

**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective – MAP Peer Review Report, San Marino (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

Following the release of the report *Addressing Base Erosion and Profit Shifting* in February 2013, OECD and G20 countries adopted a 15-point Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions along three key pillars: introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.

After two years of work, measures in response to the 15 actions were delivered to G20 Leaders in Antalya in November 2015. All the different outputs, including those delivered in an interim form in 2014, were consolidated into a comprehensive package. The BEPS package of measures represents the first substantial renovation of the international tax rules in almost a century. Once the new measures become applicable, it is expected that profits will be reported where the economic activities that generate them are carried out and where value is created. BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 85 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

A better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business. Proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

As a result, the OECD established the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The

Inclusive Framework, which already has more than 136 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 11 December 2019 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

San Marino has a modest tax treaty network with over 20 tax treaties. San Marino has no experience in handling and resolving MAP cases, as it has not been involved in any MAP cases. Overall, San Marino meets the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies San Marino is working to address some of them.

All of San Marino's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention. Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Approximately 40% do not contain the second sentence of Article 25(1) of the OECD Model Tax Convention, which sets a three-year time limit for filing a MAP request
- Approximately 40% do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, which requires competent authorities to endeavour to resolve MAP cases by mutual agreement, as these treaties set a time limit for such resolution, the expiration of which terminates the MAP process.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, San Marino needs to amend and update a certain number of its tax treaties. In this respect, San Marino signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, San Marino reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard, but it has not yet put in place a plan in relation hereto.

As San Marino has no bilateral APA programme in place, there were no elements to assess regarding the prevention of disputes.

San Marino meets some of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2016 not received any MAP requests. However, access to MAP may be denied in cases where domestic remedies have been concluded for the same case under review, which does not conform with Article 25 of the OECD Model Tax Convention. Furthermore, San Marino does not have in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. In addition, San Marino has not yet issued MAP guidance but submitted its MAP profile. This MAP profile, however, stipulates that access to MAP will not be granted in cases where the

taxpayer and the tax administration have entered into an audit settlement, which does not conform with San Marino's policy.

San Marino has not been involved in any MAP cases during the period 2016-18, but meets in principle all the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases.

As there was no MAP agreement reached that required implementation in 2016, 2017 or 2018, it was not yet possible to assess whether San Marino meets the Action 14 Minimum Standard as regards the implementation of MAP agreements.

Introduction

Available mechanisms in San Marino to resolve tax treaty-related disputes

San Marino has entered into 23 tax treaties on income (and/or capital), 22 of which are in force.¹ These 23 treaties are being applied to an equal number of jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, six of the 23 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

In San Marino, the competent authority function to conduct MAP is delegated to the Ministry of Finance. The competent authority of San Marino currently employs approximately one employee who is responsible for both attribution/allocation cases and other cases in addition to other non-MAP related tasks.

San Marino has not yet issued guidance on the governance and administration of the mutual agreement procedure (“MAP”) although it intends to introduce such guidance in the near future.

Recent developments in San Marino

San Marino reported it is currently conducting tax treaty negotiations with Canada, Germany and the Czech Republic.

Furthermore, on 7 June 2017 San Marino signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. With the signing of the Multilateral Instrument, the San Marino also submitted its list of notifications and reservations to that instrument.³ In relation to the Action 14 Minimum Standard, San Marino reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.⁴ This reservation is in line with the requirements of the Action 14 Minimum Standard. San Marino is in the process of ratifying the Multilateral Instrument which is currently pending parliamentary approval.

Where treaties will not be modified by the Multilateral Instrument, San Marino reported that it is open to updating them through future bilateral negotiations. However, it has not planned any bilateral negotiations to amend or renegotiate existing treaties which do not meet the Action 14 Minimum Standard, as San Marino’s policy is to modify treaties via the Multilateral Instrument. Nevertheless, San Marino indicated that it was approached by one treaty partner to amend its existing treaty to bring it in line with the requirements under this standard, but no actions were taken in this respect, as San Marino intends to modify this treaty via the Multilateral Instrument and in that regard asked the treaty partner to modify its notifications under that instrument.

Basis for the peer review process

The peer review process entails an evaluation of San Marino’s implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by San Marino and its peers. The questionnaires for the peer review process were sent to San Marino and the peers on 27 March 2019.

The period for evaluating San Marino’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 March 2019 (“**Review Period**”). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of San Marino’s implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether San Marino is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of San Marino’s tax treaties regarding the mutual agreement procedure.

In total one peer provided input: Italy. As San Marino has not yet received a MAP request from either a taxpayer or another competent authority, such peer input was limited to the treaty aspects of its relationship with San Marino.

San Marino provided answers in its questionnaire. San Marino was further responsive in the course of the drafting of the peer review report by responding to requests for additional information, and provided further clarity where necessary. In addition, San Marino did not provide its MAP statistics according to the MAP Statistics Reporting Framework. However, San Marino did provide its MAP profile, which contains limited information and which will be updated once it publishes MAP guidance.

Finally, San Marino is a member of the FTA MAP Forum and has shown good co-operation during the peer review process.

Overview of MAP caseload in San Marino

As mentioned above, San Marino has not been involved in any MAP cases during the Review Period.

General outline of the peer review report

This report includes an evaluation of San Marino’s implementation of the Action 14 Minimum Standard. The report comprises the following four sections:

- A. Preventing disputes
- B. Availability and access to MAP

- C. Resolution of MAP cases
- D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁵ Apart from analysing San Marino’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by San Marino to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that San Marino continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

Notes

1. The tax treaties San Marino has entered into are available at: www.esteri.sm/on-line/home/affari-esteri/trattati-internazionali/convenzioni-bilaterali/accordi-in-materia-di-doppia-imposizione-fiscale-e-scambio-dinformazioni-in-materia-fiscale/articolo1001384.html. The treaty that is signed but has not yet entered into force is with the United Arab Emirates. Reference is made to Annex A for the overview of San Marino’s tax treaties regarding the mutual agreement procedure.
2. The concerns the treaties with Austria, Azerbaijan, Italy, Liechtenstein, Luxembourg and the United Arab Emirates.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-san-marino.pdf.
4. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Republic of San Marino reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified.

5. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Reference

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

[A.1] **Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties**

Jurisdictions should ensure that their tax treaties contain a provision which requires the competent authority of their jurisdiction to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties.

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of San Marino's tax treaties

2. All of San Marino's 23 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.

Anticipated modifications

3. As all of San Marino's 23 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention there is no need for modifications. Regardless San Marino reported that it will continue to seek to include Article 25(3), first sentence in all of its future tax treaties.

Peer input

4. The peer that provided input indicated that its treaty with San Marino meets the Action 14 Minimum Standard for this element, which conforms to the above analysis.

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	San Marino should maintain its stated intention to include the required provision in all future tax treaties.

[A.2] Provide roll-back of bilateral APAs in appropriate cases

Jurisdictions with bilateral advance pricing arrangement (“APA”) programmes should provide for the roll-back of APAs in appropriate cases, subject to the applicable time limits (such as statutes of limitation for assessment) where the relevant facts and circumstances in the earlier tax years are the same and subject to the verification of these facts and circumstances on audit.

5. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

San Marino’s APA programme

6. San Marino reported that it does not have an APA programme, by which there is no possibility to provide roll-back of bilateral APAs to previous years.

7. The peer confirmed that it did not have any experience with San Marino regarding roll-back of bilateral APAs since 1 January 2016, which is logical given that San Marino does not have such a programme.

Anticipated modifications

8. San Marino indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Note

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

References

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://doi.org/10.1787/tpg-2017-en>.
- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Part B

Availability and access to MAP

[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a MAP provision which provides that when the taxpayer considers that the actions of one or both of the Contracting Parties result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty, the taxpayer, may irrespective of the remedies provided by the domestic law of those Contracting Parties, make a request for MAP assistance, and that the taxpayer can present the request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty.

9. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties include a provision allowing taxpayers to request a mutual agreement procedure and that this procedure can be requested irrespective of the remedies provided by the domestic law of the treaty partners. In addition, to provide certainty to taxpayers and competent authorities on the availability of the mutual agreement procedure, a minimum period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, is the baseline.

Current situation of San Marino's tax treaties

Inclusion of Article 25(1), first sentence of the OECD Model Tax Convention

10. Out of San Marino's 23 tax treaties, 22 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. In addition, none of San Marino's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as changed by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either state.

11. The remaining treaty can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	1

12. The treaty mentioned above is considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, the non-discrimination provision of this tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to allow only for the submission of MAP requests to the state of which the taxpayer is a resident and for this reason the treaty is considered to be in line with this part of element B.1.

Inclusion of Article 25(1), second sentence of the OECD Model Tax Convention

13. Out of San Marino's 23 tax treaties, 13 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

14. The remaining ten tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
Filing period less than 3 years for a MAP request (two years)	10

Practical application

Article 25(1), first sentence, of the OECD Model Tax Convention

15. As follows from the analysis in the paragraphs above, all of San Marino's tax treaties allow the filing of a MAP request irrespective of domestic remedies. In this respect, San Marino indicated that nothing in its domestic tax law prevents a taxpayer from requesting MAP assistance where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of San Marino. However, where such remedies have been concluded, San Marino indicated that access to MAP will not be granted.

Anticipated modifications

Multilateral Instrument

Article 25(1), first sentence of the OECD Model Tax Convention

16. San Marino signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and allowing the submission of MAP requests to the competent authority of either

contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

17. San Marino reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.¹ In this reservation, San Marino declared that it would ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report. It subsequently declared it would implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

Article 25(1), second sentence of the OECD Model Tax Convention

18. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

19. In regard of the ten tax treaties identified in paragraph 14 above that contain a filing period for MAP requests of less than three years, San Marino listed all ten treaties as a covered tax agreement under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). All of the ten relevant treaty partners are signatories to the Multilateral Instrument, but one did not list its treaty with San Marino as a covered tax agreement under that instrument. All remaining nine tax treaties partners, also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, nine of the ten tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

20. San Marino reported that for the tax treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, and will not be modified by the Multilateral Instrument, it was approached by one treaty partner to amend

its existing treaty to bring it in line with the requirements under this standard. No actions were taken in this respect, as San Marino intends to modify this treaty via the Multilateral Instrument and in that regard asked the treaty partner to modify its notifications under that instrument.

21. Regardless, San Marino reported it will seek to include Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, in all of its future tax treaties.

Peer input

22. The peer that provided input confirmed that its treaty with San Marino does not meet the requirement under the Action 14 Minimum Standard regarding the second sentence of Article 25(1). The peer confirmed that this provision would be modified by the Multilateral Instrument to be in line with the Action 14 Minimum Standard for this element, which conforms to the analysis above.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Ten out of 23 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these ten treaties: <ul style="list-style-type: none"> • Nine are expected to be modified by the Multilateral Instrument to include such equivalent upon entry into force for these treaties. • One will not be modified by that instrument to include such equivalent. For this treaty the relevant treaty partner has approached San Marino to amend the treaty via bilateral negotiations, but this has not been followed up by San Marino due its preference of having the treaty modified via the Multilateral Instrument, for which it has requested the treaty partner to update its notifications under that instrument 	San Marino should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in nine of the ten treaties upon entry into force for the treaties concerned. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent, San Marino should take action with the one treaty partner that has approached it to include the required provision via bilateral negotiations or ensure that the treaty partner updates its notifications under the Multilateral Instrument to ensure that the required provision is in place.
		In addition, San Marino should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report in all future tax treaties.
	The policy is that access to MAP will be denied in eligible cases where the issue under dispute has already been decided via the administrative or judicial domestic remedies provided by San Marino's domestic law.	San Marino should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP process, in particular when administrative or judicial domestic remedies have been concluded.

