

## THAILAND'S RESPONSE TO THE UN QUESTIONNAIRE

prepared by

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### 1. How does base erosion and profit shifting affect your country?

In 2013, more than 30 percent of tax collection of the Revenue Department of Thailand comes from corporate income tax where the figure is ranked second compared to value added tax collection which is about 39 percent. Thus Thailand relies more on value added tax and corporate income tax. BEPS could result in revenue losses, for examples, the application of transfer pricing and Arm's Length Principle which may reduce revenue in Thailand through the use of risk-limited subsidiaries; and ineffective tax collection on income generated from cross-border trades of digital goods and services despite the increase in its number. It also creates unfair competitiveness among small businesses and MNEs through tax planning. The problems raise awareness and concerns regarding tax law and regulations improvement with respect to transfer pricing, thin capitalization, and controlled foreign corporation regimes.

MSMEs (micro, small and medium entrepreneurs) form the real backbone and play a crucial role to the growth of the Thai economy. This characteristic is similar to other developing countries. In Thailand in 2013, SMEs accounted for 37 percent of GDP and employed almost 11 million people accounting for 84 percent of the country's labor force. However SMEs cannot compete with MNEs because, when compare on an equal basis, small businesses pay disproportionately more taxes than big MNEs. They may then utilize "fiscal optimization" from one country to another resulting in paying very little if no tax at all. In addition, the source country has to bear hidden cost of doing business such as cost of developing infrastructure, waste management, and social development, etc. The amount of such cost does not match with the amount of tax paid to the source country.

2. If you are affected by base erosion and profit shifting, what are the most common practices or structures used in your country or region, and the responses to them?

### The most common practices or structures in Thailand

1) Creation of intra-group transactions and expenses

It is often found that MNEs have created significant intra-group transactions and expenses which may be paid to tax haven countries with an objective of minimizing their corporate tax bill. The most common intra-group transactions and expenses are as follows:

- debt-financing through setting too much debt and/or high interest loans from associated enterprises;
- high royalty payments to subsidiaries in low or no tax jurisdictions without cost/benefit analysis;
- high fees charged with respect to business consultation within the group.

2) Business restructuring and transfer pricing

The concerned issues are, in particular, related to the shifting of risks and intangibles, the artificial splitting of ownership of assets between legal entities within a group, and transactions between related entities that would rarely take place between independent entities. These issues must be carefully analyzed since they create a mismatch between their corporate structure and the substance of their activities resulting in tax exploitation.

3) Digital economy

Due to lack of physical presence, a crucial element is to determine permanent establishment where the MNE pays taxes.

4) High-net worth individuals (HNWIs)

HNWIs seek benefits from systems in tax haven countries (without transparency) to manage their wealth by setting up a nominee in order to avoid tax in the source country.

5) Treaty abuse

One example is the misuse of treaty benefit to avoid having permanent establishment in the source country.

### **Thailand's responses**

By experiencing the above examples which result in base erosion and profit shifting, Thailand applies the following to respond to the problems:

- 1) Risk assessment for international transaction and tax audit;
- 2) Exchange of information with treaty partner countries;
- 3) Legal reconsideration with respect to transfer pricing, thin capitalization, and controlled foreign corporation regimes;
- 4) Reconsideration of treaty provisions.

**3. When you consider an MNE's activity in your country, how do you judge whether the MNE has reported an appropriate amount of profit in your jurisdiction?**

In practice, tax officials judge whether the MNE has reported an appropriate amount of profit in Thailand by using several tools such as court decisions, rulings, application of Arm's Length Principle, and internal rate of return comparison, etc.

**4. What main obstacles have you encountered in assessing whether the appropriate amount of profit is reported in your jurisdiction and in ensuring that tax is paid on such profit?**

The main obstacles in assessing appropriate amount of profit:

- 1) Insufficient legal infrastructure;
- 2) Limited information disclosure by accounting standard and International Financial Reporting Standards which do not require the disclosure of some expenses such as related transaction or royalty expense;
- 3) Treaty abuse by interpretation and loophole such as Permanent Establishment (PE) concept etc.;
- 4) Lengthy time for exchange of information.

**5. Do you agree that these are particularly important priorities for developing countries?**

Yes, the matters are really important to all developing countries in terms of economic impact and social impact.

**6. Which of these OECD's action points do you see as being most important for your countries, and do you see that priority changing over time?**

Digital Economy, treaty abuse, and transfer pricing (intangible and business restructuring) and PE definition are priority issues for developing countries as base eroding from source country (through unfair tax planning scheme).

Data collection and analysis is very important tool to address BEPS in developing countries. One of the factors that cause inefficient measures in dealing with BEPS is lack of information. The priority has changed from focusing on tools to focusing more on information.

**7. Are there other Action Points currently in the action plan but not listed above that you would include as being most important for developing countries?**

Other Action Points which are important for developing countries are such as:

- 1) Cooperation between developing countries to share information especially on MNE's aggressive tax planning scheme;
- 2) MNE's tax disclosure standard – especially information disclosure on royalty income and tax payment from each developing country, etc.;
- 3) Determination of the intangible value for example by using conservative approach such as International Financial Reporting Standards (IFRS);
- 4) Redefining concept of taxation principle such as the concept of permanent establishment (PE) for traditional businesses which cannot differentiate between the various businesses and industries.

8. Having considered the issues outlined in the Action Plan and the proposed approaches to addressing them (including domestic legislation, bilateral treaties and a possible multilateral treaty) do you believe there are other approaches to addressing that practices that might be more effective at the policy or practical levels instead of, or alongside such actions, for your country?

In Thailand, supervision is used alongside with audit. This measure aims to increase compliance and reduce mistakes in declaring corporate tax liability. Such approach can also be used at practical level alongside the above actions. Such supervision should include coaching and business consultation which could be beneficial since it may allow tax authority to establish corporate tax planning strategy taken by a company under supervision. The tax authority can then have better and faster responses to any tax planning that may result in profit shifting.

9. Having considered the issues outlined in the action plan, are there are other base erosion and profit shifting issues in the broad sense that you consider may deserve consideration by international organizations such as the UN and OECD?

An action plan to deal with business restructuring could be helpful to developing countries. Developing countries can then learn from developed countries' experiences how to deal with business restructuring.

10. Do you want to be kept informed by email on the subcommittee's work of the UN Committee of Experts on International Cooperation in Tax Matters?

Yes.