

San Marino

San Marino 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.

In the prior year report, San Marino had received three recommendations. San Marino has resolved these issues and therefore none of the prior year recommendations remain.

San Marino can legally issue two types of rulings within the scope of the transparency framework.

In practice, San Marino issued rulings within the scope of the transparency framework as follows:

- One past ruling;
- For the period 1 April 2017 - 31 December 2017: no future rulings;
- For the calendar year 2018: no future rulings; and
- For the year in review: no future rulings.

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

A. The information gathering process

926. San Marino can legally issue the following two types of rulings within the scope of the transparency framework: (i) preferential regimes¹ and (ii) permanent establishment (PE) rulings. Rulings are issued by the Tax Office of San Marino.

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

927. For San Marino, past rulings are any tax rulings within scope that are issued either (i) on or after 1 January 2015 but before 1 April 2017; and (ii) on or after 1 January 2012 but before 1 January 2015, provided they were still in effect as at 1 January 2015.

928. In the prior year peer review report, this section was not assessed because of the absence of past rulings in scope. However, during the year in review, San Marino took extensive actions for mapping the issuance of rulings (called “preventive agreements”) on tax matters in order to identify any agreements that could fall within the scope of the transparency framework. Previously, San Marino had not taken the view that such preventive agreements were in the scope of the standard, but this was clarified during the year in review. The Tax Office manually analysed all requests received from 2015, as well as all requests received in the previous years that were still in effect as at 1 January 2015, to identify possible preventive agreements in scope of the transparency framework. As a result, one preventive agreement issued in 2016 was identified as in scope of the transparency framework because the preventive agreement related to permanent establishment matters. Once the ruling was identified, San Marino was able to identify all the relevant exchange jurisdictions by reviewing the certificate of incorporation of the non-resident head office and by carrying out appropriate checks on the parent companies through the use of databases available to the public administration.

929. As San Marino quickly took steps to identify and remedy the issue and this is not expected to be a recurring issue, no recommendations are made.

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

930. For San Marino, future rulings are any tax rulings within scope that are issued on or after 1 April 2017.

931. In the prior year peer review report, it was determined that San Marino did not have an information gathering process to identify the rulings and all potential exchange jurisdictions (ToR I.4). Therefore, San Marino was recommended to finalise its information gathering process for identifying future rulings and potential exchange jurisdictions as soon as possible.

932. During the year in review, San Marino defined a new procedure to ensure that all relevant information related to future rulings and exchange jurisdictions is captured accurately. The new procedure was shared with the relevant offices dealing with rulings. The process was in place in 2019, and it was formalised with the issuance of an internal circular (“Internal Circular no. 1 - Process to implement the Transparency Framework, BEPS Action 5 OECD/G20”) on 18 February 2020. The new procedure provides a detailed process to identify future rulings in scope and all information on potential exchange jurisdictions which must be provided by the taxpayers when requesting a ruling as a prerequisite to its issuance. As such, the recommendation is now removed.

933. In addition, during the year in review, San Marino adopted extensive actions for mapping any rulings that had been issued since 1 April 2017 and should have been identified as future rulings in order to identify any agreements that could fall within the scope of the transparency framework. No future rulings were identified.

Review and supervision (ToR I.4.3)

934. In the prior year peer review report, it was determined that San Marino did not yet have a review and supervision mechanism in place for future rulings under the transparency framework (ToR I.4). During the year in review, San Marino adopted a new procedure to ensure that all relevant information is captured accurately and a review and supervision mechanism is in place. According to the new procedure noted above, the Director of the Tax Office, together with the coordinator of the transparency framework, who is an expert in the Finance and Budget Department, supervises and reviews the process for collecting the information needed for the transparency framework. The Director assumes the role of team leader responsible for supervising and validating the data. The new procedure was defined and shared with the relevant offices dealing with rulings and transparency framework compliance. In addition, as noted above San Marino applied an enhanced quality control review, to verify that all relevant past and future rulings have been correctly identified. As such, the recommendation is now removed.

Conclusion on section A

935. San Marino 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)

936. San Marino has the necessary domestic legal basis to exchange information spontaneously. San Marino 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.

937. San Marino has international agreements permitting spontaneous exchange of information, including being a party to the (i) *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011^[4]) (“the Convention”) and (ii) bilateral agreements in force with 23 jurisdictions.²

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

938. In the prior year peer review report, it was determined that San Marino did not yet have in place a process for the completion and exchange of templates (ToR II.5). Therefore, San Marino was recommended to develop a process to complete the templates on relevant rulings and to ensure that the exchanges of information on rulings occur in accordance with the form and timelines under the transparency framework.

