

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



Making Dispute Resolution More Effective – MAP Peer Review Report, San Marino (Stage 2)

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 90 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 135 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 19 November 2021 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
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 more than 20 tax treaties. San Marino has no experience with resolving MAP cases, as it has not been involved in any MAP cases. The outcome of the stage 1 peer review process was that overall San Marino met the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies, San Marino has worked to address them, which has been monitored in stage 2 of the process. In this respect, San Marino has solved almost all the identified deficiencies.

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 (OECD, 2017). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Approximately 40% contain a timeline to file a MAP request that 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.
- Approximately 40% do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), 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 signed and ratified the Multilateral Instrument. Through this instrument a number of its tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force and entry into effect of the Multilateral Instrument, San Marino reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. Such bilateral negotiations have already been initiated or are envisaged to be initiated for all of those treaties.

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

Furthermore, San Marino meets almost all the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in eligible cases in principle, although it has since 1 April 2019 not received any MAP requests. However, access to MAP is denied in eligible cases where a taxpayer accepts an audit report issued by San Marino's tax administration or where a taxpayer has failed to challenge a new notice of assessment issued pursuant to a revised audit report issued by San Marino's tax administration before the court within the prescribed 60 day time-limit. Furthermore, San Marino has in place a documented bilateral consultation process for those situations in which its competent authority considers the objection raised by

taxpayers in a MAP request as not justified. San Marino has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice under tax treaties.

San Marino has not been involved in any MAP cases since 1 January 2016, but it meets in principle almost all the requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. San Marino's competent authority operates fully independently from the audit function of the tax authorities and envisages a co-operative approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. However, San Marino did not submit MAP statistics in accordance with the MAP Statistics Reporting Framework for all applicable years.

Lastly, San Marino meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. San Marino monitors the implementation of such agreements.

Reference

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

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), all 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 (“**MAP**”) 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

Under San Marino’s tax treaties, the competent authority function is assigned to the Ministry of Finance. This responsibility is delegated to the Secretariat of State for Finance and Budget within the Finance and Budget Department of the Ministry of Finance. The competent authority of San Marino currently employs one employee who is responsible for both attribution/allocation cases and other cases in addition to other non-MAP related tasks.

San Marino issued guidance on the governance and administration of the mutual agreement procedure (“**MAP guidance**”) in December 2020, which is available at:

www.finanze.sm/on-line/home/archivio-norme-e-circolari/documento24121326.html
(in Italian)

www.finanze.sm/on-line/home/archivio-norme-e-circolari/documento24121327.html
(in English)

Developments in San Marino since 1 April 2019

Developments in relation to the tax treaty network

The stage 1 peer review report of San Marino noted that it was conducting tax treaty negotiations with Canada, Germany and the Czech Republic. San Marino reported that it has concluded tax treaty negotiations with Andorra and the Czech Republic and that, at present, it has initiated or is conducting tax treaty negotiations with eleven other treaty partners on new treaties or amending protocols. Further, the stage 1 report noted that San Marino had signed a new treaty with the United Arab Emirates (2018), which had not entered into force at that time. This treaty has now entered into force.

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. On 11 March 2020, San Marino deposited its instrument of ratification, following which the Multilateral Instrument entered into force

for San Marino on 1 July 2020. With the deposit of the instrument of ratification of the Multilateral Instrument, 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.

For the ten treaties that are considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, San Marino reported that it intends to update them via bilateral negotiations. In this respect, San Marino reported that one treaty partner has informed San Marino that it would revise their list of notifications and reservations to the Instrument to have the treaty with San Marino modified by it. With respect to the remaining nine treaties, negotiations are ongoing with one treaty partner, whereas San Marino has sent proposals for amending protocols to the eight remaining treaty partners.

Other developments

Further to the above, San Marino reported that it has made a few changes to the operation of its MAP process and that it has issued MAP guidance. These changes can be summarised as follows:

- *Notification/consultation process*: the introduction and documentation of a bilateral consultation process in its internal procedures
- *MAP guidance*: issuance of comprehensive MAP guidance including *inter alia* the contact details of the competent authority and the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance.

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 and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by San Marino, its peers and taxpayers. The questionnaires for the peer review process were sent to San Marino and the peers on 27 March 2019.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, San Marino's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 11 December 2019. This report identifies the strengths and shortcomings of San Marino in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.⁵ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by San Marino. In this update report, San Marino reflected (i) what steps it has already taken, or are to be taken, to

address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

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.

