficial owner of the income.	
Full name of person making the application	<input type="text"/>
Capacity of person making the application	<input type="text"/>
Signature	<input type="text"/> Date of application: <input type="text"/>
Contact person	<input type="text"/> Contact Number: <input type="text"/>

¹ A foreign-owned company refers to a company where 50% or more of its share capital is held by foreign companies / individuals.
² Delete where not applicable.

Under the Singapore Income Tax Act, there are penalties for making a false or incorrect declaration.

55 Newton Road, Revenue House, Singapore 307987
Telephone: 1800-356 8622 Facsimile: 6351 4360 www.iras.gov.sg

Part 1 – Company Particulars	
Name of company	<input type="text"/>
Tax reference no.	<input type="text"/>
Registered address	<input type="text"/>
Is the company a foreign-owned ¹ company?	Yes <input type="radio"/> No <input type="radio"/>
Is the company an investment holding company?	Yes <input type="radio"/> No <input type="radio"/>

Part 2 – Required Information Pertaining to Income Derived from Treaty Country	
Name of treaty country	<input type="text"/>
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Name(s) of the foreign company / person paying the income	<input type="text"/>
Date(s) of remittance of income	<input type="text"/> (dd/mm/yyyy)
(Please complete Part 3 – Undertaking if the income has not been remitted to Singapore.)	
Year of Assessment for which the certificate is required	<input type="text"/>

Challenges to Get A TRC: Hong Kong



INLAND REVENUE DEPARTMENT

Tax Treaty Section
Revenue Tower
5 Gloucester Road
Wan Chai, Hong Kong
GPO Box 132, Hong Kong
Telephone No. 2594 1500

Application for Certificate of Resident Status Company, Partnership, Trust or other Body of Persons

To : The Hong Kong Competent Authority

IRD File No. (if any) _____

I submit an application for a certificate of resident status for the purpose of claiming tax benefits under the Agreement between the Hong Kong Special Administrative Region of the People's Republic of China and _____ (state the name of "the Contracting Party") for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income / Income and Capital ("the Agreement"). (Note 1)

(1) Calendar Year(s) of Claim _____

(2) Particulars of Applicant

(a) Name of Company / Partnership / Trust / Body of Persons _____

(b) Particulars of Establishment of Company / Partnership / Trust / Body of Persons (Note 2)

(i) Place where it was incorporated / established _____

(ii) Date on which it was incorporated / established _____

(iii) Hong Kong Business Registration Number (if any) _____

(iv) Registration Number with the Hong Kong Companies Registry (if any) _____

(c) Business Address in Hong Kong _____

(d) Postal Address in Hong Kong _____

(e) Serial Number of the latest certificate of resident status issued (if any) _____

(f) Name and Telephone Number of Contact Person in Hong Kong _____

(3) Business Operation during the Calendar Year(s) of Claim

(a) Nature of Business _____

(b) (i) Location of Headquarters _____

(ii) Locations of Main Branches _____

(c) Management and Other Staff

	Number of persons with fixed place of residence in Hong Kong	Number of persons residing outside Hong Kong or without fixed place of residence in Hong Kong
Directors / Partners / Trustees	_____	_____
Senior Management Personnel	_____	_____
Other Staff	_____	_____

(d) Full Details of the Establishment and Business Activities must be provided in the Appendix

(4) Income for which tax benefits under the Agreement are to be claimed in the Contracting Party

Nature and Amount of the Income for each year of claim _____

Name and Address of the Beneficial Owner of the Income (Note 3) _____

(5) Declaration

I hereby declare that the information provided and documents attached, which may be disclosed to the tax authorities of the Contracting Party for the purposes of applying the provisions of the Agreement, are true, correct and complete.

