

San Marino Dispute Resolution Profile

(Updated on 23 September 2019)

General Information

- **San Marino tax treaties are available at:**

<http://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.html>

- **MAP and APA requests should be made to:**

Segreteria di Stato per le Finanze e il Bilancio (Ministry of Finance and Budget)
Contrada Omerelli, 31
47890 – San Marino
Repubblica di San Marino
info.finanze@gov.sm
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San Marino Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
A. Preventing Disputes				
1.	Are agreements reached by your competent authority to resolve difficulties or doubts arising as to the interpretation or application of your tax treaties in relation to issues of a general nature which concern, or which may concern, a category of taxpayers published?	No		
2.	Are bilateral APA programmes implemented? If yes:	No	To date, San Marino has not implemented APA programme. To date, no bilateral APAs or rollbacks of bilateral APAs were received and granted.	
a.	<ul style="list-style-type: none"> • Are roll-back of APAs provided for in the bilateral APA programmes? 	N/A		
b.	<ul style="list-style-type: none"> • Are there specific timeline for the filing of an APA request? 	N/A		
c.	<ul style="list-style-type: none"> • Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be 	N/A	San Marino is planning to publish an upcoming guideline on such issues.	

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	submitted in a taxpayer’s request for bilateral APA assistance, publicly available?			
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	N/A		
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	N/A		
3.	Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions of your tax treaties?	No	To date, no training has been provided because there were no MAP cases to be handled. Upcoming training and assistance activities are planned, also through advisors, precisely because San Marino plans to start with MAPs.	
4.	Is other information available on preventing tax treaty-related disputes?	Yes		http://www.finanze.sm/on-line/home/archivio-norme-e-circolari/articolo24013526.html

Notes:

1. An APA is an “arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time”. (see definition of APA in the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (“Transfer Pricing Guidelines”).)

2. Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA.

San Marino Dispute Resolution Profile – Availability and Access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
B. Availability and Access to MAP				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	Nevertheless not every tax treaties of San Marino contain the equivalent of Article 9(2) of the OECD Model Tax Convention, San Marino ensure and provide access to MAP in transfer pricing cases. For this purpose, San Marino will specify this accessibility with an upcoming dedicated guideline.	
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	None of the tax treaties San Marino entered into contain a specific provision stating that MAP is not available in cases where San Marino considers that there is an abuse of the tax treaty or of the domestic tax law. Therefore, the jurisdiction of San Marino will accept such cases for MAP.	
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes		
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	In San Marino the start of the audit settlement does not preclude access to the MAP procedure by a taxpayer in the same case.	
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	No		

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
10.	Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP?	No		
11.	Are taxpayers allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	Yes	Yes, because this possibility is provided for Tax Treaties of San Marino.	
12.	Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	See detailed explanation	<p>In San Marino, the separation of powers is in force (as issued by the Article 3 of Law no. 59 of 8 July 1974) and therefore a final judicial judgement (which can no longer be appealed because it is final) cannot be derogated from by a decision of an administrative authority such as that of the MAP Competent Authority.</p> <p>In case of an administrative remedy, we remark that San Marino adheres to the European Convention on Human Rights, which provides for both the right to a fair trial (Article 6 ECHR) and protection through an effective remedy (Article 13 ECHR), therefore it will be possible to</p>	

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			<p>include element B.1 with regard to internal administrative remedies.</p> <p>To date San Marino has no guidelines concerning MAP procedures, therefore San Marino will publish a guideline on access to the MAP in the coming times. The upcoming guideline will also include the clarification about the above explanation.</p>	
13.	<p>Are rules, guidelines and procedures on how taxpayers can access and use MAP, including the specific information and documentation that should be submitted in a taxpayer’s request for MAP assistance, publicly available?</p>	No	<p>To date San Marino has no guidelines concerning MAP procedures, therefore San Marino will publish a guideline on access to and use of the MAP in the coming times. The upcoming guideline will also include the specific information and documentation that a taxpayer should submitted in his request for MAP assistance.</p>	
14.	<p>Are there specific timeline for the filing of a MAP request?</p>	Yes	<p>According to the Paragraph 1 of Article 25 of the OECD Model Tax Convention, tax treaties San Marino entered into ensure a timely resolution with taxpayers. Tax treaties of San Marino give the possibility to the taxpayer to 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</p>	

