

Challenges of Anti-Tax Avoidance Measures for Thailand in the Context of the Digital Economy

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Abstract

The emergence of the digital economy—all the economic activities driven by digital technologies, including e-commerce, data, advertising, digital services, and the platform economy—has demonstrated that traditional measures to thwart tax avoidance under existing rules are inadequate to address complex, unpredictable types and methods of tax avoidance, thus increasing the risk that multinational enterprises will avoid tax. The growth of the digital economy has exacerbated the problem of tax avoidance, resulting in significant lost tax revenue for governments and impacting their ability to finance public services. This has led the Organization for Economic Co-operation and Development to devise measures to prevent the erosion of the international tax base, specifically the Global Anti-Base Erosion Rules under Pillar II. Consequently, Thailand faces several significant challenges. The present study found that in the context of the digital economy, the country can appropriately pursue anti-avoidance measures by relying on its courts' use and interpretation of various anti-avoidance doctrines, such as the principle of "abuse of law," which represents a highly flexible general measure. As for specific measures, Thailand should accelerate the issuance of regulations to support and clarify the Royal Decree on Additional Taxes and either quickly enact specific legislation to collect direct tax on income from digital service provision or amend Section 76 bis or Section 70 of the Thai Revenue Code to collect income tax from multinational tech companies. The final step involves hastening the implementation of measures to ensure transparency and accountability in the domestic and international exchange of tax information by adopting blockchain technology.

Introduction

The rapid growth of the digital economy has significantly changed the global economic system through e-commerce, digital services, and platforms that have transformed how individuals and organizations conduct business and transactions, both domestically and internationally (Bukht & Heeks, 2018). In particular, multinational tech companies once maintained permanent establishments (PE) in a source country as a key factor determining tax liability, but this is no longer essential in the context of the digital economy (Aslam & Shah, 2021). As a result, new methods of tax avoidance are challenging traditional measures against the avoidance of taxation (OECD, 2015). Multinational tech companies have broadly exploited this legal loophole to avoid taxes in the digital economy. Therefore, it is crucial to identify the specific challenges currently facing traditional anti-tax avoidance measures as well as which measures against tax avoidance may be suitable for Thailand in the present circumstances.

The Meaning of Tax Avoidance and the Digital Economy

In studying the challenges related to anti-tax avoidance measures, it is first essential to define key terms. Three interrelated concepts warrant particular attention: tax avoidance, tax evasion, and tax planning. Tax avoidance differs from tax evasion, which is illegal and involves underreporting or not paying taxes (Crown, 1944). As a criminal offence, tax evasion falls under the principle *ignorantia juris non excusat* (ignorance of the law is no excuse), and it may be prosecuted whether deliberate or not (Kansra, 2020). In contrast, tax avoidance involves arranging financial affairs to minimize tax liability. It is legal, closely linked to tax planning, and typically exploits legal methods, strategies, and loopholes or flaws in tax laws—often by concealing facts or through aggressive structuring—to minimize tax liability or the amount of tax owed (International Institute of

Tax and Finance, 2025). This approach is deemed to represent unacceptable tax avoidance because it evades the law's intended purpose (Troup, 1992). Acceptable tax avoidance, in contrast, employs legitimate strategies to reduce tax burdens, such as making genuine transactions or donations to claim deductions (OECD, 1987).

The term *digital economy* first appeared in 1996 (Tapscott, 1997). Early definitions focused on the role of the internet's information and communication technologies. Over time, the concept expanded to encompass its impact—both positive and negative—on various sectors, including agriculture, tourism, and trade. The digital economy has created new economic structures that boost business efficiency, including digital services, platforms, new business models, e-commerce, and Industry 4.0. Eventually, the term evolved to describe an economic system built around information and communication technology within the larger economy (Ismail, 2020).

In other words, the digital economy describes the economic activities that result from billions of everyday online connections among people, businesses, devices, data, and processes (World Economic Forum, 2022). It encompasses all economic processes, transactions, and activities based on digital technologies and digitalized information, including e-commerce, digital services, and data-driven business models. The digital economy integrates both traditional economic sectors that have been transformed by digitalization and new sectors that exist purely in digital form (Bukht & Heeks, 2017; OECD, 2020). Anti-tax avoidance measures in the digital economy era are those doctrines and rules established by the state to prevent or counter tax avoidance through business transactions conducted in various forms and channels within the digital economy.