Timing of the process and input received from peers and taxpayers

Stage 1 of the peer review process for San Marino was launched on 27 March 2019, with the sending of questionnaires to San Marino and its peers. The FTA MAP Forum has approved the stage 1 peer review report of San Marino in September 2019, with the subsequent approval by the BEPS Inclusive Framework on 11 December 2019. On 11 December 2020, San Marino submitted its update report, which initiated stage 2 of the process.

The period for evaluating San Marino's implementation of the Action 14 Minimum Standard for stage 1 ranged from 1 January 2016 to 31 March 2019 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 April 2019 and depicts all developments as from that date until 31 December 2020.

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, this peer input was limited to the treaty aspects of its relationship with San Marino. During stage 2, the same peer provided input and reported that the update report of San Marino fully reflects the experiences this peer has had with San Marino since 1 April 2019.

Input by San Marino and co-operation throughout the process

San Marino provided answers in its questionnaire. San Marino was 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 provided the following information:

- MAP profile⁶
- MAP statistics⁷ according to the MAP Statistics Reporting Framework (see below), but only for 2017, 2018 and 2020.

Concerning stage 2 of the process, San Marino submitted its update report on time and the information included therein was extensive. San Marino was very co-operative during stage 2 and the finalisation of the peer review process.

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

Overview of MAP caseload in San Marino

San Marino has not been involved in any MAP cases during the period under review for stage 1 or stage 2.

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 implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁸ Apart from analysing San Marino’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by San Marino during stage 1 and stage 2. 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 basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of San Marino relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes included in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but San Marino should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation 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. Reference is made to Annex A for the overview of San Marino’s tax treaties regarding the mutual agreement procedure.
2. This 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-instrument-deposit.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. Available at: <https://www.oecd.org/fr/publications/making-dispute-resolution-more-effective-map-peer-review-report-san-marino-stage-1-34ec90e0-en.htm>.
6. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
7. The MAP statistics of San Marino are included in Annexes B and C of this report.
8. 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

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 (OECD, 2017a) 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 (OECD, 2017a), 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.

3. The peer that provided input during stage 1 indicated that its treaty with San Marino meets the Action 14 Minimum Standard for this element, which is line with the above analysis.

Recent developments

Peer input

4. The peer that provided input during stage 2 did not provide input in relation to its tax treaty with San Marino.

Anticipated modifications

5. San Marino reported that it will continue to seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	-

[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.

6. 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

7. San Marino reported that it has not put in place an APA programme.

Roll-back of bilateral APAs

8. Since San Marino does not have an APA programme in place, there is no possibility to provide roll-back of bilateral APAs to previous years.

Recent developments

9. There are no recent developments with respect to element A.2.

Practical application of roll-back of bilateral APAs

Period 1 January 2016-31 March 2019 (stage 1)

10. San Marino reported not having received any requests for bilateral APAs in the period 1 January 2016-31 March 2019, which is logical given that San Marino does not have such a programme in place.

11. The peer that provided input indicated that it has not received a request for a roll-back of bilateral APAs concerning San Marino in the period 1 January 2016-31 March 2019.

Period 1 April 2019-31 December 2020 (stage 2)

12. San Marino reported also not having received any requests for a bilateral APA since 1 April 2019, which is logical given that San Marino still does not have such a programme in place.

13. The peer that provided input during stage 1 stated in stage 2 that the update report provided by San Marino fully reflects its experience with San Marino since 1 April 2019.

Anticipated modifications

14. 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 (OECD, 2017b).

References

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

OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, <https://dx.doi.org/10.1787/tpg-2017-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.

15. 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

16. None of San Marino's 23 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state 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. Furthermore, 22 of these 23 treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

17. The remaining treaty contains a variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident. This treaty

is considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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

18. 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 (OECD, 2017) 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.

19. 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

Peer input

20. The peer that provided input during stage 1 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 is line with the analysis below.

Practical application

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

21. As follows from the analysis in paragraphs 16 and 17 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. Further, San Marino reported that it would grant access to MAP where there is a pending administrative or judicial proceeding or if an administrative or court decision has been issued regarding the same subject matter. Nevertheless, San Marino noted that its competent authority cannot derogate from a final court decision in MAP and therefore it will only seek to resolve the MAP case by having the treaty partner providing for correlative relief in line with the decision of its court. This is confirmed in section 4.2.5 of San Marino's MAP guidance as well.