San Marino Dispute Resolution Profile – Availability and Access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			provisions of the tax treaty itself. For this purpose, San Marino will develop the timeline for the filing of a MAP request to the CA with an upcoming dedicated guideline.	
15.	Are guidance on multilateral MAPs publicly available?	No	To date San Marino has no guidelines concerning MAP procedures, for this reason a dedicated guideline will be published in the coming times.	
16.	Are tax collection procedures suspended during the period a MAP case is pending?	No	There are no dedicated procedures aimed at the suspension of tax collection pending MAPs.	
17.	Are there any fees charged to taxpayers for a MAP request?	No		
18.	Is there any other information available on availability and access to MAP?	No		

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
C. Resolution of MAP Cases				
19.	Are there any model timeframes for the steps taken by your competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers?	No	San Marino has the intention to insert such informations into an upcoming dedicated guideline that will be compliant with the Element C.2 of the Action 14 Minimum Standard.	
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	No	San Marino has no MAP statistics.	
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	No	As San Marino has no involved in any MAP cases, currently there are not such cases.	
22.	Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP office available in the <i>annual</i> report of the organisation?	No	An upcoming dedicated guideline will provide such informations.	
23.	Is MAP arbitration a mechanism currently available for the resolution of	Yes	San Marino included in a certain number of tax treaties an arbitration procedure as a supplement to the mutual agreement procedure.	

San Marino Dispute Resolution Profile – Resolution of MAP Cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	tax treaty related disputes in any of your tax treaties? If not:			
a.	<ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties? 	N/A		
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 	N/A		
24.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available? If yes:	No	San Marino does not allow audit settlements between taxpayers and the domestic tax authority, nevertheless, the explanation of the relationship between the MAP and domestic law will be provided into an upcoming guideline which will be publicly available.	
a.	<ul style="list-style-type: none"> Does the guidance specifically address whether the competent authority considers that it is legally bound to follow a domestic court decision in the MAP or will not deviate from a domestic court 	N/A		

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	decision as a matter of administrative policy or practice?			
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	No		
26.	Do all your jurisdiction's tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction's tax treaties)?	See detailed explanation	Not every tax treaties of San Marino contain the equivalent of Article 9(2) of the OECD Model Tax Convention, but it is the aim of San Marino to include it in the upcoming tax treaties.	
27.	Is there any other information available on resolution of MAP cases?	No		

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
D. Implementation of MAP Agreements				
28.	Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid?	Yes	According to the Paragraph 1 of Article 25, is the aim of San Marino to ensure that the agreements reached by competent authorities through the MAP process would be implemented promptly. For this reason, every agreement reached by a MAP will contain such informations and those will be properly communicated to the taxpayer.	
29.	Where the agreement reached by your competent authority through the MAP process leads to a refund of the tax due or paid by your taxpayer, are there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for a refund of the tax paid?	Yes		
30.	Are all mutual agreements reached through MAP implemented	Yes	As in the 2 nd Paragraph of Article 25, every agreements reached in MAP discussion will be	

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	notwithstanding any time limits in your domestic law?		<p>implemented notwithstanding any time limits in San Marino domestic law. San Marino reminds indeed that, thanks to the Law 174/2015 (which deals with international tax cooperation), every tax treaties (as DTAs and TIEAs) signed by San Marino acquire the status as primary domestic law.</p> <p>San Marino remarks that its domestic statute of limitation would apply for the implementation of MAP agreements. This statute of limitation is defined in Article 115, Paragraph 3, letter g) 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.</p>	
31.	Is there any other information available on the implementation of MAP agreements?	No	To date, there are no further informations San Marino needs to provide.	