

LAW no. 81 of 25 May 2005

REPUBLIC OF SAN MARINO

Taxation of incomes generated by savings under the form of interest payments to residents of the European Union

We Captains Regent of the

Most Serene Republic of San Marino

Promulgate and send for publication the following Law approved by the Grand and General Council during the session of May 25 2005.

Art. 1

(Objective)

The objective of the present Law is to implement the Agreement between the Republic of San Marino and the European Union which establishes the measures similar to those defined by the Directive 2003/48/CE of the European Council concerning taxation of incomes generated by savings and paid under the form of interest, hereinafter called "Agreement", signed on December 7 2004 and ratified by the Grand and General Council of San Marino through Decree 42 of March 22 2005.

Art. 2

(Definition of the actual beneficiary)

For the purposes of the present Law, an "actual beneficiary" is defined as any natural person who collects a interest payments or any other natural person in favour of whom a payment of interest is credited, unless such person proves not to have collected or not to have received such payment or:

- a. acts as payment agent according to the provisions of article 4; or
- b. acts on behalf of a legal entity, of an investment fund or similar organisation for the mutual investment of securities; or
- c. acts on behalf of another natural person who is the actual beneficiary and notifies the payment agent the identity of such actual beneficiary in compliance with article 3.

When an payment agent has information based on which the natural person collecting payments of interest, or in favour of whom a payment of interest is credited, could not be the actual beneficiary, and is not included in instances defined by letter a) or letter b) of the preceding paragraph, said

payment agent shall operate accordingly to define the identity of the actual beneficiary in compliance with article 3. If the payment agent is not capable of identifying the actual beneficiary, the payment agent shall consider the above natural person to be the actual beneficiary.

Art. 3

(Identity and residence of the actual beneficiaries)

In order to define the identity and residence of the actual beneficiary, as defined in article 2, the payment agent shall maintain records of the surname, name and data pertaining to the address and country of residence of such persons, in compliance with the regulations in matters for contrasting money laundering and usury. Effective January 1 2004, for initiating contractual relations or for transactions carried out in the absence of contractual relations with natural persons who submit a passport or document of identity issued by a member state of the European Union, hereinafter called “member state”, but declare themselves to be residents of a state other than a member state or of the Republic of San Marino, residency is established through a certificate of fiscal residency issued by the Authorities of the state in which the natural person declares himself to be resident. Failure to provide such a certificate, the member state issuing the official passport or document of identity shall be considered the state of residence.

Art. 4

(Definition of payment agent)

For the purpose of the present Law, are defined as “payment agent”, banks of San Marino, business operators, either resident natural persons or physical entities with head office in the Republic of San Marino or permanent establishments of foreign companies which, in fulfilling their professional activities, even occasionally, accept, hold or transfer third parties equities, or rather pay or credit payments of interest.

Art. 5

(Definition of interest payments)

According to the present Law, for “interest payments” are defined as:

- a) interest paid or credited to an account, pertaining to credits of any whatsoever nature, backed or not, by mortgages and accompanied or not by a clause of participation in the debtor’s profits, and in particular, incomes generated by state securities and incomes generated by bonds, including premiums connected to such securities and bonds; penalties on arrears are not interest payments;
- b) interest matured or capitalised upon transfer, pay-back or redemption of credits as defined in letter a above);
- c) income generated by interest payments, directly or through an entity as specified by article 4, paragraph 2, of the Directive 2003/48/CE, and distributed by:
 - I. organizations of mutual investments or similar organisations or equivalent for mutual investments in securities as established by the European Union or Republic of San Marino;

- II. an entity domiciled in a member state exercising the option specified by article 4, paragraph 3 of the Directive 2003/48/CE, informing the payment agent;
- III. organizations of mutual investments or comparable organizations or equivalent for mutual investments in securities as established outside the European Union or Republic of San Marino;

d) income generated by transfers, pay-backs or redemption of holdings or shares in the following organisations and entities, if these invest, directly or indirectly or through other organisations of mutual investments or entities listed hereinafter, over 40% of their assets in credits as provided by letter a) above:

- I. organizations of mutual investments or comparable organizations or equivalent for mutual investments in securities as established by the European Union or Republic of San Marino;
- II. an entity domiciled in a member state exercising the option specified by article 4, paragraph 3 of the Directive 2003/48/CE, informing the payment agent;
- III. organizations of mutual investments or comparable organizations or equivalent for mutual investments in securities as established outside the European Union or Republic of San Marino.

