GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

SAN MARINO

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: San Marino 2011

PHASE 1

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as at October 2010)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 90 jurisdictions which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of jurisdictions' legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to *www.oecd.org/tax/transparency*.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in San Marino.

2. San Marino is located in the Italian peninsula and shares its border with Italy. It is not a member of the European Union (EU), but co-operates with it under a number of EU mechanisms. San Marino relies on a well diversified economy. The revenue from construction, tourism and banking and financial services contributes more than half of its GDP.

3. San Marino committed to the international standards of transparency and exchange of information for tax purposes in 2000. Though it has been very active in negotiating tax information agreements recently, San Marino does not have an agreement to the standard with Italy, which is its biggest trading and financial partner.

4. A number of changes have recently improved the legal and regulatory framework, such as lifting bank secrecy so it does not limit international exchange of information for tax purposes. Additionally, anonymous companies, which were previously allowed to issue bearer shares, have now been asked to convert to joint-stock companies or close down. Bearer passbooks must also be converted to more transparent forms under recent legislative amendments.

5. However, San Marino's legal and regulatory framework suffers serious deficiencies which do not provide for exchange of information for tax purposes to the standard, including when agreements are in place. In particular, the competent authority for international exchange of information only has the power to obtain and provide information to its overseas counterparts for criminal tax matters. Further, the ability of other authorities to gather information to respond to an international request for information for tax matters is not clear. Also, the Tax Office cannot access information which is more than three years old. The scope of professional secrecy in San Marino's laws is wide in comparison to the standards and may limit authorities' access to information needed to meet requests from foreign tax authorities.

6. Once the authorities' powers to obtain information for international tax matters are strengthened, exchange of information should largely work well as domestic companies, partnerships, and foundations already keep information pertaining to their ownership. However, gaps exist in the penalties prescribed for non-compliance with the existing obligations to maintain ownership and identity information. In addition, potential deficiencies have been noted with regards to identification of beneficiaries of trusts and shortcomings have been noticed with regards to availability of information related to fiduciary companies.

7. For foreign partnerships, most commonly from Italy, which have their place of effective management or administration in San Marino, there is a lack of clarity in their obligations to keep ownership information and accounting records.

8. Some deficiencies have been noted with regard to keeping of accounting records by companies and partnerships. Bank information is available for all account holders under anti-money laundering and financial supervision legislation.

9. As elements which are crucial to achieving effective exchange of information are not yet in place in San Marino, it is recommended that San Marino does not move to a Phase 2 Review until it has acted on the recommendations contained in the Summary of Factors and Recommendations to improve its legal and regulatory framework and also has a reasonable practical experience of exchange of information under its recently enacted laws. San Marino's position will be reviewed when it provides a detailed written report to the Peer Review Group within 12 months of the adoption of this report. It should also provide an intermediate report within 6 months of the adoption of this report.

Introduction

Information and methodology used for the peer review of San Marino

10. This assessment of the legal and regulatory framework of San Marino was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference,*[1] and was prepared using the Global Forum's *Methodology for Peer reviews and Non-Member Reviews*.[2] The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at 5 October, 2010 and other materials supplied by San Marino, and information available in the public domain.

11. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchanging information. This review assesses San Marino's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either *(i)* the element is in place, *(ii)* the element is in place but certain aspects of the legal implementation of the element need improvement, or *(iii)* the element is not in place. These determinations are accompanied by recommendations for improvement where relevant (see Summary of Determinations and Factors Underlying Recommendations on page 67).

12. The assessment was conducted by a team consisted of two assessors and a representative of the Global Forum Secretariat: Caroline Peffer, Administration des contributions directs Division échange de renseignements, Luxembourg, Monica Sionara Schpallir Calijuri, from Secretariat of

1. See Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information for Tax Purposes (full text available at *www.oecd.org/dataoecd/37/42/44824681.pdf).*
2. See Methodology for Peer reviews and Non-Member Reviews (full text available at *www.oecd.org/dataoecd/37/41/44824721.pdf*).

the Federal Revenue of Brazil and Sanjeev Sharma from the Global Forum Secretariat. The assessment team examined the legal and regulatory framework for transparency and exchange of information and relevant exchange-of-information mechanisms in San Marino.

Overview of San Marino

13. The Republic of San Marino is the Europe's third smallest independent state, after Monaco and the Vatican, and has a resident population of slightly over 31 000, of whom over 4 000 are foreign citizens (mostly Italian). The State covers an area of 61.2 square kilometres and is located in Central-Northern Italy, 23 kilometres from the Adriatic Sea. San Marino is divided into nine Castles (or municipalities), each bearing the name of its chief town. Italian is the official language of San Marino and it has adopted the Euro[3] as its currency.

14. San Marino is a republic. The Office of Head of State is jointly held by two Captains Regent, who are elected every six months by the Great and General Council (Parliament) from amongst its members. They preside over meetings of the Great and General Council and the Congress of state (Cabinet) and supervise the activities of the public institutions. The Parliament (the Great and General Council) is elected every five years by universal suffrage and consists of 60 members. Executive power vests with the Congress of State.

15. San Marino is not member of the European Union but it signed an agreement on economic co-operation and customs union with the status of "third country" in 1991 and its territory is treated as part of the EU customs zone. On the basis of this agreement, trade between San Marino and the EU is carried out exempt of all import and export duties or taxes with an equivalent effect.

16. Due to sharing of borders with Italy on all sides and various other reasons, Italy is the most important partner in Sanmarinese economic life. All the imports and exports of San Marino are routed through Italy. Sanmarinese banks have indirect access to the EU payment systems via Italian banks acting as direct participants on behalf of San Marino banks. San Marino has signed many bilateral conventions with Italy dealing with diverse issues like postal, telegraphic, telephone, services by professionals, convention for the circulation of bicycles and automobiles, Convention on Good Neighbourliness

3. The Council of European Union has authorised San Marino to use the Euro as its official currency and mint a limited quantity of Euro with its own national images.

and Friendship of 1939,[4] agreements on imports/exports matters, Monetary Conventions *etc*, the oldest being the Postal Convention of 1865.

17. San Marino maintains the lowest unemployment rate in Europe and until the recent global financial crisis had a state budget surplus[5] and no national debt. Over recent decades, San Marino has undergone strong economic growth averaging 3.1% annually from 2000 to 2008, due in part to an increase in foreign investments. More than half of San Marino's gross domestic product of about USD 1 600 million (as at 2007)[6] has been traditionally produced in the tourism industry which attracts about two million people annually. The financial sector, consisting mainly of banking and insurance industries, contributes nearly 19% to the Sanmarinese GDP.

General information on the legal sand taxation systems

Legal system

18. San Marino's legal system is based on civil law system with Italian law influences.

19. The Declaration on Citizens' Rights, enacted in 1974, is the highest law stipulating the country's institutional framework. This law guarantees fundamental civil, political and social rights to Sanmarinese people and is considered equal to a constitutional charter. The legislation of the Republic of San Marino is made up of statutes, laws, commune and customary laws. There are different kinds of laws: ordinary laws (*Leggi*), qualified laws (*Leggi Qualificate*) and constitutional laws (*Leggi Constituzionali*), and different kinds of decrees. The Great and General Council approves all the laws and decrees, though with different level of majority depending on the type of law. International treaties come first in the hierarchy of legal norms, followed by laws, decrees and regulations. Congress of State decisions are also binding and enforceable. Instruments under various names including circulars and instructions *etc* may also be issued but these do not have the status of law or regulation. Rules and circulars issued by the Central Bank or the Financial Intelligence Agency are however mandatory and enforceable.

4. The said convention envisages several matters, which includes Judicial Cooperation, Administrative Cooperation and free circulation of people and goods.
5. The adverse effects of the current downturn have resulted, in particular to a 2010 drop in GDP to (-) 7%.
6. The CIA World Fact book: *https://www.cia.gov/library/publications/the-world-factbook/.*

20. Judicial power is organised in a Single Court having ordinary and administrative jurisdictions. Two levels of appellate courts available: the Civil and Criminal Judge of Appeal and the Administrative Judge of Appeal; and the judge of the last appeal. The Council of Twelve (*Consiglio dei XII*), chaired by the Captains Regent fulfils administrative functions. The jurisdictional functions are now conferred upon the Judicial Bodies after the adoption of Constitutional Law in 2003. The Constitutional Court (*Collegio Garante della costituzionalità delle norme*), established on 28 April 2005, verifies that laws, acts, and provisions are consistent with the constitutional principles.

Taxation system

21. San Marino's taxation system provides for direct and indirect taxes. Direct tax is in the form of general income tax, which is levied on both natural and legal persons. It taxes the worldwide income of its residents, whereas non-residents are taxed on income sourced in San Marino. Indirect tax is in the form of import tax.

22. Individuals are taxed at progressive rates to increasing income brackets and tax rates ranges from 12% (for income below a threshold of EUR 9 296) to 50% (for any income above a threshold of EUR 232 405). Capital appreciation from speculative transactions is taxed at 8%. Companies pay tax at rate of 17% of their income. No tax is levied on distributed dividends. San Marino offers tax benefits to companies investing in plants and technologies resulting in new production processes, reduction of pollutants, energy savings or restructuring of jobs. The operating profits invested in the range of 30% to 60% are tax exempt.

23. Trusts are taxable entities and income produced by the trust assets is taxed at the ordinary company tax rate (17%), but on a tax base which is 10% of the actual trust income. Therefore, the effective tax rate is 1.7%. Transfers from settlor to trustee and from the trust to beneficiaries are exempt from taxes.

24. There is no VAT in San Marino, but there is a tax on the import of goods. This is a single-phase tax which applies to the total value of the goods imported into San Marino. The ordinary tax rate is 17%, but special rates exist for some types of goods.

Overview of financial sector and relevant professions

25. The Law on Companies and Banking, Financial and Insurance Services, also known as "LISF" provides for the licensing and supervision of reserved activities. The Central Bank of the Republic of San Marino (CBSM)[7] is the licensing and supervisory authority. This law regulates the financial sector activities undertaken by banks, financial and fiduciary companies, management companies and insurance companies. The maintenance of records under the provisions of this law adds greatly to meet the requirements of effective exchange of information.

26. Data for the banking sector show that the San Marino banking system continues to grow in terms of total assets, total deposits and number of employees. The ratio of total assets of the financial sector to GDP[8] was close to nine at the end of 2008.[9] Of the 12 banks operating in San Marino, four have been operating for many years, carrying out traditional banking services (two Sanmarinese owned and two owned by Italian commercial banks). In addition, since 1999, eight banks have been licensed, which are mostly owned by foreign individuals or companies from countries including Italy, Switzerland and Luxembourg. San Marino had 60 financial institutions (12 banks and 48 financial/fiduciary companies) on 1 January 2010. San Marino does not have a stock exchange.

27. Until the first half of 2009, insurance services were exclusively supplied by agencies of foreign insurance companies, mainly Italian, operating domestically. Since the second half of 2009, the first two Sammarinese life insurance companies also started operating.

28. Domestic and foreign fiduciary companies operate in San Marino, holding customers' assets in their own names and charging fees for these services. In addition, two asset management companies have recently started operations.

29. Professionals providing services to customers, such as lawyers, accountants and company formation agents are required to register with their respective Registry. They are also "obliged parties" under the anti-money laundering and counter-terrorist financing (AML/CFT) laws[10] of San Marino. The exercise of the Office of Professional Trustees is subject to authorisation of the Central Bank. Trustees are also subjected to anti-money laundering provisions with regard to record keeping of the trusts.

7. An authorisation from Congress of State is necessary for some activities.
8. Sanmarinese GDP in 2008 was about USD 1 800 million (EUR 1 370 million).
9. *www.imf.org/external/pubs/ft/scr/2010/cr1066.pdf* (accessed on 27 July 2010).
10. Law No.92/2008, modified by Law No.73/2009.

Overview of commercial laws and other relevant factors for exchange of information

30. San Marino allows companies and partnerships as the forms of business in the country. These are created and regulated under the provisions of specific laws. Foundations are also allowed to be created, though only for non-profit purposes.

31. The levy of income tax is governed by the Introduction to the General Income Tax (Law No.91/1984) as amended by Law No.66 of 2007, Law Decree No.153 of 2009. The taxation regime for trusts is governed separately by Law No.38/2005. The legal basis for the exchange of information for tax purposes is not provided in the income tax law.

32. The framework for the exchange of information for tax purposes was created through Law No.95/2008. This has created the central Liaison Office (CLO), the competent authority in San Marino, for implementing all the international agreements adopted by San Marino.

33. On 7 December 2004 an agreement was signed with the European Community establishing measures similar to those defined by Council Directive 2003/48/EC regarding taxation of income from savings in the form of interest payments. The EU Savings Tax Initiative became effective in 2005 in San Marino, through Law No.81/2005.

34. San Marino introduced changes to its strict banking secrecy laws by Law No.5/2010. Now bank secrecy cannot be used to stop access to bank information by authorities for the purposes of exchange of information in accordance with international agreements signed by San Marino.

35. The AML/CFT Law of San Marino provides for the creation of the Financial Intelligence Agency and sets down the obligations on obliged parties. The requirements for obliged parties to keep customers' identity and ownership information and the records of their transactions contributes greatly to keeping of records for the purpose of exchange of information.

36. The Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), or which San Marino is a member, conducts evaluations of San Marino's compliance with the FATF Recommendations for Anti-Money Laundering and Combating of Financial Terrorism (AML/CFT).[11] In response to the findings of the 2007 evaluation of San Marino, a database for the exchange of information between San Marino banks and Italian intermediary banks on cross-border transactions that are settled through the Italian payment system was created in 2009.