These two terms—*digital economy* and *tax avoidance*—are often intertwined. The former poses significant challenges to traditional tax systems, which cannot adequately respond to the complex

tax avoidance methods based on digital technologies. Therefore, governments worldwide are tackling this crucial issue.

Principles Used to Prevent Tax Avoidance

The doctrines of anti-tax avoidance emerged from efforts to prevent the significant annual revenue losses of governments worldwide that result from tax avoidance. Although tax avoidance does not violate the law (J. Freedman, 2008), it may still contravene the law's intent or ethical standards (Lokanan, 2023). Tax authorities and courts reject such unacceptable forms of tax avoidance, leading to tax reassessment, penalties, and surcharges (OECD, 2017). Thus, various doctrinal principles have been developed to guide the creation of anti-tax avoidance measures in national tax legislation across both common law and civil law systems (Thuronyi, 2016) as summarized below.

In civil law systems, courts or tax authorities can disregard transactions that are merely formalities intended to conceal the actual substance by applying the Sham Transaction Doctrine; they may also invoke the principle of Abuse of Law (*fraus legis*), which prioritizes the law's purpose over the form of the transaction, enabling tax authorities to deny tax benefits gained through manipulative arrangements. Moreover, the Simulation Doctrine can be applied in court when parties collude to disguise the true nature of transactions, allowing tax authorities to tax the actual transaction rather than the disguised one (Brincker, 2014; Vanistendael, 1996). These principles ensure that tax assessment is based on the actual intent of transactions, not merely their legal form (Perillo, 1995). Many anti-avoidance doctrines were shaped by common law court rulings rather than under the civil law system, particularly in the US and UK. The Doctrine of Substance over Form, for instance, disregards documents created solely to avoid taxes (Thuronyi, 2016). Additionally, under the Step Transaction Doctrine, a series of linked steps is

considered as a single transaction to determine the true tax liability (DiCarlo, 2010). Furthermore, the Economic Substance Doctrine, which focuses on whether a transaction has a real economic impact beyond tax benefits (US Senate Committee on Finance, 2011), compares with the Business Purpose Doctrine, which requires that transactions have a genuine business objective rather than purely seeking tax benefits (Thuronyi, 2016).

Historically, English courts were reluctant to look beyond the legal form of transactions to their substance in tax cases as exemplified by the landmark case *Inland Revenue Commissioners v. Duke of Westminster* (1936), in which the court ruled that taxpayers are entitled to arrange their affairs to minimize tax liability and that courts must not disregard the form of a transaction that complies with the law (Flynn, 1995). In *T.W. Ramsay Ltd v Commissioners of Inland Revenue* (1982), however, the House of Lords introduced what is known as the Ramsay Principle, allowing courts to look at the substance and disregard transactions that are primarily designed for tax avoidance, effectively counteracting artificial tax avoidance schemes. The general anti-tax avoidance measures provides HM Revenue & Customs with a statutory mechanism to counteract tax advantages arising from abusive arrangements that, while complying with the letter of the law, go against the intended purpose of the legislation. The General Anti-Avoidance Rule (GAAR) applies to various taxes and came into effect for arrangements entered into on or after 17 July 2013 (HM Revenue & Customs, 2013).

These doctrines provide crucial tools for interpreting and applying tax law. Courts use them to resolve tax disputes, and tax officers may apply them when assessing taxes to ensure the law's true intent prevails over manipulative practices.

Anti-Tax Avoidance Measures Under Traditional Tax Rules

Building on the previously discussed principles of anti-tax avoidance, many countries have adopted

statutory anti-tax avoidance measures (often referred to as rules) to better address the wide range of tax avoidance methods. These measures typically include (1) general anti-tax avoidance measures and (2) specific anti-tax avoidance measures tailored to target particular forms of avoidance. The following section provides a concise overview of several key measures.

1. Anti-Treaty Shopping Measures

Individuals or legal entities—especially domestic and foreign companies—sometimes exploit tax treaties signed between countries to pay less tax or avoid it entirely. This practice, known as treaty shopping (or directive shopping), often involves establishing a so-called conduit company in a treaty country to benefit from favorable tax provisions (BIBF, 2008). Although Thailand does not yet have formal laws targeting treaty shopping, the Revenue Department has been working on reforms under its Revenue Code study and development project.