For the calculation of income as provided by letter d), only the portion of capital gains corresponding to incomes which, directly or indirectly, are generated by interest matured according to the provisions of letter a) and b) is to be included.

In reference to paragraph 1, letters c) and d), whenever a payment agent does not have information pertaining to the portion of income generated by interest payments, the total amount of the income shall be considered as interest payments.

With reference to paragraph 1, letter d), whenever a payment agent is not in possession of information pertaining to the percentage of assets invested in credits, or rather in holdings or shares provided by the said paragraph, such percentage shall be considered to be in excess of 40%. Whenever the same payment agent does not have sufficient elements pertaining to the amounts of income generated by payments of interest included in the gains in order to calculate such percentages, payment of interest shall be considered to be the difference between the product from the transfer, pay-back or redemption and purchase price of the holdings or shares or value of the holdings and shares as of the effective date of the provisions of the present Law, if the actual beneficiary is already in possession of the holdings or shares as of that date. Whenever the payment agent is not capable of calculating such differences, the income shall be considered to be the product of transfers, pay-back or redemption of holdings or shares.

Income defined in paragraph 1, letters c) and d), generated by organisations or entities established in the Republic of San Marino are excluded from the definition of interest payments, whenever the investments in credits specified by paragraph 1, letter a) by such entities, have not exceeded 15% of their assets.

After December 31 2010, the percentage provided by paragraph 1, letter d) and paragraph 4, shall be 25%.

Percentages defined by paragraph 1, letter d) and paragraph 5 are calculated on the basis of the investments policy defined by the fund regulations or by the articles of association of organisations or entities and, lacking those references, are based on the actual break-down of the assets of relative organisations and entities.

Art. 6

(Withholding tax at the source)

Payment agents resident or having their head office in the Republic of San Marino, shall withhold, whenever the actual beneficiary is resident of a member state and has not benefited by the provisions of article 9, paragraph 1, an amount at source of 15% for the first three years effective as of the day of application of the provisions of the present Law, 20% for the following three years and 35% thereafter.

Such withholding tax is applicable to interest as defined by the preceding paragraph and matured as of the day of enforcement of the provisions of the present Law.

The payment agent shall deduct withholding tax on:

- a. payments of interest according to the provisions of article 5, paragraph 1, letter a), on the amount of interest paid or credited;
- b. payments of interest according to the provisions of article 5, paragraph 1, letters b) or d), on the amounts of interest or incomes specified in such letters, or by withholding tax an equivalent amount charged to the recipient on the entire amounts of revenues from transfer, redemption or pay-back;
- c. payment of interest according to the provisions of article 5, paragraph 1, letter c), on the amount of incomes therein specified.

According to the provisions of the preceding paragraph, letters a) and b), the withholding tax at source is withheld based on the length of time the credit has been held by the actual beneficiary. If the payment agent is not capable of defining the holding period based on the information in his/her possession, the payment agent shall consider as actual beneficiary for the entire duration, the holder of the credit, unless the same actual beneficiary can supply evidence of the date of acquisition.

Taxes different from withholding tax at source as specified by the present Law on the same payment of interest, therein included withholding tax at source according to the provisions of San Marino Law, are discounted by the amount of withholding tax at source defined in paragraph 1 of the present article.

Art. 7

(Allocation and transfer of the revenues)

The Republic of San Marino retains 25% of the revenues generated by the withholding tax at source according to the provisions of the preceding article and transfers 75% of such revenues to the member state of residence of the actual beneficiary of the interest.