Name _____ Signature _____

(Person signing the form)

Designation _____ Date _____

(Position held) (Note 4)

[Heavy penalties may be incurred under section 80(2D) of the Inland Revenue Ordinance for giving incorrect information]

IR1313B (10/2015)

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(3) Business Operation during the Calendar Year(s) of Claim

(a) Nature of Business _____

(b) (i) Location of Headquarters _____

(ii) Locations of Main Branches _____

(c) Management and Other Staff

	Number of persons with fixed place of residence in Hong Kong	Number of persons residing outside Hong Kong or without fixed place of residence in Hong Kong
Directors / Partners / Trustees	_____	_____
Senior Management Personnel	_____	_____
Other Staff	_____	_____

(d) Full Details of the Establishment and Business Activities must be provided in the Appendix

Challenges to Get A TRC: Hong Kong (cont'd)

PERSONAL INFORMATION COLLECTION STATEMENT

The information provided by you will be used for purposes relating to the administration of tax laws in this Department. This Department may give some of the information to other parties authorized by law to receive it. Except where there is an exemption provided under the Personal Data (Privacy) Ordinance, you have the right to request access to and correction of your personal data. A request for access to and correction of your personal data should be addressed in writing to the Assessor (Tax Treaty), GPO Box 132, Hong Kong. Please also quote your file number in this Department.

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Notes

1. The Hong Kong competent authority may refuse to issue a certificate of resident status where it is clear that the applicant would not be entitled to the tax benefits under the Agreement. Upon receipt of an application, the Hong Kong competent authority will examine the information supplied and may request further information from the applicant, and if the case is justified, will issue a certificate of resident status. The processing of the application normally requires 21 working days. Generally, the certificate of resident status will be sent by ordinary mail to the applicant's postal address unless the applicant requests to collect it in person. Applicant should be aware that issue of a certificate of resident status will not guarantee a successful claim for the tax benefits under the Agreement. The decision as to whether the tax benefits can be granted is, ultimately, one to be made by the tax authorities of the Contracting Party. It will be up to the tax authorities of the Contracting Party to determine whether all the relevant conditions are fulfilled and whether the tax benefits can be granted.
2. The form should be accompanied by:
 - (a) a copy of the certificate of incorporation and if any, a copy of the certificate of change of name, if the applicant is a company;
 - (b) a certified true copy of the partnership agreement and the particulars of each partner during the calendar year(s) of claim, including the name, Hong Kong identity card number / business registration number and address, if the applicant is a partnership;
 - (c) a certified true copy of the trust deed if the applicant is a trust; or
 - (d) a certified true copy of the constitution if the applicant is a body of persons; unless a copy of the same has been provided in another application and the relevant reference number of that application is provided by the applicant in item 5 of the Appendix.
3. Where the applicant, for example, is a recipient of dividends, interest or royalties and its right to use and enjoy the income is constrained by a contractual or legal obligation to pass on the payment received to another person, the applicant is not the beneficial owner and the name and address of the beneficial owner of that income have to be provided. The agent, nominee or conduit company acting as a fiduciary or administrator is not regarded as the beneficial owner.

Challenges to Get A TRC: Hong Kong (cont'd)

Appendix

This Appendix and the Application for Certificate of Resident Status (IR1313B) should be signed and submitted together. If space provided is insufficient, please continue on additional sheet(s).

IRD File No. (if any) _____ Calendar Year(s) of Claim _____

Part 1 This part must be completed by the applicant.

1. Confirm whether all income are passive income or derived outside Hong Kong.

2. State the place where the business is normally carried on and the nature of business activities carried on in each territory or country. Provide the business address of the establishment in each territory or country.

3. If no employer's return was submitted to the Inland Revenue Department, provide a list of staff employed in Hong Kong, if any, showing their names, Hong Kong identity card numbers and total remuneration for each calendar year of claim. In case employer's returns have already been submitted to the Department for the calendar year(s) of claim, provide the file reference under which the employer's returns were submitted.

4. State the place where the management and control of the company / partnership / trust / body of persons was exercised for each calendar year(s) of claim. If there was more than one location in which the company / partnership / trust / body of persons was managed and controlled, state the names of those territories or countries. Indicate which territory or country was the place where the company / partnership / trust / body of persons was centrally managed and controlled.

