



REPUBLIC OF SAN MARINO

DELEGATED DECREE no. 119 of 26 August 2016

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

*Having regard to Article 52, paragraph 1, letters a) and d) of Law no. 174 of 27 November 2015;
Having regard to Congress of State Decision no. 24, adopted during its sitting of 10 August 2016;
Having regard to Article 5, paragraph 3 of Constitutional Law no. 185/2005 and to Articles 8
and 10, paragraph 2 of Qualified Law no. 186/2005;
Promulgate and order the publication of the following Delegated Decree:*

AMENDMENT TO LAW NO. 174 OF 27 NOVEMBER 2015 - INTERNATIONAL TAX COOPERATION

Art. 1

1. The following letter shall be added to Article 2, paragraph 1 of Law no. 174 of 27 November 2015: "e)-bis bilateral and/or multilateral agreements between competent authorities relating to the agreements referred to in the preceding letters."

Art. 2

1. Letter cc) of paragraph 1 of Article 5 of Law no. 174/2015 shall be amended as follows:
"cc) "AML/CFT Legislation" and "AML/KYC Procedures": all regulatory provisions and instructions of the Financial Intelligence Agency on the prevention and combating of money laundering and terrorist financing, including customer due diligence procedures pursuant to the anti-money laundering or similar requirements to which the Financial Institution is subject;"

Art. 3

1. The following letter shall be added to Article 24, paragraph 1 of Law no. 174/2015:
"d)-bis in bilateral and/or multilateral agreements between competent authorities relating to the agreements referred to in the preceding letters."

Art. 4

1. Paragraph 1 of Article 25 of Law no. 174/2015 shall be amended as follows:

“1. For the purposes of automatic exchange of information, the definitions set out in the standards and in the agreements referred to in Article 24 and included in Annex A to this Law shall be used, insofar as compatible with the terms defined in this Law.”.

Art. 5

1. Article 27 of Law no. 174/2015 shall be replaced by the following:

“Art. 27 (Reportable Account)

1. For the purposes of this Chapter III, “Reportable Account” shall mean a financial account that meets the following conditions:

- a) the account falls within the definition of financial account under the relevant agreement;
- b) the account is registered:
 - 1) with reference to the CRS, in the name of one or more individuals not residing in the territory of the Republic of San Marino, or of one or more Passive Non-Financial Entities (Passive NFEs), as defined in the relevant agreement, controlled by one or more individuals not residing in the territory of the Republic of San Marino;
 - 2) with reference to FATCA, in the name of one or more U.S. citizens wherever resident, or of one or more Passive Non-Financial Entities (Passive NFEs), as defined in the relevant agreement, controlled by one or more U.S. citizens wherever resident;
- c) the parties referred to in letter b), point 1) reside in a State or jurisdiction falling within the definition of “Participating Jurisdiction” under the CRS, with which information is exchanged;
- d) the account is maintained with the Reporting Financial Institution:
 - 1) with reference to the CRS, as of 31 December 2015 or starting from a date later than the latter;
 - 2) with reference to FATCA, as of 30 June 2014 or starting from a date later than the latter;
- e) the account also has the characteristics provided for:
 - 1) with reference to the Global Standard, in Section VIII, letter D of the CRS;
 - 2) with reference to FATCA, in IGA SM Agreement;
- f) the account does not fall within the definition of excluded account under the relevant agreement.

2. Due diligence requirements under Article 28 shall not apply to excluded accounts.

3. The Reporting Financial Institution shall identify reportable accounts by applying the due diligence procedure for the purposes of automatic exchange provided for in this Law in accordance with the relevant agreements.

4. The Reporting Financial Institution shall apply the account balance aggregation and currency rules provided for in the relevant agreements in order to determine whether the account falls within the definition of reportable account. The account balance aggregation and currency rules are provided for:

- a) with reference to the Global Standard, in Section VII, letter C of Annex B to this Law;
- b) with reference to IGA SM, in Section VI of Annex C to this Law;

5. For the purposes of the relevant agreement and of this Law, in applying the account balance aggregation and currency rules, an account balance that has a negative value shall be treated as having a nil value.

6. The list of States and jurisdictions with which automatic exchange of information is active for the purposes of the Global Standard shall be published and updated through Congress of State (Government) Decision.

7. A financial account opened in the name of more than one party shall become a reportable account even if only one of the parties meets the requirements indicated in paragraph 1, letters b) and c).

8. A financial account may be subject to multiple reporting obligations in accordance with different agreements if, based on the definitions of the relevant agreements, it may be qualified both as a reportable account and as a U.S. account. Similarly, an account opened in the name of more than one party, some of whom meet the requirements to be identified as U.S. account and others meet the requirements to be identified as reportable account, shall be an account subject to reporting obligations both under FATCA and under the agreements relative to the Global Standard.”.

