

San Marino

San Marino's implementation of the transparency framework is still in development. San Marino is taking steps to implement the legal basis for the transparency framework and to commence administrative preparations (in line with the terms of reference (OECD, 2017^[3]) (ToR)) to ensure that it finalises its information gathering process (ToR I.4), information on rulings will be identified and exchanged in a timely manner (ToR II.5) and to identify and exchange information on all new entrants to the IP regimes (ToR I.4.1.3). San Marino receives three recommendations on these points for the year in review.

In the prior year review, no recommendations were made, given that in that period no rulings in the scope of the transparency framework could legally be issued, and the implementation of grandfathering for the IP regime had not been finalised. As those circumstances have changed with respect to the year in review, recommendations have been made as relevant.

San Marino can legally issue one type of rulings within the scope of the transparency framework. In practice, San Marino issued no rulings within the scope of the transparency framework.

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

Introduction

This peer review covers San Marino'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

San Marino can legally issue the following type of rulings within the scope of the transparency framework: preferential regimes.¹ In the previous year peer review report, it was noted that San Marino cannot legally issue any rulings in scope of the transparency framework. However, in 2018, San Marino introduced a new IP regime that allows taxpayers to request benefits via a ruling. This also applies for the other two IP regimes that San Marino has in place.

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

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. San Marino has the legal basis to issue rulings, but it requires a decree to issue certain types of rulings in scope of the transparency framework. Currently, San Marino has only issued a decree regarding the IP regime. However, it should be noted that in the past, San Marino could issue permanent establishment rulings (using another legal instrument, aimed to provide taxpayers with clarifications in case of objective uncertainties in the interpretation or in the application of specific tax provisions). San Marino is currently examining whether in practice it did issue any permanent establishment ruling in scope of the transparency framework.

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

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

San Marino can legally issue rulings from 2018. San Marino's tax office is in charge of issuing the rulings. San Marino notes that so far, no tax rulings have been issued in practice. However, San Marino acknowledges that it does not yet have an information gathering process in place to identify the rulings and all potential exchange jurisdictions. San Marino intends to implement this process as soon as possible.

Review and supervision (ToR I.4.3)

San Marino did not yet have a review and supervision mechanism in place for future rulings under the transparency framework for the year in review.

Conclusion on section A

San Marino is recommended to finalise its information gathering process for identifying all past and future rulings and potential exchange jurisdictions, with a review and supervision mechanism, as soon as possible (ToR I.4).

B. The exchange of information

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

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.

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) double tax 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)

San Marino is still developing a process to complete the templates on the relevant rulings, to make them available to the Competent Authority for exchange of information and to exchange them with relevant jurisdictions.

As San Marino did not issue any future rulings in scope of the transparency framework in the relevant period, San Marino was not required to exchange any information on rulings in the year in review and no data on the timeliness of exchanges can be reported.

Conclusion on section B

San Marino is 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 (ToR II.5).

C. Statistics (ToR IV)

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)

San Marino offers three intellectual property regimes (IP regime)³ that are subject to the transparency requirements under the Action 5 Report (OECD, 2015^[5]). It states that the identification of the benefitting taxpayers will occur as follows:

IP regime

- ***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.

New companies regime

- **New entrants benefitting from the grandfathered IP regime:** Transparency obligations apply for this regime, because grandfathering is provided to entrants that entered the regime after the relevant date from which enhanced transparency obligations apply. San Marino is currently putting in place a process to identify new entrants (both new taxpayers and IP assets) in the grandfathered regime. As such, San Marino is recommended to continue its efforts to identify and exchange information on new entrants to the grandfathered IP regime (ToR I.4.1.3).
- **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.

High tech regime

- **New entrants benefitting from the grandfathered IP regime:** this is an amended regime. The amendments took effect from 29 June 2018, but before the amendments took effect there were no entrants in the regime, due to absence of administrative guidelines by San Marino which would operationalise the regime, and therefore the enhanced transparency requirements do not apply.
- **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.

San Marino is recommended to continue its efforts to identify and exchange information on new entrants to the grandfathered IP regime (ToR I.4.1.3).

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 does not yet have in place a process to identify all information on potential exchange jurisdictions for future rulings.	San Marino is recommended to finalise its information gathering process for identifying all past and future rulings and potential exchange jurisdictions, with a review and supervision mechanism, as soon as possible.
San Marino does not yet have in place a process for completion of templates and exchange of information on rulings.	San Marino is 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.
San Marino has not exchanged all information on new taxpayers benefitting from the grandfathered IP regime, 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.	San Marino is recommended to continue its efforts to identify and exchange information on new entrants to the grandfathered IP regime.

Jurisdiction's response and recent developments

San Marino has already undertaken steps in 2019 to follow-up on the recommendations. It is currently designing a database for collecting issued rulings. In addition, an internal agreement was signed between

the San Marino Tax Administration and the Competent Authority for the exchange of information on rulings. These two bodies are also currently developing internal manual for the implementation of the several elements of Action 5 transparency framework. San Marino notes that these steps will be finalised by the end of 2019. This will be assessed in the next year's peer review.

Notes

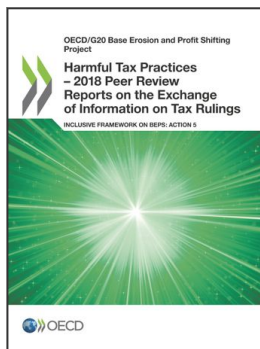
¹ With respect to the following preferential regimes: 1) New companies regime (New companies regime provided by art. 73, law no. 166/2013), 2) High tech regime (Regime for high-tech start-up companies under law no. 71/2013 and delegated decree no. 116/2014) and 3) IP regime.

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 in effect 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.

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 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.



From:

Harmful Tax Practices – 2018 Peer Review Reports on the Exchange of Information on Tax Rulings Inclusive Framework on BEPS: Action 5

Access the complete publication at:

<https://doi.org/10.1787/7cc5b1a2-en>

Please cite this chapter as:

OECD (2020), “San Marino”, in *Harmful Tax Practices – 2018 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/1f4be991-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. Extracts from publications may be subject to additional disclaimers, which are set out in the complete version of the publication, available at the link provided.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.