[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process

Jurisdictions should ensure that either (i) their tax treaties contain a provision which provides that the taxpayer can make a request for MAP assistance to the competent authority of either Contracting Party, or (ii) where the treaty does not permit a MAP request to be made to either Contracting Party and the competent authority who received the MAP request from the taxpayer does not consider the taxpayer's objection to be justified, the competent authority should implement a bilateral consultation or notification process which allows the other competent authority to provide its views on the case (such consultation shall not be interpreted as consultation as to how to resolve the case).

23. In order to ensure that all competent authorities concerned are aware of MAP requests submitted, for a proper consideration of the request by them and to ensure that taxpayers have effective access to MAP in eligible cases, it is essential that all tax treaties contain a provision that either allows taxpayers to submit a MAP request to the competent authority:

- i. of either treaty partner; or, in the absence of such provision,
- ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases, jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

Domestic bilateral consultation or notification process in place

24. As discussed under element B.1, out of San Marino's 23 treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, none of these other 23 tax treaties will, following San Marino's reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by that instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

25. San Marino reported that it has not introduced a bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when San Marino's competent authority considers the objection raised in the MAP request not to be justified.

Practical application

26. San Marino reported that since 1 January 2016 its competent authority has not been involved in any MAP requests. Therefore, there were no cases where it was decided that the objection raised by taxpayers in such request was not justified.

27. The peer that provided input indicated not being aware of any cases for which San Marino's competent authority considered the objection raised in a MAP request as not justified. They also reported not having been consulted/notified in such cases, which can be explained by the fact that no such cases occurred since this date.

Anticipated modifications

28. As previously discussed under element B.1, San Marino has signed the Multilateral Instrument. Specifically regarding element B.2, San Marino reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to existing treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.² Where tax treaties will not be amended via the Multilateral Instrument, San Marino indicated that it intends to introduce a documented bilateral notification and/or consultation process and noted that to date it has not yet been involved in any MAP cases.

Conclusion

	Areas for improvement	Recommendations
[B.2]	None of the 23 treaties contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	San Marino should without further delay follow its stated intention to document its bilateral notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, San Marino should apply its bilateral notification or consultation process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.

[B.3] Provide access to MAP in transfer pricing cases

Jurisdictions should provide access to MAP in transfer pricing cases.

29. Where two or more tax administrations take different positions on what constitutes arm's length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner's transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Jurisdictions should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

30. Out of San Marino's 23 tax treaties, 17 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. The remaining six treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but deviate from this provision for the following reasons:

- In one treaty the granting of a corresponding adjustment is only optional as the word "shall" is replaced by "may".
- Two treaties are missing the words "if necessary" in the last sentence. This language stipulates that competent authorities are required to consult together instead of only doing so when necessary.
- In three treaties corresponding adjustments can only be made via the mutual agreement procedure.

31. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in San Marino's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, San Marino indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments. As San Marino has not issued MAP guidance yet, there is no public information available regarding whether it will give access to MAP in transfer pricing cases.

Application of legal and administrative framework in practice

32. San Marino reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned was a transfer pricing case. However, no such cases in relation hereto were received since that date.

33. The peer that provided input indicated not being aware of a denial of access to MAP by San Marino since 1 January 2016 on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

34. San Marino reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, San Marino signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention).

35. San Marino has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the six treaties identified in paragraph 30 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, San Marino listed all as a covered tax agreement under the Multilateral Instrument and included all of them in the list of treaties for which San Marino has, pursuant to Article 17(3), reserved the right not to apply

Article 17(2) of the Multilateral Instrument. Therefore, at this stage, none of the six tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

Conclusion

	Areas for improvement	Recommendations
[B.3]	San Marino reported that it will provide access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP request for such cases during the Review Period. San Marino is therefore recommended to follow its policy and grant access to MAP in such cases.	

[B.4] Provide access to MAP in relation to the application of anti-abuse provisions

Jurisdictions should provide access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty.

36. There is no general rule denying access to MAP in cases of perceived abuse. In order to protect taxpayers from arbitrary application of anti-abuse provisions in tax treaties and in order to ensure that competent authorities have a common understanding on such application, it is important that taxpayers have access to MAP if they consider the interpretation and/or application of a treaty anti-abuse provision as being incorrect. Subsequently, to avoid cases in which the application of domestic anti-abuse legislation is in conflict with the provisions of a tax treaty, it is also important that taxpayers have access to MAP in such cases.

Legal and administrative framework

37. None of San Marino's 23 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of San Marino does not contain a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

38. San Marino reported that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of MAP. As San Marino has not issued MAP guidance yet, there is no public information available regarding whether it will give access to MAP in such cases.

Practical application

39. San Marino reported that since 1 January 2016 it has not denied access to MAP in any cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict

with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

40. The peer that provided input indicated not being aware of cases that have been denied access to MAP in San Marino since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

41. San Marino indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	San Marino reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. San Marino is therefore recommended to follow its policy and grant access to MAP in such cases.	

[B.5] Provide access to MAP in cases of audit settlements

Jurisdictions should not deny access to MAP in cases where there is an audit settlement between tax authorities and taxpayers. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, jurisdictions may limit access to the MAP with respect to the matters resolved through that process.

42. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases, unless they were already resolved via an administrative or statutory disputes settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

Audit settlements

43. San Marino reported that under its domestic legislation no process is available allowing the tax administration and taxpayers to enter into a settlement agreement during the course of or after ending of an audit.

Administrative or statutory dispute settlement/resolution process

44. San Marino reported it does not have an administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Practical application

45. San Marino reported that since 1 January 2016 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration. However, no such cases in relation hereto were received since that date.

46. The peer that provided input indicated not being aware of a denial of access to MAP in San Marino since 1 January 2016 in cases where there was an audit settlement between the taxpayer and the tax administration, which can be explained by the fact that such settlements are not possible in San Marino.

