



REPUBLIC OF SAN MARINO

DELEGATED DECREE no. 18 of 25 January 2019

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

Having regard to Article 65 of Law no. 173 of 24 December 2018;  
Having regard to Decision no. 25 of 25 January 2019 adopted by the Congress of State;  
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;  
Hereby promulgate and order the publication of the following Delegated Decree:

**PROVISIONS ON THE MANDATORY AUTOMATIC EXCHANGE OF INFORMATION IN TAX  
MATTERS**

**Art. 1**  
*(Purposes)*

1. This Decree shall govern the obligations to which multinational enterprises meeting the requirements of Article 3 hereunder are subject with regard to the preparation and annual filing of the Country-by-Country report, in accordance with the procedures laid down in the following articles. Such report shall include the amount of revenue and gross profit, tax paid and accrued, together with other elements indicating an effective business activity according to the models attached to this Decree.

**Art. 2**  
*(Definitions)*

1. For purposes of this Decree the following terms have the following meanings:

- a) "group of enterprises": a collection of resident and non resident companies related through ownership or control, pursuant to Article 2, paragraph 1 letter m) of Law no. 166 of 16 December 2013, such that it is either required to prepare consolidated financial statements for financial reporting purposes under accounting principles applicable in its jurisdiction of tax residence or would be so required if equity interests in any of the enterprises were traded on a regulated market;
- b) "tax residence": an enterprise is deemed to be resident for tax purposes in the territory of the State if it has its registered office or place of effective management in the territory of the State for most of the fiscal year;
- c) "multinational group" or "multinational enterprise group": any group, other than an excluded multinational group, which includes two or more enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction;



## REPUBLIC OF SAN MARINO

- d) "excluded multinational group " or "excluded multinational enterprise group": a multinational enterprise group whose total revenue is less than 750 million Euro, during the fiscal year immediately preceding the reporting year, as reflected in its consolidated financial statements for such preceding fiscal year;
- e) "constituent entity":
- i. any separate business unit of a multinational group that is included in the consolidated financial statements for financial reporting purposes, or would be so included if equity interests in such business unit were traded on a regulated market;
  - ii. any separate business unit that is excluded from the multinational group's consolidated financial statements solely on size or materiality grounds;
  - iii. any permanent establishment of any separate business unit of the multinational group included in (i) or (ii) above required to prepare a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting or internal management control purposes;
- f) "reporting entity": the ultimate parent entity, the surrogate parent entity or any constituent entity of the group referred to in Article 3 of this Decree that is required to file a Country-by-Country report conforming to the requirements in Article 5 in its jurisdiction of tax residence on behalf of the multinational group;
- g) "ultimate parent entity": the constituent entity that meets both of the following criteria:
- i. owns directly or indirectly a sufficient interest in one or more constituent entities of the same group such that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if equity interests in one of the constituent entities of the group were traded on regulated markets;
  - ii. there is no other constituent entity of the multinational group or entity required to prepare consolidated financial statements that owns directly or indirectly an interest in the first mentioned constituent entity;
- h) "designated entity": the constituent entity of the multinational group designated as the sole representative of the ultimate parent company to file the Country-by-Country report when the requirements of Article 3, paragraph 4 are met;
- i) "surrogate parent entity": one constituent entity of the multinational group that has been appointed by such group under Article 3, paragraph 4 as a sole substitute for the ultimate parent entity to file the Country-by-Country report in that constituent entity's jurisdiction of tax residence on behalf of the group, when one or more of the conditions set out in Article 3, paragraph 2 of this Decree applies;
- l) "fiscal year": an annual accounting period with respect to which the ultimate parent entity of the multinational group prepares its consolidated financial statements;
- m) "reporting year": the fiscal year the financial and operational results of which are reflected in the Country-by-Country report defined in Article 5 of this Decree;
- n) "International Agreement": the Multilateral Convention for Mutual Administrative Assistance in Tax Matters, signed by the Republic of San Marino in Jakarta on 21 November 2013 and ratified with Parliamentary Decree no. 115 of 23 July 2015, or any bilateral or multilateral tax convention, or any tax information exchange agreement to which the Republic of San Marino is a party, and that by its terms provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information;
- o) "Qualifying Competent Authority Agreement": an agreement concluded between authorised representatives of those jurisdictions that are parties to an international agreement and that requires the automatic exchange of Country-by-Country reports between the party jurisdictions. With reference to the signatory jurisdictions. The Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) signed on 10 October 2018 by the