11. *www.coe.int/moneyval.*

Recent developments

37. In 2010 San Marino has made changes to its legal and regulatory framework with respect to the international standards on exchange of information for tax purposes. The significant changes are:[12]

- anonymous companies are no longer allowed to operate (Law No.98/2010).[13] All bearer shares should now be converted into registered shares;
- existing trust laws were replaced with a new Trust Act (Law No.42/2010);
- bank secrecy was lifted for the purpose of international exchange of information (Law No.5/2010);
- in July 2010, the laws requiring licenses for carrying on of business activities were replaced by Law No.129/2010 which also introduced special provisions for foundations and non-profit organisations;
- also in July 2010, the AML/CFT law was amended so that it better conforms to the international standards and the Warsaw Convention on anti-money laundering;
- in August 2010, the definition of permanent establishment was introduced in the Income Tax Law; and
- in September 2010, rules were issued defining "unfit parties" in the company law.

12. In addition, in August 2010, amendments were made to the Income Tax Law, introducing the concept of permanent establishment (for foreign companies) and the taxation thereof. As these amendments were ratified by Parliament in late October 2010, they are outside the timeframe considered in the analysis in this report.
13. San Marino had 659 anonymous companies on 1 January 2010.

Compliance with the Standards

A. Availability of Information

Overview

38. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of San Marino's legal and regulatory framework on availability of information.

39. The obligations imposed on domestic companies, partnerships, trusts and foundations for keeping ownership and identity information are generally sufficient to meet the international standards. However, the absence of enforcement provisions in the relevant statutes does not ensure the availability of ownership and identity information for domestic companies and partnerships.

40. Previously, San Marino had provisions in its law providing for the issue of bearer shares, creation of anonymous companies, issue of bearer bank passbooks and bearer deposit certificates. All these provisions have recently been abrogated. All anonymous companies must be converted into joint-stock companies or wound up and bearer shares must be converted into registered shares by 30 September 2010. Bearer passbooks had to be closed or converted into nominative accounts by 30 June 2010.

41. There is no obligation on fiduciary companies registered in San Marino that have shareholdings in foreign companies to disclose to the authorities information identifying the person(s) for whom they act and also identification data of their beneficial owners, however, such requirements have been recently prescribed for foreign and domestic fiduciary companies having mandate to participate in San Marino companies.

42. There is no clarity in the requirement for foreign partnerships having their place of effective management or administration in San Marino to keep ownership and identity information and accounting records.

43. Uncertainties have been noticed in identification of beneficiaries in the case of beneficiary trusts.

44. Domestic companies and partnerships are required to maintain accounting records. The trust law and laws governing foundations oblige the respective entities to maintain accounting records and data. However the relaxed requirements under Tax Laws for entities having revenue less than a threshold amount do not ensure availability of full accounting records to the standards.

45. Sanmarinese commercial law governing the creation and regulation of companies, partnerships, trusts and foundations provide for keeping accounting records for five years. However, the information retention requirements under the Income Tax Law are for a maximum of three years only.

46. In respect of financial institutions and other authorised parties, the combination of licensing and AML/CFT regimes impose appropriate obligations to ensure that customer due diligence information and financial transaction records of their customers are available and maintained for a minimum of five years.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

Companies (ToR[14] A.1.1)

47. Companies in San Marino are governed under the provisions of Law No.47/2006. This Law, referred as Company Law in this report, repealed the earlier Company Law (Law No.68/1990), with the exception of its Article 4 (non-commercial associations and foundations: concepts and basic rules).

14. *Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information.*

48. According to Art.2 of the Company Law, as amended by the Law No.98 of 7 June 2010, companies with share capital can be established in the form of joint-stock companies (società per azioni) and limited liability companies (società a responsabilità limitata). Law No.98/2010 amended Article 2 of the Company Law and provides that companies in the form of public limited companies (anonymous companies) can no longer exist and all anonymous companies must convert into joint-stock companies.

49. Articled 2 of the Company Law also allows for the creation of unlimited partnerships ("societa in nome collective") as a form of company and provisions of this law which apply to companies apply equally to such partnerships.

50. In addition, Art.3 provides for the creation of societies among professional persons for conducting together the professional activity for which they are authorised.

51. Legislation also provides for co-operatives, which are specifically regulated under Law No.149/1991, and more generally under the old Company Law (Law No.68/1990). Co-operatives are commonly in the nature of housing co-operatives or consumer co-operatives managing grocery stores. These operate for the benefit of their member-owners. Information about members of co-operatives is available with the Court Registrar. The provisions of the Company Law apply to co-operatives.

Registration of companies

52. Article 20 of the Company Law obliges all the San Marino companies to be registered in the Register of Companies, maintained by the Court Registrar. Companies gain legal personality on their registration in the Company Register.

53. The Register of Companies contains details of each registered company. Such details include: details of the memorandum of association; registered office; subscribed and paid up capital and any variations; personal particulars of the legal representatives of the company, of the directors, the auditors, liquidators and other information regarding the important events during the existence of the company (Art.6 of Company Law).

54. The main document forming the basis of registration is the memorandum of association of the company, which must be in the form of a public deed. For registering a company, the notary must file an authenticated copy of the memorandum of association and documents attesting to the existence of the conditions envisaged by the Law with the Registrar's office.[15]

15. The register is held by the Office of the Court Registrar.

The Registrar enters the company in the Register and such registration is also notified to the Office of Industry, Commerce and Crafts (Art.20 of the Company Law).

55. Resolutions to modify the memorandum of association must be made in a public deed submitted by the notary to the Registrar for registration (Art.22).

Ownership information on companies

56. The memorandum of association contains information on the identity of owners and also contributions made by them to the capital of the company. Articles 14 and 15 provide for the reduction and increase of capital respectively.

57. Participation in joint-stock companies is represented by shares. Both natural and legal persons can be members of companies with share capital. San Marino allows creation of sole partner companies. The issue of shares must be endorsed and authenticated by a notary. Share capital is freely transferable, unless established differently by the articles of association. Registered shares must be transferred by means of a public deed recorded by a San Marino notary, who is required to file an authentic copy of assignment deed with the Registrar's office. Transfer has effect after it has been registered in the stock ledger.

58. Article 72 of the Company Law obliges the company to keep a stock ledger containing the personal details of the holders of the registered shares and holdings and also any transfers or obligations relating to the same. The stock ledger must be endorsed by the Mortgage Register Office and it must be kept in the registered office of the company for its entire duration. The personal details recorded are the shareholder's full name and any other data contained in an ID card or passport or, in case of legal entities, the business name and the certificates of registration with the Court.

59. San Marino enacted Law No.98 of 7 June 2010 (Provisions for the Identification of the Beneficial Ownership Structure of Companies under San Marino Law). Article 4 of this law requires all companies with share capital having their registered office in San Marino to provide a certified abstract of their Register of Shareholders, through a Notary Public, to the Commercial Registry of the Single Court by 31 July 2010. This Register of Shareholders must clearly outline the company's ownership structure. Anonymous companies must comply with the requirement by 30 November 2010. The information in the Commercial Registry is not public but regulatory and supervisory authorities have unrestricted access to it.

60. All domestic companies, whether owned by residents or non-residents are subjected to the same regulations with regards to ownership and accounting information.

61. In addition, under Art.40 of Law No.129 of 23 July 2010, the Office of Industry, Handicraft and Trade is obliged to keep the public register of licences containing information on all licences granted for carrying out business in San Marino. It must contain the name of holder, the Economic Operator registration and identification code, the place of establishment of the business, the details of economic activity carried out and status of licence. However, for obtaining registration no information on ownership is required to be furnished.

62. To sum up, domestic companies are obliged to keep information that identifies the owners. The law mandates availability of information with the Registrar.

Income tax law

63. The Income Tax Law (Law No.91/1984) obliges all persons receiving income to file a tax return (Art.28),[16] irrespective of tax liability. Persons earning corporate income must file a tax return even if they have not generated any income. Income tax returns filed by companies do not contain information on their ownership.

64. Profits distributed by joint-stock companies are not subjected to tax at source (Art.39 of Income Tax Law); therefore, in absence of necessity of filing of withholding tax return, the information about the stock holders is not available with the tax authorities. San Marino authorities have confirmed that information on shareholdings is not available with tax authorities.

65. In view of the above, the Tax Office does not hold ownership information on companies.

Foreign companies

66. Article 11 of Law No.129 of 23 July 2010[17] has created obligations on foreign companies to obtain licences from the Office of Industry, Handicraft and Trade, if they wish to open a permanent establishment and intend to undertake economic activities in San Marino. They are required to appoint a representative in San Marino and submit documents which *inter alia* include a certified copy of the statutes, certificate of the effectiveness of the company or equivalent document and a certified copy of the articles of association of the permanent establishment.

16. Article 29 provides exemption from filing tax returns for some persons.
17. Effective from 10 August 2010.

67. Legal persons having place of effective management in the territory of San Marino are considered tax resident in San Marino (Art.2 of Law No.91/1984) and accordingly their worldwide income is taxable in San Marino. Until recently, foreign companies were not however taxed because the Income Tax Law did not contain the concept of permanent establishment, however, on 6 August 2010 the Congress of State issued Decree No.144,[18] which amended Law No.91/1984 and introduced the definition of permanent establishment,[19] similar to that of Art.5 of OECD Model Tax Convention, and prescribed the same accounting requirements for foreign companies as are applicable to domestic companies. These changes to the law ensure the availability of the ownership and identity information for foreign companies with their place of effective management or administration in San Marino.

Regulated entities

68. Entities carrying on reserved activities[20] are subject to prior authorisation and regulation by the CBSM (Law No.165/2005- Law on Companies and Banking, Financial and Insurance Services referred to as "LISF"). In some cases, authorisation from the Congress of State is also necessary. The LISF contains comprehensive provisions for the regulation of authorised parties and reserved activities. Supervised entities include banks, finance companies, trust companies (fiduciary companies), investment fund management companies, investment enterprises, insurance companies, trustees, financial promoters and insurance brokers. Acquiring a substantial participation or losing it requires notification to the supervisory authority. Article 23 of LISF provides powers to the supervisory authority to request information from authorised parties about participants (owners and members) and also from companies directly or indirectly holding participations in the authorised parties.

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18. San Marino's Constitutional Law empowers the Congress of State to issue Decrees having immediate force of law on the basis that they must be submitted to the Parliament within three months for formal ratification, under of penalty of nullity. This decree came into force on 8 August 2010, on the date of publication and was ratified by the Parliament on 26 October 2010.
19. The Decree of 6 August 2010 defines the notion of «permanent establishment» (mentioned in Art.2 of the Law of 13 October 2010) as applying to non-resident companies.
20. The reserved activities listed in Annexure 1 of LISF are: Banking, granting of loans, fiduciary activities, investment services, collective investment services, non-traditional collective investment services, insurance, re-insurance, payments services, electronic money issue services, exchange intermediation and the taking of holdings.

69. Entities carrying out the reserved activities must have their registered office and administrative seat in San Marino. Foreign persons can also be authorised to carry out reserved activities in San Marino through the setting up of branches or the provision of services without establishment, if those fulfil prescribed requirements (Art.75(1) of LISF).

Service providers

70. The regulatory regime for service providers requiring them to keep identity and ownership in respect of their customers is provided by the AML/CFT Laws. The service providers are referred to as "obliged parties" in Art.17 of the Law.

71. Obliged parties include: banks; financial and insurance and re-insurance agencies; the Central Bank; post offices; financial promoters; professional credit recovery services; investment services; assistance and consultancy on tax, financial and commercial matters; credit brokerage; real estate brokerage; custody services; auction houses; purchase of unrefined gold; trade in antiques; and various professionals.

72. Law No.92/2008 requires the obliged parties to conduct customer due diligence (CDD). The customer due diligence measures include identifying and verifying the identities of customers and beneficial owners before establishing a business relationship or carrying out a transaction, and also ongoing monitoring of the relationship with the customer and updating the data, documents and information acquired during the fulfilment of the customer due diligence obligations. This law has defines "beneficial owners" of a company to be natural person(s) that directly or indirectly own more than 25% of the voting rights in the company or control the management of the company.

73. In 2008 and 2009, laws were enacted in order to phase out bearer instruments. Laws also provided that after 1 January 2012 no new bearer passbooks can be issued and those issued earlier with low balances must also be closed or converted. Banks must carry out customer due diligence for each deposit, withdrawal, closure or conversion regarding bearer passbooks. Subsequently, these due dates were brought forward by Law-Decree No.136/2009, under which:

- issuance of bearer passbooks was prohibited with immediate effect;
- all bearer passbooks, regardless of their balances, must be closed or converted to nominative accounts by 30 June 2010.

74. Issue of certificates of deposit in bearer form was prohibited by a Decree enacted on 8 November 2009. Designated Non-Financial Businesses

and Professions[21] (DNFBPs) are covered under the ambit of AML/CFT Law. Professional Practioners are obliged to conduct identification and verification of the identity of customers and their beneficial owners. The detailed requirements have been prescribed in the instructions issued by the Financial Intelligence Agency.[22] Instruction No.2009-09 deals with the obligations of non-financial entities with regard to CDD requirements and record keeping. The requirements apply to all forms of customers including companies, foundations and trusts.

75. Financial Information Agency (AIF) Instruction 2009/06 specifically requires lawyers, notaries public and accountants involved in the formation of companies or transfer of shares, to conduct due diligence on their clients.

76. The obliged parties are regulated and supervised by the FIA. An obliged party which fails to comply with the obligations imposed by the AML/CFT Law is liable to different types of sanctions depending on the nature of violation. For example, the violation of customer due diligence obligations is punishable by criminal sanction with first degree imprisonment or second degree daily fine. A pecuniary administrative sanctions from EUR 2 000 to EUR 40 000 and third degree disqualification shall also apply (Art.61 of Law No.92 as amended by Art.9 of Law No.73/2009 and subsequently amended by Art.23 of Decree Law No.134 of 26 July 2010).

Nominees

77. Article 72 of the Company Law requires companies to keep the personal details of the holders of the registered shares in the stock ledger. These provisions require that the information about the nominal or legal shareholder be kept in the stock ledger, regardless of whether such shareholder is a nominee. The stock ledger does not have information on which stock holders are nominees, nor on the persons for whom nominees act.

78. The LISF defines fiduciary activity as holding of the title of the assets of third parties in execution of a mandate without representation. It is the understanding of the assessment team that fiduciary companies fall within the category of nominees but these may not be the only forms of nominees acting in San Marino.

