



Key Hong Kong Tax Develop ments

27 February 2017





Agenda

A

Key Hong Kong Tax Developments

- 1) Base Erosion and Profit Shifting
- 2) Corporate Treasury Centre
- 3) Offshore Private Equity Fund Exemption
- 4) Comprehensive Double Taxation Agreements

B

Q&A Session

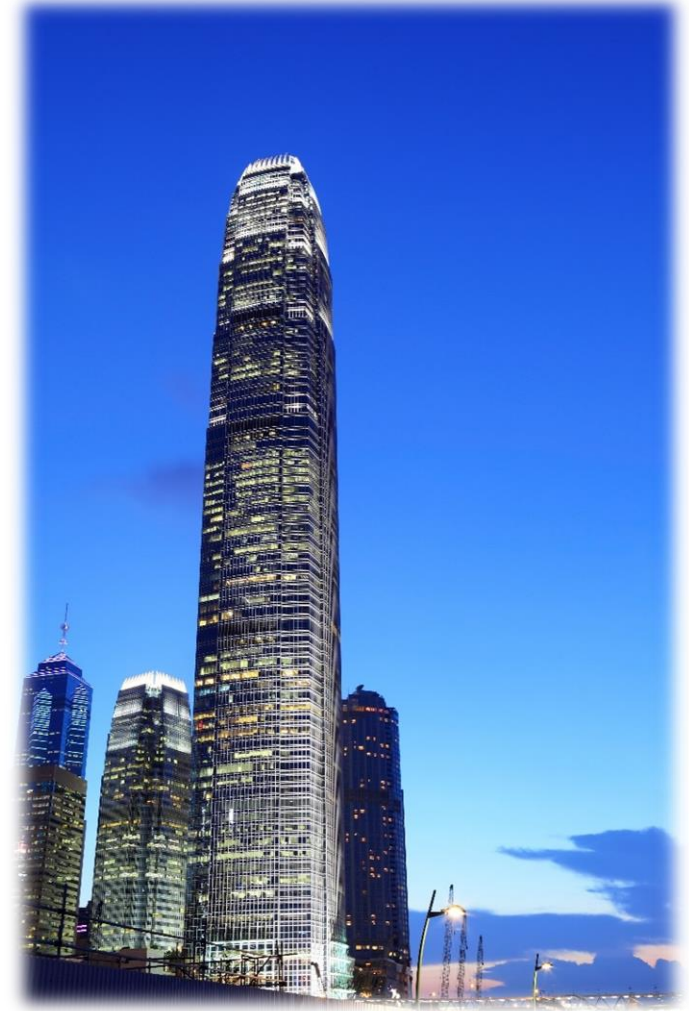
01

Base Erosion and Profit Shifting



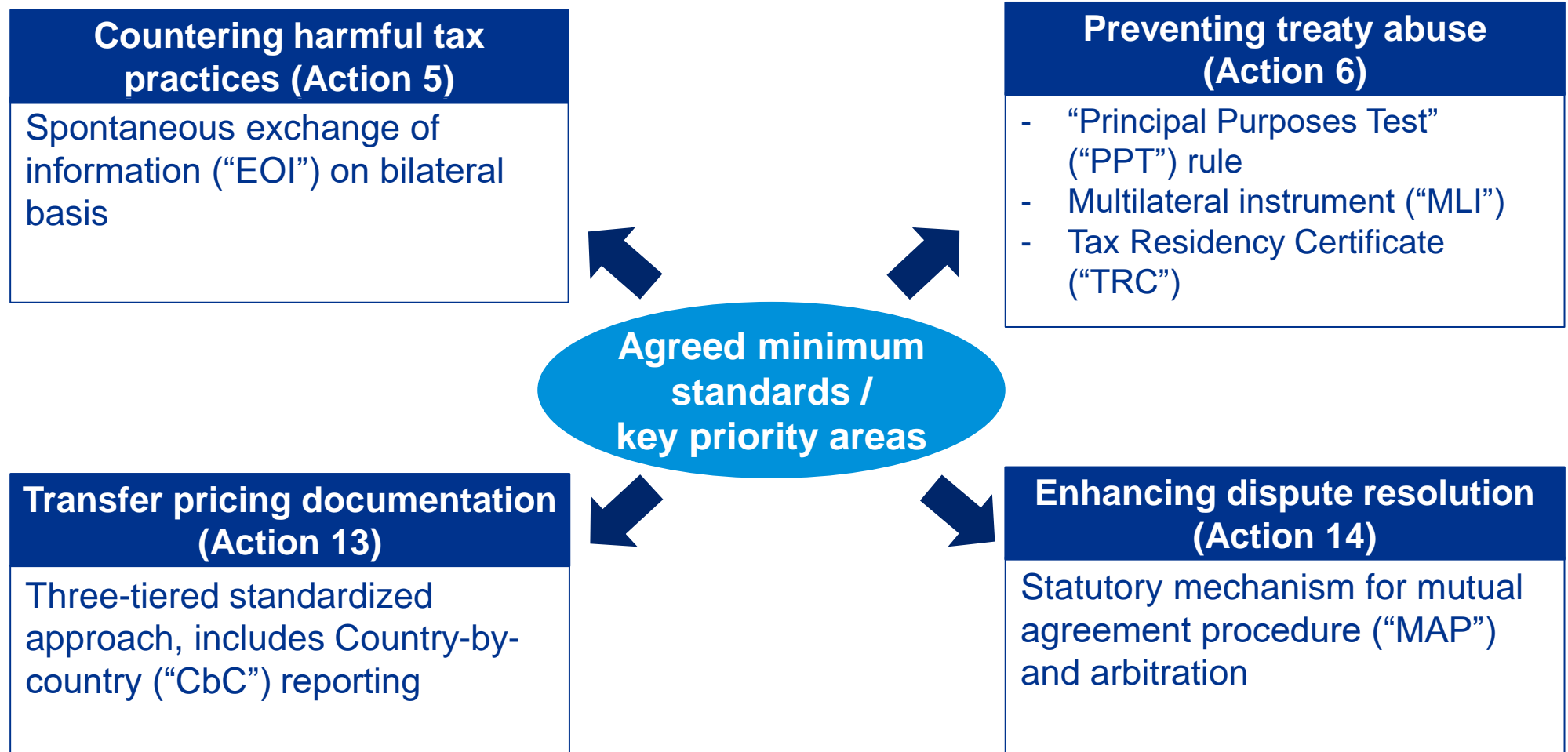
Base Erosion and Profit Shifting in Hong Kong

- **Key BEPS themes**
 - Aligning the taxation outcome with economic value creation
 - Prevention of treaty abuse
 - Information transparency
- **Deficiencies in the current tax regime:**
 - Provisions in the Inland Revenue Ordinance (“IRO”) can be difficult to apply in practice (e.g. s 61A)
 - Departmental Interpretation and Practice Notes (“DIPN”)
 - Not legally binding – only IRD administrative practices
 - Lack of transfer pricing rules – only DIPN 46