939. During the year in review, San Marino adopted a new procedure for completion of templates and exchange of information on rulings. According to the new procedure, exchanges have to be performed according to the template contained in Annex C of the BEPS Action 5 Report (OECD, 2015^[1]) and the summary section has to be completed in line with the internal FHTP suggested guidance. The procedure also specified the process and timelines for making the template available to the Competent Authority responsible for international exchange of information, so-called Central Liaison Office (CLO), and for the Competent Authority to exchange with all relevant jurisdictions. According to the procedure, the Tax Office shall complete the Annex C template within 10 days after the issuance of the tax ruling. Within 30 days after issuing the ruling, the director of the Tax Office shall validate the data contained in the template and transmit it to the CLO. The CLO shall exchange the template with the Competent Authority of the relevant exchange jurisdictions within 90 days. The new procedure was defined and shared with the relevant offices

dealing with rulings and transparency framework compliance. As such, the recommendation is now removed.

940. 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	1	The ruling was identified in November 2019 and exchanged in February 2020.	This relates to the additional past ruling identified, noted in section A above.
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	0	N/A	N/A
Total	0	1		

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

941. San Marino has the necessary legal basis for spontaneous exchange of information, a process for completing the templates in a timely way and has completed all exchanges. San Marino has met all of the ToR for the exchange of information process and no recommendations are made.

C. Statistics (ToR IV)

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

D. Matters related to intellectual property regimes (ToR I.4.1.3)

943. San Marino offered three intellectual property regimes (IP regime)³ that are not subject to the transparency requirements under the Action 5 Report (OECD, 2015_[1]), because:

- **New entrants benefitting from the grandfathered IP regime:** not applicable, because 1) the IP regime and the High innovative enterprise regime⁴ are new IP regimes rather than grandfathered IP regimes and transparency on new entrants is not relevant and 2) the High tech regime is an abolished regime and no entrants ever benefitted from this regime.
- **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 use of the option to treat the nexus ratio as a rebuttable presumption:** not applicable as the regimes do not allow the nexus ratio to be treated as a rebuttable presumption.

944. San Marino offered one IP regime⁵ that is subject to the transparency requirements under the Action 5 Report (OECD, 2015^[1]). It states that the identification of the benefitting taxpayers will occur as follows:

- **New entrants benefitting from the grandfathered IP regime:** transparency obligations apply for the New companies regime, because grandfathering is provided to entrants that entered the regime after the relevant date from which enhanced transparency obligations apply. In the prior year report, it was determined that San Marino had not exchanged all information on new entrants (i.e. new taxpayers and new assets of existing taxpayers) benefitting from the grandfathered regime as this information was not able to be collected during the year in review. Therefore, San Marino was recommended to continue its efforts to identify and exchange information on new entrants to the grandfathered IP regime. During the year in review, San Marino put in place a process to identify new entrants in the grandfathered regime. The process involved reviewing the taxpayer's file and those of any associates, analysing the balance sheets in order to verify the existence of both existing and new IP assets as well as accessing publicly available information. The identification process informed that there were no new entrants in the relevant period that benefitted from the grandfathered regime and therefore no information needed to be exchanged. As such, the recommendation is now removed.
- **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
San Marino experienced difficulties in the identification of past rulings and identified one additional past ruling that was not previously captured.	No recommendations are made because San Marino has quickly taken steps to identify and remedy the issue, completed the exchanges on the one identified past ruling quickly after the issues were identified and resolved, and this is not a recurring issue.

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

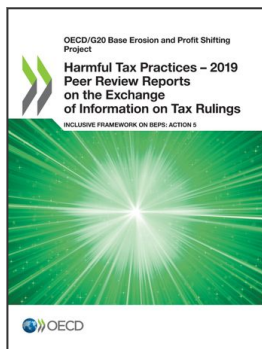
¹ With respect to the following preferential regime: IP regime. In the prior year report, it was noted that San Marino could legally issue rulings with respect to the following preferential regimes: 1) New companies regime (New companies regime provided by art. 73, law no. 166/2013), 2) High tech regime (Regime for high-tech start-up companies under law no. 71/2013 and delegated decree no. 116/2014) and 3) IP regime. San Marino has since clarified that rulings can be issued only with respect to the IP regime.

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. San Marino also has bilateral agreements with Austria, Azerbaijan, Barbados, Belgium, Croatia, Cyprus, Georgia, Greece, Hungary, Italy, Liechtenstein, Luxembourg, Malaysia, Malta, Portugal, Qatar, Romania, Saint Kitts and Nevis, Serbia, Seychelles, Singapore, United Arab Emirates and Viet Nam.

³ 1) IP regime, 2) High tech regime (Regime for high-tech start-up companies under law no. 71/2013 and delegated decree no. 116/2014), and 3) High innovative enterprise regime (High innovative enterprise regime introduced by delegated decree no. 101/2019 of 13 June 2019).

⁴ San Marino introduced this new IP regime which came into effect from June 2019 and it has not yet been reviewed by the Forum.

⁵ New companies regime (New companies regime provided by art. 73, law no. 166/2013).



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