Anticipated modifications

47. San Marino indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

[B.6] Provide access to MAP if required information is submitted

Jurisdictions should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information based on the rules, guidelines and procedures made available to taxpayers on access to and the use of MAP.

48. To resolve cases where there is taxation not in accordance with the provisions of the tax treaty, it is important that competent authorities do not limit access to MAP when taxpayers have complied with the information and documentation requirements as provided in the jurisdiction's guidance relating hereto. Access to MAP will be facilitated when such required information and documentation is made publicly available.

Legal framework on access to MAP and information to be submitted

49. As will be discussed under element B.8, San Marino has not yet issued any MAP guidance.

50. Where a taxpayer has not included all required information in its MAP request, San Marino reported that it does not have any rules in place regarding requesting additional information to process a MAP request. Furthermore, no specific timelines are given to taxpayers within which they have to present such required information and there are no further rules of procedure regarding how the MAP process is further continued in those situations where not all relevant information is contained in a MAP request. The absence of any rules in this respect bears the risk that access to MAP will not be granted, or only with substantial delays, as also that a MAP case cannot be further dealt with or completed in due time.

Practical application

51. San Marino reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements. It further reported that since 1 January 2016 it has not received any MAP requests from taxpayers.

52. The peer that provided input indicated not being aware of a limitation of access to MAP by San Marino since 1 January 2016 in situations where taxpayers complied with information and documentation requirements, which can be clarified by the fact that no MAP requests were received by San Marino since that date.

Anticipated modifications

53. San Marino indicated that it expects to issue dedicated MAP guidelines in the near future that will contain the specific information requirements that taxpayers will need to submit in future MAP requests to San Marino.

Conclusion

	Areas for improvement	Recommendations
[B.6]	No rules are in place regarding what information taxpayers need to include in a MAP request nor are any rules and timelines in place for requesting additional information by the competent authority and for taxpayers to provide such information. This bears the risk that access to MAP may not be granted or that access is only granted with substantial delays.	San Marino should put in place clear procedures and timelines for requesting additional information from taxpayers when such information is not included in the initial MAP request and also provide for timelines within which taxpayers should comply with requests for additional information to ensure that eligible cases are dealt with in MAP and that no unnecessary delays occur. Such information could be included in the forthcoming published MAP guidance (see element B.8).

[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a provision under which competent authorities may consult together for the elimination of double taxation in cases not provided for in their tax treaties.

54. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention, enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of San Marino's tax treaties

55. Out of San Marino's 23 tax treaties, 21 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining two treaties do not contain any provision that is based on, or equivalent to, Article 25(3), second sentence of the OECD Model Tax Convention.

Anticipated modifications

Multilateral Instrument

56. San Marino signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

57. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, San Marino listed both of them as a covered tax agreement under the Multilateral Instrument and for both of them did it make, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant two treaty partners, both are signatories to the Multilateral Instrument and both listed their treaty with San Marino as a covered tax agreement, and also made such notification. Therefore, at this stage, both of the tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

58. As the two treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention will be modified by the Multilateral Instrument, no bilateral modifications are necessary. Regardless, San Marino reported that it will continue to seek to include Article 25(3), second sentence, in all of its future tax treaties.

Peer input

59. The peer that provided input indicated that its treaty with San Marino meets the Action 14 Minimum Standard for this element, which conforms to the above analysis.

Conclusion

	Areas for improvement	Recommendations
[B.7]	Two out of 23 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Both treaties are expected to be modified by the Multilateral Instrument to include the required provision for the treaties concerned.	San Marino should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. In addition, San Marino should maintain its stated intention to include the required provision in all future tax treaties.

[B.8] Publish clear and comprehensive MAP guidance

Jurisdictions should publish clear rules, guidelines and procedures on access to and use of the MAP and include the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance.

60. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

San Marino's MAP guidance

61. San Marino clarified that due to the fact that it has not yet received a single MAP request to date, it has not published rules, guidelines and procedures on access to and use of MAP, including the specific information and documentation that should be submitted in a MAP request.

62. Since San Marino has not yet published MAP guidance, the information that the FTA MAP Forum agreed should be included in such guidance is not available. This concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayers should submit its MAP request.³ Furthermore, due to the absence of any MAP guidance, information on various subjects is not specifically addressed. This concerns information on:

- whether MAP is available in cases of: (i) transfer pricing cases, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the possibility of suspension of tax collection during the course of a MAP
- the consideration of interest and penalties in the MAP
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

Information and documentation to be included in a MAP request

63. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.⁴ This concerns:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) requested to be resolved via MAP

- whether the MAP request was also submitted to the competent authority of the other treaty partner
- whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
- whether the issue(s) involved were dealt with previously
- a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

64. Due to the fact that San Marino has not issued MAP guidance, there is also no guidance on any of the above in San Marino.

Anticipated modifications

65. San Marino indicated that it intends to introduce dedicated MAP guidelines in the near future.

Conclusion

	Areas for improvement	Recommendations
[B.8]	There is no published MAP guidance.	<p>San Marino should, without further delay, introduce and publish guidance on access to and use of the MAP, and in particular include the contact information of its competent authority.</p> <p>Additionally, although not required by the Action 14 Minimum Standard, San Marino could consider including information on:</p> <ul style="list-style-type: none"> • how MAP operates in San Marino, the rules for accessing MAP, how its competent authority applies the process in practice and the rights and role of taxpayers • whether MAP is available in cases of: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the possibility of suspension of tax collection during the course of a MAP • the consideration of interest and penalties in the MAP • the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any)

	Areas for improvement	Recommendations
[B.8]	No MAP guidance is available on what information taxpayers should include in their MAP request.	<p>San Marino should include in its to be published MAP guidance information on the manner and form in which taxpayers should submit their MAP request. In particular, the following items could be included:</p> <ul style="list-style-type: none"> • facts of the case • analysis of the issue(s) requested to be resolved via MAP • whether the MAP request was also submitted to the competent authority of the other treaty partner • whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes • whether the issue(s) involved were dealt with previously • a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

[B.9] Make MAP guidance available and easily accessible and publish MAP profile

Jurisdictions should take appropriate measures to make rules, guidelines and procedures on access to and use of the MAP available and easily accessible to the public and should publish their jurisdiction MAP profiles on a shared public platform pursuant to the agreed template.

66. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.⁵

Rules, guidelines and procedures on access to and use of the MAP

67. As discussed under element B.8, San Marino has not yet published MAP guidance.

MAP profile

68. San Marino’s MAP profile has not been published yet as it was only recently submitted. The MAP profile submitted by San Marino contains only minimal information, which can be clarified by the fact that San Marino has not yet published MAP guidance and therefore does not include external links that could provide extra information and guidance where appropriate.

Anticipated modifications

69. San Marino did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.9]	There is no MAP guidance publicly available.	San Marino should make its MAP guidance publicly available and easily accessible once it has been introduced. Furthermore, the MAP profile should be updated once San Marino's MAP guidance has been introduced.

[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP

Jurisdictions should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, and jurisdictions limit access to the MAP with respect to the matters resolved through that process, jurisdictions should notify their treaty partners of such administrative or statutory processes and should expressly address the effects of those processes with respect to the MAP in their public guidance on such processes and in their public MAP programme guidance.

70. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction's MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

MAP and audit settlements in the MAP guidance

71. As previously discussed under B.5, audit settlements are not possible in San Marino. In that regard, there is no need to address in its forthcoming MAP guidance that such settlements do not preclude access to MAP.

72. The peer that provided input raised no issues with respect to the availability of audit settlements and the fact that San Marino has not yet published MAP guidance.

MAP and other administrative or statutory dispute settlement/resolution processes in available guidance

73. As previously mentioned under element B.5, San Marino does not have an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. In that regard, there is no need to address the effects of such process with respect to MAP in San Marino's forthcoming MAP guidance.

74. The peer that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in San Marino, which can be clarified by the fact that there is no such process in San Marino.

Notification of treaty partners of existing administrative or statutory dispute settlement/resolution processes

75. As San Marino does not have an internal administrative or statutory dispute settlement/resolution process in place, there is no need for notifying treaty partners of such process.

Anticipated modifications

76. San Marino indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Republic of San Marino reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified.” An overview of San Marino’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-san-marino.pdf.
2. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Republic of San Marino reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either

Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified." An overview of San Marino's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-san-marino.pdf.

3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
4. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
5. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Part C

Resolution of MAP cases

[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a provision which requires that the competent authority who receives a MAP request from the taxpayer, shall endeavour, if the objection from the taxpayer appears to be justified and the competent authority is not itself able to arrive at a satisfactory solution, to resolve the MAP case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the tax treaty.

77. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention, which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of San Marino’s tax treaties

78. Out of San Marino’s 23 tax treaties, 14 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty. The remaining nine treaties also contain such a provision, but additional wording stipulating that the mutual agreement procedure “shall expire by the end of the third/fourth year following that in which the case was presented by the taxpayer” is included. As the inclusion of this sentence bears the risk that a MAP case cannot be resolved anymore if an agreement is not reached within the three-year or four-year period, these treaties are considered to not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Anticipated modifications

Multilateral Instrument

79. San Marino signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

80. In regard of the nine tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, San Marino listed all of them as a covered tax agreement under the Multilateral Instrument but for none of them did it make, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i). Therefore, at this stage, none of the nine tax treaties identified above will be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Bilateral modifications

81. Where treaties will not be modified by the Multilateral Instrument, San Marino reported that it is open to updating them through future bilateral negotiations. However, it has not planned any bilateral negotiations to amend or renegotiate existing treaties which do not meet the Action 14 Minimum Standard, as San Marino's policy is to modify treaties via the Multilateral Instrument. Regardless, San Marino reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

82. The peer that provided input indicated that its treaty with San Marino meets the Action 14 Minimum Standard for this element, which conforms to the above analysis.

Conclusion

	Areas for improvement	Recommendations
[C.1]	Nine out of 23 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. All nine will not be modified by the Multilateral Instrument to include the required provision.	<p>As the nine treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument, San Marino should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, San Marino should put a plan in place on how it envisages updating these nine treaties to include the required provision.</p> <p>In addition, San Marino should maintain its stated intention to include the required provision in all future tax treaties.</p>

[C.2] Seek to resolve MAP cases within a 24-month average timeframe

Jurisdictions should seek to resolve MAP cases within an average time frame of 24 months. This time frame applies to both jurisdictions (i.e. the jurisdiction which receives the MAP request from the taxpayer and its treaty partner).

83. As double taxation creates uncertainties and leads to costs for both taxpayers and jurisdictions, and as the resolution of MAP cases may also avoid (potential) similar issues for future years concerning the same taxpayers, it is important that MAP cases are resolved swiftly. A period of 24 months is considered as an appropriate time period to resolve MAP cases on average.

Reporting of MAP statistics

84. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template.

85. San Marino did not provide its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline for the year 2016 but did so for 2017 and 2018. As San Marino has not been involved in any MAP cases, it was not necessary to match its statistics with its treaty partners.

Monitoring of MAP statistics

86. As San Marino has not received a MAP request, there was no need to have a system in place with its treaty partners that communicates, monitors and manages with its treaty partners the MAP caseload.

Analysis of San Marino’s MAP caseload

87. San Marino has not been involved in any MAP cases since 1 January 2016.

Overview of cases closed during the Statistics Reporting Period

88. San Marino has not been involved in any MAP cases since 1 January 2016.

Average timeframe needed to resolve MAP cases

89. San Marino has not been involved in any MAP cases since 1 January 2016.

Peer input

90. As San Marino has not yet been involved in any MAP cases, the peer that provided input did not provide any specific comment in relation to element C.2.