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21. Article 20 of Law No.92/2008 defines professionals covered by the provisions of the AML regulations in San Marino and these are: Members of the Register of Chartered and Certified Accountants; members of the register of independent Auditors and Auditing firms and the Register of Actuaries; and members of the register of Lawyers and Notaries of the Republic of San Marino with regard to specified services.
22. Instruction No.2009-06/2009 and Instruction No.2009-09.

79. Fiduciary activity can only be carried out by legal persons under an authorisation from the Central Bank (Law No.165/2005). Such authorised legal persons are banks and fiduciaries companies. Article 17 of the Company Law deals with the participation by trust companies (which are in fact the fiduciary companies). Such companies, upon acceptance of the trust assignment are under an obligation to obtain prior certification with regard to the grantors of the assignment and must declare the same in the articles of association.

80. San Marino has recently enacted a law to regulate activities of foreign fiduciary companies which participate in San Marino companies (Law No.98 of 7 June 2010[23] – Provisions for the Identification of the Beneficial Ownership Structure of Companies under San Marino Law). This law sets out the conditions for foreign fiduciary companies having mandate to participate in San Marino companies. They are required to comply with the enforcement provisions issued by the Central Bank of the Republic of San Marino (CBSM) and the FIA. They must comply with the same obligations imposed on fiduciary companies authorised in San Marino by Art.17[24] of the Company Law as amended. Another condition requires that foreign fiduciary companies should not establish contractual and pre-contractual relations with clients on San Marino territory. Article 3 of Delegated Decree No.153 of 2 September 2010 requires deposit of original certificates obtained by fiduciary companies with a San Marino notary. The information available with the CBSM is accessible to the competent authority for international tax matters (the CLO) pursuant to Art.7 of Law No.98/2010.

81. Law No.98/2010 also requires that fiduciary companies, whether domestic or foreign, having mandate to participate in San Marino companies must communicate to the Supervision Department of the CBSM the identification data of the persons whom they represent, the shareholding of each of them and in case they are not natural persons, the identification data of their beneficial owners. Any subsequent changes concerning their settlors and/or beneficial owners must also be communicated.

82. Further, the fiduciary companies registered in San Marino with shareholding in foreign companies are required to report to CBSM about the number and amount of operations carried out by them on behalf of their clients. However, there is no obligation on San Marino domestic fiduciary companies whose clients hold shares in foreign companies to disclose the

23. This law came into force on 23 June 2010.

24. Article 17 of Company Law was amended by Law No.162/2010 and provides that "fiduciary companies may not establish undertakings, acquire or possess their holdings on the basis of the fiduciary assignments if the certification shows that the grantor or beneficial owner is an unfit party."

identification of the persons for whom they acting as nominee, nor of other persons in an ownership chain, nor the names of foreign companies in which they hold shares.

83. San Marino's authorities have indicated that the CBSM may request and obtain both on-site and off-site, at any given moment, information from San Marino fiduciary companies on shareholdings in San Marino companies held by foreign companies and on grantors and beneficial ownership thereof. The CBSM also has access to the information on grantors and beneficial owners of customers of fiduciary companies who invest in San Marino and also information on the grantors and beneficial owners on behalf of whom the San Marino fiduciary company purchases assets in San Marino or abroad, including company shareholdings. The CBSM has issued Circulars[25] 2007-03, 2008-06 and 2010-03 in this regard. However, the ability of the CBSM to obtain information from fiduciary companies with respect to their participation in foreign companies is not clear, as Art.23 of the LISF allows the CBSM to request information from fiduciary companies that have registered participations in the authorised parties (which are by definition domestic companies) only. Law No.98/2010 is also silent on this question.[26]

84. In addition to the general obligation on fiduciary companies, whether domestic or foreign, having mandate to participate in San Marino companies to communicate information on their clients to the Supervision Department of the CBSM, all domestic fiduciary companies must identify the "beneficial owners" of their clients. But, the definition of "beneficial owner" in the AML/CFT Law means that only those who hold more than a 25% interest in the client must be identified.

85. Considering the importance of the fiduciary companies in the financial economy of San Marino, it is recommended that San Marino takes effective steps to make available information about the persons on whose behalf fiduciary companies act as well as all persons in the ownership chain.

25. English translations of these circulars were not provided to the assessment team.
26. On 20 October 2010 (outside the timeframe considered in this report) the IMF published a Financial System Stability Assessment on San Marino and paragraph 57 of this report states that "*legal and regulatory framework governing these companies remains fragmented and weak. Mechanisms to ensure transparency in the ownership of fiduciary companies should be enhanced and scope of activities in which fiduciary companies can engage should be clarified. Some fiduciary companies offer services that appear designed simply to obscure the connection between assets and their beneficial owners.*"

Bearer shares (ToR A.1.2)

86. The Company Law allows for shares to be issued in registered or bearer form. Article 72 of the Company Law obliges companies to keep stock ledgers containing information on registered shares only and not on bearer shares. These provisions were amended by the AML/CFT Law in 2008 and subsequently by Law No.100/2009 which allowed the owners of bearer shares to be identified through custodial arrangements.

87. Provisions in the Company Law relating to anonymous companies (*i.e.* those which have bearer shares) were repealed recently by Law No.98/2010. This law requires all bearer shares to covert to registered shares and consequently all anonymous companies to convert into joint stock companies or limited liability companies by 30 September 2010 and deposit a certified abstract of the Register of Shareholders with the Commercial Registry of the Single Court by 30 November 2010. Companies not fulfilling these obligations will be subject to compulsory winding up.

88. Article 31 of the Companies Act had provisions for raising of fresh capital by joint stock companies through issue of bearer bonds. However, such bonds can no longer be used for raising fresh capital (Art.5 of Law Decree No.162 of 24 September 2010).

Partnerships (ToR A.1.3)

89. Company Law (Law No.47/2006) provides for the creation of unlimited partnerships and these are legal persons in accordance with the Company Law. In such partnerships, all partners are jointly, severally and unlimitedly liable for the obligations of the partnership.

90. The provisions of the Company Law and licensing requirements which are applicable to domestic companies apply equally to domestic partnerships and, as a result, ownership and identity information is maintained for domestic partnerships, though not information with respect to the ownership chain.

91. Law No.129/2010 prescribes the licensing requirements for a "società estera", which includes foreign companies and foreign partnerships. Foreign partnerships desirous of carrying on business in San Marino are required to obtain an administrative license from the Office of the Industry, Handicraft and Trade for which information on the partners is not required to be filed.

Tax law

92. Partnerships are not required to register with the Tax Office.

93. Domestic partnerships are not taxed as separate legal persons. Partnerships are required to file a tax return by 31 July of the year following the tax year, though no tax is payable by them. The profits or losses of partnerships are attributed to each partner in accordance with their shareholding (Art.2 of Law No.91/1984). Partner's names are not reported in the tax return.

94. Foreign partnerships carrying on business in San Marino are not taxed. Recent inclusion of the concept of permanent establishment in the tax laws uses different terminology ("impresa") to define the types of foreign entities whose permanent establishments are subject to tax from the terminology used in the law establishing licensing requirements for foreign entities operating in San Marino. "Impresa" is not defined. As a result, it is not clear whether the tax laws apply to permanent establishments of entities other than companies. As both the law concerning licensing of permanent establishments and the law applying taxation laws to permanent establishments are recently enacted, the impact of the different use of terms is unknown. As a result, it is not clear that information on the partners of foreign partnerships with place of effective management in San Marino is to be kept by the partnerships, nor is it clear that such information would be available with any authority in San Marino. It is recommended that San Marino address this lack of clarity in its laws to ensure that such information is kept.

Service providers

95. As noted previously with respect to companies, Law No.92/2008 requires a wide range of financial institutions as well as non-financial businesses and professions (DNFBPs) to conduct customer due diligence. The customer due diligence measures include identifying and verifying the identities of customers and beneficial owners before establishing a business relationship or carrying out a transaction, and also ongoing monitoring of the relationship with the customer and updating the data, documents and information acquired during the fulfilment of the customer due diligence obligations. Thus, the ownership of any partnership which holds an account or conducts any financial business in San Marino will be known to the financial institutions or DNFBP involved.

Trusts *(ToR A.1.4)*

96. Law No.37/2005 governed the creation and regulation of trusts in San Marino; however, this law has been repealed and replaced by new laws, decrees and regulations:

- Law No.42 of 1 March 2010 – Trust Act;
- Decree No.49 of 16 March 2010 – Office of Professional Trustee;

- Decree No.50 of 16 March 2010 – Registration and keeping of the trust register and procedure for the authentication of the book of events;
- Decree No.51 of 16 March 2010- Identification of the methods and procedures necessary to keep the accounts of administrative facts relating to trust assets; and
- Regulation 2010-01- Regulation for the professional exercise of the office of trustees in the Republic of San Marino.

97. The Trust Act is a comprehensive law on trusts and provides for the creation, amendment, revocation and termination of trusts and the rules relating to the parties to the trust namely the trustee, beneficiaries and protectors. It also contains provisions relating to foreign trusts.

98. Trusts created under Law No.37/2005 are required to conform to the provisions of the new laws and trustees of such trusts must make necessary amendments to the trust instruments in this regard. Failure to comply with these provisions attracts an administrative fine of EUR 12 000 which is levied on the trustee.

99. Now, a trust can be created exclusively by a public deed through a public notary. For the formation of trusts, location of assets, residence or domicile of settlors, trustees or beneficiaries, whether in or out of San Marino, is not a factor. Article 6 of the Trust Act requires that a trust shall be created by an instrument in writing and authenticated by a notary public. Accordingly, oral or implied trusts are not recognised under San Marino's Law.

100. The Trust Act provides for the creation of three types of trusts:

- beneficiary trusts: created for the benefit of one or more beneficiaries;
- purpose trust: created to pursue one or more purposes; and
- beneficiary and purpose trust: for the benefit of beneficiaries and pursuing a purpose.

101. Article 6 of the Trust Act requires the trust instrument to contain various information about identification of trustee, identification of the resident agent, if the trustee is non-resident, settlor's will to create the trust, identification of the trust assets, identification of beneficiaries in the case of beneficiary trust and identification of protector in the case of the purpose trusts.

102. Article 6 (2) (g) then provides for the trust elements to be available for beneficiary trusts as:

- the identification of the beneficiaries, or the criteria which enable them to be identified, or the identification of the person who has power to identify the beneficiaries; and
- rules ensuring the presence of a protector, authorised to take action against the trustee in case of breach of trust when, for any reason, there are no beneficiaries and in other cases envisaged by the law.

103. This creates uncertainties pertaining to identification of beneficiaries, particularly by allowing simply for identification of a person who has the power to identify the beneficiaries. In such cases, identification of the beneficiary is dependent on a person acting at intermediate level and this additional layer creates opaqueness. How this intermediate structure would be accountable is not specified.

104. A trust is required to be registered in a Trust Register, which is maintained by CBSM. Art.7 of the Trust Act obliges the trustee to draw up a certificate of trust to be authenticated by a notary public. This certificate should contain information on the trustee, protector, settlor and beneficiaries. The notary public must file this certificate with the office of the Trust Register, where it is transcribed into the Register. However, ambiguities have been created by Art.3 of Delegated Decree No.50 of 16 March 2010, which provides that only an abstract of the trust instrument is to be registered. Whether the abstract is the same as the trust certificate and the extact nature of information on beneficiaries it contains is unclear.

105. There were 26 trusts registered as at 21 July 2010. All of these are domestic trusts. Foreign trusts have never been registered in San Marino.

106. Sanmarinese law requires the appointment of a trustee by the trust instrument. The position of trustee can be held by one or more natural or legal persons, none of whom shall be a trustee of more than one trust subject to San Marino law. However, this restriction does not apply for a natural or legal person identified as an obliged party under the AML/CFT Law or substantially equivalent law of other state. Delegated Decree No.49/2010 regulates professional trustees who hold the office of trustee in a plurality of trusts. The CBSM has issued Regulation 2010-1, which sets out the requirements for obtaining the authorisation to the Office of the Professional Trustee and the maintenance of requirements.

107. The office of protector is envisaged under the Trust Act. It is compulsory to provide for a protector in case of a purpose trust; however this is only necessary in case of beneficiary trust when no beneficiaries are in existence. The settlor of the trust can reserve some rights or powers and can also appoint himself as protector.

Service providers

108. Notaries public provide services in relation to creation, certification and registration of trusts. Without their involvement no trust can be created in San Marino. Provision of services in relation to trusts by these professionals brings them within the ambit of obliged parties in the AML/CFT Law (Art.17 and Art.20).

109. Professional trustees are categorised as non-financial parties, with obligations under Article 19 of the AML/CFT Law (Article 4 of Delegated Decree No.49 of 16 March 2010). Only financial institutions, companies, lawyers, notaries and accountants, who are members of their associations, can act as professional trustees. They are subject to authorisation and supervision by the CBSM. Non-professional trustees are also subject to provisions of anti-money laundering laws.

110. Under the Art.22 of AML/CFT Law, notaries and professional trustees must undertake CDD measures include identifying and verifying the identities of the settlors.

111. Art.22 of Law No.92/2008 describes the scope of required CDD measures as including "if necessary, identification of the beneficial owner and taking risk-based and adequate measures to verify the identity". Art.23 also refers to taking adequate measures in order to understand the ownership and control structure of the customer. Article 1(1) (r) (2) of the same law defines the beneficial owner for trusts as, "the natural person(s) who is beneficiary of more than 25% of the property of a foundation, trust or other arrangements with or without legal personality that administers funds; whenever the beneficiaries have not been determined, the natural person(s) in whose principal interest the entity is established or acts".

112. In support of the AML/CFT Law, pursuant to Art.21 of FIA Instruction No.2009-06 professional practioners are required to maintain an anti-money laundering register which *inter alia* contain particulars of the beneficial owner, when present. Article 11 of the instruction requires that, when the customers are not operating on their own behalf, the professional practitioner must acquire the identification details of the beneficial owners.