Base Erosion and Profit Shifting in Hong Kong

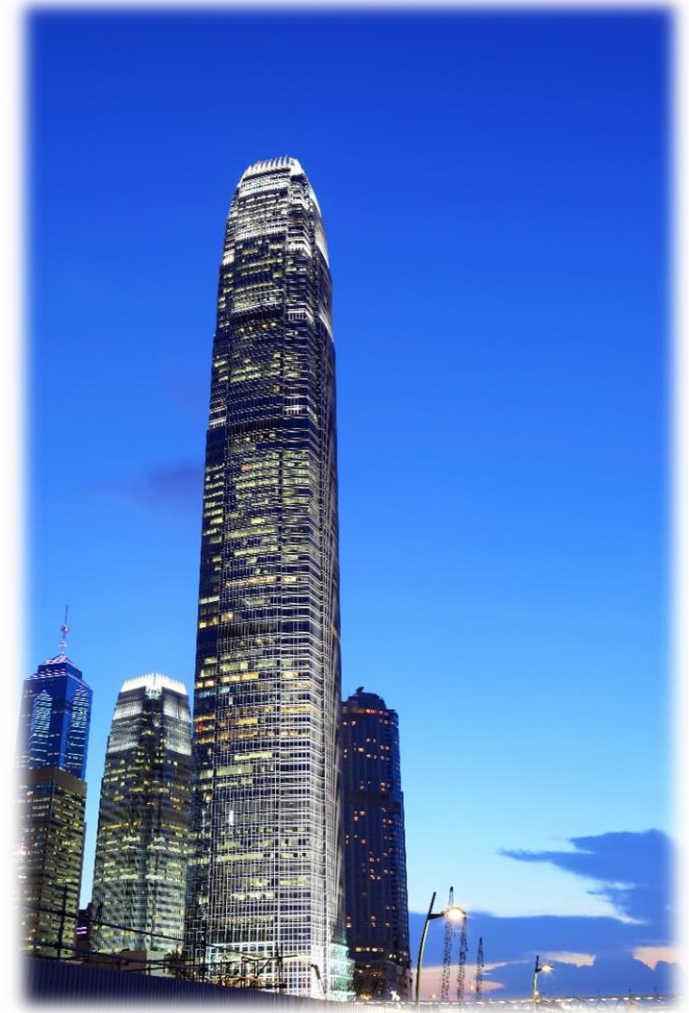
Hong Kong's position: To align tax system with international standards while upholding simple and low tax regime



Base Erosion and Profit Shifting in Hong Kong

Hong Kong initiatives:

- **Proposed transfer pricing regulatory regime:**
 - Transfer pricing is a key pillar of BEPS enforcement
 - Empowers the IRD to adjust profits / losses when a tax advantage is created through non-arm's length related party transaction
 - Codifies transfer pricing documentation requirement
 - Provides penalties for incorrect tax returns arising from non arm's length pricing among associated parties
 - Statutorily provides for advanced pricing arrangement ("APA")
- **Automatic Exchange of Financial Account Information**
- **Participation in MLI as part of global BEPS effort to address treaty abuse**
- **IRD's process for granting Tax Residency Certificates**