2. Controlled Foreign Corporation Rules

Since 1962 (OECD, 2015), many countries have introduced controlled foreign corporation (CFC) rules to prevent taxpayers from deferring foreign income tax by retaining profits in overseas subsidiaries. For instance, a company may keep dividends abroad to avoid home-country taxes. CFC rules remain under development in Thailand, guided by the Revenue Code study project (Revenue Department, 2025). These rules could lessen tax avoidance by multinational tech companies that own intellectual property rights, requiring them to pay taxes in their resident country even on income derived in low-tax jurisdictions.

3. Thin Capitalization Rules

Some businesses reduce their tax liability by financing operations through excessive debt rather than equity, resulting in high interest expenses and artificially low taxable profits. In response, many countries have enacted thin capitalization rules to set reasonable debt-to-equity ratios. Thailand

does not yet have such a law in place, but the issue is currently under review by the Revenue Department.

4. Transfer Pricing Rules

Multinational enterprise (MNE) groups often comprise affiliated companies in multiple countries. These companies may trade goods or services among themselves, setting internal prices that differ from market prices to shift profits to low-tax jurisdictions (Schreiher, 2023) to reduce their global tax burden. Thailand currently addresses this issue through several measures, including Revenue Department Order No. Por. 113/2545, tax code provisions (Section 65 bis [4] [7], Section 65 ter, and Section 70 ter), and relevant tax treaties and accounting standards (No. 37 and No. 47). For digital transactions, Thailand has also amended Section 83/6 of the tax code to require that domestic buyers of intangible goods and services (e.g., in-app purchases, virtual goods, image files, music files, e-books) to pay value-added tax (VAT). However, it remains challenging to enforce value-added tax collection directly from individual consumers purchasing such digital goods.

5. Other Specific Anti-Tax Avoidance Measures

Despite existing measures, the complexity and variety of tax avoidance strategies necessitate even more targeted solutions, giving rise to other specific anti-tax avoidance measures, including the exchange of information (EOIs) between countries. Tax information exchange agreements (TIEAs) enable tax authorities to exchange taxpayer data across borders, facilitating the detection and prevention of tax avoidance (Rohatgi, 2007). To conclude, while traditional tax rules and both general and specific anti-avoidance measures provide an essential framework, continued legal development is crucial, especially in the context of an increasingly digital and global economy.

In conclusion, analyzing traditional anti-tax avoidance measures reveals a highly rational framework whose advantages—flexibility, certainty, and targeted action—depended entirely on

the economic context for which it was designed: a world defined by physical presence, tangible assets, and national borders. Its doctrines and rules provided a coherent defense against pre-digital era tax avoidance strategies. The primary disadvantage of this framework is not some minor flaw in its internal logic but its profound, irremediable incompatibility with the borderless, intangible landscape of the digital economy. The most obvious example of its shortcomings is the functional obsolescence of the concept of permanent establishment, which breaks the connection between taxes and economic activity and makes some of the world's most successful businesses almost stateless for tax purposes. This failure resulted in lost income and was so harmful to the economy and public trust that it led to a once-in-a-generation change in international tax rules. The OECD's two-pillar structure represents a complete change from the former system. It rightly shifts the basis of taxation from anachronistic notions of physical presence to the modern reality of market participation and establishes a global minimum tax floor to halt the self-destructive race to the bottom that has plagued the international community for decades.

Anti-Tax Avoidance Measures for Thailand under the New Global Tax Framework

Under the new global tax framework, the Organization for Economic Co-Operation and Development (OECD) has introduced new mechanisms to tax multinational enterprises. This initiative is part of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, ratified by 140 member countries (OECD, 2024). The primary objective is to assist member countries in implementing measures to counter tax avoidance by multinational enterprises, which under the traditional corporate income tax system often shifted profits to low-tax jurisdictions for Base Erosion and Profit Shifting purposes to lower their global tax burden (OECD, 2014, 2015). Thailand must

adopt two pillars when applying the OECD framework on BEPS as described below.

Pillar I

Pillar I is designed to ensure tax fairness for source countries, irrespective of the permanent establishment (PE) of a multinational enterprise in that country. To be eligible, a multinational enterprise must meet three criteria: (1) global revenue exceeding €20 billion per year (about 720 billion baht), (2) a profit margin above 10% of its revenue in that country, and (3) revenue in the source country of at least €1 million per year (about 36 million baht). When these conditions are met, the source country (e.g., Thailand) gains the right to collect corporate income tax from local profits of the multinational enterprise (OECD, 2023).

