



LAW no. 38 of 17 March 2005

# REPUBLIC OF SAN MARINO

## TAXATION SYSTEM OF TRUSTS GOVERNED BY THE LAW OF THE REPUBLIC OF SAN MARINO AND ADMINISTERED BY AUTHORISED TRUSTEES

We the Captains Regent

**of the Most Serene Republic of San Marino**

*Are promulgating and ordering the publication of the following law approved by the Great and General Council at the meeting of 17 March 2005.*

### **Art. 1**

*(Definitions)*

1. In this law, the meaning of these terms is as follows:
  - a) "asset" means any right, power, or expectation that may be assessed in economic terms;
  - b) "assets in trust" are the assets held in trust referred to in Article 12 of the law on trusts;
  - c) "law" means this law and its subsequent amendments and supplements;
  - d) "law on trusts" is the law of the Republic of San Marino that regulates the institution of trusts, and its subsequent amendments and supplements;
  - e) "tax period" means each calendar year or, if different, each period of administration of the trust for a period not exceeding twelve months;
  - f) "authorised trustees" are the trustees who have received authorisation to exercise their office pursuant to the law on trusts;
  - g) "normal value" is the value determined:
    - (I) for shares, bonds and other financial assets traded on regulated markets, based on the arithmetic average of prices registered in the last calendar month prior to the reference date;
    - (II) for other shares, units of non-stock companies, shares in the corporate capital of entities other than the companies, in proportion to the value of the economic capital of the company or entity or, for newly established companies or entities, to the total economic value of contributions;
    - (III) for bonds and other financial assets other than those mentioned in the previous points (I) and (II), comparatively to the normal value of securities having similar characteristics negotiated on regulated markets and, in the absence of this, on the basis of other elements that can be determined in an objective manner;
    - (IV) for goods other than those mentioned in the previous points (I), (II) and (III) and for the services, on the basis of the price or consideration on average paid for goods and services of the same kind or similar, in conditions of free competition and the same marketing stage, at the time and in the place where the goods or services were acquired or loaned and, in the absence of this, at the closest time and in the nearest place.

## **Art. 2**

### *(Subjective scope of application)*

1. The law applies, even as an exception with respect to other tax regulations, to trusts established in accordance with the provisions contained in the law on trusts that are residents for tax purposes on the territory of the Republic of San Marino and are not professionally carrying out business activities, or practising arts and other professions.
2. Trusts administered by at least one trustee who has received authorisation to exercise his/her office pursuant to the law on trusts, are considered fiscally resident in the Republic of San Marino.

## **Art. 3**

### *(Trust income tax)*

1. The trust is liable to trust income tax.
2. The rate of trust income tax is the rate provided for in the first paragraph of Article 12 of Law no. 91 of 13 October 1984, as subsequently amended and supplemented.
3. Obligations to declare, settle and pay trust income tax rest on the trustee, who is jointly and severally responsible for the tax liability of the trust.

## **Art. 4**

### *(Reporting on assets and liabilities, and financial and income position of the trust)*

1. For the purposes of the application of this law, the trustee must keep the records of administrative transactions concerning the assets of each trust for which the trustee is appointed. Accounting records must be kept, separately for each trust, in a systematic form and in accordance with the principles of orderly accounting, as these are aimed to monitor analytically the changes in the consistency of the assets in trust.
2. The trustee shall draw up an inventory of the assets in trust, alongside a written report containing the summary of the size and composition of such assets held in trust from the date on which the trust begins to be effective, pursuant to Article 10 of the law on trusts and, subsequently, at least every twelve months, providing also evidence, if appropriate, of amending events that affected the aforesaid assets. The inventory must be drawn up in such a way as to distinguish the capital from income and results derived from the assets in trust.
3. The trustee must draw up a summary of the aforesaid income and results made and cashed by the trust in each tax period.
4. The periodic inventory and the summarising profile of the income and results made and cashed by the trust must be drawn up and signed by the trustee within five months from the date of closure of each tax period.

## **Art. 5**

### *(Determination of the taxable income of the trust)*

1. The taxable income of the trust is determined by applying the ten per cent profitability coefficient to the total amount of income and results, in cash and in kind, derived from the assets in trust, also as compensations for the loss of earnings, made and received in each tax period. The income and results derived from real property located on the territory of the Republic of San Marino are not calculated in the aforementioned amount.
2. However, the profitability coefficient referred to in paragraph 1 is equal to fifty percent when the income and results derived from the assets in trust are constituted by profits, dividends or shares of participation in the profits distributed by companies or entities fiscally resident or at any rate with a domicile in States or on territories with privileged tax regimes, identified by the Decree of the Republic of San Marino no. 2 of 24 January 2005.

3. For income from real property located on the territory of the Republic of San Marino and included among the assets in trust, the provisions on income tax provided for by Law no. 91 of 13 October 1984, as subsequently amended and supplemented, shall apply, with reference to the companies and entities that are legal persons with tax residence on the territory of the Republic of San Marino. The income produced from ownership of rights relating to the above-mentioned real property shall contribute, alongside the income determined pursuant to the previous paragraphs, to form the total income of the trust.