22. However, San Marino reported that its competent authority would restrict access to MAP in certain situations relating to domestic remedies initiated by a taxpayer. San Marino noted that following an audit, an audit report is issued to the taxpayer which would document the adjustments proposed to be made by the tax authorities. San Marino reported

that the taxpayer would be given 60 days to challenge such report administratively, in the first instance, before the tax authorities. San Marino clarified that if the taxpayer expressly accepts this report, then access to MAP would not be provided in such cases. However, San Marino noted that access to MAP would be provided if the taxpayer does not accept the report, even if the taxpayer does not challenge the report within the prescribed 60 day period. San Marino reported that if the taxpayer chooses to challenge the audit report within the 60 day period, the tax authorities would reconsider the audit report and issue another audit report. San Marino noted that the taxpayer would be given a ten day period to accept this revised report and if the taxpayer does not accept the report, a new notice of assessment is issued in respect of which the taxpayer is given another 60 day period to challenge such notice before the court. If the taxpayer accepts the revised audit report or fails to challenge the new notice of assessment within the prescribed time period, access to MAP would be denied by San Marino's competent authority. This is confirmed in part 6 of San Marino's MAP guidance.

23. Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b) states that access to MAP should be granted to a taxpayer "irrespective of domestic remedies." San Marino's policy requires taxpayers to not formally accept audit reports issued by its tax authorities or to initiate domestic judicial remedies challenging a notice of assessment issued pursuant to a revised audit report of its tax authorities concomitantly for the taxpayer to be provided access to MAP. Consequently, this policy entails that, in practice, a MAP request cannot be submitted irrespective of the remedies provided by the domestic law of San Marino. Therefore, this practice is considered to not be in line with this element of the Action 14 Minimum Standard.

24. San Marino noted that it has prepared a new draft decree by which, once approved, taxpayers would be given access to MAP irrespective of taxpayer actions concerning domestic remedies or whether domestic remedies have been simultaneously initiated.

Recent developments

Multilateral Instrument

25. San Marino signed the Multilateral Instrument, for which it deposited its instrument of ratification on 11 March 2020. The Multilateral Instrument has for San Marino entered into force on 1 July 2020.

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

26. 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 (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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.

27. 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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

28. 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 (OECD, 2017) – 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 (OECD, 2017).

29. With regard to the ten tax treaties identified in paragraph 19 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 made for all, 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).

30. Seven of these nine treaty partners have already deposited their instruments of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between San Marino and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining two treaties, the instrument will, upon entry into force for this treaty, modify them to include this equivalent.

Other developments

31. 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 (OECD, 2017), and will not be modified by the Multilateral Instrument, the concerned treaty partner has informed San Marino that it would revise their list of notifications and reservations to the Instrument to have the treaty with San Marino modified by it.

Peer input

32. The peer that provided input during stage 2 did not provide input in relation to its tax treaty with San Marino.

Anticipated modifications

33. San Marino reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Ten out of 23 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), 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:</p> <ul style="list-style-type: none"> • Seven have been modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Two are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One will not be modified by the Multilateral instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to this treaty, the relevant treaty partner has been contacted by San Marino with a view to have the treaty modified by the Multilateral Instrument. 	<p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent, San Marino should continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument.</p>
	<p>Access to MAP is denied in eligible cases where a taxpayer accepts an audit report issued by San Marino's tax administration or where a taxpayer has failed to challenge a new notice of assessment issued pursuant to a revised audit report issued by San Marino's tax administration before the court within the prescribed 60 day time-limit.</p>	<p>San Marino should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017) can access the MAP.</p>

[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).

34. 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

35. As discussed under element B.1, none of San Marino's 23 treaties currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), 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 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.

36. San Marino reported that it has 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. San Marino reported that when San Marino's competent authority considers that the objection raised by a taxpayer in a MAP request is not justified, it will notify the competent authority of the treaty partner to arrive at an agreed solution. This is noted in section 4.2.8 of San Marino's MAP guidance as well. San Marino clarified that the procedure as well as the template for the same has been documented in its internal procedure and that the staff in its competent authority have been briefed on this process.

Recent developments

37. In the stage 1 report, it was noted that San Marino had not yet introduced a bilateral consultation or notification process which allowed the other competent authority concerned to provide its views on the case when San Marino's competent authority considered the objection raised in the MAP request not to be justified.

38. As detailed above, San Marino has since 1 April 2019 introduced a bilateral notification/consultation process that is applicable in situations where its competent authority considers the objection raised in the MAP request not to be justified. Therefore, the recommendation made in stage 1 has been addressed.

Practical application

Period 1 January 2016-31 March 2019 (stage 1)

39. San Marino reported that in the period 1 January 2016-31 March 2019 its competent authority has not been involved in any MAP cases.

40. The peer that provided input indicated not being aware of any cases for which San Marino’s competent authority denied access to MAP in the period 1 January 2016-31 March 2019. It also reported not having been consulted/notified of a case where San Marino’s competent authority considered the objection raised in a MAP request as not justified since that date, which can be clarified by the fact that no MAP cases have arisen in San Marino during this period.

