



REPUBLIC OF SAN MARINO

DELEGATED DECREE no. 44 of 24 April 2017

**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. 8 adopted during its sitting of 18 April 2017;
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 AND SUBSEQUENT AMENDMENTS

Art. 1

1. Article 27 of Law no. 174 of 27 November 2015 and subsequent amendments 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 held:
 - 1) 1) with reference to the CRS, in the name of one or more individuals or Entities 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. 2

1. Article 34 of Law no. 174/2015 and subsequent amendments shall be replaced by the following:

“Art. 34

(Requirement to keep information and documents obtained during the due diligence procedure)

1. Financial Institutions shall keep documents and evidence used in order to fulfil due diligence requirements and requirements to obtain data on financial accounts for the purposes of automatic exchange of information referred to in this Title and Chapter for not less than 5 years following the end of the period within which Reporting Financial Institutions shall transmit such information.”.

Art. 3

1. After Article 34 of Law no. 174/2015 and subsequent amendments the following Article shall be added:

“Art. 34-bis
(Anti-avoidance provision)

1. If a Financial Institution, individual, Entity or intermediary enters into any arrangement the main purpose, or one of the main purposes, of which is to avoid or to circumvent the requirements referred to in this Title, such arrangement is deemed not to have been entered into by the Financial Institution, individual, Entity or intermediary and the provisions of this Title shall have effect.
2. In relation to the avoidance referred to in the preceding paragraph the sanctions provided for in Article 45 shall apply.”.

Art. 4

1. Annex A to Law no. 174/2015 and subsequent amendments shall be replaced by Annex A to this Delegated Decree.

Art. 5

1. Point 7 of paragraph A of Section I of Annex B to Law no. 174/2015 and subsequent amendments shall be replaced by the following:
“7. in the case of any account not described in subparagraph A(5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.”.

Art. 6

1. Point 1 of paragraph B of Section III of Annex B to Law no. 174/2015 and subsequent amendments shall be replaced by the following:
“1. **Residence Address.** If the Reporting Financial Institution has in its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the jurisdiction in which the address is located for the purposes of determining whether such individual Account Holder is a Reportable Person.”.

Done at Our Residence, on 24 April 2017/1716 since the Foundation of the Republic.

THE CAPTAINS REGENT
Mimma Zavoli - Vanessa D'Ambrosio

THE MINISTER OF
INTERNAL AFFAIRS
Guerrino Zanotti

