

San Marino

San Marino has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2020 (year in review), and no recommendations are made.

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:

| Type of ruling | Number of rulings |
|--|-------------------|
| Past rulings | 1 |
| Future rulings in the period 1 April 2017 – 31 December 2017 | 0 |
| Future rulings in the calendar year 2018 | 0 |
| Future rulings in the calendar year 2019 | 0 |
| Future rulings in the year in review | 0 |

No peer input was received in respect of the exchanges of information on rulings received from San Marino.

A. The information gathering process (ToR I.A)

979. 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 rulings.

980. 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. Future rulings are any tax rulings within scope that are issued on or after 1 April 2017.

981. In the prior year peer review report, it was determined that San Marino's undertakings to identify past and future rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. In addition, it was determined that San Marino's review and supervision mechanism was sufficient to meet the minimum standard. San Marino's implementation remains unchanged, and therefore continues to meet the minimum standard.

982. San Marino has met all of the ToR for the information gathering process and no recommendations are made.

B. The exchange of information (ToR II.B)

983. San Marino has international agreements permitting spontaneous exchange of information, including being a party to (i) the *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

984. For the year in review, the timeliness of exchanges is as follows:

| Past rulings within the scope of the transparency framework | Number of exchanges transmitted by 31 December 2020 | Delayed exchanges | | |
|---|---|---|------------------------|--------------------|
| | | Number of exchanges not transmitted by 31 December 2020 | Reasons for the delays | Any other comments |
| | 1 ³ | 0 | N/A | See below. |

| 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 |

985. The exchange reported in the table above relates to a permanent establishment ruling issued by San Marino in 2016. This past ruling was identified by the Tax Office in November 2019 and exchanged with the relevant exchange jurisdiction in February 2020. This exchange has already been reported in the prior year peer review report.

986. In the prior year peer review report, it was determined that San Marino's process for the completion and exchange of templates were sufficient to meet the minimum standard. It was also determined that San Marino concluded all remaining exchanges for past rulings during the year in review. San Marino's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

987. 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)

988. The statistics for the year in review are as follows:

| Category of ruling | Number of exchanges | Jurisdictions exchanged with |
|--|--------------------------------|------------------------------|
| Ruling related to a preferential regime | 0 | N/A |
| Permanent establishment rulings | <i>De minimis</i> rule applies | N/A |
| <i>De minimis</i> rule | 1 | N/A |
| IP regimes: total exchanges on taxpayers benefitting from the third category of IP assets, new entrants benefitting from grandfathered IP regimes; and taxpayers making use of the option to treat the nexus ratio as a rebuttable presumption | 0 | N/A |
| Total | 1 | |

D. Matters related to intellectual property regimes (ToR I.A.1.3)

989. San Marino offered three intellectual property regimes (IP regime)⁴ 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, as described in the prior year peer review report.
- **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.

990. 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:** not applicable because 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.
- **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 |
|--|--------------------------------|
| | No recommendations are made. |

References

- OECD (2021), *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 (ed.) (2017b), *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264283954-en>. [2]
- 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 Participating jurisdictions 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 This exchange is the same exchange as the one included in the prior year peer review report as a delayed exchange.

⁴ 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).

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



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