

Thailand

Thailand has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2020 (year in review), except for identifying future rulings within the scope of the transparency framework (ToR I.A.1.2), having the domestic legal framework for spontaneous exchange of information on rulings (ToR II.B.1) and the timely exchange of information on past and future rulings (ToR II.B.6). Thailand receives three recommendations on these points for the year in review.

In the prior year report, as well as in the 2018 peer review, Thailand had received two recommendations. However, as there were new circumstances, an additional recommendation has been made as relevant.

Thailand can legally issue one type of ruling 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 year in review	23

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

A. The information gathering process (ToR I.A)

1115. Thailand can legally issue the following type of rulings within the scope of the transparency framework: preferential regimes.¹

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

1116. 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.

1117. 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)

1118. For Thailand, future rulings are any tax rulings within scope that are issued on or after 1 April 2018.

1119. 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. However, during the year in review, 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. As Thailand is still taking action on this issue and in order to ensure that similar issues are not encountered in future, Thailand is recommended to strengthen its information gathering process identifying all future rulings within the scope of the transparency framework.

Review and supervision (ToR I.A.3)

1120. In the prior years' peer review reports, it was determined that Thailand's review and supervision mechanism was sufficient to meet the minimum standard. As noted above, during the year in review, Thailand identified a technical issue with the database for future rulings issued in 2019 and 2020. As part of the efforts to strengthen the information gathering process, Thailand is therefore recommended to strengthen its review and supervision mechanism to ensure that the information gathering process is working effectively.

Conclusion on section A

1121. Thailand has met all of the ToR for the information gathering process except for identifying all future rulings within the scope of the transparency framework (ToR I.A.1.2). Thailand is recommended to strengthen its information gathering process identifying all future rulings within the scope of the transparency framework and its review and supervision mechanism to ensure that the information gathering process is working effectively.

B. The exchange of information (ToR II.B)

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

1122. In the prior year peer review report, 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.

1123. Thailand is in the process of implementing a new legal provision with respect to exchange of information to address this issue. This will involve an amendment to Section 10 of the Revenue Code. This Exchange of Information Bill is currently undergoing the legislative process and is expected to enter into force by 2021. Thailand is recommended to finalise the amendments to put the domestic legal basis in place to commence exchanges as soon as possible.

1124. Thailand has international agreements permitting spontaneous exchange of information, including bilateral agreements in force with 61 jurisdictions.² Thailand signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011^[4]) ("the Convention"). Thailand is encouraged to continue its efforts to ratify the Convention and expand its international exchange of information instruments to be able to exchange information on rulings. It is noted, however, that jurisdictions are assessed on their compliance with the transparency framework in respect of the exchange of information network in effect for the year of the particular annual review.

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

1125. In the prior year peer review report, it was determined that Thailand's process for the completion and exchange of templates were sufficient to meet the minimum standard. Although Thailand could not legally exchange the information, Thailand is preparing the templates to be in a position to complete the exchanges as soon as the legal basis is in force. However, Thailand notes that although the appropriate process for the completion and exchange of templates has been implemented, in practice, the Revenue Department lacked the appropriate resources to be able to complete all templates in accordance with the timelines under the transparency framework. Therefore, Thailand is recommended to ensure that all information on past and future rulings is exchanged as soon as possible after the legal basis is in force.

1126. For the year in review, the timeliness of exchanges is as follows:

Past rulings within the scope of the transparency framework	Number of exchanges transmitted by 31 December 2020	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2020	Reasons for the delays	Any other comments
	0	182	See previous paragraph	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	201	See previous paragraph	N/A
Total	0	383		

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

Conclusion on section B

1127. Thailand is recommended to finalise the amendments to put the domestic legal basis in place to commence exchanges and to ensure that all information on past and future rulings is exchanged as soon as possible (ToR II.B.1 and II.B.6).

C. Statistics (ToR IV)

1128. As there was no information on rulings exchanged by Thailand for the year in review, no statistics can be reported.

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

1129. Thailand offers an intellectual property regime (IP regime)³ that is not subject to the transparency requirements under the Action 5 Report (OECD, 2015^[1]), because:

- **New entrants benefitting from the grandfathered IP regime:** as this is a new IP regime rather than a grandfathered IP regime, transparency on new entrants is not relevant.
- **Third category of IP assets:** not applicable as the regime does not allow the third category of IP assets to qualify for the benefits.
- **Taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable as the regime does not allow the nexus ratio to be treated as a rebuttable presumption.

Summary of recommendations on implementation of the transparency framework

Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
Thailand found that the database for future rulings issued in 2019 and 2020 may be incomplete due to a technical issue when migrating data from paper into the database.	Thailand is recommended to strengthen its information gathering process identifying all future rulings within the scope of the transparency framework and its review and supervision mechanism to ensure that the information gathering process is working effectively.
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 as soon as possible. This recommendation remains unchanged since the prior year peer review report.
Thailand did not undertake spontaneous exchange of information on all tax rulings within the scope of the transparency framework during the year in review.	Thailand is recommended to ensure that all information on past and future rulings is exchanged as soon as possible after the domestic legal basis is in force. This recommendation remains unchanged since the 2018 and 2019 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]

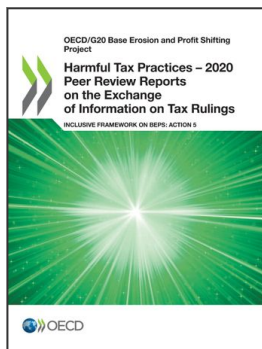
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- OECD (ed.) (2017b), *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264283954-en>. [2]
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264115606-en>. [4]

Notes

¹ With respect to the following preferential regimes: 1) International headquarters and treasury centre, 2) International trading centre and 3) International business centre.

² 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. 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, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uzbekistan and Viet Nam.

³ International business centre.



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