**Art. 6**

*(Tax credit for income generated abroad)*

1. Tax paid abroad as definitive payments on income and results made and received by the trustee on behalf of the trust are tax-deductible, in accordance with the Law no. 55 of 30 April 2004, from income tax payable by the trust to the extent of ten per cent, or fifty percent in the case provided for in Article 5, paragraph 2, of the law.

**Art. 7**

*(Deductions on deeds of allocation of income and results)*

1. At the time of allocation to fiscally non-resident beneficiary owners of income and results derived from the assets in trust, defined by a special decree of the Republic of San Marino to be issued within one hundred and twenty days from the entry into force of the law, the trustee shall withhold fifteen per cent tax on the sums or the normal value of the allocated assets. Within two months of closure of each tax period, the trustee shall communicate to the Tax Authority of the Republic of San Marino the citizenship and residence of the actual economic beneficiary owners of the aforementioned allocations carried out in the course of the same period, as well as the amount of the corresponding deductions withheld.

2. The trustee, however, shall not withhold tax if, within two months from the date of closure of the tax period concerning the allocations of income and results arising from assets in trust referred to in the first paragraph, it also communicates to the Tax Authority of the Republic of San Marino information regarding the beneficiary owners of the above-mentioned allocations, stating their personal details, citizenship, residence and any other data or information requested.

3. In the case of allocations in favour of fiscally resident beneficiary owners of income and results derived from the assets in trust, the trustee is required to communicate to the Tax Authority of the Republic of San Marino, within two months from the date of the closure of the tax period concerning said allocations, information regarding the beneficiary owners of the above-mentioned allocations, stating their personal details, citizenship and any other data or information requested.

4. The rules in the previous paragraphs shall apply, to the extent applicable, also in case of the final distribution of assets in trust, although with exclusive reference to income and results arising from these assets.

5. The procedures for the implementation of the communications referred to in this Article will be identified by a decree of the Republic of San Marino to be issued within one hundred twenty days from the date of entry into force of the law.

6 Payment of tax withholdings referred to in this Article shall take place no later than two months following the date of their application.

### **Art. 8**

*(Submission of tax return for the trusts. Payment of trust income tax. Assessment of trust income tax)*

1. Within five months from closure of each tax period, the trustee shall submit the tax return for each trust for which s/he is appointed as a trustee, and pay trust income tax in accordance with the provisions of the law.
2. The procedures for the submission of the tax return referred to in the above paragraph, and for payment of trust income tax, shall be identified by a decree of the Republic of San Marino to be issued within one hundred and twenty days from the date of entry into force of the law.
3. The mandatory assessment or adjustment deed shall be notified, on pain of forfeiture, by 31 December of the second year following the year in which the tax return to which the assessment refers, was submitted or was supposed to have been submitted. In the case of omitted tax return or lack of validity of the same, the assessment deed must be notified by 31 December of the third year following the year in which the tax return should have been made.

### **Art. 9**

*(Other trust taxes and duties)*

1. No other tax, apart from those provided for by law, is due to any transfer deeds, even without any monies changing hands, made by the grantor in favour of the trustee, or by means of which the assets in trust or the income and results derived from assets in trust are allocated to beneficiary owners, also in the final distribution of the same, with the exception of:
  - a) for the registration fee of the extract of the trust's founding act in the Trust Register, amounting to 500.00 Euro;
  - b) for the annual fee for maintaining registration of the trust in the aforementioned Register, amounting to 250.00 Euro;
  - c) for the fee to register any changes in the further provisions contained in the extract transcribed in the aforesaid Register, amounting to 150,00 Euro;
  - d) for the tax on imports referred to in Law no. 40 of 22 December 1972 as subsequently amended, concerning the import of goods and related services in the Republic of San Marino;
  - e) for the registration fee referred to in Law no. 85 of 29 October 1981 as subsequently amended, concerning the deeds of transfer of real property located in the Republic of San Marino in favour of beneficiary owners who, regardless of whether they are made on payment or free of charge, are nevertheless subject to registration formalities by the payment of the tax provided for in no. 1, Tariff "A", attached to said law as subsequently amended.
2. All deeds relating to the trust, other than those for which the law provides otherwise, are subject to tax-exempt registration.
3. Payment of the taxes referred to in points a) and c) is carried out by the party who has requested the registration of the extract or an amendment of the same. Payment of the tax referred to in point b) shall be made by the trustee by 31 January of each year. Payment of taxes referred to in points d) and e) takes place in the manner and within the time limits set out in the relevant applicable laws.

### **Art. 10**

*(Final provisions)*

1. As regards what is non provided for by law, rules on prescription, assessment and collection, and administrative and criminal sanctions provided for companies and institutions with legal persons fiscally resident on the territory of the Republic of San Marino, shall apply.

**Art. 11**  
*(Entry into force)*

1. This law shall enter into force on the fifth day following its legal publication.

*Done at our Residence, on 22 March 2005/1704 s.F.R.*

THE CAPTAINS REGENT  
*Giuseppe Arzilli - Roberto Raschi*

THE SECRETARY OF STATE  
FOR INTERNAL AFFAIRS  
*Rosa Zafferani*