Period 1 April 2019-31 December 2020 (stage 2)

41. San Marino reported that also since 1 April 2019, its competent authority has not been involved in any MAP cases

42. The peer that provided input during stage 1 also indicated in stage 2 that since 1 April 2019 it is not aware of any cases for which San Marino’s competent authority considered an objection in a MAP request not justified. They also reported not having been consulted/notified in such cases.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

44. 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

45. Out of San Marino’s 23 tax treaties, 17 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) 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 (OECD, 2017), 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”.

- In two treaties, the words “if necessary” are missing 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.

46. 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. This is confirmed in section 4.2.2 of San Marino’s MAP guidance.

Recent developments

Multilateral Instrument

47. San Marino signed the Multilateral Instrument, for which it deposited its instrument of ratification on 11 March 2020. The Multilateral Instrument has for San Marino entered into force on 1 July 2020.

48. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) – 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 (OECD, 2017). 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 (OECD, 2017), 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 (OECD, 2017). 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 (OECD, 2017)).

49. 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 (OECD, 2017). With regard to the six treaties identified in paragraph 45 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), 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 (OECD, 2017).

Application of legal and administrative framework in practice

Period 1 January 2016-31 March 2019 (stage 1)

50. San Marino reported that in the period 1 January 2016-31 March 2019, it has not denied access to MAP on the basis that the case concerned a transfer pricing case. However, no such cases were received during this period.

51. The peer that provided input indicated that it is not aware of a denial of access to MAP by San Marino in the period 1 January 2016-31 March 2019 on the basis that the case concerned was a transfer pricing case.

Period 1 April 2019-31 December 2020 (stage 2)

52. San Marino reported that also since 1 April 2019, it has for none of the MAP requests it received denied access to MAP on the basis that the case concerned was a transfer pricing case. However, no such cases were received since that date.

53. The peer that provided input during stage 1 stated in stage 2 that the update report provided by San Marino fully reflects its experience with San Marino since 1 April 2019.

Anticipated modifications

54. San Marino reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include Article 9(2) in all of its future tax treaties. Other than this, San Marino did not indicate that it anticipates any modifications in relation to element B.3.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

[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.

55. 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

56. 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.

57. 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 provisions of a tax treaty are within the scope of MAP. Section 4.2.2 of San Marino's MAP guidance notes that questions relating to the application of a treaty anti-abuse provision are covered in MAP, but is silent about the application of domestic anti-abuse provisions in conflict with the provisions of a tax treaty.

Recent developments

58. There are no recent developments with respect to element B.4.

Practical application

Period 1 January 2016-31 March 2019 (stage 1)

59. San Marino reported that in the period 1 January 2016-31 March 2019, San Marino's competent authority has not denied access to MAP in 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 were received during this period.

60. The peer that provided input indicated not being aware of cases where San Marino has denied access to MAP in the period 1 January 2016-31 March 2019 in relation to the application of treaty and/or domestic anti-abuse provisions.

Period 1 April 2019-31 December 2020 (stage 2)

61. San Marino reported that since 1 April 2019, it has also not denied access to MAP in 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 were received since that date.

62. The peer that provided input during stage 1 stated in stage 2 that the update report provided by San Marino fully reflects its experience with San Marino since 1 April 2019.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

[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.

64. 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

65. 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

66. 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.

Recent developments

67. There are no recent developments with respect to element B.5.

Practical application

Period 1 January 2016-31 March 2019 (stage 1)

68. San Marino reported that in the period 1 January 2016-31 March 2019 it has not denied access to MAP in any case 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, which is explained by the fact that such settlements are not possible in San Marino.

69. The peer that provided input indicated not being aware of a denial of access to MAP in San Marino in the period 1 January 2016-31 March 2019 in cases where there was an audit settlement between the taxpayer and the tax administration.

Period 1 April 2019-31 December 2020 (stage 2)

70. San Marino reported that since 1 April 2019 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax administration since such settlements are still not possible in San Marino.

71. The peer that provided input during stage 1 stated in stage 2 that the update report provided by San Marino fully reflects its experience with San Marino since 1 April 2019.

Anticipated modifications

72. 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.

73. 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

74. The information and documentation San Marino requires taxpayers to include in a request for MAP assistance are discussed under element B.8.

75. San Marino's MAP guidance in section 4.2.8 states that when a MAP request is submitted, the competent authority verifies that the formal conditions for initiating the procedure are met. It is further stated that its competent authority verifies whether a MAP request contains all the elements of the request required in section 4.2.4 of its MAP guidance. If the taxpayer's request is missing some of the required information, San Marino reported that the competent authority will request the taxpayer to provide such missing information within the time limit specified in the request, which would in no case be lesser than 15 days.