Art. 6

1. Article 29 of Law no. 174/2015 shall be replaced by the following:

“Art. 29 (Reporting requirements)

1. Each Reporting Financial Institution shall, in respect of the first reporting year and every following calendar year, prepare a declaration setting out the information required to be reported under the relevant agreement in relation to each reportable financial account that is maintained with the institution during the calendar year in question.

2. The first reporting year shall be:

- a) the calendar year 2016, in relation to an account identified as a reportable account for the purposes of the Global Standard;
- b) the calendar year 2014, in relation to an account identified as a reportable account for the purposes of IGA SM and of the FFI Agreement.

3. The reporting shall be made:

- a) with reference to the Global Standard: to CLO by 31 March of each year following that to which the information refers, according to the modalities provided for in Article 30;
- b) with reference to IGA SM: to the U.S. competent authority within the time-limits and in the manner envisaged by IGA SM and the FFI Agreement.

4. Reportable information shall be:

- a) with reference to the Global Standard: the information referred to in Section I, letter A of Annex B to this Law;
- b) with reference to FATCA: the information specified in the FFI Agreement.

5. With reference to the provision referred to in paragraph 2, letter a), if the information is destined to jurisdictions that apply automatic exchange in respect of post-2016 years, the first reporting year shall be indicated in the Decision referred to in Article 27.

6. In relation to the Global Standard, if Reporting Financial Institutions have not maintained any reportable account during the reference period, they shall in any case be required to file a nil return, according to the same terms referred to in paragraph 3.

7. In relation to the Global Standard, and only with regard to information relating to 2016 to be reported by 31 March 2017, Reporting Financial Institutions may choose not to report the gross proceeds from the sale or redemption of securities. Reporting requirements applying to the remaining information shall in any case be met within the ordinary time-limits. Starting from 2018, all information listed in Section I, Letter A of Annex B to this Law shall be reported within the time-limits referred to in the preceding paragraph 3 of letter a).

8. With reference to FATCA, regardless of whether a financial account falls within the definition of reportable account, the reporting requirement referred to in this Article shall not apply to Reporting Financial Institutions if the conditions referred to in Annex II of IGA SM are met, namely:

- a) Financial Institutions have a small or limited scope and are considered as compliant FFIs;
- b) Financial Institutions are investment entities considered as compliant FFIs.”.

Art. 7

1. Letter c) of paragraph 1 of Article 43 of Law no. 174/2015 shall be amended as follows:

“c) transmit to CLO, by 31 December 2016, a list of the names of said data processors and persons in charge of the processing.”.

Art. 8

1. The following paragraph shall be added to Article 45 of Law no. 174/2015:

"3-bis Financial Institutions shall be prohibited to open financial accounts in the name of non-residents for tax purposes in the Republic of San Marino in the event that the holders of such accounts refuse to submit the certificates provided for in Article 28. In the event that the Financial Institution opens the account notwithstanding the above refusal, the sanctions referred to in paragraph 1 shall apply to said Financial Institution.”.

Art. 9

1. After Article 45 of Law no. 174/2015 the following Article shall be added:

“Art. 45-bis
(*Criminal rules*)

1. Anyone who, in the cases provided for by this Law, makes false or misleading statements, or draws up or uses false deeds or documents, shall be punished under the criminal rules in force concerning falsification of public and private deeds, statements, certificates, their use and suppression.

2. The submission of a document containing information that is no longer true is equivalent to using false documents or deeds, unless a statement has been made that the data contained in the document have changed.

3. The certificates of tax residence issued pursuant to Article 28 and the statements made in the interest of a minor or of a disqualified or incapacitated person shall always be considered for all purposes as issued to a public official. The statements of a minor, or of a disqualified or incapacitated person shall be made and signed by at least one of the parents exercising parental authority, by the guardian or by the incapacitated person with the assistance of the curator.”.

Art. 10

1. Paragraph 1 of Article 46 of Law no. 174/2015 shall be amended as follows:

“1. The administrative pecuniary sanction of € 10,000.00 shall apply to Reporting Financial Institutions that do not transmit the information referred to in Article 29 within the time-limits specified therein.”.

Art. 11

1. Annexes A, B and C of Law no. 174/2015 shall be replaced by Annexes A, B and C of this Delegated Decree.

Done at Our Residence, on 26 August 2016/1715 since the Foundation of the Republic.

THE CAPTAINS REGENT
Gian Nicola Berti - Massimo Andrea Ugolini

THE MINISTER OF
INTERNAL AFFAIRS
Gian Carlo Venturini