Anticipated modifications

91. San Marino indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	MAP statistics for 2016 were not submitted, but were submitted for 2017 and 2018.	Despite not having been involved in any MAP requests, San Marino should annually report MAP statistics as required by the MAP statistics Reporting Framework.
	As there were no post-2015 MAP cases to resolve it was therefore at this stage not possible to evaluate whether San Marino's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	

[C.3] Provide adequate resources to the MAP function

Jurisdictions should ensure that adequate resources are provided to the MAP function.

92. Adequate resources, including personnel, funding and training, are necessary to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner.

Description of San Marino's competent authority

93. Under San Marino's tax treaties, the competent authority function is assigned to the Ministry of Finance and Budget. Within the Ministry of Finance and Budget, one person is responsible for handling both attribution/allocation cases and other cases in addition to other non-MAP related tasks.

94. San Marino reported that to date it considers the resources available to the competent authority to be sufficient given the fact that it did not receive any MAP requests from taxpayers or other competent authorities.

Monitoring mechanism

95. San Marino reported that once it receives its first MAP request then it will consider the possibility to monitor its resources to ensure that it continues to have sufficiently available resources for its competent authority.

Practical application

MAP statistics

96. As discussed under element C.2, San Marino was not involved in any MAP cases for the period under review, by which there were no MAP statistics to analyse.

Peer input

97. The peer that provided input noted that there were no MAP cases pending with San Marino and therefore did not provide any input relating to the functioning of San Marino's competent authority.

Anticipated modifications

98. San Marino indicated that it is considering the possibility to add another person to its competent authority team. San Marino also stated that it expects to include model timeframes for the steps to be taken by its competent authority throughout the MAP process in its forthcoming dedicated MAP guidelines.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	San Marino should monitor whether the resources available for the competent authority function remain adequate in order to ensure that future MAP cases are resolved in a timely, efficient and effective manner.

[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty

Jurisdictions should ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, in particular without being dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty.

99. Ensuring that staff in charge of MAP can and will resolve cases, absent any approval/direction by the tax administration personnel directly involved in the adjustment and absent any policy considerations, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

100. San Marino reported that its one staff member in charge of MAP cases in practice was not involved in any MAP cases for the period under review. In this respect San Marino clarified that when its competent authority handles a MAP request, it would act fully independently because the competent authority is within the Department of Finance, whereas the audit function is separately located within the Tax Administration.

101. In regard of the above, San Marino reported that staff in charge of MAP in practices operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations that San Marino would like to see reflected in future amendments to the treaty.

Practical application

102. As San Marino has not received any MAP cases, the peer that provided input reported no impediments in San Marino to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy.

Anticipated modifications

103. San Marino indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	For future MAP cases, San Marino should ensure that its competent authority has the authority, and uses that authority in practice, to resolve such cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that San Marino would like to see reflected in future amendments to the treaty.

[C.5] Use appropriate performance indicators for the MAP function

Jurisdictions should not use performance indicators for their competent authority functions and staff in charge of MAP processes based on the amount of sustained audit adjustments or maintaining tax revenue.

104. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

Performance indicators used by San Marino

105. The Action 14 final report includes examples of performance indicators that are considered appropriate. These indicators are:

- number of MAP cases resolved
- consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers)
- time taken to resolve a MAP case (recognising that the time taken to resolve a MAP case may vary according to its complexity and that matters not under the control of a competent authority may have a significant impact on the time needed to resolve a case).

106. In view of these examples, as San Marino has not been involved in any MAP cases thus far, it did not report using any of these performance indicators to assess staff in charge of MAP cases. In a general sense, San Marino reported that its domestic system does not have any specific rules relating to the evaluation of employee performance other than those relating to those relating to the trial period as defined in Article 23-25 of the law 31 July 2019/107.

107. Further to the above, San Marino reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue. In other words, staff in charge of MAP would not be evaluated on the basis of the material outcome of MAP discussion.

Practical application

108. The peer that provided input reported not being aware of the use of performance indicators by San Marino that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

109. San Marino indicated that its forthcoming dedicated MAP guidelines will contain performance indicators that are in line with both the Action 14 Minimum Standard and San Marino’s internal regulations relating to the staff of its public administration.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	San Marino could consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes.

[C.6] Provide transparency with respect to the position on MAP arbitration

Jurisdictions should provide transparency with respect to their positions on MAP arbitration.

110. The inclusion of an arbitration provision in tax treaties may help ensure that MAP cases are resolved within a certain timeframe, which provides certainty to both taxpayers and competent authorities. In order to have full clarity on whether arbitration as a final stage in the MAP process can and will be available in jurisdictions it is important that jurisdictions are transparent on their position on MAP arbitration.

Position on MAP arbitration

111. San Marino reported that it has no domestic law limitations for including MAP arbitration in its tax treaties and its MAP profile clearly states that arbitration is available in a certain number of its tax treaties (see below).

Practical application

112. Up to date, San Marino has incorporated an arbitration clause in six of its 23 tax treaties as a final stage to the MAP. Three of these six treaties contain an arbitration provision that is based on Article 25(5) of the OECD Model Tax Convention. Two other treaties contain a mandatory arbitration clause, one of which provides for an arbitration procedures with an arbitration court but is not based on Article 25(5) of the OECD Model Tax Convention. The sixth treaty contains a voluntary arbitration procedure and the peer that provided input confirmed the existence of an arbitration provision.

Anticipated modifications

113. San Marino indicated that its forthcoming dedicated MAP guidelines will contain information on San Marino’s position with respect to arbitration.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

Jurisdictions should implement any agreement reached in MAP discussions, including by making appropriate adjustments to the tax assessed in transfer pricing cases.

114. In order to provide full certainty to taxpayers and the jurisdictions, it is essential that all MAP agreements are implemented by the competent authorities concerned.

Legal framework to implement MAP agreements

115. San Marino reported that, pursuant to Law No. 174/2015, tax treaties acquire the status of primary domestic law. Unless overridden by tax treaties that contain the second sentence of Article 25(2) of the OECD Model Tax Convention, San Marino reported that its domestic statute of limitation would apply for the implementation of MAP agreements. This statute of limitation is defined in Article 115(3)(g) and (4) of the Law No. 166/2013 and is three years after the ending of the fiscal year concerning, or four years in case the taxpayer did not file a tax return or declared in the tax return a zero amount of tax due.