76. In addition, San Marino's MAP guidance also states in Section 4.2.9 that the taxpayer is in turn provided a right to information on the progress of the MAP case and that in transfer pricing cases, San Marino's competent authority would allow the taxpayer to present the facts and arguments related to the case orally or in writing.

Recent developments

77. The stage 1 report noted that no rules were in place in San Marino regarding what information taxpayers need to include in a MAP request nor were any rules and timelines in place for requesting additional information by the competent authority and for taxpayers to provide such information and thus, San Marino was recommended to 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.

78. As detailed above, San Marino has issued its MAP guidance in December 2020 that includes the information and documentation San Marino requires taxpayers to include in a MAP request and contains clear procedures for requesting additional information from taxpayers when such information is not included in the initial MAP request. Further, San Marino has clarified that each information request would have its own time-limit as well. Therefore, the recommendation made in stage 1 has been addressed.

Practical application

Period 1 January 2016-31 March 2019 (stage 1)

79. San Marino reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that in the period 1 January 2016-31 March 2019 its competent authority has not denied access to MAP for cases where the taxpayer had provided the required information or documentation, which can be clarified by the fact that no MAP cases have arisen in San Marino during this period.

80. The peer that provided input indicated not being aware of a limitation of access to MAP by San Marino in the period 1 January 2016-31 March 2019 in situations where taxpayers complied with information and documentation requirements.

Period 1 April 2019-31 December 2020 (stage 2)

81. San Marino reported that since 1 April 2019 its competent authority has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation, which can be clarified by the fact that no MAP cases have arisen in San Marino since this date either.

82. The peer that provided input during stage 1 stated during stage 2 that the update report provided by San Marino fully reflects its experience with San Marino since 1 April 2019.

Anticipated modifications

83. San Marino indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

[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.

84. 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 (OECD, 2017), 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

85. 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 (OECD, 2017) 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 a provision that is based on, or equivalent to, Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017).

86. The peer that provided input during stage 1 indicated that its treaty with San Marino meets the Action 14 Minimum Standard for this element, which is line with the above analysis.

Recent developments

Multilateral Instrument

87. San Marino signed the Multilateral Instrument, for which it deposited its instrument of ratification on 11 March 2020. The Multilateral Instrument has for San Marino entered into force on 1 July 2020.

88. 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 (OECD, 2017) – 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 (OECD, 2017). 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 (OECD, 2017).

89. With regard to 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 (OECD, 2017), San Marino listed both of them as a covered tax agreement under the Multilateral Instrument and made for both, 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.

90. Both treaty partners concerned have already deposited their instruments of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between San Marino and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

91. The peer that provided input during stage 2 did not provide input in relation to its tax treaty with San Marino.

Anticipated modifications

92. San Marino reported that it will continue to seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	-	-

[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.

93. 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

94. San Marino has issued rules, guidelines and procedures on the mutual agreement procedure, in December 2020, which is available at:

www.finanze.sm/on-line/home/archivio-norme-e-circolari/documento24121326.html
(in Italian)

www.finanze.sm/on-line/home/archivio-norme-e-circolari/documento24121327.html
(in English)

95. San Marino's MAP guidance consists of six parts, which inter alia deal with:

- i. introduction to MAP under San Marino's tax treaties
- ii. the tax treaty based and domestic law based legal bases for MAP
- iii. the different parties involved in the MAP

- iv. details on conduct of the MAP, covering both taxpayer-requested and general MAP
 - v. interventions allowed to be made by the tax authority in San Marino in a MAP
 - vi. the effect on MAP of a control report made under Article 133 of Law No. 166.
96. These sections cover the following information:
- a. contact information of the competent authority
 - b. the manner and form in which the taxpayer should submit its MAP request
 - c. the specific information and documentation that should be included in a MAP request (see also below)
 - d. how the MAP functions in terms of the role of the competent authorities
 - e. rights and role of taxpayers in the process
 - f. information on availability of arbitration
 - g. relationship with domestic available remedies
 - h. access to MAP in transfer pricing cases and cases involving the application of treaty anti-abuse provisions
 - i. the possibility of the multi-year resolution of recurring issues in MAP
 - j. the consideration of interest and penalties in MAP
 - k. the possibility of suspension of tax collection during the course of a MAP
 - l. implementation of MAP agreements.
97. The above-described MAP guidance of San Marino contains detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which 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 taxpayer should submit its MAP request.²
98. Although the information included in San Marino's MAP guidance is detailed and comprehensive, some subjects are not specifically discussed. This concerns information on:
- whether MAP is available in cases of: (i) the application of domestic anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments
 - 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

99. 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 request for MAP assistance.³ This agreed guidance is shown below. San Marino's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

- 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.