## REPUBLIC OF SAN MARINO

Minister of Finance and Budget, Posts, Transport and Economic Planning is equivalent to a Qualifying Competent Authority Agreement (QCAA);

p) "consolidated financial statements": the financial statements of a multinational group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single economic entity;

q) "systemic failure": the situation in which a jurisdiction has a qualifying competent authority agreement in effect with the Republic of San Marino, but has suspended automatic exchange, for reasons other than those that are in accordance with the terms of that agreement, or otherwise persistently failed to automatically provide to the Republic of San Marino Country-by-Country reports in its possession of multinational groups that have constituent entities residing for tax purposes in the territory of the State, or of permanent establishments in the Republic of San Marino of foreign companies;

r) "competent authority": the Central Liaison Office (CLO).

### **Art. 3**

#### *(Filing obligation)*

1. From the fiscal year 2019, each company residing for tax purposes in San Marino, which is the ultimate parent entity of a multinational group, shall file a Country-by-Country report conforming to the requirements of Article 5 with the Tax Office with respect to its reporting year within the deadline specified in Article 6.

2. From the fiscal year 2019, a constituent entity of a multinational group, which is not the ultimate parent entity shall file a Country-by-Country report conforming to the requirements of Article 5 with the Tax Office with respect to the reporting year within the deadline specified in Article 6, if such entity is resident for tax purposes in the territory of the Republic of San Marino and one of the following criteria is satisfied:

a) the ultimate parent entity of a multinational group is not obligated to file a Country-by-Country report in its jurisdiction of tax residence;

b) the jurisdiction in which the ultimate parent entity is resident for tax purposes has a current international agreement to which San Marino is a party but a qualifying competent authority agreement is still not in effect between the jurisdictions by the time specified in Article 6 of this Decree for filing the Country-by-Country report for the reporting year;

c) there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified to the constituent entity residing for tax purposes in San Marino.

3. Where there are more than one constituent entities of the multinational group that are resident for tax purposes in San Marino and one or more of the conditions set out in paragraph 2 above apply, the multinational group may designate one of such constituent entities to file the Country-by-Country report conforming to the requirements of Article 5. Such entity shall be required to notify the Tax Office that the filing is intended to satisfy the filing requirement of all the constituent entities of the group that are resident for tax purposes in San Marino.

4. Notwithstanding the provisions of paragraph 2 of this Article, when one or more of the conditions set out therein apply, a constituent entity of the group shall not be required to file a Country-by-Country report if the multinational group of which it is a constituent entity has made available a Country-by-Country report conforming to the requirements of Article 5 with respect to the relevant fiscal year through a surrogate parent entity that files that Country-by-Country report with its jurisdiction of tax residence within the deadline set out in Article 6 and that satisfies all of the following conditions:

a) the jurisdiction of tax residence of the surrogate parent entity requires filing of Country-by-Country reports conforming to the requirements of Article 5;



## REPUBLIC OF SAN MARINO

- b) the jurisdiction of tax residence of the surrogate parent entity has a qualifying competent authority agreement in effect to which San Marino is a party by the time specified in Article 6 for filing the Country-by-Country report;
- c) the jurisdiction of tax residence of the surrogate parent entity has not notified the San Marino competent authority of a systemic failure;
- d) the jurisdiction of tax residence of the surrogate parent entity has been notified in accordance with paragraph 1 of Article 4 of this Decree by the constituent entity resident for tax purposes in its jurisdiction that it is the surrogate parent entity;
- e) a notification has been provided to the Tax Office in accordance with paragraph 2 of Article 4 of this Decree.

### **Art. 4**

#### *(Notifications)*

1. Within the deadline for submitting the tax return for the reporting year, the constituent entity of the group residing for tax purposes in the Republic of San Marino, which is required to file the Country-by-Country report as ultimate parent entity, surrogate parent entity or designated entity, shall notify the Tax Office thereof.
2. Within the deadline specified in paragraph 1 of this Article, any constituent entity of the group residing for tax purposes in the Republic of San Marino, other than those indicated in said paragraph 1, shall notify the Tax Office of the identity and tax residence of the reporting entity.
3. The notifications referred to in this Article shall be made in the manner indicated in the circular mentioned in Article 5, paragraph 2.

