

Thailand

Thailand has met all aspects of the terms of reference (OECD, 2017^[3]) (ToR) for the calendar year 2019 (year in review) and no recommendations are made, except for having the domestic legal framework for spontaneous exchange of information on rulings (ToR II.5.1) and the timely exchange of information on past and future rulings (ToR II.5.6). Thailand receives two recommendations on these points for the year in review.

In the prior year report, Thailand had received one recommendation. As it has not been addressed, the recommendation remains in place.

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 calendar year 2018: 36 future rulings, and
- For the year in review: 157 future rulings.

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

1086. Thailand can legally issue the following type of rulings within the scope of the transparency framework: preferential regimes.¹

1087. 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. Future rulings are any tax rulings within scope that are issued on or after 1 April 2018.

1088. In the prior year's peer review report, it was determined that Thailand's undertakings to identify past and future rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. In addition, it was determined that Thailand's review and supervision mechanism was sufficient to meet the minimum standard. Thailand's implementation remains unchanged, and therefore continues to meet the minimum standard.

1089. 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)

1090. In the previous year's peer review report, it was noted that Thailand has the necessary domestic legal basis to exchange information spontaneously. However, Thailand has corrected this information and indicated that there is a legal impediment that prevents the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard, meaning that no such domestic legal basis exists. The Revenue Department is currently not permitted by law to exchange information with respect to tax rulings. The reason for this is that under Section 10 of the Revenue Code, taxpayers' information is protected 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.

1091. Thailand is in the process of implementing a new legal provision with respect to exchange of information to address this issue for the purposes of complying with the transparency framework. 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 mid-2021. Thailand is recommended to finalise the amendments to put the domestic legal basis in place to commence exchanges as soon as possible.

1092. Thailand has international agreements permitting spontaneous exchange of information, including bilateral agreements in force with 60 jurisdictions.²

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

1093. 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.

1094. 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 2019	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2019	Reasons for the delays	Any other comments
	0	182	See previous paragraph.	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	193	See previous paragraph.	N/A
Total	0	375		

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

1095. 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.5.1 and II.5.6).

C. Statistics (ToR IV)

1096. 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)

1097. In the previous year in review, Thailand offered three non-nexus compliant IP regimes.³ During the year in review, Thailand abolished these regimes without providing grandfathering and as such, no enhanced transparency requirements apply.

1098. In addition, Thailand offers an intellectual property regime (IP regime)⁴ 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 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.
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 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 prior year's peer review report.

References

- OECD (2017), *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://dx.doi.org/10.1787/9789264241190-en>. [1]
- 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 Parties 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, 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.

³ 1) International headquarters and treasury centre, 2) Regional operating headquarters 1 and 3) Regional operating headquarters 2.

⁴ International business centre.



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