5. Provide any supplementary information below. (e.g. the reference number required in note 2 of the form)

Part 2 This part must be completed if the applicant was incorporated / established in Hong Kong and did not have more than 2 members (e.g. shareholders) and was neither a statutory corporation / body nor part of a listed group.

6. In respect of the establishment in each territory or country, provide a table showing the number of staff and their respective duties.

7. State the business commencement date in Hong Kong.

8. For each director / partner / trustee / principal officer, provide his / her nationality, residential address, key responsibilities and the place where he / she performed the duties.

9. For each meeting of directors / partners / trustees / supervisory body held during the calendar year(s) of claim, provide date of the meeting, names of the directors / partners / trustees / principal officers who attended the meeting, place where the meeting was held, and description of the subject matters discussed and resolutions passed.

Page 3



Part 1 This part must be completed by the applicant.

1. Confirm whether all income are passive income or derived outside Hong Kong.

2. State the place where the business is normally carried on and the nature of business activities carried on in each territory or country. Provide the business address of the establishment in each territory or country.

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5. Provide any supplementary information below. (e.g. the reference number required in note 2 of the form)

Challenges to Get A TRC: Hong Kong (cont'd)

10. Identify the principal bankers of the company / partnership / trust / body of persons in Hong Kong and state the total number of bank accounts maintained in Hong Kong.

11. Describe the nature of permanent establishment maintained in Hong Kong and provide the value of fixed assets and balance of cash at bank stated in the statement of financial position as at the end of the last reporting period.

Part 3 This part must be completed if the applicant was incorporated / established outside Hong Kong.

12. In respect of the establishment in each territory or country, provide a table showing the number of staff and their respective duties.

13. State the business commencement date in Hong Kong. Confirm whether the date was the same as the business commencement date reported to the Business Registration Office of the Inland Revenue Department and the date of establishment of the place of business in Hong Kong reported to the Hong Kong Companies Registry. Explain with reasons if the above dates do not match with each other.

14. For each director / partner / trustee / principal officer, provide his / her nationality, residential address, key responsibilities and the place where he / she performed the duties.

15. For each meeting of directors / partners / trustees / supervisory body held during the calendar year(s) of claim, provide date of the meeting, names of the directors / partners / trustees / principal officers who attended the meeting, place where the meeting was held, and description of the subject matters discussed and resolutions passed.

16. Identify the principal bankers of the company / partnership / trust / body of persons in Hong Kong and state the total number of bank accounts maintained in Hong Kong.

17. Describe the nature of permanent establishment maintained in Hong Kong and provide the value of fixed assets and balance of cash at bank stated in the statement of financial position as at the end of the last reporting period.

18. Provide full details of how, where and by whom, as appropriate, the following activities were carried out:

- (a) formulation of strategic policies;
- (b) determination of business directions;
- (c) setting work plans;
- (d) decision on mode of business financing;
- (e) implementation of management policies / directions / work plans; and
- (f) evaluation of business performance.

Name _____ Signature _____

(Person signing the form)

Designation _____ Date _____

(Position held)

Page 4



Part 3 This part must be completed if the applicant was incorporated / established outside Hong Kong.

12. In respect of the establishment in each territory or country, provide a table showing the number of staff and their respective duties.

13. State the business commencement date in Hong Kong. Confirm whether the date was the same as the business commencement date reported to the Business Registration Office of the Inland Revenue Department and the date of establishment of the place of business in Hong Kong reported to the Hong Kong Companies Registry. Explain with reasons if the above dates do not match with each other.