Transfer is made through a single instalment for each member state for all withholding taxes deducted during the year and by June 30th of the following year, and costs of transfers are charged to the member state.

Art. 8

(Payment of withholding tax at source and declaration by the payment agent)

Withholding taxes deducted at source specified by article 6 must be paid by the payment agent by the first two months subsequent the year in which the withholding tax has been deducted.

Within the same term, the payment agents who paid-out or credited interest payments subject to withholding tax as specified by article 6, must file statements of the amounts subject to such withholding tax based on the form drawn up by the Secretariat of state for Finance and the Budget and implemented by Regency Decree. Such statement must be accompanied by attached statements proving payment of such withholding taxes.

Art. 9

(Voluntary notification and notification of information)

Payment agent does not deduct withholding tax at source specified by article 6 of the present law, when the actual beneficiary expressly authorises the same agent to notify the Tax Office of payment of interest.

Such authorisation must include all payments of interest, either paid or credited directly to such actual beneficiaries by the payment agent.

The minimum information that the payment agent is obliged to communicate to the Tax Office is as follows:

- a) identity and residence of the actual beneficiary according to the provisions of article 3 of the present Law, supplemented, where available, by the identifying tax code number assigned by the member state of residence to the actual beneficiary;
- b) payment agent name, address, legal head office and business operator code;
- c) account number of the actual beneficiary or, lacking that reference, identification of the interest generating credit;
- d) amount of interest payment as defined by article 5 of the present Law.

Within February of the year following payments, the payment agent must notify all payments of interest made during the year not subject to withholding tax at source based on the provisions of the first paragraph of the present article. Such notification must conform to the form drawn up by the Secretariat of the state for Finance and the Budget and implemented by Regency Decree and must contain all information required by the preceding paragraph. ..

By June of each year, the Tax Office notifies the member state authorities in charge of the above information regarding the actual beneficiary of interest payments of all payments made during said year.

Once issued, the authorization provided by the first paragraph is valid until the payment agent receives a specific revocation by the actual beneficiary.

Revocation is valid only if the actual beneficiary guarantees the payment agent the amount of the withholding tax to be applied in lieu of notification.

The payment agent may revoke a notification pertaining to interest payments at the latest by the month of April of the year in which such notification has been carried out. Whenever it is necessary to deduct withholding tax at source as specified by article 6, the payment agent, at the latest within five working days, must immediately pay the tax and file properly amended returns according to article 8.

Art. 10

(Other withholding taxes – pertinence to other agreed provisions)

The present law does not prevent other withholding taxes being deducted at source that are different from the one specified by article 6, which taxes to be withheld in compliance with the San Marino laws or based on conventions against double taxation.

Provisions of Conventions against double taxation between San Marino and member state of the European Union do not impede withholding tax at source as specified by article 6 of the present law.

Art. 11

(Transitional provisions for negotiable securities)

As of the date of enforcement of the present provisions of law and until when a member state continues also to enforce similar provisions and until December 31 2010, national and international bonds and other negotiable securities issued for the first time before March 1 2001 or whose original schedule of terms of issue has been approved before such date by the authorities in charge of the issuing state, are not considered credits according to the provisions of article 5, paragraph 1, letter a) if their issue has not been reopened by or after March 1 2002.

However, and until one of the member states continues also to enforce provisions similar to article 7 of the Agreement, the present article shall continue to be enforced after December 30 2010, if pertaining to such negotiable securities:

- which provide gross-up clauses and connected advanced pay-back,
- for which the payment agent as specified by article 4, is established in San Marino, and
- for which said payment agent pays interest or credits payments of interest directly to an actual beneficiary resident of a member state.

If and when all member states cease to enforce provisions similar to article 7 of the Agreement, the provisions of the present article shall continue to be enforced solely for negotiable securities:

- which provide gross-up clauses and connected advanced pay-back,
- for which the payment agent as specified by article 4, is established in San Marino, and
- for which said payment agent pays interest or credits payments of interest directly to an actual beneficiary resident of a member state.

