

REPUBLIC OF SAN MARINO

**We, the Captains Regent
of the Most Serene Republic of San Marino**

Having regard to Article 4 of Constitutional Law no. 185/2005 and to Article 6 of Qualified Law no. 186/2005;

Hereby promulgate and order the publication of the following Ordinary Law approved by the Great and General Council in its sitting of 19 July 2011.

LAW No. 106 of 22 July 2011

PROVISIONS FOR THE IMPLEMENTATION OF INTERNATIONAL TAX ASSISTANCE THROUGH EXCHANGE OF INFORMATION

TITLE I

GENERAL PROVISIONS ON EXCHANGE OF INFORMATION

Art. 1

(Promotion of bilateral agreements)

The Congress of State is engaged in strengthening bilateral agreements in the field of tax cooperation through the conclusion, with willing States and Jurisdictions, of agreements to avoid double taxation and of agreements for the exchange of information on the basis of OECD standards and models.

In the framework of these treaties, the Congress of State is also engaged in negotiating and signing agreements envisaging forms of administrative assistance in a spontaneous, upon request or automatic way, in line with the Memorandum of Understanding approved by the OECD and/or with Council Directive 2011/16/EU on administrative cooperation among States in tax matters, adopted by the Council of the European Union on 15 February 2011.

Art. 2

(Exchange of information in tax matters)

Exchange of information in tax matters between the Republic of San Marino and other States and Jurisdictions shall take place in compliance with international agreements in force, with Decree Law no. 36 of 24 February 2011 and with this Law.

Pending the conclusion and entry into force of agreements between the Republic of San Marino and other States or Jurisdictions to avoid double taxation and/or to favour exchange of information in tax matters on the basis of OECD standards, the provisions contained in Title III of this Law shall establish the procedures according to which the Republic of San Marino provides tax information upon request to said States or Jurisdictions, with which the agreement negotiated, and initialled in conformity with international law, has not yet entered into force.

Following the entry into force of the agreements referred to in the preceding paragraph, information shall be exchanged according to the procedures and in compliance with what

established in such agreements and in the respect for specific provisions on this matter, including those envisaged by this Law.

Art. 3
(Definitions)

For the purposes of the provisions contained in this Title, unless otherwise defined:

- a) the term “requesting State” shall mean the State or Jurisdiction requesting information under this Law;
- b) the term “person” shall include individuals, companies and any other body of persons;
- c) the term “company” shall mean any body corporate or any entity that is treated as a body corporate for tax purposes;
- d) the term “tax” shall mean taxes defined in the agreements and in Article 10 for the purposes of the application of the provisions contained in Title III of this Law;
- e) the term “information gathering measures” shall mean laws and administrative or judicial procedures that enable a requesting Party to obtain and provide the requested information;
- f) the term “information” shall mean any fact, statement or record in any form whatever;
- g) the term “criminal tax matters” shall mean tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting State;
- h) the term “criminal laws” shall mean all criminal laws designated as such under the domestic law of the requesting State, irrespective of whether contained in the tax laws, the criminal code or other statutes;
- i) the term “negotiated agreement” shall mean an agreement concerning exchange of information or an agreement to avoid double taxation, for which negotiations have been concluded through the initialling of the text or which has been signed but not yet ratified or entered into force.

TITLE II
EXCHANGE OF INFORMATION ON THE BASIS OF BILATERAL AGREEMENTS

Art. 4
(Rules and criteria for the implementation of exchange of information provisions)

Without prejudice to what expressly provided for in the agreements referred to in Article 2 above, requests for information shall be sent to the competent authorities, and information shall be received from them in compliance with the procedures and guidelines established by the OECD in its “MANUAL ON THE IMPLEMENTATION OF EXCHANGE OF INFORMATION PROVISIONS FOR TAX PURPOSES – MODULE 1 ON EXCHANGE OF INFORMATION ON REQUEST (2006)” and subsequent amendments.

Art. 5
(Assessment of requests received)

Before commencing internal procedures aimed at obtaining the information requested by a foreign authority, the Central Liaison Office shall verify the elements of such request by assessing its admissibility on the basis of what envisaged in the agreements, of the general criteria referred to in Article 4 above, of the provisions of this Law and of those contained in Decree Law no. 36 of 24 February 2011.