113. While anti-money laundering obligations require trustees to identify settlors of trusts they manage, the obligations under the AML/CFT Law do not adequately ensure the availability of information on the beneficiaries as only those who had more than a 25% interest in the trust property requires to be identified.

Tax law

114. The new legislation on trusts has not affected the pre-existing rules for taxation of trusts. A trust is a taxable entity. Law No.38/2005 regulates the taxation of all trusts regulated by San Marino law and managed by a trustee resident in San Marino or otherwise fiscally resident in San Marino. Trusts are considered fiscally resident in San Marino if they are administered by at least one trustee who has been authorised to exercise such office in accordance with the law on trusts.

115. Under Article 3, the trust is liable for the taxable income of the trust. The trustee is responsible for the tax obligations of the trust, which includes duty to pay the tax and other reporting requirements as per tax laws, which includes filing of income tax returns. It is compulsory for all trusts to file tax returns; however, information on the beneficiaries and settlors is not required to be provided in the tax return and information on beneficiaries is not available with the Tax Office.

116. Article 7 of Law No.38/2005 and its Decree allow trustees not to disclose the fiscally non-resident beneficiaries' identities but instead pay a withholding tax. However, the tax is not required to be withheld if the trustee communicates the names and data, citizenship, residence and any other data or information requested to the Financial Administrative Branch of the Republic of San Marino. In case of distributions to fiscally resident beneficiaries, trustees must report details of actual economic beneficiaries to the Financial Administrative Branch. Therefore, under the tax provisions, the authorities have information on all fiscally resident beneficiaries, but not on non-resident beneficiaries.

117. When read together, the trust laws, the AML/CFT laws and the tax laws oblige trustees to maintain information on the settlors and those beneficiaries of trusts who had more than a 25% interest in trust property.

Foreign trusts

118. In 2004, San Marino ratified the Hague Convention on the Recognition of Trusts allowing the free use of foreign trust laws. The Trust Act defines the foreign trust as a trust whose applicable law is a law on trusts of a foreign state. Article 56 contains provisions specific to foreign trusts and provides that:

- provisions relating to creation of trusts (Art.6) referred to earlier apply to creating foreign trusts where the settlor is a natural or legal person residing in San Marino;

- foreign trusts with an administrative seat in the Republic of San Marino are required to be registered in the trust register in the same manner as domestic trust; and
- resident trustees of foreign trusts are required to meet all the requirements prescribed as relating to domestic trusts.

119. The trust laws do not envisage any restriction on the residents of San Marino to act as trustees for foreign trusts.

120. The administration of a trust by a San Marino resident trustee makes the trust fiscally resident in San Marino and taxable in San Marino.

Mutual funds

121. Under San Marino Law, a mutual fund is a sort of unit trust, managed by a fund management company which needs to be authorised by the CBSM. All provisions of the Company Law apply to fund management companies. The regulations issued by the CBSM have set clear rules about cross-border operations, obliging foreign funds to be authorised. As a result, full information is available on the members of unit trusts.

Foundations *(ToR A.1.5)*

122. Foundations can be created under Sanmarinese Law. These are not commercial entities but part of the non-profit sector and must pursue the purpose of public benefit. A foundation can be created exclusively through a public notary, who is an obliged party under the AML/CFT Law.

123. Provisions relating to regulation of non-commercial associations and foundations are available in Art.4 of Law No.68/1990, the old company law, and these provisions continue to be in operation.The provisions relating to creation, administration and liquidation of associations, foundations and other non-profit organisations are subject to the provisions of the companies contained in the Company Law (Law No.47/2006). In addition, Law No.129 of 23 July 2010 (Regulations Governing Licenses to pursue Industrial, Service, Handicraft and Commercial Activities) has enacted special provisions for associations, foundations and non-profit organisations.

124. Congress of State Decision No.55/2009, required creation of a separate database on members of associations, foundations, co-operatives and consortium. This database, which has the same characteristics as for companies, is kept at the Single Court Registrar's Office. Foundations are required to keep at their registered office a register containing the names of their members and beneficiaries and must submit a list of their members to the Commercial Registry of the Single Court by 31 December each year,

which allows the Court to update the Registry. Foundations are also subject to supervision by the Judge of Supervision and the Financial Intelligence Agency.[27] Any public authority can have access to the data contained therein upon request.

125. Pursuant to Art. 37 and 38 of Law No.129/2010 and to the Memorandum of Understanding for the Prevention and Countering of Money Laundering and Terrorist Financing between the Council of Twelve, the Judge of Supervision and the AIF over associations, foundations and non-profit organisations and the Financial Intelligence Agency of 14 September 2009, the Judge of Supervision fulfils the following functions:

- supervises these entities' compliance with obligations related to budget sheets, prospectuses and summaries of funding and uses;
- reports to AIF risk factors possibly linked with AML/CTF crimes that emerged during the controls referred to above; and
- reports to the Council of Twelve. Such reports may contain proposals for the removal of non-operating entities or entities operating unlawfully.

126. The profits of foundations are not taxable in San Marino and thus they are not obliged to submit information to the Tax Office.

Enforcement provisions to ensure availability of information (ToR A.1.6)

127. Article 5 of Law No.98 of 7 June 2010 has prescribed an administrative sanction of EUR 5 000 for any single violation relating to reporting and filing obligations envisaged in the Company Law and subsequent amendments and also under Law No.98/2010. These administrative sanctions will be applied by the Office of Industry, Handicraft and Trade following a report by the competent supervisory offices/ bodies to which communications are to be addressed or with which documents have to be deposited.

128. The abovementioned sanctions were prescribed for the first time in June 2010. However, these sanctions are inadequate as they suffer from the following defects:

- no sanctions are prescribed for violations relating to keeping of ownership and identity records, for example, stock ledgers; and

27. For this purpose a memorandum of understanding between the Council of Twelve, the Judge of Supervision and the Financial intelligence Agency was signed on 14 September 2009.

- if the notary fails to file the required information, the sanction applies to him and not to the company.

129. Partnerships and foundations are regulated under the company law and while enforcement provisions for companies may apply equally to these entities, this is not clearly stated.

130. Article 66 of the Income Tax Law provides for the administrative sanctions for non-fulfilment of obligations by taxpayers. A fine ranging from EUR 51 to EUR 309 applies for not keeping records in accordance with the legal provisions. A fine ranging from two to four times the amount of tax due is imposed, if the tax due on income source not included in the tax return is higher than EUR 18 076, however, no administrative sanction applies where a taxpayer unintentionally submits an inaccurate, incomplete and false tax return and provides well-founded reasons.

131. Legal and natural persons providing services relating to the establishment, management or administration of companies, trusts or similar arrangements, are regulated under the AML/CFT Law of San Marino (Law No.92/2008). Administrative and criminal sanctions have been outlined in Title VI of this law and violations relating to customer due diligence and registration are punishable with pecuniary administrative sanctions ranging from EUR 2 000 to EUR 40 000.

132. Persons performing the office of professional trustee are considered obliged parties under the AML/CFT Law (Art.4 of Delegated Decree No.49 of 16 March 2010). They are also subject to supervision by the CBSM, the supervisory authority. The CBSM may impose an administrative sanction of EUR 2 000 to any notary public, resident trustee or resident agent for failure to register the trust within the specified time (Article 8 of Trust Act). Article 60 provides for a punishment to a trustee in the form of second-degree arrest and second-degree disqualification from the office of trustee for failure to keep wholly or in part the accounts relating to the trust assets.

133. The effectiveness of the enforcement provisions which are in place in San Marino will be considered as part of the Phase 2 review.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
Other than for foreign companies, the requirement that entities formed outside of San Marino but having their place of effective management in San Marino maintain ownership information or provide it to authorities is unclear.	San Marino should address the lack of clarity in its laws to make it explicit that, in addition to foreign companies, all foreign entities having sufficient nexus to San Marino are required to maintain information on their ownership.
The obligations on fiduciary companies registered in San Marino that have shareholdings in foreign companies to disclose to the authorities information identifying the person(s) for whom they act are unclear and only those persons in the ownership chain who hold more than 25% interest in the fiduciary company's client must be identified.	Provisions should be established to ensure that San Marinese fiduciary companies having shareholdings in foreign companies maintain the information identifying the person(s) for whom they act and that all fiduciary companies maintain information on all persons in the ownership chain behind their clients.
There is no obligation to identify the beneficiaries of trusts unless they hold more than a 25% interest in trust property.	San Marino should establish clear provisions in its laws to ensure availability of information on all beneficiaries of trusts.
The Company Law does not prescribe any sanctions for failure by companies or partnerships to keep ownership information.	San Marino should prescribe enforcement provisions in the form of penalties for companies and partnerships which do not maintain information in accordance with the Company Law.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

General requirements (ToR A.2.1)

134. The Company Law obliges companies to keep accounting records, namely the journal book of original entries, the inventory ledger and the book of depreciable assets (Art.72 of Law 47/2006) at the registered office of the

company. Directors of the company must prepare a balance sheet to truthfully and correctly represent the assets, liabilities and financial situation of the company and the operating results of the business year, which coincides with the calendar year (Art.74). The balance sheet comprises the statement of assets and liabilities, the profit and loss account and balance sheet statement. The principles for drawing up the balance sheet and the structure and content of the balance sheet are prescribed in the company law. This requirement applies to all type of companies and partnerships.

135. All joint stock companies are obliged to nominate auditors. In case of limited liability company, the appointment of auditor is necessary when company capital exceeds EUR 77 000 or the proceeds from sales and services exceeds EUR 2 000 000 for two consecutive business years. A board of auditors is nominated when the sales and services in the company exceed EUR 7 300 000 for two consecutive business years. Auditors are required to make sure that the annual balance sheet corresponds to the accounting results.

136. The balance sheet, auditor's report and the minutes of the meeting of the company approving the balance sheet must be filed by the directors with the Registrar's office (Art.84 of Company Law). The financial statements must also be approved in a general meeting of the company.

137. The Company Law refers to the preparation of a balance sheet to reflect the operating results of the business year which must be prepared annually. The law refers to the accounting standards; but no accounting standards appear to have been prescribed under Sanmarinese law. It is understood that action is currently underway to officially recognise the accounting standards, which are said to be in line with internationally accepted accounting standards, which are being followed by San Marino. This is necessary to ensure the accounting records are kept in such a way to enable the entities to determine their financial position with reasonable accuracy at any time.

138. The obligation to keep proper accounting records by companies engaged in providing financial services are provided under the LISF. Articles 29 to 34 of this law oblige the authorised parties to prepare financial statements so as to give a true and fair view of the assets and liabilities, the financial situation and profit and loss account for the year.

139. While the Company Law has not prescribed clear sanctions for failures to meet the prescribed obligations by the company or the directors, Article 56 prescribes that directors must fulfil the obligations imposed by the law and in particular they are answerable for regular accounting and keeping of the corporate books. It refers to penal sanctions but no such sanctions are detailed.

141. As regards keeping of accounting books by trusts, Delegated Decree No.51 of 16 March 2010 obliges the trustee to keep regular and complete accounting of the facts concerning the trust's assets and to annually draw up the trust's balance sheet and the inventory of the trust fund. Article 4 of Law No.38/2005 (Taxation of Trusts) requires the trustee to maintain book entries in systematic form and in accordance with the provisions on proper accounting. The failure by a trustee to keep the accounts relating to the trust's assets, resulting in loss to the beneficiaries, attracts punishment by terms of second-degree arrest and second-degree (nine months to two years) disqualification from the office of trustee (Art.60 of the Trust Act).

142. An obligation to keep accounting records by foundations, associations and other non-profit organisations arises under Art.37 of Law No.129/2010. These entities are required to register data and information regarding funding and funds received and the use thereof. Every foundation must deposit every year an abstract of the balance sheet and the prospectus "Summary of Funding and Uses" with the Judge of Supervision. Article 37(5) provides that failure to comply with information reporting, keeping and filing requirements will lead to an administrative sanction of EUR 2 000.

Tax law

143. Section IX of Law No.91/1984 (Introduction of the General Income Tax) stipulates provisions relating to accounting entries. Article 34, under the heading "accounting requirements for companies, similar entities and major companies" establishes that companies, similar entities, permanent establishments of non-resident companies as well as sole proprietors having generated revenue[28] higher than that specified in Art.26 during the reference year, must keep a day book, an inventory book and a register of depreciable assets, all duly certified, as well as auxiliary accounting entries clearly indicating assets and profits consistent with the size and nature of business. They must also compile an inventory and balance sheet with a profit and loss account.

144. Article 35 of the Income Tax Law, under the heading, "simplified accounting rules for minor businesses" provides that, where the revenue made during the reference year has not exceeded the amount indicated in Art.26, taxpayers conducting business activities[29] shall be exempted for the

28. Law No.91/1984 in Articles 34 and 35 uses the term "ricavi" which is defined in Art. 22bis to mean revenues.

29. Article 20 of the Tax Act, under the heading, "corporate income", provides that corporate income shall be understood as the income generated by the carrying on of a business activity related to trade, manufacturing of goods or services, intermediation, transport, banking, insurance and any other activity ancialliary to the former.

following two years from the full accounting requirement under Art.34. However, they must still maintain an inventory book and a purchase and sale book, without prejudice to the obligation to keep purchase and export invoice and any other books or documents required in any legislation.

145. Article 26 provides that taxpayers conducting business activities who are not already bound to prepare financial statements, who during the year have achieved revenues exceeding EUR 800 000, must prepare (in addition to the inventory and balance sheet) the profit and loss account and balance sheet for the subsequent two years.

146. Article 66 of Law No.91/1984 provides a monetary fine ranging from EUR 51.65 to EUR 307.87 for failure to keep accounting records in accordance with the law.

146. As a result, companies, similar entities, permanent establishments of non-resident companies and sole proprietors who during the year have achieved revenues exceeding EUR 800 000 must keep full accounting records in line with the standards. The relaxed requirements for all businesses whose revenue is below that threshold mean that partial accounting records must be kept. That is, they must keep records which explain all transactions but they are not obliged to keep records enabling the financial position to be determined and they are not obliged to prepare financial statements or a balance sheet. Therefore, it is recommended that, San Marino prescribe accounting requirements for these businesses which ensure the keeping of accounting records in line with the standards.

