

## San Marino Dispute Resolution Profile

(Updated on 6 July 2021)

### 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  
tel. (+378) 0549 – 882661 / (+378) 0549 – 882242  
fax. (+378) 0549 – 882244

San Marino Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
<b>A. Preventing Disputes</b>				
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"> <li>Are roll-back of APAs provided for in the bilateral APA programmes?</li> </ul>	N/A		
b.	<ul style="list-style-type: none"> <li>Are there specific timeline for the filing of an APA request?</li> </ul>	N/A		
c.	<ul style="list-style-type: none"> <li>Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should</li> </ul>	N/A	San Marino issued guidance on access and use of the mutual agreement procedure in December 2020, which is available, in Italian, at <a href="http://www.finanze.sm/on-line/home/archivio-norme-e-circolari/documento24121326.html">http://www.finanze.sm/on-line/home/archivio-norme-e-circolari/documento24121326.html</a>	<a href="http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html">http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html</a>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	be submitted in a taxpayer's request for bilateral APA assistance, publicly available?		and, in English, <a href="http://www.finanze.sm/on-line/home/archivio-norme-e-circolari/documento24121327.html">http://www.finanze.sm/on-line/home/archivio-norme-e-circolari/documento24121327.html</a> (hereinafter "MAP guidance")	
d.	<ul style="list-style-type: none"> <li>Are there any fees charged to taxpayers for a bilateral APA request?</li> </ul>	N/A		
e.	<ul style="list-style-type: none"> <li>Are statistics relating to bilateral APAs publicly available?</li> </ul>	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	Upcoming training and assistance activities are planned, also through advisors.	
4.	Is other information available on preventing tax treaty-related disputes?	Yes		<a href="http://www.finanze.sm/on-line/home/archivio-norme-e-circolari/articolo24013526.html">http://www.finanze.sm/on-line/home/archivio-norme-e-circolari/articolo24013526.html</a>

**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>B. Availability and Access to MAP</b>				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	Although not every tax treaty of San Marino contains the equivalent of Article 9(2) of the OECD Model Tax Convention, San Marino ensures and provides access to MAP in transfer pricing cases. For this purpose, San Marino specified this possibility within the MAP guidance.	<a href="http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html">http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html</a>
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 initiation of an 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	No		

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	foreign adjustments covered within the scope of MAP?			
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, this possibility is provided for by the Tax Treaties entered into by 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 applies (as provided for by the Article 3 of Law no. 59 of 8 July 1974); therefore, a final judicial judgment (which can no longer be challenged 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, please note that San Marino is part to the European Convention on Human Rights,</p>	<p><a href="http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html">http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html</a></p>

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			<p>which provides for the rights to a fair trial (Article 6 ECHR) and to an effective remedy (Article 13 ECHR), therefore it will be possible to include element B.1 with regard to domestic administrative remedies.</p> <p>The clarification about the above-mentioned explanation is contained in the MAP guidance.</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>	Yes	<p>The specific information and documentation that a taxpayer should submit in his request for MAP assistance is listed in the MAP guidance (see section 4.2.4).</p>	<p><a href="http://www.finanze.sm/online/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html">http://www.finanze.sm/online/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html</a></p>
14.	<p>Are there specific timeline for the filing of a MAP request?</p>	Yes	<p>According to paragraph 1 of Article 25 of the OECD Model Tax Convention, the tax treaties entered into by San Marino ensure a timely resolution with taxpayers. Such treaties give the taxpayer the possibility to make a 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 itself. For this purpose, San Marino</p>	<p><a href="http://www.finanze.sm/online/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html">http://www.finanze.sm/online/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html</a></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
			specified the timeline for the filing of a MAP request to the CA in its MAP guidance.	
15.	Are guidance on multilateral MAPs publicly available?	Yes	Please see the MAP guidance.	<a href="http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html">http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html</a>
16.	Are tax collection procedures suspended during the period a MAP case is pending?	See detailed explanation	There are no dedicated procedures aimed at suspending tax collections during MAP. The ordinary measures of suspension of collections could apply as indicated by section 4.2.7 of the MAP guidance.	<a href="http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html">http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html</a>
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?	Yes	Please see the MAP guidance.	<a href="http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html">http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html</a>