Pillar II

Pillar II aims to curb tax competition, strengthen investment incentives, and, most importantly, stop multinational enterprises from shifting profits to subsidiary companies in low-tax countries. It sets a global minimum tax (GMT) rate of 15% for multinational enterprises with consolidated annual revenue above €750 million (about 27 billion baht). For example, if a multinational tech company based in the US earns hundreds of millions of baht from digital services to Thai users, it would be subject to taxation in Thailand under Pillar II, even without a permanent establishment (PE) in the country. Conversely, if a Thai multinational enterprise offers digital services in a source country, such as Vietnam, and meets Pillar I conditions (such as having a significant digital presence in that country, which could include a large user base or substantial revenue from digital services), it must also pay corporate tax there.

However, Thailand is likely to experience only a limited impact from Pillar I, as relatively few multinational enterprises are headquartered here. Pillar II makes profit shifting less effective (OECD, 2020). If, for example, a multinational

enterprise channels profits to a subsidiary company in a tax haven such as Hong Kong, Singapore, the British Virgin Islands, or the Cayman Islands (with tax rates below 15%), the ultimate parent entity (hereinafter “parent company”) must pay additional tax in its resident country to reach the full 15% global minimum tax (GMT) rate. This rule aims to prevent subsidiary companies in Thailand from avoiding tax by shifting profits abroad. Thailand can then collect tax on the difference if the foreign tax paid falls below the global minimum tax (GMT) rate. At the same time, if a foreign parent company wants to establish a permanent establishment (PE) in Thailand—such as building a factory to benefit from local tax incentives—the incentive may lose appeal. Even with lower taxes in Thailand, the parent company would still face the global minimum tax (GMT) rate, reducing motivation to invest. This represents a potential negative impact of Pillar II on Thailand.

After ratifying the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting, the Thai Revenue Department began aligning domestic measures with global standards by issuing Royal Decree (No. 19) B.E. 2561 (2018), which expanded income tax coverage to include digital assets (such as digital tokens and cryptocurrency) under Section 40 (4) of the Thai Revenue Code, and by introducing value-added tax on foreign electronic service (e-service) providers and digital platforms for Thai users under the Revenue Code Amendment Act (No. 53) B.E. 2564 (2021). The Revenue Department then developed AI-based systems to monitor and track these transactions to prevent tax avoidance (Revenue Department, 2025), and Thailand issued the Royal Decree on the Exchange of Information for International Tax Agreements B.E. 2566 (2023). Lastly, the most recent development in Thailand’s response was the enactment of the Royal Decree on Additional Taxes B.E. 2567 (2024). These efforts reflect Thailand’s ongoing adaptation to the global tax measures designed to ensure fair taxation in the

digital era and limit opportunities for tax avoidance by multinational enterprises, particularly tech companies.

In summary, Thailand’s decision to implement the global minimum tax brings many advantages, most importantly protecting the country’s revenue base. Thailand can collect top-up tax from multinational tech companies whose effective tax rates are lower than the agreed-upon worldwide minimum tax rate, as it has a Qualified Domestic Minimum Top-Up Tax (QDMTT). This arrangement prevents tax revenue from being diverted to foreign jurisdictions and ensures that value generated within Thailand contributes directly to national public finances. The new laws could also offer new ways for digital multinationals to make money under Pillar I, which gives Thailand limited powers to tax a portion of the profits made by large multinational tech companies that do business in its market. The reform also eases the pressure of harmful tax competition, as the global tax floor of 15% makes it less appealing for multinational tech companies to move profits to regional tax havens, slowing the “race to the bottom.” Thailand’s successful use of the OECD framework also aligns it with global tax governance standards, strengthening its credibility as a modern, open economy and its bid to join the OECD. Importantly, any extra tax collected in the country can be put into a national fund to create new, legal incentive programs to make the economy more competitive.

These benefits come with many disadvantages, however. The most immediate effect is that Thailand’s traditional tax breaks will become less effective. Under Pillar II rules, long-standing tools such as tax holidays and lower corporate income tax rates for multinational tech companies are largely ineffective. This violates a crucial strategy for attracting foreign direct investment and could make Thailand less appealing to investors who care about taxes and formerly saw its tax advantages as offering a competitive edge. The reform also faces many legal and administrative

challenges. Implementing highly sophisticated rules will require significant capacity-building and a complete overhaul of tax administration systems, which will cost institutions substantial time and money. How countries compete with one another is also changing. As profit-based tax breaks become less valuable, governments are expected to compete by giving direct subsidies and qualified refundable tax credits. This new “subsidy war” benefits countries with strong economies, putting developing economies such as Thailand at a disadvantage.