147. As this threshold of EUR 800 000 is relatively high and applies to all types of entities, this results in a significant gap in the accounting records which must be kept by taxpayers conducting business activities. Further, considering the nature of the accounting records such entities are required to keep (inventory book and a purchase and sale book) this could result in no or very limited accounting records being kept by some types of entities (*e.g.* asset holding companies and trading companies) which have limited transactions and revenues under the EUR 800 000 threshold.

140. Foreign partnerships carrying on business in San Marino are not clearly obliged to maintain accounting records. As mentioned previously in paragraphs 91-94, it is unclear from the Income Tax Law whether San Marino taxes the income of such partnerships. No other laws of San Marino provide for the maintenance of accounting records by foreign partnerships.

Underlying documentation (ToR A.2.2)

148. The Company Law provides for keeping the original copies of the incoming and outgoing correspondence and invoices in an orderly way for each operation (Art.72). The external auditor or the auditing company charged with auditing the accounts, for companies achieving revenue exceeding a threshold amount, is required to check to make sure that the company's accounts are kept in a regular way and the accounting records appraise the management affairs correctly (Art.68). The auditing companies or auditors are liable in relation to the company, the partners and third parties for the damages deriving from failure to accomplish their duties. These provisions also apply to partnerships and foundations.

149. The governing laws relating to trusts do not specifically prescribe keeping of particular underlying documentation in support of the accounting records. However, trustees are obliged to keep regular and complete accounting relating to trust assets. In addition, Delegated Decree No.51 of March 2010 requires trustees to keep accounting books in a systematic manner and according to proper accounts standards. Professional trustees are also obliged parties under the anti-money laundering laws of San Marino and thus must keep all documentation related to customer due diligence and financial transactions (Art.4 of Law No.49/20100).

150. Authorised parties are under an obligation to keep records under anti-money laundering legislation. Article 34 of Law No.92/2008, as amended by Decree Law No.134/2010, requires obliged parties to keep supporting evidence of the transactions.

151. In view of the relaxed requirements of accounting and keeping documents as mentioned in paragraphs 143 to 149, the availability of full underlying documentation for the accounting records for all businesses is not guaranteed.

5-year retention standard (ToR A.2.3)

152. Article 72 of the Company Law requires the accounting records specified therein to be kept for five years in compliance with Directory LXXI of Book of the Charters. The same provisions apply to partnerships. Foundations must keep accounting records for at least five years pursuant to Art.37 of Law No.129/2010.

153. Persons exercising the office of professional as well as non-professional trustees are required to keep the documents relating to trusts for five years from the date at which they cease to hold that position (Art.4 of Law No.49/2010).

154. The Sanmarinese AML/CFT Law requires the authorised parties to maintain all records related to customer due diligence and transactions for at least five years.

155. Article 38 of the General Income Tax Act requires that all entries and records under this tax law or other tax laws and in any case relevant for assessment purposes be kept for three years from the end of the relevant tax year.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
There is lack of clarity concerning the obligations on foreign partnerships carrying on business in San Marino to maintain accounting records in San Marino.	San Marino should clarify the requirement for foreign partnerships that carry on business in San Marino to maintain accounting records and underlying documentation.
Businesses achieving revenue less than EUR 800, 000 are allowed to keep accounts in the simplified form for the reference year and two subsequent years. The keeping of accounts in simplified form does not meet the international standards.	San Marino should provide that all entities maintain proper accounting records and underlying documents consistent with the international standards.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements *(ToR A.3.1)*

156. Entities carrying on banking business are subject to licensing requirements as well as the obligations imposed on them as service providers. Prior authorisation is required from CBSM for carrying on banking business (Law No.165/2005 and Law No.96/2005). The legislative framework for record keeping requirements, as service providers, applicable to banks and other financial institutions is in the AML/CFT Law (Law No.92/2008) and Decree Law No.126 of 15 July 2010.

157. Article 34 of Law No.92/2008 requires all financial institutions (obliged parties) to record data and information obtained under CDD requirements and keep the records and copy of documents obtained for at least five years from the closure of the business relationship or execution of the occasional transaction. Article 34(2), as amended by Decree Law No.126/2010, requires the obliged parties to register and keep the supporting evidence and records of business relationships and occasional transactions or of services provided for a period of five years from the closure of business relationship or execution of the transaction.

158. Paragraph 5 of Art.34 of Law No.34/2008 specifically notes that these obligations to maintain detailed records for at least 5 years apply equally to "all transactions both domestic and international, concerning existing and terminated business relationships, as well as to occasional transactions." As a result banking information is available for all account holders.

159. The AML Law also obliges the authorised parties to make available the documents and information maintained to the Financial Intelligence Agency. The Financial Intelligence Agency has issued instruction No.2009-10/2009 prescribing the requirements relating to registration and maintenance of the data and information on customers as per Art.34 of Law 92/2008. Law No.73/2009 and Decree Law No.134/2010 provide sanctions for violations of CDD obligations and non-compliance with the registration and reporting obligations and sanctions.

160. The AML/CFT Law, the instructions issued by the AIF and also the regulatory regime for authorised financial institutions should ensure the availability of all records pertaining to accounts as well as related financial and transactional information.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

B. Access to Information

Overview

161. A variety of information may be needed in respect of the administration and enforcement of the relevant tax laws and jurisdictions should have the authority to access all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether San Marino's legal and regulatory framework gives the authorities access powers that cover the right types of persons and information and whether rights and safeguards that are in place would be compatible with effective exchange of information.

162. The report identifies deficiencies in the authorities' powers to obtain information for exchange purposes. The most serious deficiency is the competent authority has authority to obtain information in criminal tax matters only.

163. For obtaining information, the competent authority relies on public authorities, primarily OCSEA and the Central Bank, and also on AIF, the Tax Office and other offices of the Public Administration. The competent authority has powers to obtain information held by banks, other financial institutions as well as ownership and accounting information for all relevant entities, as this is generally held by the Central Bank and other public authorities of San Marino. However, uncertainties remain about all involved public authorities powers to obtain information from all relevant entities. Also, the Tax Office cannot obtain information which is older than three years.

164. The provisions dealing with legal professional privilege in San Marino are wide in scope and these secrecy provisions are not overridden for the purpose of exchange of information for tax purposes. Accordingly, San Marino may not be able to obtain and provide information from these professionals as required under the EOI agreements signed by it.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

Ownership and identity information (ToR B.1.1) and accounting records (ToR B.1.2)

165. The Central Liaison Office (CLO) is the Competent Authority of San Marino for international exchange of information in tax matters. It is constituted pursuant to Art.9 of Law No.95/2008 for the purposes of international administrative co-operation. It reports to the Congress of State (Council of Ministers) and to the Parliament. The CLO is an autonomous body which functions as San Marino's competent authority for not only tax purposes but also for all international agreements adopted by the Republic of San Marino. It co-operates with and relies upon the Office for Control and Supervision of Economic Activities (OCSEA), the Central Bank, the Tax Office and other bodies of the public administration for the exercise of powers to obtain information to respond to requests for information from foreign competent authorities. Similarly, the Tax Office relies on the CLO for obtaining information from the foreign jurisdictions with which San Marino has concluded agreements.

166. The CLO derives all its powers from Law No.95/2008. The tasks and functions of the CLO are set out in Art.11, which provides:

> *1. The Central Liaison Office shall be the body responsible for contacting the competent offices of other Countries for administrative cooperation with a view to implementing the international agreements adopted by the Republic of San Marino.*
>
> *2. The Central Liaison Office shall access all the necessary information to prevent and contrast frauds, including tax frauds and "The like" as well as distortions in trade exchange.*

167. Tax fraud is not defined in the Law No.91/1984 (Introduction of the General Income Tax). Article 389 of the Criminal Code does however define "tax evasion" as filing false tax returns using fraudulent means, or:

- otherwise putting in place fraudulent arrangements for the purpose of evading tax liabilities; or
- facilitating others to evade tax liabilities.

168. The term "the Like" refers to illegality of the level of tax fraud. "The Like" is defined in Law No.95/2008 as:

- violations which present the same degree of illegality as tax fraud under San Marino legislation; and
- in the framework of the international agreements adopted by the Republic of San Marino.

169. The powers of the CLO to access information in the criminal tax matters were established in accordance with the prevalent bank secrecy regime in San Marino at the time of introduction of Law No.95/2008. While later Law No.5/2010 changed the rules relating to the bank secrecy, which can no longer be invoked against the CLO and other San Marino public bodies and offices responsible for the exchange of information in accordance with the international agreements in the force, corresponding changes have not been made to the powers of the CLO for accessing information.

170. In view of the above, the CLO can access information for the prevention of fraud, including tax fraud, when information is requested from foreign competent authorities. It does not however have powers to obtain information relating to civil tax matters.

Powers to obtain information

171. The CLO can seek co-operation:

- from the Office for Control and Supervision of Economic Activities and the bodies of the Public Administration (Art.12 of Law No.95/2008); and
- from the Central Bank for investigations into banking and financial aspects (Art.13).

172. Previously, under Law No.95/2008, the CLO also had the power to request information from company representatives directly, subject to many conditions; however, this power has been withdrawn by Law No.129/2010. Thus, the CLO is now dependent on public authorities, primarily the OCSEA and the CBSM, and also on the AIF, the Tax Office and other office of the Public Administration for accessing information.

173. The CLO can access data maintained by other authorities and if the data is unable to meet the request of the foreign competent authority, then it can seek co-operation from relevant public authorities. This co-operation often involves exercise of the information gathering powers of the relevant public authority.

174. The OCSEA was also set up by Law No.95/2008. Its role is to, directly or through other public offices, prevent, identify, investigate, counter tax fraud or "the like" frauds, and counter distortions in trade exchange. The OCSEA controls and supervises economic operators (primarily companies) (Art.5). The OCSEA, on which the CLO is mainly dependent, can access information from companies only and not other relevant entities namely partnerships, trusts or foundations.

175. The CLO can request information from OCSEA, who in turn has the power to convene company (including partnerships) representatives and request them to submit any documents which could be useful to the fulfilment of its functions. The OCSEA also has access to premises, means of transport and documents of the economic operators (Art.6 and Art.8 of Law No.95/2008). The OCSEA can seek co-operation from the Gendarmerie, the Civil Police and the Fortress Guard Uniformed Unit for performing its functions.

177. Article 37 of Law No.129/2010 requires that data and information kept by associations, foundations and other non-profit organisations be provided, upon request, to the Judge of Supervision for supervisory functions and to the AIF to perform functions assigned by Law No.92/2008. San Marino has clarified that with respect to these entities, the CLO can seek information from the Law Commissioner or the AIF.

178. Article 13 of Law No.95/2008 provides that, the CLO can request co-operation from the CBSM for investigations into banking and financial aspects. It is from the CBSM or the AIF that the CLO obtains information available with financial institutions and fiduciaries, which these authorities have powers to access under the AML/CFT Law and Law No.165/2005.

179. In addition, the CLO can access information, in accordance with Art.12 of Law No.95/2008, from other public authorities, including the:

- Office of Industry, Commerce and Handicrafts – business registration information;
- Commercial Registry of Single Courts – company registration information;
- Foundations Authority – foundations;
- Labour Office – company employees;
- Registrar's Office – Register of residents and non-residents; and
- any other authorities such as the Registry and Mortgage Office or the, Motor Vehicle Registration Office.

180. The CLO and OCSEA have access to the data collected by the Tax Office. The CLO can also request the Tax office use its information gathering powers under Article 42ter of Law No.91/1984. These Tax Office powers are described in Art.42ter under the heading "Controls Made by the Tax Office". These powers, for control purposes, as mentioned in Art.42ter, allow the Tax Office to:

- require public officers to provide an abstract or copy of documents and acts held by them;
- summon taxpayers to appear at the office to submit clarifications, information and evidence; and
- require the submission of evidence of income or of change in income.

181. For the purpose of controls, the Tax Office is empowered to collect data and information relevant to accurate income assessment, audit tax returns filed by taxpayers and withholding agents and also check the regular keeping of the accounting records (Art.42ter of ITA). These powers may be exercised when the CLO requests information from the Tax Office for the purpose of international exchange of information in criminal tax matters. Commonly the CLO will seek the assistance of the Tax Office when the information request pertains to individuals or when the CLO does not wish the legal person to be notified of the information gathering.

182. The assessment of income tax is carried out by Assessment Committees, referred to in Art.41 of the ITA. Article 42 of the ITA provides that the Assessment Committees, for the purpose of supervision and assessment only, have even stronger powers. The powers of the Assessment Committees to obtain information can only be exercised for the purposes of supervision and assessment of income tax. Thus they are not available for use in order to respond to an EOI request.

183. The Tax Law contains a limitation in the matter of access of information by the tax authorities. Article 38 of the Income Tax Law deals with record keeping and requires that all entries and records must be kept for three years, excluding the tax period they refer to. On receipt of a request from the Tax Office, the taxpayer could therefore be justified in claiming that the records older than three years cannot be requested.

184. It is recommended that the CLO be granted powers to obtain information in civil as well as criminal matters and all relevant legislation be checked to ensure public authorities are explicitly provided the ability to exercise their information gathering powers on behalf of the CLO. Further, information was not provided to the assessment team on the various information gathering powers of the Ministry of Industry, Commerce and Handicrafts; the Commercial Registry of Single Courts; or the Foundations Authority. These

powers should be the subject of examination during the Phase 2 review of San Marino. In addition, the Tax Office should be able to obtain at least five years of information in order to respond to international requests for information.

Use of information gathering measures absent domestic tax interest (ToR B.1.3)

185. The CLO relies on the OCSEA and the bodies of public administration for meeting its obligations arising from the international agreements. With regard to tax matters, the CLO can directly request information from the Tax Office or obtain it through the OCSEA.