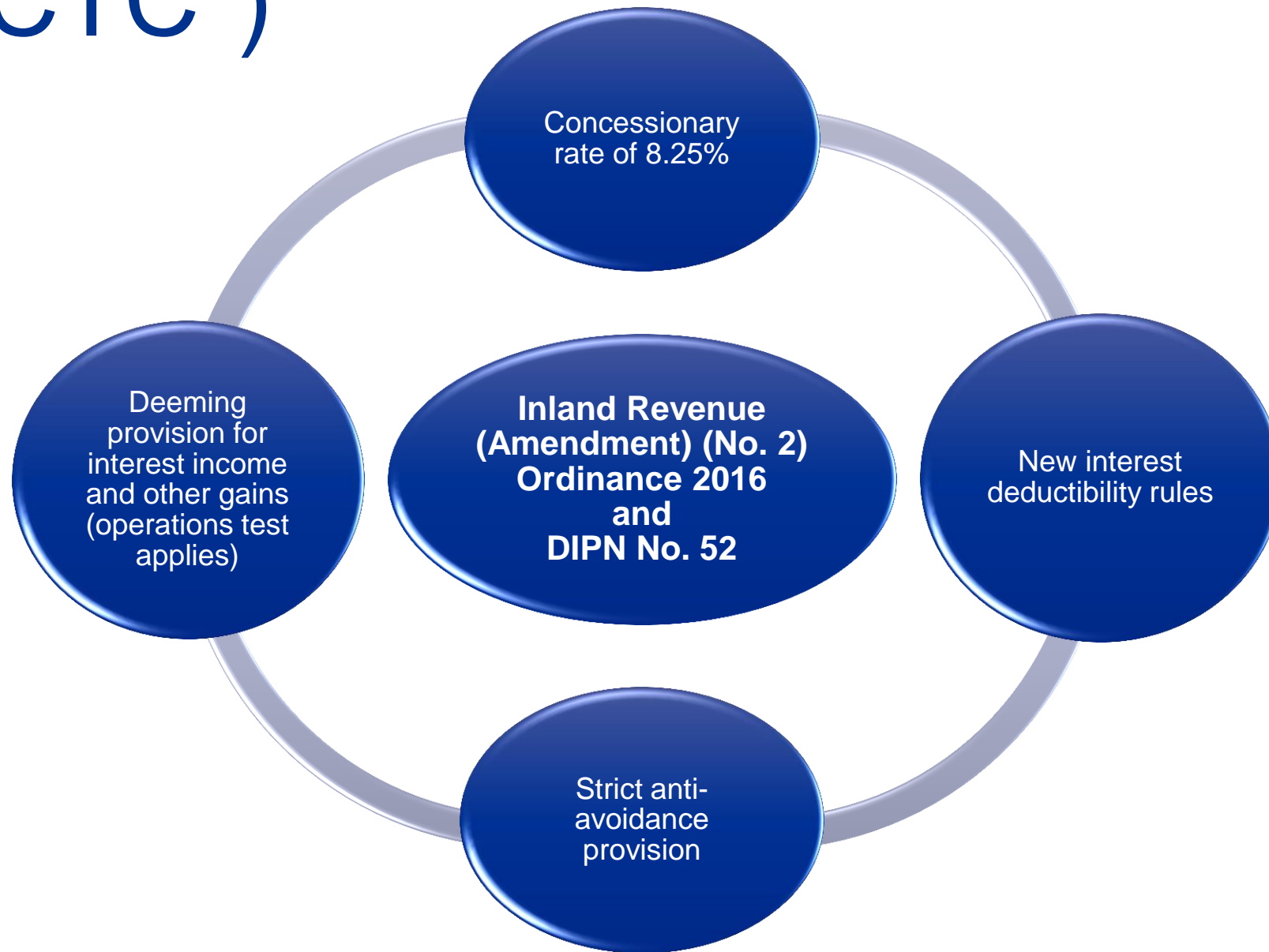


02

Corporate Treasury Centre



Corporate Treasury Centre ("CTC")



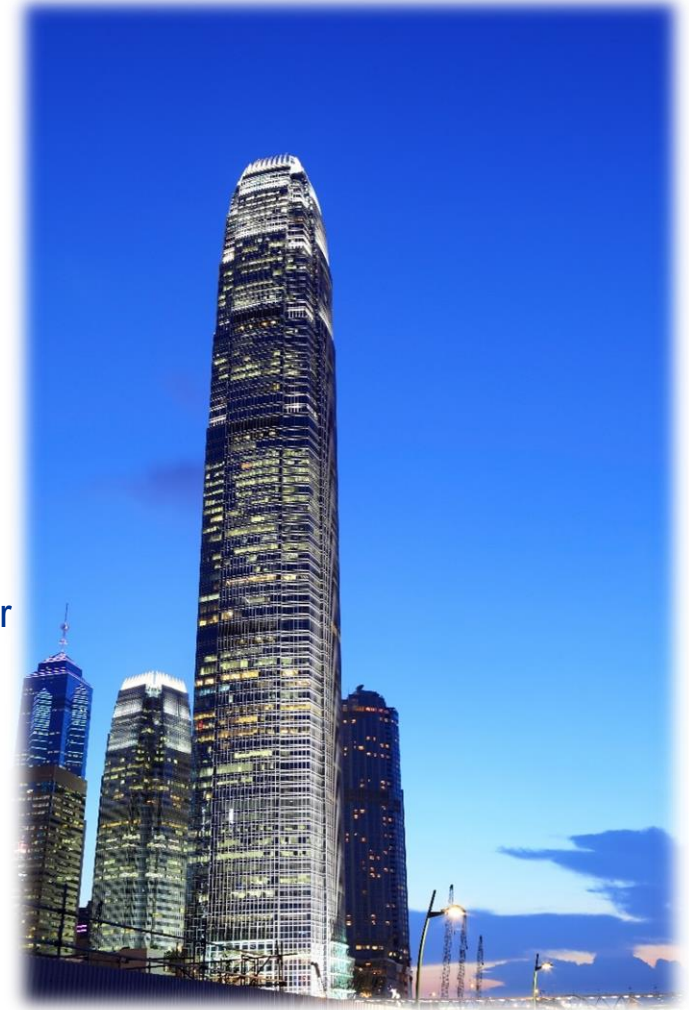
Corporate Treasury Centre

DIPN 52 sets a high threshold for ‘intra-group financing business’