Challenges of Thailand’s Anti-Tax Avoidance Measures in the Digital Economy Context

New challenges emerge from the enactment of the Royal Decree on Additional Taxes B.E. 2567 (2024) to align with the Global Anti-Base Erosion Rules (GloBE) under Pillar II (often referred to as Pillar II GloBE Rules)—including the income inclusion rule, undertaxed payment rule (UTPR), and qualified domestic minimum top-up tax (QDMTT)—as well as from amendments to the Thai Revenue Code allowing taxation of multinational tech companies without a permanent establishment (PE) in Thailand. The present analysis finds that the challenges of implementing anti-tax avoidance measures in Thailand fall into four main areas.

The first challenge of enforcing the Royal Decree on Additional Taxes B.E. 2567 (2024), Section 26, which stipulates that a subsidiary company in Thailand that is a member of a multinational enterprise group is liable for additional tax under this Royal Decree if its total income according to the consolidated financial statements of the multinational enterprise’s parent company is not less than €750 million per year (about 27 billion baht). However, the law does not adequately specify the details of adjusting income to comply with the Pillar II GloBE rules, even though Section 3 requires the issuance of ministerial regulations to support the implementation of the Royal Decree.

It also does not specify the total amount of taxes covered by subsidiary companies after adjustment as the Adjusted Covered Taxes. In addition, when considering the calculation of additional tax for multinational enterprises, joint ventures, or groups of joint ventures located in Thailand, the legislation does not specify guidelines for implementing the domestic minimum top-up tax (DMTT) by the domestic additional tax collection rules that meet the qualified domestic minimum top-up tax (QDMTT) criteria. This lack of clarity prevents a clear, consistent approach to establishing domestic marginal tax rules as outlined in the OECD’s administrative guidance; for example, there are no provisions for tax reduction or accounting standards. Therefore, it is difficult to identify which domestic minimum top-up taxes (DMTTs) comply with the qualified domestic minimum top-up tax (QDMTT) and which do not comply with the model rule of Pillar II GloBE.

Regarding the undertaxed payment rule (UTPR), in contrast, the author believes that it may cause practical problems because the legislation has prescribed an overly complex calculation method, resulting in different calculation methods for the effective tax rate (ETR) in each country, such as varying methods for deductions or tax credits. Potentially, numerous tax disputes regarding the top-up tax will arise in the future, which requires each country to adjust its tax rate to align with the global minimum tax (GMT) rate of 15%. In reality, each country sets different tax rates. Therefore, it is considered an additional burden for multinational enterprises as taxpayers that must keep track of the actual tax rates and calculation methods of each country, which in practice causes more complexity and higher costs. This complexity not only increases administrative costs but also contradicts Adam Smith’s canons of convenience and economy. In addition, the undertaxed payment rule (UTPR) may violate the nondiscrimination principle, which is a core principle of double tax agreements (DTAs), since it allows a source country

to tax a subsidiary company at a higher rate than the tax rate of the resident country. Finally, the undertaxed payment rule (UTPR) may create the risk of double taxation, as untaxed remuneration is not deductible against other tax deductions in the source country.

The second challenge of tax avoidance arises from the lack of measures against the provision of digital services in Thailand by foreign companies, which are often multinational tech companies, earning income from providing digital services in Thailand even though the companies do not have a permanent establishment (PE) in Thailand. This includes the case of multinational enterprises, wherein the parent company is established under foreign laws and has an office in Thailand through a subsidiary company registered under Thai law.