In case the request is valid and complete, the Central Liaison Office shall obtain, either directly or indirectly, the requested information for exchange purposes.

If the Central Liaison Office deems the request inadmissible on account of incomplete information or for the reasons indicated in Article 6 hereunder, it shall immediately inform the

competent authority of the requesting State thereof, which may supplement the request or send a new, correct request.

Art. 6
(Reasons to decline a request)

The Central Liaison Office shall not provide the forms of assistance regulated by this Law, including those envisaged in Title III, if:

- a) it is established that the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty;
- b) the processing of the request and the disclosure of the information to the requesting Party would be contrary to public order;
- c) the request does not contain sufficient elements demonstrating the foreseeable relevance of the requested information to the administration and enforcement of the domestic laws of the requesting State or Jurisdiction;
- d) the request is not detailed and contains generic references and/or indications according to which the request could be considered a “fishing expedition”, to mention the term used within the OECD indicating an indiscriminate attempt to obtain information;
- e) in the context of the collaboration forms regulated by Title III of this Law, the request does not contain the elements referred to in Article 11, paragraph 6.

The Central Liaison Office shall not be required to provide information that:

- a) would disclose any trade or industrial secret or trade process;
- b) would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
 - a. produced for the purposes of seeking or providing legal advice;
 - b. produced for the purposes of use in existing or contemplated legal proceedings.

The Central Liaison Office may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a San Marino national as compared with a national of the requesting Party in the same circumstances.

The Central Liaison Office shall not be required to provide information neither held by San Marino authorities nor in the possession or control of a person or company within the Republic of San Marino.

In any case, the Central Liaison Office shall not exchange information if the request is not made in conformity with the applicable bilateral agreement.

Art. 7
(Information gathering measures)

Without prejudice to what envisaged in Articles 11, 12 and 15 bis of Law no. 95 of 18 June 2008, as amended by Decree Law no. 36 of 24 February 2011, the Central Liaison Office may obtain information directly from persons holding or controlling the information requested.

The obtaining of information under the preceding paragraph may occur:

- a) on the basis of a direct request, which shall:
 - 1. be made in writing and transmitted in such a way as to enable the verification of its receipt;
 - 2. contain elements useful to identify the information requested;
 - 3. mention the fact that the request is made in application of an agreement or of one of the forms of collaboration envisaged in Title III of this Law;
 - 4. expressly refer to any provisions concerning the confidentiality of the request;
 - 5. indicate any procedures and time required to process the request;

b) by requesting the collaboration of the offices and authorities referred to in Articles 12 and 17 bis of Law no. 95 of 18 June 2008, as amended by Decree Law no. 36 of 24 February 2011, on the basis of the respective competence and functions.

With reference to paragraph 2, letter a) above, the establishment of time-limits shall take into account the reasonable time necessary to process the request, also on account of its complexity.

Art. 8

(Request for assistance from foreign authorities)

The request for information in tax matters from foreign authorities shall be made by the Central Liaison Office upon request of San Marino offices or authorities responsible for carrying out control and assessment activities relative to the taxes to which the agreements referred to in Article 2 apply.

The request referred to in the preceding paragraph 1 shall contain the elements envisaged by the agreements and by the provisions of this Law and shall be made in compliance with such agreements and provisions.

TITLE III

EXCHANGE OF INFORMATION PENDING THE ENTRY INTO FORCE OF THE AGREEMENTS

Art. 9

(Scope of the provisions contained in Title III)

The Central Liaison Office (CLO) shall provide assistance to the competent authorities of the States or Jurisdictions referred to in Article 2, paragraph 2 above through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of said States or Jurisdictions concerning taxes covered by Article 10 hereunder. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.

Information shall be exchanged in accordance with the provisions of this Title irrespective of and independently from the content of the relevant agreement, which has not yet entered into force.

The rights and safeguards secured to persons by the laws or administrative practice in the Republic of San Marino shall remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Art. 10

(Taxes covered)

The taxes covered for exchange of information purposes according to the provisions contained in this Title shall be the taxes imposed by the requesting State according to the Laws in force in this State when the request is made.