186. While the powers of the Tax Office do not appear to be explicitly limited by a domestic tax interest, the lack of definition in some of its terminology has the potential for appeals to be lodged on that basis. Article 42ter of the Income Tax Law refers to the controls made by the Tax Office, and provides that Tax Office has powers to summon taxpayers to submit clarifications, information and evidence. This is the power relied on for the international exchange of information for tax purposes. However, the terms "taxpayer" and "control" are not defined in the Law. It is recommended that San Marino define these terms in such a way as to unequivocally allow for exercise of the Tax Office's powers in the case of international information exchange.

Compulsory powers (ToR B.1.4)

187. As discussed above, the Tax Office's Assessment Committees have strong powers which may be exercised when conducting assessments, and this includes the power to compel the production of information as well as the general powers to compel the production of information. These powers allow the Tax Office to require production of documents, summons taxpayers and enter premises of enterprises. These powers cannot however be used to obtain information required to respond to an international request for information. That said, under Art.42ter of the Income Tax Law, the Tax Office has the powers, which can be exercised in support of such international requests, to:

- require public officers to provide an abstract or copy of documents and acts held by them;
- summon taxpayers to appear at the office to submit clarifications, information and evidence; and
- require the submission of evidence of income or of change in income.

188. Non-compliance with these powers can be sanctioned with a fine ranging from EUR 102 to EUR 618 (Art.66 of the ITA).

189. The OCSEA is under an obligation to provide information to the CLO to support international exchange of information in tax matters (Art.12 of Law No.95/2008) and OCSEA has the power to require company representatives to attend a meeting and produce documentation. The OCSEA also has the power to search companies' premises and seize documentation. Refusal to provide requested information or causing any other obstruction to the OCSEA can result in administrative pecuniary sanctions of EUR 1 000 to EUR 10 000 depending on the seriousness of the infraction (Art.8 of Law No.95/2008).

190. In addition, the OCSEA can seek the assistance of the Fraud Squad, which is a special section of the Civil Police tasked with preventing and combating tax fraud, swindling, distortions and irregularities in trade exchange. Article 32 of Law No.129 of 23 July 2010 has provided powers to Fraud Squad under which they may access the premises intended to be used for business activities for carrying out inspection of documents, verifications and any other investigations deemed useful to prevent, detect and counter illegal administrative activities. For this purpose, the authorisation to access premises is issued by the Judge of Supervision.

Secrecy provisions *(ToR B.1.5)*

191. Bank secrecy provisions are stipulated in the law on companies and banking, financial and insurance services (Law No.165/2005). The definition of bank secrecy in this law encompasses secrecy with regard to bank information and also the data and information relating to all the reserved activities. The directors, internal and external auditors, actuaries, employees, external consultants, members of supervisory committees, third party outsourced service providers and other persons specified in the law are bound by the obligations of bank secrecy (Art.36).

192. These secrecy obligations are now overridden for specific purposes in accordance with Law No.5 of 21 January 2010, which amended Art.36 of Law No.165/2005. Bank secrecy provisions cannot be invoked against the parties specified in the law in the exercise of their public functions. These parties include the Central Liaison Office and other public offices responsible for the direct exchange of information with foreign counterparts in accordance with the international agreements in force. Moreover, Art.36 provides that bank secrecy cannot be invoked against the Judicial Authorities for criminal matters, nor against the CBSM while fulfilling its supervisory functions, nor against the Financial Intelligence Agency (AIF).

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
The CLO can access information in criminal tax matters only.	The CLO should be granted powers to access information in all tax matters, including civil tax matters.
The CLO relies on the OCSEA, Tax Office and other public bodies for obtaining information. Uncertainties remain in the powers of these authorities to obtain information from all relevant entities and arrangements for the purpose of international requests for information.	The relevant authorities on which the competent authority relies for obtaining information should be granted the well defined powers to obtain information in the possession or control of all persons within San Marino's territorial jurisdiction for the purpose of international requests for information.
The Tax Office cannot obtain information more than three years old.	The Tax Office should have powers to obtain all available information necessary for the purpose of international exchange of information.
The Law does not unequivocally provide that the Tax Office is empowered to obtain information to meet the requests from CLO in absence of a domestic tax interest. The use of term "control" and "taxpayer" without defining scope of these terms creates uncertainties.	San Marino should make appropriate amendments to the Tax Law explicitly providing the Tax Office with powers to obtain information in all cases to assist the CLO to meet international requests for information. In doing so, it should consider defining the scope of various terms like "tax payer" and "control".

B.2. Notification requirements and rights and safeguards

The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information *(ToR B.2.1)*

193. There are no notification requirements for taxpayers under Sanmarinese law. The Tax Office need not notify the requested natural or legal person of the purpose of the request for information.

194. The OCSEA may obtain information from companies to respond to an international request for information for tax purposes. However, it must inform the company representatives of the reasons and specific facts relating to the need for the information (Art.8 of Law No.95/2008). There are no exceptions allowed to this notification requirement. Equally, the companies are not able to refuse to provide the information requested. The failure to provide information attracts penalties.

195. Taxpayers can refuse to provide information requested by the Tax Office only if the said information would reveal a trade, business, industrial, commercial or professional secret or the disclosure of information would be contrary to public policy.

196. Sammarinese authorities have indicated that, several other laws, such as the Law on Public Employees and laws on bar associations *etc*, similarly provide for the duty to abide by professional confidentiality or secrecy. Decree No.11 of 1995[30] deals with legal recognition of the by-laws of the Bars of lawyers and notaries in San Marino. Article 10 of this Decree provides that lawyers should maintain the confidentiality of the activity performed or issues dealt with. Lawyers are also prohibited from testifying on facts or acts they have gained knowledge of in the course of the professional activity. These provisions are wide in scope and limit the powers of the authorities to obtain information from lawyers, well beyond the matters covered by confidential communication between a client and lawyer or attorney where such communications are for the purpose of legal advice or legal proceedings.

197. The scope of professional secrecy has also been dealt in AML/CFT Law. Art.38 of Law No.92/2008 provides that lawyers, notaries and accountants may invoke professional secrecy on the information they acquire while defending and representing their client during a judicial or administrative proceedings or in relation to proceeding, including advice on the eventuality of prosecuting or avoiding a proceeding, where the information is received or obtained before, during or after such proceeding.

198. However, San Marino's laws do not specify the scope of professional secrecy for the purposes of international exchange of information in tax matters and in the absence of specific provisions the general provisions in Decree No.11 of 1995 would apply.

199. The assessment team considers that the scope of professional secrecy in San Marino law is very wide and these safeguards will unduly prevent exchange of information in the possession of the Lawyers, Notaries and Accountants. We are of the view that the safeguards under attorney-client privilege be clearly specified in accordance with the standards.

30. An English translation of this Decree was not provided to the assessment team.

200. Under San Marino's law, any person can take action in ordinary courts to protect its own rights (diritti soggettivi). In case of violation of legitimate interests (interessi legittimi), the person can take action in the administrative courts. Whether these rights and safeguards are in practice compatible with effective exchange of information will be reviewed in, due course, in the Phase 2 assessment.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The scope of professional secrecy for lawyers and notaries is wide (not limited to giving of advice or conduct of legal proceedings) and not compatible with the effective exchange of information.	It is recommended that provisions be put in place to reduce the scope of the professional secrecy of lawyers and notaries so this does not unduly prevent or delay the international exchange of information for tax matters.

C. Exchanging Information

Overview

201. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In San Marino, the legal authority to exchange information is derived from double tax conventions or tax information exchange agreements after the same are ratified by the Parliament. These agreements hold the status of domestic law. This section of the report examines whether San Marino has a network of information exchange arrangements that would allow it to achieve the effective exchange of information in practice.

202. San Marino has been actively engaged in extending its network of exchange of information agreements, which has resulted in signing of 21[31] agreements since January 2009, taking the total to 29 signed agreements. It also revised its double tax conventions with five jurisdictions by signing protocols which now provide for exchange of information to the international standards. At present, 13 of San Marinos' international arrangements providing for the exchange of information in tax matters are in force and appear to provide for effective exchange of information to the international standards. San Marino continues to negotiate agreements with various jurisdictions.

203. However, San Marino has no agreement to the standard with its most important trading and financial partner, Italy. A bilateral tax treaty was signed with Italy in 2002. However, this agreement is not to the standard and has not been ratified.

204. While San Marino has been very active in signing new agreements, it has not taken all commensurate measures to give effect to the agreements in its domestic laws.

31. Consisting of 4 tax treaties and 17 TIEAs.

C.1. Exchange-of-information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

205. San Marino has signed tax treaties with 12 jurisdictions namely; Austria, Belgium, Croatia, Cyprus,[32,33] Hungary, Italy, Liechtenstein, Luxembourg, Malta, Malaysia, Romania and St. Kitts and Nevis. In addition, it has signed protocols to its tax treaties with Austria, Belgium, Luxembourg, Malta and Romania[34] so as bring the exchange of information article in line with Article 26 of the OECD Model Tax Convention. The tax treaties with three jurisdictions, namely Croatia, Cyprus[32; 33] and Italy, do not contain language similar to paragraphs 4 and 5 of Article 26 of the OECD Model Tax Convention and domestic laws of San Marino have limitations with regard to obtaining information to meet the international standards. Therefore, tax treaties with only nine jurisdictions – Austria, Belgium, Hungary, Liechtenstein, Luxembourg, Malta, Malaysia, Romania and St. Kitts and Nevis – provide for exchange of information to the standard.

206. San Marino has also signed TIEAs with 17 jurisdictions namely; Andorra, Argentina, Australia, The Bahamas, Denmark, the Faroe Island, Finland, France, Germany, Greenland, Iceland, Monaco, Netherlands, Norway, Samoa, Sweden and the United Kingdom All these agreements provide for exchange of information to the standard, however 11 of these agreements are not in force.

207. Therefore, out of 29 agreements, agreements with three jurisdictions – Croatia, Cyprus[32, 33] and Italy – do not provide for exchange of information to the standard.

Foreseeably relevant standard (ToR C.1.1)

208. The international standard for exchange of information provides that the competent authorities of the contracting states shall exchange such information as is foreseeably relevant to secure the correct application of the provisions of the convention or of the domestic laws of the contracting states.

32. Note by Turkey:
The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

33. Note by all the European Union Member States of the OECD and the European Commission:
The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

34. Protocol to tax treaty signed on 27 July 2010.

The commentary to Article 26(1) of the OECD Model Tax Convention provides that the standard of "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest extent possible. It does not allow "fishing expeditions".

209. The agreements with Croatia, Cyprus[35] and Italy provide for the exchange of information as is "necessary" for carrying out the provisions of the convention or of the domestic laws of the Contracting States concerning the taxes covered by the agreements. All other agreements use the term "foreseeably relevant" in place of "necessary". The commentary to Article 26 of the OECD Model Tax Convention, in paragraph 5 refers to this standard of "foreseeable relevance" and states that the Contracting States may agree to an alternative formulation of this standard that is consistent with the scope of the Article (*e.g.* by replacing "foreseeably relevant" with "necessary" or "relevant"). In view of this recognition of term "necessary", all of San Marino's agreements meet the "foreseeably relevant" standard.

210. Most of the TIEAs require the requesting jurisdiction to provide the greatest detail possible while making a request for the information. The specific details should state the tax purpose of seeking the information. The requested party may decline to provide the information if the request is not made in conformity with the agreement. These safeguards ensure that the "foreseeably relevant" requirement can be implemented by the jurisdictions.

In respect of all persons (ToR C.1.2)

211. For exchange of information to be effective it is necessary that a jurisdiction's obligations to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason the international standard for exchange of information envisages that exchange of information mechanisms should provide for exchange of information in respect of all persons.

212. All of San Marino's tax treaties either specifically provides that the exchange of information is not restricted by Article 1 (Personal Scope) or they note that information is to be exchanged for carrying out the provisions of the domestic laws of the contracting states. As domestic laws are applicable to residents and non-residents equally, it can be stated that even in absence of reference to Article 1, the contracting states are under obligations to exchange information in respect of all persons.

213. All of San Marino's TIEAs contain an Article dealing with jurisdictional scope which is in line with Article 2 of the OECD Model TIEA.

214. Therefore, all of San Marino's agreements provide for exchange of information with respect to all persons.

35. See notes 32 and 33.

Obligation to exchange all types of information (ToR C.1.3)

215. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. Both the OECD Model Convention and the OECD Model TIEA which are primary authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

216. None of the TIEAs concluded by San Marino allow the requested jurisdiction to decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interest in a person.

217. The protocols to the tax treaties with Austria, Belgium, Luxembourg, Malta and Romania and the tax treaties with Hungary, Liechtenstein, Malaysia and Saint Kitts and Nevis contain exchange of information articles which incorporate a paragraph similar to Article 26(5) of the OECD Model Tax Convention. Parties to these agreements cannot decline to supply information solely because it is held by a financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

218. San Marino's tax treaties with three other countries – Croatia, Cyprus[36] and Italy – do not contain wording similar to Article 26(5) of the OECD Model Tax Convention. As highlighted in section B.1 of this report, San Marino has bank secrecy reinforced by statute, however, this can be overridden for exchange of information with foreign counterparts in accordance with international agreements. In absence of explicit obligations in these three treaties to exchange bank information, San Marino's bank secrecy provisions will apply and information to the standard cannot be exchanged.

Absence of domestic tax interest (ToR C.1.4)

219. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. A refusal to provide information based on a domestic tax interest requirement is not consistent with the international standard. EOI partners must be able to use their information gathering measures even though invoked solely to obtain and provide information to the requesting jurisdiction.

220. The protocols to the tax treaties with Austria, Belgium, Luxembourg, Malta and Romania and the tax treaties with Hungary, Liechtenstein, Malaysia

36. See notes 32 and 33.

and Saint Kitts and Nevis contain a paragraph in the exchange of information article which is identical to Article 26(4) of the OECD Model Tax Convention and all these agreements provide for exchange of information even though San Marino may not need such information for its own tax purposes. All the 17 tax information exchange agreements signed by San Marino specifically oblige it to exchange of information not withstanding that it may not need such information for its own tax purposes. Therefore, the domestic tax interest provisions in domestic laws of San Marino are overridden in these 26 agreements.