116. As will be discussed under element D.3, if the Multilateral Instrument takes effect for San Marino's tax treaties, all of them will have a provision stating that all MAP agreements shall be implemented notwithstanding any domestic time limits, following which the domestic statute of limitation would not be applicable.

117. Concerning the process of implementation of MAP agreements, since San Marino has not yet been involved in any MAP cases, it reported that it does not have any processes in place for implementing such agreements.

Practical application

118. As San Marino was not involved in any MAP case for the period under review, it was not possible to assess the implementation of MAP agreements by San Marino.

119. The peer that provided input reported that it was not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by San Marino, which is logical as San Marino has not yet received a MAP case.

Anticipated modifications

120. San Marino indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether San Marino would have implemented all MAP agreements thus far.	

[D.2] Implement all MAP agreements on a timely basis

Agreements reached by competent authorities through the MAP process should be implemented on a timely basis.

121. Delays in implementing MAP agreements may lead to adverse financial consequences for both taxpayers and competent authorities. To avoid this and to increase certainty for all parties involved, it is important that the implementation of any MAP agreement is not obstructed by procedural and/or statutory delays in the jurisdictions concerned.

Theoretical timeframe for implementing mutual agreements

122. As discussed under element D.1., San Marino has not yet received a MAP case and therefore it reported that it does not have any processes in place for implementing MAP agreements,

Practical application

123. As San Marino was not involved in any MAP cases for the period under review, it was not possible to assess the implementation of MAP agreements by San Marino.

124. The peer that provided input reported that it was not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by San Marino, which is logical as San Marino has not yet received a MAP case

Anticipated modifications

125. San Marino indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether San Marino would have implemented all MAP agreements on a timely basis thus far.	

[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties or alternative provisions in Article 9(1) and Article 7(2)

Jurisdictions should either (i) provide in their tax treaties that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law, or (ii) be willing to accept alternative treaty provisions that limit the time during which a Contracting Party may make an adjustment pursuant to Article 9(1) or Article 7(2), in order to avoid late adjustments with respect to which MAP relief will not be available.

126. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Legal framework and current situation of San Marino's tax treaties

127. As discussed under element D.1, San Marino's domestic legislation contains a statute of limitations of three/four years for implementing MAP agreements, unless overridden by tax treaties. As will be shown below, the effect of the Multilateral Instrument will cause that this is the case for all of San Marino's tax treaties.

128. Out of San Marino's 23 tax treaties, 22 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. The remaining treaty does not contain Article 25(2), second sentence of the OECD Model Tax Convention nor the alternative provision in Article 9(1) and Article 7(2) setting a time limit to make transfer pricing adjustments.

Anticipated modifications

Multilateral Instrument

129. San Marino signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its

tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

130. In regard of the one tax treaty identified above that is considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions for Articles 9(1) and 7(2), San Marino listed it as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(ii), a notification that it does not contain a provision described in Article 16(4)(b)(ii). The relevant treaty partner also signatory to the Multilateral Instrument, listed its treaty with San Marino as a covered tax agreement and made a notification for the relevant provision. Therefore, at this stage, the tax treaty identified above will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

131. As the one treaty identified above will be modified by the Multilateral Instrument, no further bilateral modifications are necessary. Regardless San Marino reported that it will continue to seek to include Article 25(2), second sentence, of the OECD Model Tax Conventions in all of its future tax treaties.

Peer input

132. The peer that provided input indicated that its treaty with San Marino meets the Action 14 Minimum Standard for this element, which conforms with the above analysis.

Conclusion

	Areas for improvement	Recommendations
[D.3]	One out of 23 tax treaties contains neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). This treaty is expected to be modified by the Multilateral instrument to include the required provision upon entry into force for the treaty concerned.	San Marino should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned. In addition, San Marino should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternative provisions, in all future tax treaties.

Reference

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	San Marino should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	Ten out of 23 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these ten treaties: <ul style="list-style-type: none"> • Nine are expected to be modified by the Multilateral Instrument to include such equivalent upon entry into force for these treaties • One will not be modified by that instrument to include such equivalent. For this treaty the relevant treaty partner has approached San Marino to amend the treaty via bilateral negotiations, but this has not been followed up by San Marino due its preference of having the treaty modified via the Multilateral Instrument, for which it has requested the treaty partner to update its notifications under that instrument 	<p>San Marino should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in nine of the ten treaties upon entry into force for the treaties concerned.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent, San Marino should take action with the one treaty partner that has approached it to include the required provision via bilateral negotiations or ensure that the treaty partner updates its notifications under the Multilateral Instrument to ensure that the required provision is in place.</p>
		In addition, San Marino should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report in all future tax treaties.
	The policy is that access to MAP will be denied in eligible cases where the issue under dispute has already been decided via the administrative or judicial domestic remedies provided by San Marino's domestic law.	San Marino should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP process, in particular when administrative or judicial domestic remedies have been concluded.
[B.2]	None of the 23 treaties contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	San Marino should without further delay follow its stated intention to document its bilateral notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, San Marino should apply its bilateral notification or consultation process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.