- The IRD would generally accept that a corporation is carrying on an intra-group financing business if:
 - The corporation has not less than four borrowing or lending transactions each month;
 - Each borrowing or lending transaction exceeds HK\$250,000; and
 - Borrowing or lending transactions are with not less than four associated corporations in the relevant basis period of a tax year

Implications of DIPN 52

- Intention is that no new source taxation principles are introduced
- ‘Provision of credit test’ should continue to apply to simple intra-group loans of funds
- Ultimately there should be no cause for concern, assuming the IRD follows DIPN 52



03

Offshore Private Equity Fund Exemption



Offshore Private Equity Fund Exemption

The Inland Revenue (Amendment) (No. 2) Ordinance 2015 (“July 2015 legislation”) was gazetted in July 2015.

Before enactment of July 2015 legislation:

- ☐ Non-resident funds deriving profits from specified transactions / transactions incidental to the carrying out of the specified transactions are exempt from profits tax
 - “Specified transactions” excludes transactions in securities of “excepted private companies” or a SPV
 - “Specified persons” are required to be licensed and authorized financial institutions registered under the Securities and Futures Ordinance.
- ☐ PE funds not eligible for the exemption

After enactment of July 2015 legislation:

- ☐ “Specified transactions” include transactions in securities of an “excepted private company” (“EPC”)
- ☐ Offshore PE Funds not managed by “specified persons” are eligible for a profits tax exemption if it is a qualifying fund
- ☐ SPVs (including HK SPVs and interposed SPVs) are exempted from profits tax on gains from “specified transactions” subject to satisfying certain conditions:
 - SPV was established for sole purpose of holding and administering one or more EPC
 - SPV is unable to perform any activities, except those restricted by the IRD

Offshore Private Equity Fund Exemption

DIPN 43 and DIPN 51

Carried interest:

- ☐ Investment manager or advisor to be adequately compensated and to receive an arm's length return for the services that it performs
 - Fees based on cost-plus formula are unlikely to be sufficient
- ☐ A portion of carried interest paid by PE Funds should be attributed to the Hong Kong investment advisor
- ☐ Considered as a service fee/ employment income and potentially taxable in Hong Kong, unless the carried interest represents an arm's length return on a genuine investment in an offshore PE fund
 - However, no details available on what would constitute a genuine investment or an arm's length return on such an investment

SPV and TRCs

- Intention was that SPVs could access HK DTA network – Issues often arise in obtaining TRCs from the IRD

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Comprehensive Double Taxation Agreements



Comprehensive Double Taxation Agreements (“CDTAs”)

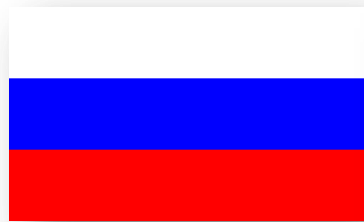
37 CDTAs signed by Hong Kong as of 17 February 2017

Austria	Belarus *	Belgium	Brunei	Canada	China
Czech Republic	France	Guernsey	Hungary	Indonesia	Ireland
Italy	Japan	Jersey	Korea	Kuwait	Latvia *
Liechtenstein	Luxembourg	Malaysia	Malta	Mexico	Netherlands
New Zealand	Pakistan *	Portugal	Qatar	Romania	Russia
South Africa	Spain	Switzerland	Thailand	United Arab Emirates	United Kingdom
Vietnam					

* Not yet in force

Comprehensive Double Taxation Agreements (“CDTAs”)

New CDTAs signed



Jurisdiction	Russia	Latvia	Belarus	Pakistan
Date of signature	18 January 2016	13 April 2016	16 January 2017	17 February 2017
Date of entry into force	29 July 2016	Pending	Pending	Pending
Effective from	Year of Assessment 2017/2018	Pending	Pending	Pending

Q & A Session





Thank you

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