100. In addition to the above, San Marino's MAP guidance also requires that taxpayers specify:

- i. the tax periods concerned
- ii. details relating to the structure of the transaction and relationship between parties concerned
- iii. details of the tax measure contested
- iv. details of other domestic procedures initiated in either state
- v. a copy of the assessment notice, control report or other equivalent document showing the disputed issue and a copy of any other document issued by the tax administration of either state, where relevant
- vi. the contact address of the taxpayer
- vii. notarised declaration required under San Marino's domestic law.

Recent developments

101. As detailed above, San Marino has issued its MAP guidance in December 2020. Since the guidance includes the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation/information that it should include in such a request, the recommendation made in stage 1 has been addressed.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

[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.

103. 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.⁴

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

104. The MAP guidance of San Marino is published and can be found at:

www.finanze.sm/on-line/home/archivio-norme-e-circolari/documento24121326.html
(in Italian)

www.finanze.sm/on-line/home/archivio-norme-e-circolari/documento24121327.html
(in English)

105. As regards its accessibility, San Marino’s MAP guidance can easily be found on the website of the State Secretariat for Finance and Budget (www.finanze.sm/) under the sub-section “MAP” within the sub-section titled “Progetto BEPS” under the section titled “Fiscalità internazionale”. It can also be easily found by searching in a search engine for “San Marino MAP Guidance” in English.

MAP profile

106. The MAP profile of San Marino is published on the website of the OECD and was last updated in July 2021. This MAP profile is complete and contains detailed information. This profile also contains external links that provide extra information and guidance where appropriate, including references to the MAP guidance where appropriate.

Recent developments

107. As mentioned above, San Marino has introduced MAP guidance in December 2020 and has made it publicly available on the website of its State Secretariat for Finance and Budget. Further, San Marino has updated its MAP profile with more detailed information following the publication of its MAP guidance, including links to such guidance where appropriate. Therefore, the recommendation made in stage 1 has been addressed.

Anticipated modifications

108. San Marino did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

[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.

109. 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

110. 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 MAP guidance that such settlements do not preclude access to MAP.

111. The peer that provided input did not provide input with respect to element B.10.

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

112. 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 MAP guidance.

113. 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

114. 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.

Recent developments

115. There are no recent developments with respect to element B.10.

Anticipated modifications

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

References

- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.
- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.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.

117. 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 (OECD, 2017), 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

118. 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 (OECD, 2017) 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 or fourth year following the year 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 (OECD, 2017).

119. The peer that provided input during stage 1 indicated that its treaty with San Marino meets the Action 14 Minimum Standard for this element, which is in line with the above analysis.

Recent developments

Multilateral Instrument

120. San Marino signed the Multilateral Instrument, for which it deposited its instrument of ratification on 11 March 2020. The Multilateral Instrument has for San Marino entered into force on 1 July 2020.

121. 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 (OECD, 2017) – 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 (OECD, 2017). 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 (OECD, 2017).

122. With regard to 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 (OECD, 2017), San Marino listed all of them as a covered tax agreement under the Multilateral Instrument but for did not make for any of them, 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 (OECD, 2017).

Other developments

123. San Marino reported that for the nine tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument, negotiations are ongoing with one treaty partner, whereas San Marino has sent proposals for amending protocols to the eight remaining treaty partners.

Peer input

124. The peer that provided input during stage 2 did not provide input in relation to its tax treaty with San Marino.

Anticipated modifications

125. San Marino reported that it will continue to seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	<p>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 (OECD, 2017). None of these treaties will be modified by the Multilateral Instrument to include the required provision. With respect to these nine treaties:</p> <ul style="list-style-type: none"> • For one, negotiations are pending. • For eight, the relevant treaty partners have been approached to initiate discussions on the amendment of the respective treaties with a view to including the required provision. 	<p>For the nine treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified via the Multilateral Instrument, San Marino should:</p> <ul style="list-style-type: none"> • for one treaty, continue negotiations with the treaty partner concerned with a view to including the required provision • for the remaining eight treaties, upon receipt of a response from the treaty partners agreeing to include the required provision, work towards updating these treaties to include this provision.

[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).

126. 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

127. 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.

