

Thailand

Thailand has met all aspects of the terms of reference (ToR) for the calendar year 2018 (year in review) except for undertaking spontaneous exchange of information on tax rulings (ToR II.5). Thailand receives one recommendation on this point for the year in review.

This is Thailand's first review of implementation of the transparency framework.

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:

- 182 past rulings;
- For the period 1 April 2018 - 31 December 2018: 36 future rulings.

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

Introduction

This peer review covers Thailand's implementation of the BEPS Action 5 transparency framework for the year 2018. The report has four parts, each relating to a key part of the ToR. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information gathering process

Thailand can legally issue the following type of rulings within the scope of the transparency framework: preferential regimes.¹ The rulings consist of confirmation letters for taxpayers to state that they can benefit from the preferential tax regime. These letters are issued by the Large Business Tax Administration Division in the tax administration.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

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; and (ii) on or after 1 January 2014 but before 1 January 2016, provided still in effect as at 1 January 2016.

Thailand issues confirmation letters with respect to their preferential tax regimes. Each time a letter is issued, it is stored in a central database. This database was consulted in order to identify all past rulings.

When a taxpayer requests access to a preferential regime, it has to identify all relevant related parties, including the ultimate parent entity, the immediate parent entity and the related parties with which the taxpayer entered into a transaction. This information is available in the same database where the confirmation letters are stored. As such, Thailand was able to obtain information on all potential exchange jurisdictions and did not need to use the "best efforts approach."

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

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

The process for identifying future rulings and potential exchange jurisdictions is the same as to the process regarding the past rulings. Each time a ruling is issued, the relevant official is aware that it will be relevant for the transparency framework and is flagged as such.

Review and supervision (ToR I.4.3)

The team responsible for issuing rulings consists of ten members. This team is supervised by the Director of the Large Business Tax Administration Division. Only these persons have access to the database, and the Director is responsible for making sure that all information is captured accurately. The team has also received training on the transparency framework from the FHTP Secretariat.

Conclusion on section A

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

B. The exchange of information

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

Thailand has the necessary domestic legal basis to exchange information spontaneously. Thailand notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

Thailand has international agreements permitting spontaneous exchange of information, including double tax agreements in force with 61 jurisdictions.²

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

The Large Business Tax Administration Division gathers, verifies, and then sends the information relating to rulings to the Tax Policy and Planning Division. The Director of the Large Business Tax Administration Division supervises this process. The Tax Policy Group under the Tax Policy and Planning Division completes the template using Annex C of the Action 5 Report (OECD, 2015^[5]), and the summary section of the template is completed in line with the internal FHTP suggested guidance. The template is then sent to the International Tax Group under the Tax Policy and Planning Division which is the assistant to the Competent Authority. This takes place once a month. Subsequently, the International Tax Group presents the information in the template to the Competent Authority for exchange. The Competent Authority then sends the templates within three months to the relevant jurisdictions.

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

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2018	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2018	Reasons for the delays	Any other comments
	0	182	See below.	N/A
Future rulings in 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	36	See below.	N/A
Total	0	218		

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

Thailand explains that delays have occurred in the exchange of information on rulings was because there was a misunderstanding of the definition of rulings. When Thailand became aware that the confirmation letters for the regime fall under the first category of rulings in scope of the transparency framework, immediate action was taken to commence the exchanges. This process is underway as of mid-2019 in order to conduct exchanges as soon as possible.

Conclusion on section B

Thailand has the necessary legal basis to undertake spontaneous exchange of information. Thailand is recommended to continue its efforts to complete the templates on relevant rulings and to ensure that the exchanges of information on rulings occur as soon as possible (ToR II.5).

C. Statistics (ToR IV)

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.4.1.3)

Thailand offers three intellectual property regimes (IP regime)³ that are not subject to the transparency requirements under the Action 5 Report (OECD, 2015^[5]), because:

- **New entrants benefitting from the grandfathered IP regime:** the regimes are not operational and in practice, no taxpayer has benefitted from any of the regimes. As such, there were no entrants on which information was required to be exchanged.
- **Third category of IP assets:** not applicable as the regimes do not allow the third category of IP assets to qualify for the benefits.
- **Taxpayers making the use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable the regimes do 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 did not undertake spontaneous exchange of information on all tax rulings within scope of the transparency framework during the year in review.	Thailand is recommended to continue its efforts to complete the templates on relevant rulings and to ensure that the exchanges of information on rulings occur as soon as possible.

Notes

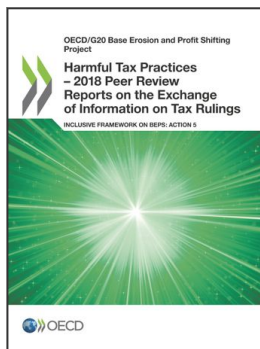
¹ With respect to the following preferential regimes: 1) International headquarters and treasury centre, 2) International trading centre and 3) International business centre.

² Thailand 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, Laos, 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.

Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union. The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

³ These regimes are: 1) International headquarters and treasury centre, 2) Regional operating headquarters 1 and 3) Regional operating headquarters 2.



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