Art. 11

(Procedures for processing requests for information)

Without prejudice to what envisaged in Article 6 above, the Central Liaison Office shall provide, upon request, the information referred to in Article 9 to the competent authority of the requesting State. Such information shall be provided without regard to whether the conduct being investigated would constitute a crime under the San Marino laws, if such conduct occurred in the Republic of San Marino.

For the purposes of obtaining the requested information by the Central Liaison Office, the provisions of Decree Law no. 36 of 24 February 2011 and subsequent amendments shall apply.

The Central Liaison Office shall seek to provide the requested information normally within 90 days of receipt of the request. If the CLO is unable to provide the information within the 90 day period due to the complexity of the request, it shall inform the competent authority of the requesting State thereof.

Ordinary costs incurred in providing assistance under this Law shall be borne by San Marino Administration. In case extraordinary costs need to be incurred in providing assistance, the Central Liaison Office shall inform the authority of the requesting State thereof and the request for information shall be processed subject to specific agreements on the sharing of such costs.

If specifically requested by the competent authority of the requesting State, the Central Liaison Office shall provide information in conformity with this Law, to the extent allowable under San Marino laws, in the form of depositions of witnesses and authenticated copies of original records.

The competent authority of the requesting State shall be required to provide the following information to the Central Liaison Office when making a request for information under this Law to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) a statement of the information sought, including its nature and the form in which the requesting Party wishes to receive the information from the requested Party;
- c) the tax purpose for which the information is sought;
- d) grounds for believing that the information requested is held in the Republic of San Marino or is in the possession or control of a person within the jurisdiction of the Republic of San Marino;
- e) to the extent known, the name and address of any person believed to be in possession of the requested information;
- f) a statement that the request is in conformity with the laws and administrative practices of the requesting State and that if the requested information was within the jurisdiction of the requesting State then the competent authority of said State would be able to obtain the information under its laws or in the normal course of administrative practice;
- g) a statement that the requesting authority has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

The States or Jurisdictions referred to in Article 9 above wishing to make use of the forms of assistance regulated by this Law shall inform the Secretariat of State for Foreign Affairs, through the diplomatic channels, of the details of the authorities responsible for sending the request for assistance and of any other information useful to identify the contact persons of said authorities, if applicable also by updating this information over time.

The Secretariat of State for Foreign Affairs shall notify to the Central Liaison Office the list of States and Jurisdictions referred to in Article 9 above, to which exchange of information is applicable under this Law, by periodically providing the necessary updates, should the conditions of application envisaged in the above-mentioned Article change.

Art. 12 (Confidentiality)

Any information provided to the requesting State under this Title shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the requesting State:

- a) concerned with assessment or collection of taxes;
- b) concerned with the enforcement or prosecution in respect of such taxes (they may disclose the information in public court proceedings or in judicial decisions);
- c) competent to determine appeals in relation to such taxes.

The persons or authorities referred to in the preceding paragraph shall use the information only for such purposes.

Without prejudice to what provided for in paragraphs 1 and 2 above, the information may not be disclosed to any other person, entity or authority, or any other jurisdiction without the express written consent of the Secretariat of State for Finance and Budget.

The violation of the provisions contained in the preceding paragraphs by persons or authorities of the requesting State shall entail the suspension of the forms of assistance regulated by this Title vis-à-vis said State with a measure adopted by the Congress of State upon proposal of the Secretariat of State for Finance and Budget.

TITLE IV FINAL PROVISIONS

Art. 13 *(Final provisions)*

The Central Liaison Office shall be authorised to provide the forms of assistance regulated by Title III of this Law following the entry into force of the latter and for information concerning tax matters relative to taxable periods beginning on or after the first day of January of 2011.

The application of the Agreement between the Republic of San Marino and the European Community providing for measures equivalent to those laid down in the Council Directive 2003/48/EC on taxation of savings income in the form of interest payments, signed in Brussels on 7 December 2004, shall not prevent the forms of exchange of information regulated by this Law, which therefore also apply with reference to the income contemplated in the above-mentioned agreement.

Art. 14 *(Entry into force)*

This Law shall enter into force on the fifteenth day following that of its legal publication.

Done at our Residence on 22 July 2011/1710 since the Foundation of the Republic

THE CAPTAINS REGENT

Maria Luisa Berti – Filippo Tamagnini

**THE SECRETARY OF STATE
FOR INTERNAL AFFAIRS**
Valeria Ciavatta