128. San Marino did not provide its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline for the year 2016 or 2019 but did so for 2017, 2018 and 2020. 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

129. 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

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

Overview of cases closed during the Statistics Reporting Period

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

Average timeframe needed to resolve MAP cases

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

Peer input

133. As San Marino has not yet been involved in any MAP cases, the peer that provided input did not provide any specific inputs in relation to element C.2. This remained the same for the stage 2 period as well.

Recent developments

134. There are no recent developments with respect to element C.2.

Anticipated modifications

135. 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 2019 were not submitted.	San Marino should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.

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

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

136. 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

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

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

Monitoring mechanism

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

Recent developments

140. There are no recent developments with respect to element C.3.

Practical application***MAP statistics***

141. As discussed under element C.2, San Marino was not involved in any MAP cases during the Statistics Reporting Period.

Peer input

142. 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. This remained the same for the stage 2 period as well.

Anticipated modifications

143. San Marino did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	-

[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.

144. 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

145. 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. Part 5 of San Marino's MAP guidance further explains situations where the tax administration could assist in MAP cases including the preparation of position papers, the collection of any additional information and clarification of any questions posed by the competent authority,

including provision of any supporting documents in relation to the case. However, San Marino noted that the tax administration would never influence the handling of MAP cases, which would be done autonomously by San Marino’s competent authority. This is clarified in Part 3 of the MAP guidance which notes that San Marino’s competent authority undertakes, in conditions of full independence and discretion, also towards the tax administration, to guarantee the application of the tax treaty in good faith, by negotiating with the other state solutions based on principles of fairness and transparency.

146. With regard to 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.

Recent developments

147. There are no recent developments with respect to element C.4.

Practical application

Period 1 January 2016-31 March 2019 (stage 1)

148. The peer that provided input reported no impediments in San Marino to perform the 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 in the period 1 January 2016-31 March 2019.

Period 1 April 2019-31 December 2020 (stage 2)

149. The peer that provided input during stage 1 stated in stage 2 that the update report provided by San Marino fully reflects its experience with San Marino since 1 April 2019.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

[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.

151. 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

152. The Action 14 final report (OECD, 2015) 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).

153. 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.

154. 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.

Recent developments

155. There are no recent developments with respect to element C.5.

Practical application

Period 1 January 2016-31 March 2019 (stage 1)

156. The peer that provided input indicated not being aware that San Marino used performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue in the period 1 January 2016-31 March 2019.

Period 1 April 2019-31 December 2020 (stage 2)

157. The peer that provided input during stage 1 stated in stage 2 that the update report provided by San Marino fully reflects its experience with San Marino since 1 April 2019.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

159. 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

160. 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). This is also confirmed in Section 4.2.6 of San Marino's MAP guidance.

Recent developments

161. There are no recent developments with respect to element C.6, except that San Marino's MAP guidance under Section 4.2.6 provides details with respect to the arbitration clauses contained in San Marino's tax treaties.

Practical application

162. 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 (OECD, 2017). 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 (OECD, 2017). The sixth treaty contains a voluntary arbitration procedure and the peer that provided input confirmed the existence of an arbitration provision.

Anticipated modifications

163. 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 (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.
- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.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.

164. 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

165. 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 (OECD, 2017), 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.

166. 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.

167. Section 4.2.10 of San Marino's MAP guidance states that once an agreement is reached in MAP, the contents of the agreement would be communicated to the taxpayer while the tax office concerned would prepare for implementation of the agreement, including possible refund of the tax amount, interest and penalties concerned. In case of transfer pricing cases, such communication would be made with the resident taxpayer in San Marino even if the MAP request was submitted by its foreign associated enterprise. If the taxpayer was simultaneously pursuing judicial remedies along with MAP, the taxpayer can accept the MAP agreement and withdraw from continuing such remedies or reject the MAP agreement and continue such remedies.

Recent developments

168. There are no recent developments with respect to element D.1, except that San Marino's MAP guidance under Section 4.2.10 provides details with respect to the implementation of MAP agreements.

Practical application***Period 1 January 2016-31 March 2019 (stage 1)***

169. San Marino reported that no MAP agreements requiring implementation were reached in the period 1 January 2016-31 March 2019.

170. The peer that provided input reported that it was not aware of any MAP agreement reached in the period 1 January 2016-31 March 2019.

Period 1 April 2019-31 December 2020 (stage 2)

171. San Marino reported that no MAP agreements requiring implementation were reached since 1 April 2019 as well.

172. The peer that provided input during stage 1 stated in stage 2 that the update report provided by San Marino fully reflects its experience with San Marino since 1 April 2019.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

[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.

174. Delay of implementation of 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

175. As discussed under element D.1., San Marino has not yet received a MAP case and therefore reported that it does not have any timelines in place regarding the implementation of MAP agreements.

