

## San Marino

1. San Marino was first reviewed during the 2017/2018 peer review. This report is supplementary to San Marino's 2017/2018 peer review report (OECD, 2018<sup>[1]</sup>). Since the last peer review, San Marino has introduced primary legislation in order to implement CbC Reporting requirements. The filing obligation for a CbC report in San Marino applies to reporting fiscal years commencing on or after 1 January 2019.

### Summary of key findings

2. San Marino's implementation of the Action 13 minimum standard meets all applicable terms of reference (OECD, 2017<sup>[2]</sup>).
3. San Marino's 2017/2018 peer review included a recommendation that San Marino take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible. San Marino now has the primary law in place to impose and enforce CbC requirements and the recommendation with respect to domestic legal and administrative framework issued in the 2017/2018 peer review is removed.
4. San Marino's 2017/2018 peer review had a recommendation that San Marino take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites band with which San Marino has international agreements that allow automatic exchange of tax information. Bilateral relationships are now in place the recommendation is removed.
5. San Marino's 2017/2018 review included a recommendation that San Marino take steps to ensure that the appropriate use condition is met ahead of the first exchanges of information (OECD, 2017<sup>[4]</sup>). San Marino has provided details of its processes and this recommendation is removed.

### Part A: The domestic legal and administrative framework

6. San Marino has primary law in place to implement the BEPS Action 13 minimum standard, establishing the necessary requirements including the filing and reporting obligations.<sup>1</sup>

#### *(a) Parent entity filing obligation*

7. San Marino has primary law which imposes a CbC filing obligation on Ultimate Parent Entities of MNE Groups which have a consolidated group revenue above a certain threshold, whereby all required Constituent Entities of the MNE Group are included in the CbC report and no entity is excluded from CbC Reporting other than permitted by the Action 13 report (OECD, 2015).<sup>2</sup>

8. With respect to the definition of an “Excluded MNE Group”, the legislation define this as “a multinational enterprise group whose total revenue is less than 750 million Euro, during the fiscal year immediately preceding the reporting year, as reflected in its consolidated financial statements for such preceding fiscal year”.<sup>3</sup> While this provision would not create an issue for MNE Groups whose Ultimate Parent Entity is a tax resident in San Marino, it may however be incompatible with the guidance on currency fluctuations for MNE Groups whose Ultimate Parent Entity is located in another jurisdiction, if local filing requirements were applied in respect of a Constituent Entity (which is a San Marino’s tax resident) of an MNE Group which does not reach the threshold as determined in the jurisdiction of the Ultimate Parent Entity of such Group. However, San Marino has issued guidance<sup>4</sup> to clarify that this rule will be applied in line with the OECD guidance on currency fluctuations so no issue arises.

9. No inconsistencies were identified with respect to San Marino’s domestic legal framework in relation with the parent entity filing obligation.

***(b) Scope and timing of parent entity filing***

10. The first filing obligation for a CbC report in San Marino commences in respect of fiscal years beginning on 1 January 2019 or later.<sup>5</sup> The CbC report must be filed within 12 months of the last day of the fiscal year of the MNE Group.<sup>6</sup>

11. No inconsistencies were identified with respect to the scope and timing of parent entity filing.

***(c) Limitation on local filing obligation***

12. San Marino has introduced local filing requirements in respect of fiscal years beginning on or after 1 January 2019.<sup>7</sup>

13. No inconsistencies were identified with respect to the limitation on local filing obligation.

***(d) Limitation on local filing in case of surrogate filing***

14. San Marino’s local filing requirements will not apply if there is surrogate filing in another jurisdiction by an MNE group, subject to conditions. No inconsistencies were identified with respect to the limitation on local filing in case of surrogate filing.

***(e) Effective implementation***

15. San Marino has legal mechanisms in place to enforce compliance with the minimum standard: there are notification mechanisms in place that apply to San Marino entities.<sup>8</sup> There are also penalties in place in relation to the filing of a CbC report: (i) penalties for failure to file a CbC report and late filing and (ii) penalties for inaccurate information.<sup>9</sup>

***Conclusion***

16. San Marino’s 2017/2018 peer review included a recommendation that San Marino take steps to implement a domestic legal and administrative framework to impose and enforce CbC requirements as soon as possible. San Marino now has the primary law in place to impose and enforce CbC requirements. As such, the recommendation with respect to domestic legal and administrative framework issued in the 2017/2018 peer review is removed. San Marino meets all the terms of reference relating to the domestic legal and administrative framework.