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<b>C. Resolution of MAP Cases</b>				
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?	Yes	<p>Pursuant to Paragraph 4.2.8 of the Guidelines, as a first step, the competent authority that received the objection must rule on its admissibility, in accordance with the timelines set forth in the relevant tax treaty.</p> <p>Subsequently, the CA has to assess whether the subjective and objective requirements for the initiation of a MAP are met and in particular whether the applicant correctly considers that the actions of one or both States result or will result in taxation not in accordance with the Convention.</p> <p>Moreover, at this stage the C.A. may also request from the taxpayer any additional information and supporting documents that may be necessary for the initiation and implementation of the MAP.</p> <p>If the application has been found admissible and grounded, the CA shall consider whether it can itself remedy the</p>	<p><a href="http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html">http://www.finanze.sm/on-line/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html</a></p>



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			<p>taxation not in accordance with the Convention by taking unilateral measures.</p> <p>If the taxpayer has not already done so, the competent authority, where appropriate through the foreign competent authority, shall invite him to make a request for refund.</p> <p>For this purpose, San Marino issued dedicated explanations in the MAP guidance.</p>	
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	Even though San Marino has no MAP cases to date, anyway it sent its MAP Statistics for the years 2017, 2018 and 2020.	
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?	Yes	The MAP office is located at the Department of Finance and Budget of the Ministry of Finance and Budget of San Marino ( <i>Dipartimento Finanze e Bilancio, Segreteria di Stato per le Finanze e il Bilancio</i> ).	<a href="http://www.finanze.sm/online/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html">http://www.finanze.sm/online/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html</a>

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			<p>As far as the responsibility of the CA is concerned, the office undertakes to ensure the application of the Convention in good faith, negotiating with the other Contracting State solutions inspired by the principles of fairness and transparency.</p> <p>In this regard, please see section 3 of MAP Guidance.</p>	
23.	<p>Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties?</p> <p>If not:</p>	Yes	<p>San Marino included in a certain number of tax treaties an arbitration procedure as a supplement to the mutual agreement procedure.</p>	
a.	<ul style="list-style-type: none"> <li>Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties?</li> </ul>	N/A		
b.	<ul style="list-style-type: none"> <li>Does your treaty policy allow you to include MAP arbitration in your tax treaties?</li> </ul>	N/A		

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
24.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?  If yes:	Yes	The explanation of the relationships between the MAP and domestic law administrative and judicial remedies is provided for by paragraph 4.2.5 of the MAP guidance.	<a href="http://www.finanze.sm/online/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html">http://www.finanze.sm/online/home/aree-tematiche/fiscalita-internazionale/articolo24013526.html</a>
a.	<ul style="list-style-type: none"> <li>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 decision as a matter of administrative policy or practice?</li> </ul>	Yes	Paragraph 4.2.5 of the MAP Guidance addresses the issue and specifies that San Marino legal system is based on the principle of hierarchy of norms, as in other countries, so that an administrative agreement reached within the framework of a MAP cannot derogate from the previous decision of a national judicial body which has become final.	
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	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.	

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	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)?			
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
<b>D. Implementation of MAP Agreements</b>				
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 Paragraph 1 of Article 25, the aim of San Marino is to ensure that the agreements reached by the competent authorities through the MAP process is promptly implemented. For this reason, every agreement reached by a MAP will contain all information and will be promptly 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 <sup>nd</sup> Paragraph of Article 25, every agreement reached through MAP will be	

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	notwithstanding any time limits in your domestic law?		implemented notwithstanding any time limits in San Marino’s domestic law. San Marino highlights that, according to Law 174/2015 (on international tax cooperation), every tax treaty (such as DTAs and TIEAs) signed by San Marino acquires the status of primary domestic law.	
31.	Is there any other information available on the implementation of MAP agreements?	No	To date, there is no further information available	