221. San Marino's tax treaties with three other countries – Croatia, Cyprus[37] and Italy do not contain wording similar to Article 26(4) of the OECD Model Tax Convention. Exchange of information of all types should be possible under these bilateral tax treaties if the domestic laws of both jurisdictions do not restrict the exchange of information to matters wherein it has domestic tax interest.

222. As highlighted in section B.1 of this report, there is no clarity on the powers of the Tax Office for obtaining information from all persons, whether they are taxpayers or not or are under tax examination or not or the information will be useful to tax office or not. It may not be possible for the CLO to provide information in all cases in even criminal tax matters. This doubt is obvious due to undefined terms like taxpayers or control used in the Tax Law. In absence of provisions in San Marino Law providing for access of information, absent domestic tax interest, three of its agreements, namely agreements with Croatia, Cyprus[37] and Italy do not provide for exchange of information to the international standard.

Absence of dual criminality principles (ToR C.1.5)

223. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

224. The EOI agreements concluded by San Marino do not provide for the application of dual criminality principle to restrict the exchange of information.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

225. All of the EOI agreements concluded by San Marino provide for the exchange of information in both civil and criminal tax matters.

226. But limitations in San Marino's laws mean that its competent authority does not have the power to exchange information in civil tax matters.

37. See notes 32 and 33.

Provide information in specific form requested *(ToR C.1.7)*

227. The tax treaties concluded by San Marino do not contain restrictions on allowing for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws. There are no such restrictions in the laws of San Marino.

228. San Marino's TIEAs contain positive statements stating that the competent authority of the requested Party shall provide information to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

In force *(ToR C.1.8)*

229. Exchange of information cannot take place unless a signed agreement enters into force. The international standard requires that a jurisdiction must take all steps necessary to bring them into force expeditiously. An agreement comes into force after both the contracting parties have completed the ratification process and notified each other of the same. In San Marino, the ratification is done by the Parliament and the whole ratification process takes usually between one and three months.

230. San Marino has signed 29 EOI agreements, comprising 12 DTCs and 17 TIEAs. It signed its first TIEA in July 2009, which is in force. Six of its 17 TIEAs are currently in force and San Marino has ratified all of the TIEAs which have not yet come into force.

231. Seven of the 12 DTCs signed by San Marino are in force. The DTC with Italy, signed on 21 March 2002, is not to the standard and is also not in force. Four recently signed treaties, with Hungary, Liechtenstein, Malaysia, and St. Kitts and Nevis, are also not yet in force, though they have been ratified by San Marino and are awaiting action by the Counterparties to bring them into force.

232. The 2002 agreement with Italy has not been ratified by either party. San Marino authorities has submitted that, after signature of this agreement, Italy informed them that they did not intend to ratify a text not including the Article 26 of the 2005 OECD Model Tax Convention. Consequently, San Marino did not carry out the ratification process. Negotiations recommenced in the first half of 2009 and an amending protocol to the DTA was initialled on 25 June 2009. The protocol will bring the information exchange provisions in the tax treaty to the international standards. Sanmarinese authorities aver that they have indicated several times to the Italian Government their desire to sign the Protocol and ratify it and the treaty. Thus, the Protocol has not yet been signed, nor has the 2002 DTC been ratified.[38]

38. As a consequence, the Economic Co-operation Agreement and the Financial Co-operation Agreement between Italy and San Marino which were signed respectively, on 31 March 2009 and 26 November 2009, have also not entered into force. This

Be given effect through domestic law *(ToR C.1.9)*

233. For information exchange to be effective, the parties to an exchange of information agreement need to enact any legislation necessary to comply with the terms of the agreement.

234. None of San Marino's domestic laws refer to mechanisms for establishing agreements for avoidance of double taxation or for the purpose of the exchange of information. San Marino's authorities have advised that after ratification by the Parliament and issue of ratification decree by the Captains Regent, DTCs and TIEAs acquire the status as domestic ordinary law. The Central Liaison Office (CLO) is constituted pursuant to Art.9 of Law No.95/2008 for the purposes of international administrative co-operation.

235. As this report raises a number of issues concerning San Marino's capacity to use its powers to obtain the information needed to give effect to the terms of its international arrangements, it cannot be considered to have given effect to these arrangements through domestic law.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
San Marino's tax treaty with Italy, which was signed 8 years ago, is not yet in force.	San Marino should take all the necessary steps on its side to bring this agreement into force expeditiously.
Three of San Marino's 29 double tax conventions do not provide for exchange of information to the international standard.	It is recommended that San Marino bring these arrangements up to the international standard.
San Marino's arrangements providing for international exchange of information have not been given effect to through domestic law as there are important limitations on the authorities' powers to obtain necessary information for the purpose of international information exchange.	It is recommended that San Marino enact necessary legislation to remove various deficiencies noted in this report, which will enable it to comply with and give effect to its EOI agreements.

is because both contain a clause indicating they will come into force when the Protocol to the double tax convention between Italy and San Marino comes into force.

C.2. Exchange-of-information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

236. The standard requires that jurisdiction exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement.

237. San Marino has signed tax treaties with 12 jurisdictions and tax information exchange agreements (TIEAs) with a further 17 jurisdictions.

238. Of its 29 signed agreements, three, with Croatia, Cyprus[39] and Italy, do not provide for exchange of information to the standards. The remaining 26 agreements provide for the exchange of information to the standards.

239. The network of signed agreements to the standards includes agreements with 12 of the 27 European Union members and covers 14 of the 33 OECD members. These agreements cover its primary trading partners in Europe except Italy, its most relevant partner.

240. San Marino's signed agreements to the standard cover 27 of the 94 Global Forum members, primarily in Europe. Similarly, its network of agreements includes 5 of the 19 country members of the G20.

241. Currently, 15 of San Marino's agreements are in force, 13 of which provide for exchange of information to the standards.

242. Since 2009, San Marino has continued to expand its EOI network and has initialed agreements with Azerbaijan, Canada, Greece, Libya, Spain and South Africa.

243. San Marino's agreement with its most important partner, Italy, was signed in 2002. But this agreement is not to the standard and is not yet in force. San Marino has very close cultural, economic, financial and monetary relations with Italy. Italy is the main trading partner of San Marino as about 85% of its exports and imports are shipped to or come from this country. Over 6 000 Italian citizens commute daily from Italy to work in San Marino. San Marino's banks participate in the EU payment system through Italian banks. There are numerous other indicators to suggest that Italy is the most relevant partner of San Marino for the exchange of information for tax purposes. Accordingly, San Marino's network of agreements to the standard does not include an agreement with its most significant partner.

39. See notes 32 and 33.

244. Italy has indicated in these negotiations that it is unable to proceed forward until San Marino has sufficiently strengthened its domestic legislation.[40]

245. Comments were sought from the jurisdictions participating in the Global Forum but no information has been received which would suggest that San Marino has not entered into an agreement with any jurisdiction when it was requested to do so.

Determination and factors underlying recommendations

Phase 1 Determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The exchange of information mechanism with Italy, San Marino's most relevant partner, is not in force and does not provide for exchange of information to the standards.	San Marino should enter into an agreement for the exchange of information with Italy.
13 of San Marino's 29 agreements are in force and appear to provide for effective exchange of information.	San Marino should continue to develop its EOI network with all relevant partners.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use, and safeguards *(ToR C.3.1)*

246. The standards of confidentiality require that information received under the exchange of information provisions shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed to persons and authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes or the oversight of the above. Such persons or authorities shall use

40. In December 2010, Italy indicated its willingness to examine the legislative changes made by San Marino during November 2010 in the expectation that this negotiation can move forward.

the information only for such purposes. They may disclose the information in public court proceedings and judicial decisions.

247. All agreements concluded by San Marino meet the standards for confidentiality including the restrictions on the disclosure of the information received and also use thereof by a contracting party. The agreements provide that any information received by a Contracting Party under the Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes imposed by the Contracting Party. The agreements also provide for the restriction on disclosure of information received and these provisions comply with the requirements of the international standards.

248. Article 17 of Law No.95/2008 provides that employees of San Marino's competent authority are bound to professional secrecy and confidentiality on any matters regarding the activities of the office of CLO and its relations with third parties. In addition, San Marino has submitted that criminal law punishes violations of confidentiality provisions as breaches of professional secrecy and there are no exceptions permitting disclosure of exchanged information.

All other information exchanged (ToR C.3.2)

249. The confidentiality provisions in San Marino's agreements use the standard language of Article 26(2) of the OECD Model Tax Convention and Article 8 of the OECD Model TIEA and do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all requests for such information, background documents to such requests, and any other document reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information (ToR C.4.1)

250. The international standard allows requested parties not to supply information in response to a request in certain identified situations. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many countries.

251. All of the TIEAs and the treaties with protocols concluded by San Marino incorporate wording providing that requested jurisdictions are not obliged to provide information which would disclose any trade, business, industrial, commercial or professional secret or information which is the subject of attorney-client privilege or information the disclosure of which would be contrary to public policy. Some of tax treaties, for example with Croatia, Cyprus[41] and Liechtenstein contain provisions similar to standards but do not include provisions for declining information subject to legal privilege. It is unlikely that these minor variations will materially affect the rights and privileges of the taxpayers and third parties due to available general safeguards.

252. As noted previously, in section B.2 of this report, the scope of legal professional privilege in San Marino is wide and its scope may interfere with exchange of information to the standards.

Determination and factors underlying recommendations

Phase 1 Determination
The element is in place.

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

253. In order for exchange of information to be effective, the information needs to be provided in a timeframe which allows tax authorities to apply it to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities.

41. See notes 32 and 33.

This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

254. There are no provisions in San Marino's laws or in its agreements pertaining to the timeliness of responses or the timeframe within which responses should be provided. As such, there appear to be no legal restrictions on the ability of San Marino's competent authority to respond to requests within 90 days of receipt by providing either the information requested or an update on the status of the request.

Organisational process and resources (ToR C.5.2)

255. San Marino enacted legislation for creation of the Central Liaison Office (CLO), the competent authority, in 2008. The CLO includes two officials appointed by the Great and General Council upon proposal by the Congress of State. They are appointed for a three year term and can be reappointed for one additional three-year term only. The administrative staff is assigned from the Department for Production Activity.

256. The competent authority relies on other public authorities for obtaining information for EOI purposes. There are no rules or administrative guidance in place with respect to the exchange of information by the CLO. This will be considered further in the Phase 2 review of the effectiveness of San Marino's framework for exchange of information for tax purposes. It is recommended that Sanmarinese Government ensures before that time that appropriate organisational processes and resources commensurate to the obligations undertaken by it are in place to ensure timely responses and effective exchange of information.

257. A number of new laws have been enacted and existing laws have been amended due to a focus in recent years on the transparency of Sanmarinese entities. The obligations imposed on various entities for keeping ownership information and also reporting requirements are very recent. Similarly, the provisions requiring the creation and maintaining the database of owners by the authorities are enacted very recently. It will take some time for these new/revised obligations and the government supervision of them, to be effectively implemented.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

258. While the domestic laws have not been aligned to meet all of the obligations undertaken by San Marino in its international agreements, there are no aspects of San Marino's laws that appeared to impose restrictive conditions on exchange of information.

Determination and factors underlying recommendations

Phase 1 Determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. *(ToR A.1)*		
The element is not in place.	Other than for foreign companies, the requirement that entities formed outside of San Marino but having their place of effective management in San Marino maintain ownership information or provide it to authorities is unclear.	San Marino should address the lack of clarity in its laws to make it explicit that, in addition to foreign companies, all foreign entities having sufficient nexus to San Marino are required to maintain information on their ownership.
	The obligations on fiduciary companies registered in San Marino that have shareholdings in foreign companies to disclose to the authorities information identifying the person(s) for whom they act are unclear and only those persons in the ownership chain who hold more than 25% interest in the fiduciary company's client must be identified.	Provisions should be established to ensure that San Marinese fiduciary companies having shareholdings in foreign companies maintain the information identifying the person(s) for whom they act and that all fiduciary companies maintain information on all persons in the ownership chain behind their clients.
	There is no obligation to identify the beneficiaries of trusts unless they hold more than a 25% interest in trust property.	San Marino should establish clear provisions in its laws to ensure availability of information on all beneficiaries of trusts.
	The Company Law does not prescribe any sanctions for failure by companies or partnerships to keep ownership information.	San Marino should prescribe enforcement provisions in the form of penalties for companies and partnerships which do not maintain information in accordance with Company Law.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. *(ToR A.2)*		
The element is not in place.	There is lack of clarity concerning the obligations on foreign partnerships carrying on business in San Marino to maintain accounting records in San Marino.	San Marino should clarify the requirement for foreign partnerships that carry on business in San Marino to maintain accounting records and underlying documentation.
	Businesses achieving revenue less than EUR 800, 000 are allowed to keep accounts in the simplified form for the reference year and two subsequent years. The keeping of accounts in simplified form does not meet the international standards.	San Marino should provide that all entities maintain proper accounting records and underlying documents consistent with the international standards.
Banking information should be available for all account-holders. *(ToR A.3)*		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). *(ToR B.1)*		
The element is not in place.	The CLO can access information in criminal tax matters only.	The CLO should be granted powers to access information in all tax matters, including civil tax matters.
	The CLO relies on the OCSEA, Tax Office and other public bodies for obtaining information. Uncertainties remain in the powers of these authorities to obtain information from all relevant entities and arrangements for the purpose of international requests for information.	The relevant authorities on which the competent authority relies for obtaining information should be granted the well defined powers to obtain information in the possession or control of all persons within San Marino's territorial jurisdiction for the purpose of international requests for information.
	The Tax Office cannot obtain information more than three years old.	The Tax Office should have powers to obtain all available information necessary for the purpose of international exchange of information.
	The Law does not unequivocally provide that the Tax Office is empowered to obtain information to meet the requests from CLO in absence of a domestic tax interest. The use of term "control" and "taxpayer" without defining scope of these terms creates uncertainties.	San Marino should make appropriate amendments to the Tax Law explicitly providing the Tax Office with powers to obtain information in all cases to assist the CLO to meet international requests for information. In doing so, it should consider defining the scope of various terms like "tax payer" and "control".