	Areas for improvement	Recommendations
[B.3]	San Marino reported that it will provide access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP request for such cases during the Review Period. San Marino is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4]	San Marino reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. San Marino is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	-	-
[B.6]	No rules are in place regarding what information taxpayers need to include in a MAP request nor are any rules and timelines in place for requesting additional information by the competent authority and for taxpayers to provide such information. This bears the risk that access to MAP may not be granted or that access is only granted with substantial delays.	San Marino should put in place clear procedures and timelines for requesting additional information from taxpayers when such information is not included in the initial MAP request and also provide for timelines within which taxpayers should comply with requests for additional information to ensure that eligible cases are dealt with in MAP and that no unnecessary delays occur. Such information could be included in the forthcoming published MAP guidance (see element B.8).
[B.7]	Two out of 23 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Both treaties are expected to be modified by the Multilateral Instrument to include the required provision for the treaties concerned.	San Marino should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. In addition, San Marino should maintain its stated intention to include the required provision in all future tax treaties.
[B.8] ↓	There is no published MAP guidance.	San Marino should, without further delay, introduce and publish guidance on access to and use of the MAP, and in particular include the contact information of its competent authority. Additionally, although not required by the Action 14 Minimum Standard, San Marino could consider including information on: <ul style="list-style-type: none"> • how MAP operates in San Marino, the rules for accessing MAP, how its competent authority applies the process in practice and the rights and role of taxpayers • whether MAP is available in cases of: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the possibility of suspension of tax collection during the course of a MAP • the consideration of interest and penalties in the MAP • the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any)

	Areas for improvement	Recommendations
↓ [B.8]	No MAP guidance is available on what information taxpayers should include in their MAP request.	<p>San Marino should include in its to be published MAP guidance information on the manner and form in which taxpayers should submit their MAP request. In particular, the following items could be included:</p> <ul style="list-style-type: none"> • facts of the case • analysis of the issue(s) requested to be resolved via MAP • whether the MAP request was also submitted to the competent authority of the other treaty partner • whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes • whether the issue(s) involved were dealt with previously • a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.
[B.9]	There is no MAP guidance publicly available.	San Marino should make its MAP guidance publicly available and easily accessible once it has been introduced. Furthermore, the MAP profile should be updated once San Marino's MAP guidance has been introduced.
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	Nine out of 23 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. All nine will not be modified by the Multilateral Instrument to include the required provision.	<p>As the nine treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument, San Marino should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, San Marino should put a plan in place on how it envisages updating these nine treaties to include the required provision.</p> <p>In addition, San Marino should maintain its stated intention to include the required provision in all future tax treaties.</p>
[C.2]	MAP statistics for 2016 were not submitted.	Despite not having been involved in any MAP requests, San Marino should annually report MAP statistics as required by the MAP statistics Reporting Framework.
	As there were no post-2015 MAP cases to resolve it was therefore at this stage not possible to evaluate whether San Marino's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	
[C.3]	-	San Marino should monitor whether the resources available for the competent authority function remain adequate in order to ensure that future MAP cases are resolved in a timely, efficient and effective manner.

	Areas for improvement	Recommendations
[C.4]	-	For future MAP cases, San Marino should ensure that its competent authority has the authority, and uses that authority in practice, to resolve such cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that San Marino would like to see reflected in future amendments to the treaty.
[C.5]	-	San Marino could consider using the examples of performance indicators mentioned in the Action 14 final report to evaluate staff in charge of the MAP processes.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether San Marino would have implemented all MAP agreements thus far.	
[D.2]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether San Marino would have implemented all MAP agreements on a timely basis thus far.	
[D.3]	One out of 23 tax treaties contains neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). This treaty is expected to be modified by the Multilateral instrument to include the required provision upon entry into force for the treaty concerned.	<p>San Marino should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.</p> <p>In addition, San Marino should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternative provisions, in all future tax treaties.</p>

Annex A

Tax treaty network of San Marino

			Article 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?	
	Y = yes N = signed pending ratification	If N, date of signing E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	
Austria	Y	N/A	O	ii	2-years	i	i	Y	Y	Y	Y	Y
Azerbaijan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y
Barbados	Y	N/A	O	ii*	2-years	Y	i	N	Y	Y	Y	N
Belgium	Y	N/A	O	ii*	2-years	Y	i	N	Y	Y	N*	N

			Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Croatia	Y	N/A	O	ii*	2-years	Y	i	N	Y	Y	Y	N
Cyprus (1)	Y	N/A	O	ii*	2-years	Y	i	N	Y	Y	Y	N
Georgia	Y	N/A	O	Y	N/A	Y	i	N	Y	Y	Y	N
Greece	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Hungary	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Italy	Y	N/A	O	ii*	2-years	i	i	Y	Y	Y	Y	Y
Liechtenstein	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y
Luxembourg	Y	N/A	O	ii*	2-years	Y	i	N	Y	Y	Y	Y
Malaysia	Y	N/A	O	Y	N/A	Y	i	Y	N*	Y	Y	N
Malta	Y	N/A	O	ii*	2-years	Y	i	N	Y	Y	Y	N
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N*	N
Qatar	Y	N/A	O	ii*	2-years	i	i	Y	Y	Y	Y	N
Romania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Serbia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Seychelles	Y	N/A	O	ii*	2-years	i	i	Y	Y	Y	Y	N
Singapore	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N
United Arab Emirates	N	11-Jul-18	O	Y	N/A	Y	i	Y	Y	Y	Y	Y

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
St. Kitts and Nevis	Y N/A	O	Y N/A		i	i	N	Y	Y	Y	N
Viet Nam	Y N/A	O	Y N/A		Y	i	N	Y	Y	Y	N

Notes: a. (1) Footnote 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 United Nations, Turkey shall preserve its position concerning the “Cyprus” issue.

Footnote 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.

Legend

- E* The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
- E** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
- O* The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
- Y* The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
- Y** The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.
- Y*** The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty

- i*/ii*/iv*/N* The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
- i**/iv**/N** The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
- i*** The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

MAP statistics reporting for pre-2016 cases

2016 MAP statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2017 MAP statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2018 MAP statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	N/A

Annex C

MAP statistics reporting for post-2015 cases

2016 MAP statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2017 MAP statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

2018 MAP statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	N/A

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 31 December 2018
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2018
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, San Marino (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The minimum standard is complemented by a set of best practices. The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 1 peer review of the implementation of the Action 14 Minimum Standard by San Marino.

Consult this publication on line at <https://doi.org/10.1787/34ec90e0-en>.

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