Recent developments

176. There are no recent developments with respect to element D.2.

Practical application***Period 1 January 2016-31 March 2019 (stage 1)***

177. San Marino reported that no MAP agreements requiring implementation were reached in the period 1 January 2016-31 March 2019.

178. The peer that provided input reported that it was not aware of any MAP agreement not being implemented in a timely manner in the period 1 January 2016-31 March 2019.

Period 1 April 2019-31 December 2020 (stage 2)

179. San Marino reported that no MAP agreements requiring implementation were reached since 1 April 2019 as well.

180. The peer that provided input during stage 1 stated in stage 2 that the update report provided by San Marino fully reflects its experience with San Marino since 1 April 2019.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

[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.

182. 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 (OECD, 2017) 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

183. 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 all of San Marino's tax treaties would override such statute of limitations concerning MAP.

184. 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 (OECD, 2017) 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 (OECD, 2017) nor the alternative provision in Article 9(1) and Article 7(2) setting a time limit to make transfer pricing adjustments.

Recent developments

Multilateral Instrument

185. San Marino signed the Multilateral Instrument, for which it deposited its instrument of ratification on 11 March 2020. The Multilateral Instrument has for San Marino entered into force on 1 July 2020.

186. 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 (OECD, 2017) – 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 (OECD, 2017). 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 (OECD, 2017). 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.

187. With regard to 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 (OECD, 2017) 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 is also a signatory to the Multilateral Instrument, listed its treaty with San Marino as a covered tax agreement and made a notification for the relevant provision.

188. This treaty partner has already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for this treaty between San Marino and the relevant treaty partner, and therefore has modified this treaty to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

189. The peer that provided input during stage 2 did not provide input in relation to its tax treaty with San Marino.

Anticipated modifications

190. San Marino reported that it will continue to seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	-	-

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	-
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	<p>Ten out of 23 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), 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:</p> <ul style="list-style-type: none"> • Seven have been modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Two are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One will not be modified by the Multilateral instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to this treaty, the relevant treaty partner has been contacted by San Marino with a view to have the treaty modified by the Multilateral Instrument. 	<p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent, San Marino should continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument.</p>
	<p>Access to MAP is denied in eligible cases where a taxpayer accepts an audit report issued by San Marino's tax administration or where a taxpayer has failed to challenge a new notice of assessment issued pursuant to a revised audit report issued by San Marino's tax administration before the court within the prescribed 60 day time-limit.</p>	<p>San Marino should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017) can access the MAP.</p>
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-

	Areas for improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	<p>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 (OECD, 2017). None of these treaties will be modified by the Multilateral Instrument to include the required provision. With respect to these nine treaties:</p> <ul style="list-style-type: none"> • For one, negotiations are pending. • For eight, the relevant treaty partners have been approached to initiate discussions on the amendment of the respective treaties with a view to including the required provision. 	<p>For the nine treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified via the Multilateral Instrument, San Marino should:</p> <ul style="list-style-type: none"> • for one treaty, continue negotiations with the treaty partner concerned with a view to including the required provision • for the remaining eight treaties, upon receipt of a response from the treaty partners agreeing to include the required provision, work towards updating these treaties to include this provision.
[C.2]	MAP statistics for 2019 were not submitted.	San Marino should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.
[C.3]	-	-
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[D.3]	-	-

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) 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?		
	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 N = no	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
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	Y*	N/A	Y	i	N	Y	Y	Y	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?	
Belgium	Y	N/A	O	Y*	N/A	Y	i	N	Y	Y	Y*	N
Croatia	Y	N/A	O	Y*	N/A	Y	i	N	Y	Y	Y	N
Cyprus	Y	N/A	O	Y*	N/A	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	Y*	N/A	Y	i	N	Y	Y	Y	Y
Malaysia	Y	N/A	O	Y	N/A	Y	i	Y	Y*	Y	Y	N
Malta	Y	N/A	O	Y*	N/A	Y	i	N	Y	Y	Y	N
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y*	N
Qatar	Y	N/A	O	Y*	N/A	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	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y
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

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 the 2016, 2017, 2018, 2019 and 2020 Reporting Periods (1 January 2016 to 31 December 2020) 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

2019 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2019	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 2019	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

2020 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2020	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 2020	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 the 2016, 2017, 2018, 2019 and 2020 Reporting Periods (1 January 2016 to 31 December 2020) 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

2019 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2019	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 2019	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

2020 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2020	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 2020	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
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2020
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 2)

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 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 2 peer monitoring of the implementation of the Action 14 Minimum Standard by San Marino.



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