If the reopening of an issue of negotiable security, as described above, issued by a government or connected organisation acting as public authority or whose role is recognised by international agreement (organisations listed in Attachment II to the Agreement), is carried out by or after March 1 2002, the entire issue of such security, represented by the original issue, is considered a credit based on the provisions of article 5, paragraph 1, letter a).

If the reopening of an issue of negotiable security as described above, issued by any other issuer not provided by the fourth paragraph of the present article, has been carried out by or after March 2 2002, only the securities issued at such reopening are to be considered credit, based on the provisions of article 5, paragraph 1, letter a).

Art. 12

(Authorities and Institutions in charge)

The Secretary of State for Finance and the Budget or his/her authorised representative, is the authority in charge based on the provisions of Attachment I to the Agreement.

The Tax Office of the Republic of San Marino is charged for the enforcement of the tax aspects of the present Law.

The body implementing EU tax regulations in charge of verifying the requests specified by article 16 of the present Law consists of three members, one of which has the functions of coordination, and is appointed by the Secretary of state for Finance and the Budget from experts in legal or taxation or financial matters. In fulfilling the functions assigned to the Body, the members of the same are independent and autonomous.

For the purpose of the present Law, for authorities of member states of the European Union are intended those listed in Attachment I to the Agreement or those who will be subsequently communicated to the Republic of San Marino.

Art. 13

(Functions of the authorities and authorised bodies)

The Secretary of state for Finance and the Budget or his/her authorised representative, represent the Republic of San Marino in international relations pertaining to the Agreement.

For the enforcement of the present Law, it is utilised the cooperation of the Central Bank of the Republic of San Marino as well as of the Body overseeing implementation of the EU tax regulations as described in the preceding article..

Tax Office provides that the present law is applied for the aspects under its jurisdiction and, for such purposes, it carries out proper verifications even through verification of the operation of the processes implemented by the payment agents in order to the collection of the withholding taxes deducted at the source.

It receives payment of withholding taxes deducted at source and, in the event of partial or total non-payment, proceeds to record the unpaid amounts according to current laws.

It calculates the amounts of withholding taxes deducted at source to transfer to authorised member states of the European Union that are due to them, in compliance with the provisions of article 7.

It receives information as defined in article 9 and transmits it to the authorities of the member states of the European Union.

It ascertains the violations as provided by subsequent article 21 below.

Verifications of data and information by name are carried out by the Supervisory Division of the Central Bank of the Republic of San Marino.

Independent professionals who act as payment agent according to the provisions of article 4, cannot reject on grounds of professional confidentiality requests for information submitted pursuant to the provisions of the present Law (including delivery of deeds and documents or copies thereof).

The Body defined by the third paragraph of article 12 of the present Law, provides for the assessment of the request received according to article 13 of the Agreement.

Art. 14

(Collection of withholding taxes deducted at source and related sanctions)

For the collection of withholding taxes deducted at source according to the provisions of the present Law and relative sanctions, the laws governing the collection of taxes shall be enforced.

Art. 15

(Fiscal fraud pertaining to incomes from savings)

Any person, who, in order to evade tax on income from savings in the form of payment of interest in favour of natural persons residents of a member state of the European Union, or to allow third parties evade such tax, or who utilises or issues documents which, in reference to paid or collected interest, or rather to the identity or residence of the actual beneficiary, are counterfeited or altered or bear false information, shall be punished with second degree incarceration, with a fine and third degree debarment from public offices and professions.

Art. 16

(Exchange of information upon request)

The Secretary of State for Finance and the Budget, or his/her authorised representative, even if the conditions provided by the subsequent article 20 have not occurred, exchanges of information with the authorities of member states of the European Union on behaviours or similar regarding tax frauds according to the provisions of article 15 of the present law, for incomes listed in the Agreement. Similar behaviours are defined as solely violations which entail the same degree of tax fraud illegality based on the regulations of the preceding article, which are detrimental to the tax interest of the requesting state. In response to a duly justified request, the Secretary of State for Finance and the Budget, or his/her authorised representative, shall supply information pertaining to

behaviours which the requesting state examines, or could examine, during penal or non-penal proceedings.