In this case, the parent company and its subsidiary companies are considered separate legal entities (or separate tax units). It does not matter whether or not these multinational enterprises meet the criteria of the Pillar II GloBE rules. Therefore, not only the multinational enterprises whose total income according to the consolidated financial statements of the parent company is equal to or less than €750 million per year (about 27 billion baht) are eligible but also those with income above the mentioned amount qualify to be required to pay corporate income tax from their profits derived in Thailand. For example, Netflix, The Walt Disney Company, Amazon, Apple, Alphabet (GOOGL), Microsoft, Twitter, Meta platforms (Facebook) and any other foreign tech company without a permanent establishment (PE) in Thailand does not qualify as a large multinational enterprise under Pillar II GloBE rules. Many countries in Europe (e.g. the United Kingdom) and some Asian countries (e.g. Vietnam) have enacted laws establishing a tax—known as the Digital Services Tax (DST)—on income derived from providing digital services (e.g. digital advertising, online marketing, and direct sales of user data),

which is the income tax base. Thailand does not have a specific tax on income from digital services, although the Revenue Department has provided for the collection of value-added tax on foreign e-service providers or electronic platforms that provide services in Thailand by enacting the Revenue Code Amendment Act (No. 53) B.E. 2564 (2024); the value-added tax is a consumption-based tax, however, which is an indirect tax and differs from a tax on income from digital services, which is a revenue-based tax and a direct tax. Therefore, there is no problem of double taxation. Thailand can enforce the collection of value-added tax and income tax from digital services together as do some other countries, such as Vietnam, India, Spain, the United Kingdom, and the United States of America.

The third challenge is that a lack of information on cross-border transactions of multinational enterprises, especially multinational tech companies, creates the risk of tax avoidance. Tax authorities' inability to access information on the operations of multinational tech companies may allow those companies to conceal their actual profits, thereby avoiding tax payments or paying less than the actual amount. Therefore, accurate and complete information is central to and deeply intertwined with the digital economy as information is a core asset that is crucial to e-commerce, digital transactions, and the creation of platform business models. The author finds that it is necessary to apply the exchange of information measure and the Tax information exchange agreement measure to digital transactions to prevent tax avoidance by multinational tech companies.

The exchange of information is a reporting measure between tax authorities and taxpayers that requires taxpayers on a country-by-country basis to report information on every cross-border transaction (e.g., certain financial information, including income, taxes payable, net profit, and the number of employees in each country where the company operates) to the tax authorities so as

to create transparency in tax payment. This information will help tax authorities and the public to monitor and verify whether those companies have paid taxes correctly, completely, and fairly in the source countries. The Revenue Department is currently drafting rules for country-by-country reporting to be applied in assessing the tax risks of multinational enterprises.

Tax information exchange agreements aim to foster cooperation between the tax authorities of different countries regarding digital transactions, as multinational tech companies may attempt to transfer profits through countries with less stringent tax laws. The present analysis indicates that the measure of exchanging tax information under international agreements can help tax authorities access information on the operations of multinational tech companies worldwide, making it harder for them to hide their profits. Although Thailand has enacted the Royal Decree on the Exchange of Information to comply with International Agreements on Taxes B.E. 2566 (2023), the legislation requires the use of only two forms of data exchange: the exchange of information upon request and the automatic exchange of information. However, it does not specify the use of data exchange without a request. The author finds that the exchange of information without request is the most important measure for promoting confidence, particularly in digital data. However, it must comply with standard protocols (e.g., ISO or W3C standards), as this guarantees the quality of the data, ensuring transparency, non-violation of the principle of consent, and alignment with the purpose. In a digital economy where communications are driven by data and seamlessly transferred across borderless computer systems, platforms, and various taxing jurisdictions, however, this can lead to violations of the Personal Data Protection Act [PDPA] B.E. 2562 (2019), which aims to ensure that entities in Thailand adhere to data protection protocols. If individuals do not provide consent and their

rights are infringed upon by another party, this is deemed a legal violation and may incur penalties. The fourth challenge is enforcing the criteria for a permanent establishment (PE) under the Thai Revenue Code, because digital transactions have rendered the original definition of permanent establishment (PE) insufficient for the source country to exercise its power to collect taxes, as the original rules assumed the physical presence or permanence of business activities. However, digital transactions do not require a permanent establishment (PE) in the source country. Under Sections 66 and 67 bis of the Thai Revenue Code, there is no need for a physical presence, business operations, or representatives in the source country.

Therefore, the definition of permanent establishment (PE) should be expanded so that having a digital platform or collecting data from users of streaming services, online platforms, or cloud services would be considered a permanent establishment (PE), making multinational tech companies subject to tax in the source country under the new rules. Multinational tech companies may be considered to have a permanent establishment (PE) based on the location where digital activities with customers occur, which is called having a 'significant digital presence' online; this may be determined by indicators such as the number of users, the number of digital transactions, revenue in the digital market, or the use of digital infrastructure systems, even if there is no physical location. This may be determined by indicators such as the number of users, the number of digital transactions, revenue in the digital market, or the use of digital infrastructure systems, even if there is no physical location, no offline business activities, and no independent agents in that country (e.g., Thailand). Since digital goods and services can be delivered to customers worldwide without a permanent establishment (PE) in the source country, multinational enterprises can transfer their profits to countries where they do not operate to avoid taxes.