## Part B: The exchange of information framework

### *(a) Exchange of information framework*

17. San Marino's 2017/2018 peer review had a recommendation that San Marino take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use prerequisites and with which San Marino has international agreements that allow automatic exchange of tax information. Bilateral relationships are now in place the recommendation is removed

18. As of 31 May 2019, San Marino has 54 bilateral relationships in place for the exchange of CbC reports under the CbC MCAA. In the context of its international exchange of information agreements that allow automatic exchange of tax information, San Marino has taken steps to have qualifying competent authority agreements in effect with jurisdictions of the Inclusive Framework that currently meet the confidentiality, consistency and appropriate use conditions. Regarding San Marino's exchange of information framework, no inconsistencies with the terms of reference were identified.<sup>10</sup> The recommendation in San Marino's 2017/2018 peer review is therefore removed.

### *(b) Content of information exchanged*

19. San Marino has processes in place that are intended to ensure that each of the mandatory fields of information as required in the CbC template are present in the information exchanged.

### *(c) Completeness of exchanges*

20. San Marino has processes in place that are intended to ensure that CbC reports are exchanged with all tax jurisdictions listed in Table 1 of a CbC reporting template with which it should exchange information as per the relevant QCAAs.

### *(d) Timeliness of exchanges*

21. San Marino has processes in place that are intended to ensure that the information to be exchanged is transmitted to the relevant jurisdictions in accordance with the timelines provided for in the relevant QCAAs and terms of reference.

### *(e) Temporary suspension of exchange or termination of QCAA*

22. San Marino has processes in place that are intended to ensure that a temporary suspension of the exchange of information or termination of a relevant QCAA be carried out only as per the conditions set out in the QCAA.

### *(f) Consultation with other Competent Authority before determining systemic failure or significant non-compliance*

23. San Marino has processes in place that are intended to ensure that its Competent Authority consults with the other Competent Authority before making a determination of systemic failure or significant non-compliance with the terms of the relevant QCAA by that other Competent Authority.

### *(g) Format for information exchange*

24. San Marino confirms that it uses the OECD XML Schema and User Guide (OECD, 2017<sup>[3]</sup>) for the international exchange of CbC reports.

*(h) Method for transmission*

25. San Marino indicates that it uses the Common transmission System to exchange CbC reports.

*Conclusion*

26. The recommendation in the 2017/2018 peer review for San Marino to take steps to have QCAAs in effect with jurisdictions of the Inclusive Framework which meet the confidentiality, consistency and appropriate use and with which San Marino has an international exchange of information agreement in effect that allows for the automatic exchange of tax information is removed.

27. San Marino has in place the necessary processes to ensure that the exchange of information is conducted in a manner consistent with the terms of reference relating to the exchange of information framework. San Marino meets all the terms of reference regarding the exchange of information.

**Part C: Appropriate use**

28. San Marino's 2017/2018 peer review included a recommendation that San Marino to take steps to have measures in place relating to appropriate use of CbC reports. San Marino now has processes which have enabled it to answer yes to all 6 questions on appropriate use (see Appendix A). The recommendation is therefore removed.

*Conclusion*

29. San Marino meets all the terms of reference relating to appropriate use of CbC reports.

## Summary of recommendations on the implementation of Country-by-Country Reporting

Aspect of the implementation that should be improved		Recommendation for improvement
Part A	Domestic legal and administrative framework	-
Part B	Exchange of information framework	-
Part C	Appropriate use	-

## Notes

<sup>1</sup> Primary Law consists of Delegated Decree No.18 of 25 January 2019 entitled “Provisions Relating to Automatic Exchange of Compulsory of Information in the Tax Sector” (the “CbC Decree”): [www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17106469.html](http://www.consigliograndeegenerale.sm/on-line/home/archivio-leggi-decreti-e-regolamenti/documento17106469.html) (access in Italian).

<sup>2</sup> See paragraph 1, Article 3 of the CbC Decree.

<sup>3</sup> See paragraph 1 d), Article 2 of the CbC Decree.

<sup>4</sup> <http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale.htm>.

<sup>5</sup> See paragraph 1, Article 3 of the CbC Decree.

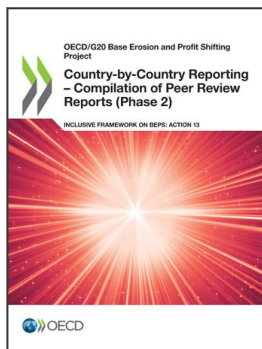
<sup>6</sup> See Article 6 of the CbC Decree.

<sup>7</sup> See paragraph 2, Article 3 of the CbC Decree.

<sup>8</sup> See Article 4 of the CbC Decree.

<sup>9</sup> See Article 9 of the CbC Decree.

<sup>10</sup> No inconsistency with the terms of reference will be identified where a QCAA is not in effect with one or more jurisdictions of the Inclusive Framework that meet the confidentiality, consistency and appropriate use conditions, but this is due to circumstances that are not under the control of the reviewed jurisdiction. This may include, for example, where the other jurisdiction intends to exchange CbC reports using the MCAA but it does not have the Convention in effect for the relevant fiscal period, or where the other jurisdiction has declined to have a QCAA in effect with the reviewed jurisdiction.



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