In deciding to supply or not information in reply to a request, the Secretary of State for Finance and the Budget, or his/her authorised representative, shall apply the statute of limitations prescribed by the legislation of the requesting State.

The Secretary of State for Finance and the Budget, or his/her authorised representative supplies information requested, when the requesting state has a reasonable suspect that the behaviour in question constitutes tax fraud or similar behaviour. The justified reasons of suspicion may be based on:

- a. authenticated or non-authenticated documents, including but not limited to, company documentation, accounting books or banking documentation;
- b. testimony of tax payers;
- c. information obtained from witnesses based on information or from other third parties, which turns out to be substantiated by sources and/or independent elements or appear anyway reliable; or
- d. circumstantial evidences.

The requesting state authorities are obliged to supply the following elements to the Secretary of State for Finance and the Budget, or his/her authorised representative, when submitting the request for information based on the provisions of article 13 of the Agreement in order to prove the presumable pertinence of the information in relation to the request:

- a) identity of the party under verification or investigation;
- b) description of the information requested, including its nature and the form in which the requesting state would like to receive it;
- c) the tax purpose for which information is requested;
- d) reasons based on which it is believed that the information requested is in San Marino, or is in possession or under the control of a party under San Marino jurisdiction;
- e) to the extent of knowledge, name and address of every person believed to be in possession of the requested information;
- f) a declaration stating that the request is in compliance with the laws and administrative practices of the requesting state, that if the information requested is under the jurisdiction of the requesting state, its authorities would be capable of obtaining the information according to the laws of the requesting state or during a normal procedure of an administrative procedure and that the request complies with the Agreement;
- g) a declaration stating that the requesting state has utilised all means available on its territory in order to secure information, except those which would have given rise to disproportionate difficulties.

The Secretary of State for Finance and Budget, or his/her authorised representative, submits the request formulated according to the provisions of article 13 of the Agreement before the Body for implementing EU tax regulations.

The Body for implementing EU tax regulations avails itself of the cooperation of the Central Bank and offices of the Public Administration of San Marino.

Once the information is acquired, the Body for implementing EU tax regulations, informs the concerned party, who has the right to consult the folder pertaining to the procedure of administrative assistance. Such a right is extended also to the request and documentation transmitted by the foreign authorities, except when the latter has requested express secrecy.

Information indicated in the preceding paragraph is issued through notification of the concerned party. If notification within the territory of the Republic is not feasible, the Secretary of State for Finance and the Budget, or his/her authorised representative, asks the requesting authorities to proceed with the notification.

The concerned party has the right to file briefs before the Body implementing EU tax regulations within twenty days from the notification specified in the preceding paragraph.

The Body implementing EU tax regulations expresses mandatory and motivated rulings regarding whether the conditions established by the present Law exist for conveying information to the requesting authority (including deeds and documents).

The Secretary of State for Finance and the Budget, or his/her authorised representative, decides, also on the basis of the opinion expressed according to the provisions of the preceding paragraph, whether to transmit the information to the authorities of the requesting state. The decision by the Secretary of state for Finance and the Budget, or his/her authorised representative, is communicated to the concerned party in the manner provided by paragraph 8 of the present article.

The concerned party may appeal to the administrative judge against this decision. The interim documents of the proceeding, including the opinion by the Body for implementing EU tax regulations, may be appealed against only when the decision is definitive. The administrative appeal suspends the enforceability of the decision implemented by the Secretary of State for Finance and the Budget, or his/her authorised representative.

The Secretary of State for Finance and the Budget, or his/her authorised representative, transmits the information to the authorities of the requesting state in the shortest time possible.

Information acquired by the Body for implementing EU tax regulations may be utilised by the San Marino authorities for tax and judicial purposes only after the decision by the Secretary of State for Finance and the Budget, or his/her authorised representative has become enforceable.

