

# Thailand

Thailand has met all aspects of the terms of reference (OECD, 2021<sup>[3]</sup>) (ToR) for the calendar year 2021 (year in review), except for having a domestic legal framework allowing spontaneous exchange of information on rulings (ToR II.B.1). Thailand receives one recommendation on this point for the year in review.

In the prior year's peer review report, Thailand had received three recommendations. Thailand has resolved two of these issues, regarding identifying future rulings within the scope of the transparency framework (ToR I.A.1.2) and the timely exchange of information on past and future rulings (ToR II.B.6). The other recommendation has not been fully addressed and remains in place.

Thailand can legally issue one type of rulings within the scope of the transparency framework.

In practice, Thailand issued rulings within the scope of the transparency framework as follows:

Type of ruling	Number of rulings
Past rulings	182
Future rulings in the period 1 April 2018 – 31 December 2018	36
Future rulings in the calendar year 2019	157
Future rulings in the calendar year 2020	23
Future rulings in the year in review	21

As no exchanges took place, no peer input was received in respect of the exchanges of information on rulings received from Thailand.

## Information gathering process (ToR I.A)

1204. Thailand can legally issue the following type of rulings within the scope of the transparency framework: preferential regimes.<sup>1</sup>

### ***Past rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1, I.A.2.2)***

1205. For Thailand, past rulings are any tax rulings within scope that are issued either: (i) on or after 1 January 2016 but before 1 April 2018; or (ii) on or after 1 January 2014 but before 1 January 2016, provided they were still in effect as at 1 January 2016.

1206. In the prior years' peer review reports, it was determined that Thailand's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Thailand's undertakings in this regard remain unchanged, and therefore continue to meet the minimum standard.

### ***Future rulings (ToR I.A.1.1, I.A.1.2, I.A.2.1)***

1207. For Thailand, future rulings are any tax rulings within scope that are issued on or after 1 April 2018.

1208. In the prior year's peer review report, it was noted that Thailand found that the database for future rulings issued in 2019 and 2020 might be incomplete due to a technical issue when migrating data from paper into the database. Therefore, Thailand was recommended to strengthen its information gathering process identifying all future rulings within the scope of the transparency framework.

1209. Thailand reports that it has revised steps and procedures for identifying future rulings and potential exchange jurisdictions, as follows. The Large Business Tax Administration Division (LBTAD) reviews all applications of International Business Centres (IBC), which is the regime on which Thailand issues tax rulings in scope of the Action 5 transparency framework. As part of its review, the LBTAD maintains a control worksheet that contains all information on the IBC and its related foreign parties. On a monthly basis, the LBTAD verifies whether the IBC control worksheet is in line with the IBC database. Any discrepancy identified are then corrected before the completed list of rulings is sent to the Exchange of Information (EOI) Unit. The EOI Unit receives the list of future rulings at the beginning of each month from the LBTAD. The list is then cross checked with the IBC database in order to ensure that each ruling is identified. The EOI Unit identifies all relevant jurisdictions by using the information included in the control worksheet. As Thailand has now strengthened this process, the recommendation on this point is removed.

### ***Review and supervision (ToR I.A.3)***

1210. In the prior years' peer review reports, it was noted that Thailand identified a technical issue with the database for future rulings issued in 2019 and 2020. Therefore, Thailand was therefore recommended to strengthen its review and supervision mechanism to ensure that the information gathering process is working effectively.

1211. Thailand reports procedures have now been strengthened. The Director of the Large Business Tax Administration Division supervises the gathering, verifying, and uploading the information into the IBC database and IBC control worksheet. The Director of the International Tax Affairs Centre supervises the exchange of information process done by the EOI Unit. Therefore, therefore the recommendation on this point is now removed.

## Conclusion on section A

1212. Thailand has met all of the ToR for the information gathering process and no recommendations are made.

## Exchange of information (ToR II.B)

### Legal basis for spontaneous exchange of information (ToR II.B.1, II.B.2)

1213. In the prior years' peer review reports, it was determined that Thailand did not have the necessary domestic legal basis to exchange information spontaneously. Thailand notes that there is a legal impediment that prevents the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard. In particular, Section 10 of the Revenue Code protects taxpayers' information from disclosure to any other persons unless there is a power to do so under the law. As tax rulings concern the information of taxpayers, Thailand is prohibited to exchange them to treaty partners without requests.

1214. Thailand reports that it has now implemented a new legal provision with respect to exchange of information to address this issue, involving an amendment to Section 10 of the Revenue Code. The amendments entered into effect on 25 January 2022, and Thailand have commenced the relevant exchanges regarding the Action 5 transparency framework as of that date. This will be taken into account in next year's peer review. The recommendation for the year in review remains. Thailand is recommended to finalise the amendments to put the domestic legal basis in place to commence exchanges as soon as possible.