Therefore, taxing these companies serves as an anti-tax avoidance measure against multinational enterprises.

However, it is difficult in practice to calculate net profits, making the payment of taxes both inconvenient and expensive, potentially leading to a violation of Adam Smith's canons of convenience and economy. The author proposes that this problem must be solved by introducing a withholding tax method under Section 70 of the Thai Revenue Code, which may require multinational enterprises that do not have a permanent establishment (PE) in Thailand to pay tax on income paid from or in Thailand for income received from providing online platform services or cloud services to customers in Thailand. However, having a substantial digital presence in Thailand should not constitute having a permanent establishment (PE) in the country. Nevertheless, multinational enterprises receive assessable income under Sections 40 (2) to (6) that is paid from or in Thailand. Such compensation may be considered as royalties under subparagraph (3) or may constitute a service fee under subparagraph (5) or (6), depending on the nature of the transaction.

If Thailand opts not to impose a digital services tax (DST) directly on the provision of digital services, the approach may inadvertently create a tax loophole that multinational enterprise groups could exploit through their subsidiary companies operating in Thailand. This issue is particularly relevant for tech companies whose global operations do not meet the income threshold stipulated under the Pillar II GloBE rules, which require a consolidated group revenue exceeding €750 million per year (approximately 27 billion baht) to trigger additional tax obligations. Consequently, such companies would not be subject to top-up taxation under the GloBE framework and would therefore not contribute additional tax revenues to Thailand under these international rules.

However, by instead requiring these companies to pay tax on certain types of income sourced from or paid within Thailand—such as through the withholding tax mechanism under Section 70 of the Thai Revenue Code—Thailand could still secure tax revenues from these entities, despite their not qualifying as large multinational enterprises under Pillar II GloBE rules. This approach would thus mitigate potential revenue loss and address gaps left by relying solely on the Pillar II GloBE criteria, ensuring a broader and more equitable tax base for the digital economy.

In summary, Thailand faces challenges in designing clear laws under Pillar II GloBE rules, in handling digital tax avoidance, in improving cross-border transparency, and in redefining permanent establishment (PE) to fit digital realities, all while seeking administrative practicality and being consistent with international standards.

Conclusion and Recommendations

In summary, anti-tax avoidance measures face several challenges that create the risk of tax avoidance by multinational tech companies, such as the enforcement of unclear additional tax decrees that cause practical problems, the absence of specific tax laws on income generated from digital services, the absence of information on international transactions of multinational tech companies, and inadequate enforcement of the criteria on permanent establishment (PE) under the Thai Revenue Code. The present study contends that appropriate anti-tax avoidance measures for Thailand in the digital economy context encompass both general measures and specific measures as outlined in the recommendations. In regard to the policy aspect, meanwhile, Thailand urgently needs to amend and improve its tax laws to align with the reforms of the new global tax rules, particularly under the Pillar II GloBE rules, including seeking more international cooperation to create new and appropriate anti-tax avoidance measures that fit

the context of Thailand in the digital economy era. According to the study, Thailand's most appropriate anti-tax avoidance measures in the digital economy context can be broadly divided into general and specific measures as described below.

First, general measures can be applied even if Thailand has not yet reformed or remains in the process of reforming its tax system to align with the rules of the new global tax system. For example, by using principles related to preventing tax avoidance as a guideline for the tax court in considering tax disputes and by setting a standard of judgment for taxpayers or tax collection agencies to use as a guideline, the tax court in its interpretations can rely on the principle that the intent of the law is more important than the form to counter tax avoidance in the case of complex transactions, particularly digital transactions. Importantly, this method will create more flexibility in interpretation and compliance with regulations than applying the provisions of each country's domestic tax laws alone.

Second, the four specific measures described below are recommended to prevent tax avoidance resulting from the provision of digital services in Thailand, particularly by multinational tech companies.

1. Issue regulations to clarify the Royal Decree on Additional Tax Collection B.E. 2567 and align it with Pillar II GloBE rules; especially the ministerial regulations that specify details on adjustments to income and the total amount of taxes covered after adjustment, including the calculation criteria for the domestic minimum top-up tax (DMTT) in accordance with the qualified domestic minimum top-up tax (QDMTT) criteria, to be clear and consistent with the OECD's administrative guidance.