Art. 17

(Tax related violations)

An administrative monetary sanction from a minimum of Euro 3,000.00 to a maximum of 30,000.00 Euro shall be applicable against anyone obtaining for his or her own or for the benefit of other parties:

a) failure to pay all or part of withholding taxes deducted at source due pursuant to the provisions of article 6;

b) omission to transfer all or part of the withholding taxes deducted at source within the term specified by article 8, paragraph 1;

If the conduct specified by the preceding paragraph has been wilfully committed, an administrative monetary sanction from a minimum of Euro 1,500.00 to a maximum of 15,000.00 Euro shall be applicable.

An administrative monetary sanction from a minimum of Euro 2,000.00 to a maximum of Euro 20,000.00 shall be applicable against any party who:

a) omits to file the returns specified by article 8, paragraph 2, and or does not attach to the returns declarations proving the payment of the withholding taxes. If the returns or declarations are filed with a delay not exceeding 30 (thirty) days, the sanction is reduced by one fourth;

b) omits notification as specified by article 9 based on authorisations by the actual beneficiary. If the notification is carried out with delay not exceeding 30 (thirty) days, the sanction is reduced by one fourth.

Administrative monetary sanctions for not less than Euro 2,000.00 to not more than Euro 20,000.00 shall be applicable against the payment agent who does not arrange, keep, file or submit to the Tax Office documentation pertaining to interest paid or credited, withholding tax deducted, transfer of the tax or substitute notification specified by the present Law..

The administrative monetary sanctions from not less than Euro 1,500.00 to not more than Euro 15,000.00 shall be applicable against the payment agent who arranges for an incorrect calculation or anyway supplies to the Tax Office incorrect information on the interest paid or credited.

If the actions specified by the present article constitute offences or administrative violations according to other provisions, application of the sanctions provided by the preceding paragraphs shall not exclude application of sanctions, surtaxes or penalties provided by other laws or decrees.

Art. 18

(Violation of the issued provisions)

Administrative monetary sanctions from not less than Euro 3,000.00 to not more than Euro 30,000.00, shall be applicable against any party who does not comply with the legally binding rulings issued by the Tax Office pertaining to taxation of incomes from savings in the form of interest paid in favour of natural persons residing in a member state.

The same sanction specified by the preceding paragraph shall be applicable to any party who without justifications does not supply information requested by the authorities, or obstructs or opposes inspections or verifications ordered by the same authorities.

Art. 19

(Violation of the secrecy obligation)

The penalty specified by article 192 of the Penal Code shall be applied to any party who, without justified reasons, discloses information which it has received for reasons connected with the application of the present Law or in any manner facilitates divulgence thereof or utilises it for his or her own or others' benefit.

Notwithstanding article 192, paragraph 2 of the Penal Code, prosecution shall be ex officio.

Art. 20

(Payment of the tax due and sanctions)

Payment of the tax specified by the present Law and of related administrative sanctions within ninety days from the date in which the assessment procedure has become final, excludes criminal liability for actions specified by article 15.

Criminal prosecution, the obligation of notification and preliminary investigations as well as the statute of limitations specified by article 15 are enforceable only after expiration of the term provided in the preceding paragraph..

If the actions specified by article 15 are linked to other offences, the judicial authorities shall prosecute the latter offences separately.

Art. 21

(Calculation of the administrative sanctions and assessment of the violations)

For calculating administrative sanctions and assessment of the violations, the provisions of articles 73 and 74 of Law no. 91 of 13 October 1984 and subsequent amendments shall apply.

In addition, the provisions of articles 75, 76 and 77 of the same law are applicable.

Art. 22

(Effective date - enforcement)

The present law shall become effective the fifteenth day following date of its publication.

The provisions of the present Law come into effect on 1 July 2005.

Done at Our Residence, on 2 June 2005/1704 since the Foundation of the Republic.

THE CAPTAINS REGENT

Fausta Simona Morganti – Cesare Antonio Gasperoni

THE SECRETARY OF STATE

FOR INTERNAL AFFAIRS

Rosa Zafferani