1215. Thailand has international agreements permitting spontaneous exchange of information, including: (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011<sup>[1]</sup>) ("the Convention") and (ii) bilateral agreements in force with 61 jurisdictions.<sup>2</sup> Thailand signed the Convention on 3 June 2020 and deposited its instrument of ratification on 22 December 2021. The Convention entered into force on 1 April 2022 and will have effect for administrative assistance related to taxable periods beginning on or after 1 January 2023.

### Completion and exchange of templates (ToR II.B.3, II.B.4, II.B.5, II.B.6, II.B.7)

1216. In the prior year's peer review report, it was noted that although the appropriate process for the completion and exchange of templates has been implemented, in practice, the Thailand Revenue Department lacked the appropriate resources to be able to complete all templates in accordance with the timelines under the transparency framework. Thailand now confirms that all templates have been completed for past and future rulings issued in and before the year in review. The exchanges of these templates will be taken into account in next year's review.

1217. During the year in review, Thailand has also strengthened its procedures for the completion and exchange of templates going forward. As noted in the previous section, the EOI Unit receives the list of future rulings at the beginning of each month from the LBTAD. The EOI Unit prepares the Annex C template accordingly and ensures that the exchange of information takes place within three months after the information became available to the EOI Unit. The summary section of the template has to be completed in line with the internal FHTP suggested guidance. The recommendation on this point is now removed.

1218. For the year in review, the timeliness of exchanges is as follows:

Past rulings within the scope of the transparency	Number of exchanges transmitted by 31 December 2021	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2021	Reasons for the delays	Any other comments

framework	0	746	N/A	N/A
Future rulings within the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	Reasons for the delays	Any other comments
	0	1 258	N/A	N/A
<b>Total</b>	0	2 004		

Follow-up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

1219. Thailand notes that the reason that the number of (delayed) exchanges in the above table has increased compared to the previous year report is the table now reflects the number of the actual exchanges, and not the number of issued rulings.

### **Conclusion on section B**

1220. Thailand has met all of the ToR for the exchange of information process except for having in place the necessary legal framework to commence exchanges. Thailand has already taken steps to ensure the administrative practices for the completion and exchange of templates on rulings is in place in advance of the finalisation of the domestic legal framework, which will ensure as speedy an exchange process as possible. Thailand is recommended to finalise the amendments to put the domestic legal basis in place to commence exchanges (ToR II.B.1).

## **Statistics (ToR IV.D)**

1221. As there was no information on rulings exchanged by Thailand for the year in review, no statistics can be reported.

## **Matters related to intellectual property regimes (ToR I.A.1.3)**

1222. In the prior years' peer review reports, it was determined that Thailand offers an intellectual property regime<sup>3</sup> for which no transparency requirements under the Action 5 Report (OECD, 2015<sup>[2]</sup>) were imposed.

## **Summary of recommendations on implementation of the transparency framework**

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Thailand does not yet have the necessary legal framework in place for exchanging information on rulings.	Thailand is recommended to finalise the amendments to put the domestic legal basis in place to commence exchanges. This recommendation remains unchanged since the 2019 and 2020 peer review reports.

## References

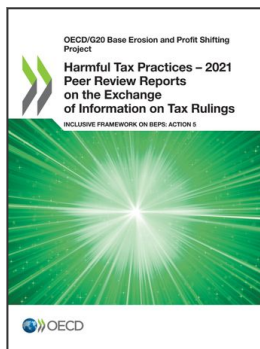
- OECD (2021), *BEPS Action 5 on Harmful Tax Practices - Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD Publishing, Paris, <http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>. [3]
- OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/9789264241190-en>. [2]
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://doi.org/10.1787/9789264115606-en>. [1]

## Notes

<sup>1</sup> 1) International headquarters and treasury centre, 2) International trading centre and 3) International business centre.

<sup>2</sup> Participating jurisdictions to the Convention are available here: [www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm). Thailand also has bilateral agreements with Armenia, Australia, Austria, Bahrain, Bangladesh, Belarus, Belgium, Bulgaria, Cambodia, Canada, Chile, China (People's Republic of), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hong Kong (China), Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Kuwait, Lao People's Democratic Republic, Luxembourg, Malaysia, Mauritius, Myanmar, Nepal, Netherlands, New Zealand, Norway, Oman, Pakistan, Philippines, Poland, Romania, Russia, Seychelles, Singapore, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Chinese Taipei, Tajikistan, Türkiye, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan and Viet Nam.

<sup>3</sup> International business centre.



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