2. Proceed with the collection of direct taxes for digital services, focusing on direct taxes that are based on income from providing digital advertising services, online marketing, selling user data, and so on, as Thailand does not have a specific digital service income tax.

3. Require that multinational tech companies, whether or not those multinational enterprises meet the criteria of the Pillar II GloBE rules, pay corporate income tax on income paid from or in Thailand under Section 70 of the Thai Revenue Code, without having to pay net profit tax under Section 76 bis to avoid practical problems that may arise from not being able to calculate net profit. However, this is inconvenient or may have high costs in tracking and demanding tax payments. This inconvenience not only increases tax administrative costs but also contradicts Adam Smith's canons of convenience and economy. Therefore, it is proposed to amend the text of Section 70, adding the words "whether or not having a significant digital status in Thailand" after the words "not operating a business in Thailand" and defining the new term "significant digital status" in Section 39, which may include indicators of a multinational tech company's significant digital presence, such as the number of users, the number of digital transactions, income in the digital market, the use of digital infrastructure systems, etc.

4. Introduce tax data exchange measures (both exchange of information (EOIs) and Tax information exchange agreements (TIEAs)) in accordance with international agreements by using decentralized data storage technology to record data and various transactions online, the data exchanged may comprise reports, tax returns, tax payments, and financial transactions in cryptocurrency. Blockchain technology could be used to store transactions on the Bitcoin digital currency network, or they could be stored on Git, an open-source distributed version control system designed to enable software developer to efficiently and quickly manage projects of any size while working asynchronously. The use of blockchain technology will contribute to transparency and reduce the risk of tax avoidance in the context of the digital economy.

These combined measures—legal flexibility, targeted tax instruments, clear regulations, and modern technology—can help Thailand adapt its tax system to the digital era and address the complex challenges of effectively and fairly taxing multinational tech companies.

Furthermore, Thailand must play a key role in implementing the OECD's two-pillar global tax framework, as the reform represents a significant shift from the traditional approach of tax-based competition to a new approach aligned with international standards. The fundamental challenge is that Pillar II, specifically the qualified domestic minimum top-up tax (QDMTT), will be hard to pass, manage, and fund, yet it also offers a significant way to defend the tax base and strengthen the country's tax sovereignty. The reforms weaken long-standing, profit-based tax incentives that attract foreign direct investment, but failing to implement the qualified domestic minimum top-up tax (QDMTT) would bring worse results. Without domestic action, Thailand would still lose its incentives benefits due to other countries' top-up taxes under the Income Inclusion Rule (IIR) and the Undertaxed Payments Rule (UTPR). It would also miss out on potential domestic revenue, so reform is a necessary strategic move rather than an option. Potential benefits include better alignment with OECD standards, reduction of harmful tax competition, modest new taxing rights over digital multinationals, and chances to reallocate top-up taxes into compliant incentive systems. The significant challenges include reduced attractiveness to tax-based foreign directed investment, increased global competition driven by subsidies, and the high administrative and human resource costs of implementation. Thailand requires a proactive strategy to optimize the benefits of the new system through reinvestment initiatives and capacity enhancement, thereby preparing the nation for sustained competitiveness in a globalized economic environment.

Therefore, the strategic policy must provide a complete and effective framework for future advancement. Underlying this approach are two main ideas that make new global norms easier to understand through the adoption of specific laws that directly affect the digital economy: using technology to modernize information transmission and adopting basic rules to stop tax evasion. Thailand can retain its legal right to tax under the new global agreement if it makes explicit the Pillar II (GloBE) standards. Changing the Revenue Code to make a "significant digital presence" a new basis for taxes could help multinational tech companies that do not fit within the Pillar II structure. Thailand can bring its tax system into the 21st century by becoming the first to adopt new technologies such as blockchain for secure data sharing and by finding ways to protect privacy while still enforcing the law. Finally, implementing long-overdue CFC rules and protections against thin capitalization can also limit base erosion and profit shifting.

Declaration

"I have not used AI tools for data analysis, figure or table generation, or interpretation of research findings to prepare this article. However, I acknowledge the use of Grammarly in helping me review my writing at the final stage of draft preparation before sending to a native speaker proofreader."

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