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. *(ToR B.2)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The scope of professional secrecy for lawyers and notaries is wide (not limited to giving of advice or conduct of legal proceedings) and not compatible with the effective exchange of information.	It is recommended that provisions be put in place to reduce the scope of the professional secrecy of lawyers and notaries so this does not unduly prevent or delay the international exchange of information for tax matters.
Exchange of information mechanisms should allow for effective exchange of information. *(ToR C.1)*		
The element is not in place.	San Marino's tax treaty with Italy, which was signed 8 years ago, is not yet in force.	San Marino should take all the necessary steps on its side to bring this agreement into force expeditiously.
	Three of San Marino's 29 double tax conventions do not provide for exchange of information to the international standard.	It is recommended that San Marino bring these arrangements up to the international standard.
	San Marino's arrangements providing for international exchange of information have not been given effect to through domestic law as there are important limitations on the authorities' powers to obtain necessary information for the purpose of international information exchange.	It is recommended that San Marino enact necessary legislation to remove various deficiencies noted in this report, which will enable it to comply with and give effect to its EOI agreements.

Determination	Factors underlying recommendations	Recommendations
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. *(ToR C.2)*		
The element is in place, but certain aspects of the legal implementation of the element need improvement.	The exchange of information mechanism with Italy, San Marino's most relevant partner, is not in force and does not provide for exchange of information to the standards.	San Marino should enter into an agreement for the exchange of information with Italy.
	13 of San Marino's 29 agreements are in force and appear to provide for effective exchange of information.	San Marino should continue to develop its EOI network with all relevant partners
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. *(ToR C.3)*		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. *(ToR C.4)*		
The element is in place.		
The jurisdiction should provide information under its network of agreements in a timely manner. *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's Response to the Review Report*

During the last two years, the Republic of San Marino has been deeply committed to a process of greater transparency. In fact, since April 2009, it has signed a significant number of Double Taxation Agreements and Tax Information Exchange Agreements according to the new OECD standards (10 DTAs or Protocols updating the pre-existing DTAs and 20 TIEAs). As of 30 November 2010, 8 of the 30 above mentioned Agreements are in force, while 17 of the remaining 22 have already been ratified by San Marino Parliament and 4 are on the Agenda of the December 2010 Parliamentary session. 4 more DTAs and 2 TIEAs have been initialed and are now ready for signature. At the end of this first stage of the process, San Marino will have in place 36 Agreements, meeting the latest OECD standards, 21 of which with OECD or EU Countries.

Moreover, on 14 June 2010 San Marino adhered to the OECD Declaration on Propriety, Integrity and Transparency in the conduct of International Business and Finance of 28 May 2010.

It should be also noted that, the San Marino Parliament amended since January 2010 the law on Bank Secrecy to allow an effective exchange of information according to the TIEAs an DTAs provisions (Law no. 5 of 21 January 2010).

Before the adoption of the Report, but after the timeframe considered in it, we realized that some aspects, which we deemed to be already sufficiently clear in our Law, still continued to raise some doubts in the evaluators. Therefore several amendments were introduced in the Law establishing the CLO, to the powers of the Tax Office and to other important issues. To this end a Law-Decree has been adopted, and is in force since 30 November 2010 (n.190/2010), which further strengthens our system for transparency and exchange of information for tax purposes, and we remain committed to its further strengthening in the near future.

* This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

To be consistent with the timeframe considered by the PRG, the following remarks only pertain to the legislation in force in San Marino as of 5 October 2010 and do not concern the improvements adopted after that date, which will be considered in the intermediate report envisaged in para. 9 of the Executive Summary.

GENERAL REMARK

All the recommendations should be consistent with the standards adopted by the Global Forum, so as to avoid an undue penalisation of San Marino with respect to other (major) countries where the same standards are not in place.

With reference to the EXECUTIVE SUMMARY

Para. 3:

San Marino confirms its strong commitment to sign the Protocol, initialled on 25 June 2009, amending the DTC with Italy in order to bring it into line with the international standards and has, since then, expressed several times to the Italian Government, its readiness to do so.

As a consequence San Marino considers the Determination and the Recommendations in C1 as inappropriate.

Para. 5:

Contrary to what is stated on this point, the competent authority for international exchange of information (CLO) had already the power to obtain and exchange information with its foreign counterparts both in criminal and civil tax matters. In this regard, it should be noted that the banking secrecy provisions contained in LISF have been amended since January 2010 (Law n. 5/2010), thus allowing CLO to access banking and financial information to respond to a request by a foreign authority. In this law, CLO has been identified as the national authority responsible for giving effects to the exchange of information provisions in the existing TIEAs (therefore not only in criminal, but also in civil tax matters).

In light of the above San Marino considers the Determination and the first two Recommendations in B1 as inappropriate. Moreover the statements in para. 204 and 235 of the Report do not reflect the actual situation and are not even relevant for a Phase 1 review.

Para. 6:

San Marino deems as incorrect the assessment made because it is based on a misunderstanding of Sammarines regulations. Moreover, the amendments required to San Marino'regulation are not in place in the majority of the G20 countries (Italy included, San Marino's major partner) where there are:

- no obligation to centralize the information on shareholdings held by domestic fiduciary companies abroad;
- no obligation for fiduciary companies to collect and maintain information on all persons in the ownership chain behind their clients.

With reference to Para. 82-84 of the Report, San Marino underlines that any operation carried out by a Sammarinese fiduciary company must be disclosed to the Supervisory Authority (CBSM) and to the CLO, which can also obtain information regarding participations in foreign companies, their settlors and beneficial owners. These paragraphs are therefore misleading considering the powers conferred to CBSM and the CLO by the LISF (articles 36, 41 and 42). As a matter of fact, the obligation to disclose is always in place.

Concerning the Law 98/2010, it should be underlined how the law does not attribute new powers to the San Marino Authorities but simply provide for the centralisation of information concerning the shareholdings in Sammarinese companies held through a fiduciary company (regardless if Sammarinese or not). The information gathered is available to the Judiciary, OCSEA and CLO for their institutional purposes and are, consequently, focused on the ownership structure of companies

In the report (see para. 84), the notion of beneficial owner as the persons who hold more than 25 % interest is also contested. According to the assessors all beneficial owners should be identified even if they hold a lower stake. San Marino Authorities deem the recommendation as inaccurate. The notion of beneficial owner in Sammarinese legislation is defined in accordance with the FATF Recommendations, as the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement. No other definition is possible.

Concerning the third Recommendation in Section A.1, San Marino underlines that the beneficiary of trust is always known unless the trustee decides to identify it at a later stage. The Central Bank keeps a centralized Register of trusts, in which the identification data of beneficiaries of the trust must be registered (Art. 7 of Law 1 March 2010 n. 42). and, if there is a change of a beneficiary of trust, this should be recorded at the register of trust within 15 days. The only cases where the beneficiary is not known are those where the beneficiary has no actual rights on the assets of the trust (for example, a trust for the children that a couple will have, but do not have at the moment).

5.1. The recommendation makes confusion between the notion of beneficial owner (identified according to the AML Law) and the beneficiary of trusts. In the first case, the beneficial owner is the person on whom the Customer Due Diligence must be carried out; in the second, is the persons that will

benefit of the trust. In the latter case, all beneficiaries must be identified even when they hold less than 25% interest.

5.2. As a consequence San Marino considers the Determination and the Recommendations in A1 as inappropriate.

Para. 7:

With reference to para. 42, 91-94 and 148, San Marino has stressed several times that, if a partnership has its place of effective management and administration in San Marino, it must be considered a San Marino partnership established and operating in San Marino and is therefore obliged to keep identity and ownership information and maintain appropriate accounting records.

As a consequence, San Marino considers the Determination and the first Recommendation in A.2 as inappropriate.

Para 8:

It should be stressed that the provisions of the San Marino tax law, allowing to adopt a simplified accounting system in the case revenues are below the annual threshold of EUR 800.000,00, apply only to domestic "sole proprietors" (natural persons carrying out business activities) and domestic partnerships. Therefore companies (joint-stock companies, limited liabilities partnerships, and permanent establishment of non-resident companies) cannot benefit from the above simplified system.

Based on the explanations above, San Marino considers the second Recommendation in A.2 as inappropriate.

Para. 9:

As far as the conclusions of the Executive Summary are concerned, we deem it unfair to recommend at this stage that San Marino does not move to Phase 2 review, which is scheduled for the second half of 2012. To this end, it should be taken into account, first of all, the considerable progress made during over the last two years and also the adoption of Law Decree n. 190 of 29 November 2010, even though the latter falls outside of the timeframe considered by the PRG.

On these progresses, San Marino is available to provide a detailed intermediate report to the PRG even in a short period of time, based on which the decision on whether to allow it to move to Phase 2 could have been made.

Annex 2: List of All Exchange-of-Information Mechanisms in Force

Jurisdiction	Type of agreement	Date signed	Date in force
Austria	Double tax convention (DTC)	24.11.2004	01.12.2005
	Protocol	18.09.2009	01.06.2010
Belgium	DTC	21.12.2005	25.06.2007
	Protocol	14.07.2009	Not in Force
Croatia	DTC	18.10.2004	05.12.2005
Cyprus[42, 43]	DTC	27.04.2007	18.07.2007
Hungary	DTC	15.09.2009	Not in Force
Italy	DTC	21.03.2002	Not in Force
Liechtenstein	DTC	23.09.2009	Not in Force
Luxembourg	DTC	27.03.2006	01.01.2007
	Protocol	18.09.2009	Not in Force
Malta	DTC	03.03.2005	19.07.2005
	Protocol	10.09.2009	15.02.2010

42. Note by Turkey:
The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

43. Note by all the European Union Member States of the OECD and the European Commission:
The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Jurisdiction	Type of agreement	Date signed	Date in force
Malaysia	DTC	19.11.2009	Not in Force
Romania	DTC	23.05.2007	11.02.2008
	Protocol	27.07.2010	Not in force
St. Kitts and Nevis	DTC	20.04.2010	Not in Force
Andorra	TIEA	21.09.2009	Not in Force
Argentina	TIEA	07.12.2009	Not in Force
Australia	TIEA	04.03.2010	Not in Force
Bahamas	TIEA	24.09.2009	Not in Force
Denmark	TIEA	12.01.2010	23.04.2010
Faroe Islands	TIEA	10.10.2009	Not in Force
Finland	TIEA	12.01.2010	15.05.2010
France	TIEA	22.09.2009	02.09.2010
Germany	TIEA	21.06.2010	Not in Force
Greenland	TIEA	22.09.2009	Not in Force
Iceland	TIEA	12.01.2010	Not in Force
Monaco	TIEA	29.07.2009	10.05.2010
Netherlands	TIEA	27.01.2010	Not in Force
Norway	TIEA	12.01.2010	22.07.2010
Samoa	TIEA	01.09.2009	Not in Force
Sweden	TIEA	12.01.2010	01.07.2010
United Kingdom	TIEA	16.02.2010	Not in Force

Annex 3: List of All Laws, Regulations and Other Material Received

Commercial Laws

- Law No.165/2005- Laws on Companies and Banking, Financial and Insurance Services.
- Law No.47/2006 – Company Law.
- Law No.100 of 22 July 2009 – provisions on Holding and Transfer of Bearer Shares of Anonymous Companies.
- Law No.5 of 21 January 2010 (Amendments to Law No.165/2005- Laws on Companies and Banking, Financial and Insurance Services).
- Law No.98 of 7 June 2010 – Provisions for the Identification of the Beneficial Ownership Structure of companies under San Marino Law.
- Decision No.55 of Congress of State – Regulation governing the keeping of the electronic Register of Legal Persons.
- Law No.42 of 1 March 2010- Trust Act.
- Delegated Decree No.49 of 16 March 2010 – Office of Professional Trustee.
- Delegated Decree No.50 of 16 March 2010 – Registration and keeping of the Trust Register and procedure for the Authentication of the Book of Events.
- Delegated Decree No.51 of 16 March 2010- Identification of the Methods and Procedures necessary to keep the Accounts of Administrative Facts relating to Trust Assets.
- Law No.129 of 23 July 2010- Regulations Governing Licenses to Pursue industrial, Service, Handicraft and Commercial Activities.

Taxation Laws

- Law No.91/1984 – Introduction to General Income Tax.
- Law No.38/2005- Taxation of trusts regulated by the Laws of the Republic of San Marino and Administered by Authorised trustees.

Banking Laws

- Law No.165/2005 – "Law on Companies, Banking, Financial and Investor Services".
- Law No.5 of 21 January 2010 – Amendments to Law No.165/2005 – overriding banking secrecy.
- Decree-Law No.136/2009 and No.154/2009 – Abrogating Bank Bearer Passbooks.
- Instruction No.2008-01 of the Central Bank.
- Instruction No.2010/02 issued by AIF.

Anti-Money Laundering Act/Regulations

- Law No.92/2008 – Provisions on Preventing and Combating Money Laundering and Terrorist Financing.
- Law No.73 of 19 June 2009 – Adjustment of National legislation to International Conventions and Standards on Preventing and Combating Money Laundering and Terrorist Financing.
- Decree-Law No.134 of 26 July 2010 (Ratifying Decree – Law No.126 of 15 July 2010).
- Instruction No.06/2009 issued by the Financial Intelligence Agency in Relation to the Countering of Money Laundering and Terrorist Financing.

Other

- Law No.95 of 18 June 2008- Re-organisation of the Supervisory Services over Economic Activities.
- Decree No.79/2002- Declaration of Citizen's Rights and Fundamental Principles of San Marino Constitutional Order.
- 3rd Compliance Report on San Marino by the Committee of Experts on the Evaluation of Anti-money Laundering Measures and the Financing of Terrorism (MONEYVAL).

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: SAN MARINO

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 90 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. "Fishing expeditions" are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

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