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Anti-Abuse Rules

Domestic anti-abuse rules override treaty provisions

- Australia:

General anti-avoidance rule;
Multinational anti-avoidance rule (MAAL)

Combination of domestic and treaty anti-abuse rules

- China

Domestic General anti-avoidance rule;
Main purpose test under treaty;
“Catch-all” provision

- Taiwan

Focus on treaty anti-abuse rules

- Japan

Limitation on benefits rules;
Anti-conduit provision

- Singapore

Limitation of relief clause

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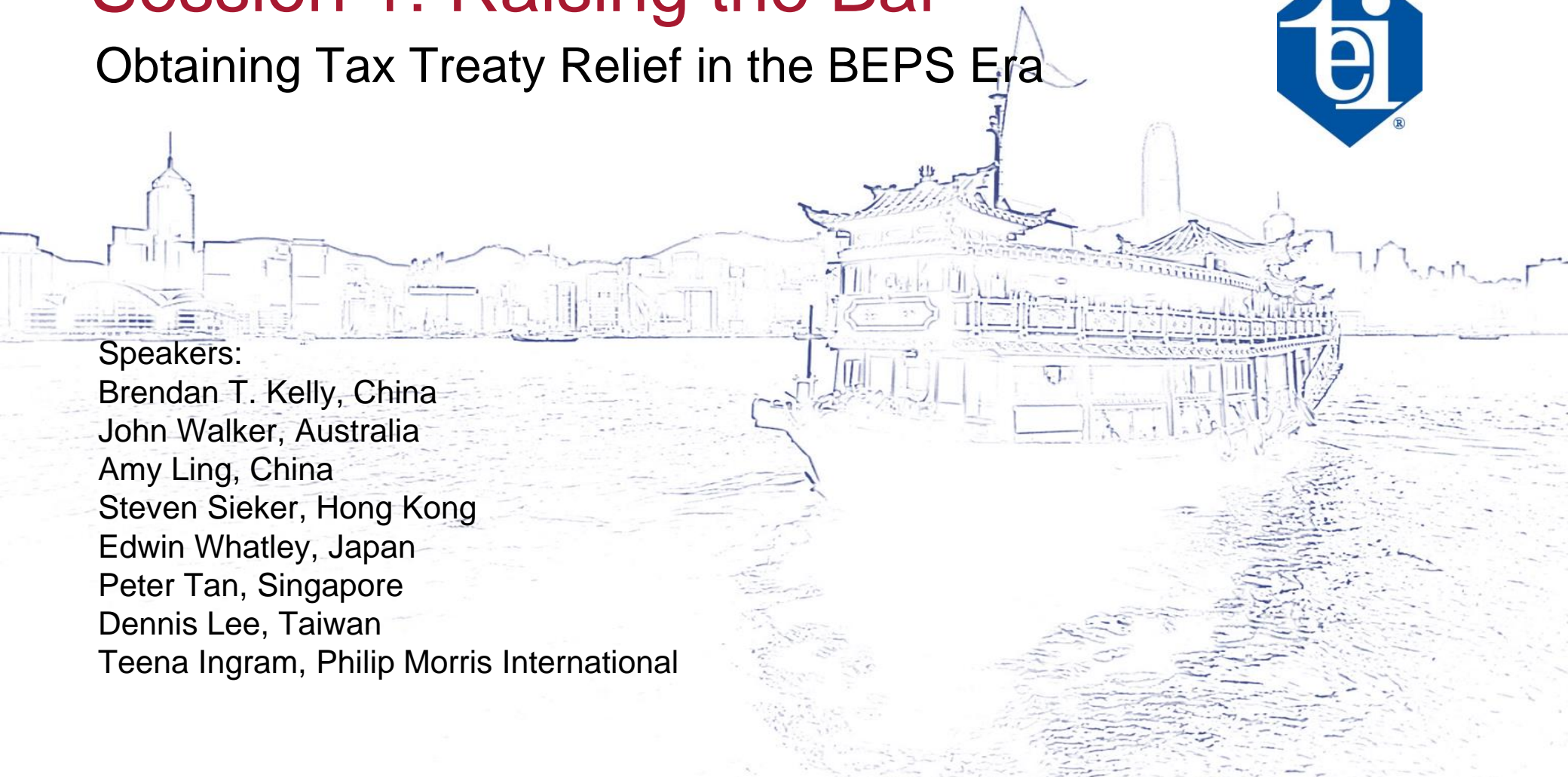
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