### **Art. 5**

#### *(Country-by-Country report)*

1. A Country-by-Country report with respect to a multinational group shall contain:
  - a) for each jurisdiction in which the multinational enterprise group operates, aggregate information of all constituent entities of the group relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees, and tangible assets other than cash or cash equivalents;
  - b) for each jurisdiction in which the multinational enterprise group operates, an identification of each constituent entity of the multinational group residing therein setting out the jurisdiction of tax residence of such entity, and where different from such jurisdiction of tax residence, the jurisdiction under the laws of which such entity is organised, and the nature of the main business activity or activities of such constituent entity. Permanent establishments shall be listed by making reference to the tax jurisdiction in which they are located, specifying the legal entity to which they belong.
2. The procedures, elements and conditions for the filing of Country-by-Country reports shall be established by means of an implementation circular to be issued by the Tax Office.

### **Art. 6**

#### *(Time for filing)*

1. The Country-by-Country report, based on the models attached to this Decree, shall be filed with the Tax Office by 31 December of the year following the reporting year.



REPUBLIC OF SAN MARINO

**Art. 7**

*(Exchange of information)*

1. By 31 March of the second year following the reporting year, the competent authority shall, using the template attached to this Decree, transmit to any other jurisdiction with which a qualifying agreement is in force the information referred to in Article 5 of this Decree relating to constituent entities of the group, which are resident or have a permanent establishment in that other jurisdiction.
2. For the first reporting year, notwithstanding the first paragraph of this Article, the deadline shall be 30 June 2021.

**Art. 8**

*(Use and Confidentiality of Country-by-Country report information)*

1. The Tax Office shall use the Country-by-Country report for purposes of assessing high-level transfer pricing risks and other base erosion and profit shifting related risks, and where appropriate for economic and statistical analysis.
2. Transfer pricing adjustments by the Tax Office shall not be based on the information referred to in Article 5 and exchanged pursuant to Article 7 of this Decree.
3. By way of derogation from the provisions of paragraph 2 of this Article, the information referred to in Article 5 of this Decree may constitute elements for further investigation concerning transfer pricing agreements or during tax examinations, following which tax bases may be appropriately adjusted.
4. The Tax Office and the competent authority, as well as all parties involved in the transmission and processing of data, shall preserve the confidentiality of the information contained in the Country-by-Country report at least to the same extent that would apply if such information were provided under the provisions of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters.

**Art. 9**

*(Administrative pecuniary sanctions and notification of violations)*

1. If the report referred to in Article 5 is not filed within the deadline indicated in Article 6 or if incomplete or incorrect data are filed, the administrative pecuniary sanction from a minimum of 10,000 Euro to a maximum of 50,000 Euro shall be applied.
2. The Tax Office shall be responsible for establishing and notifying violations, as well as for the application of sanctions.
3. The establishment of violations shall be time-barred after five years following the date on which the violation was committed.
4. The administrative pecuniary sanction shall be settled by paying to the Tax Office the amount due within the deadline indicated in the payment order, pursuant to Article 14 of Law no. 68 of 28 June 1989.
5. The possibility of settling the sanction through voluntary settlement shall be exercised by paying an amount equal to half the sanction applied within twenty days following notification of the measure.



REPUBLIC OF SAN MARINO

6. Within the deadline specified in paragraph 5 of this Article, an appeal may be lodged to the Administrative Judge of Appeal against the sanction measure, pursuant to Article 34 of Law no. 68 of 28 June 1989.

7. If the sanctioned party fails to pay the sanction within the deadline, the Tax Office shall initiate the compulsory collection procedure provided for by Law no. 70 of 25 May 2004.

8. The compulsory collection procedure shall start no earlier than six months following the notification of the sanction and the amount to be paid shall be twice the original amount of the sanction.

9. The administrative pecuniary sanctions defined by this Decree shall be included in the list annually proposed by the Administrative Judge of Appeal pursuant to Article 32 of Law no. 68 of 28 June 1989.

**Art. 10**

*(Transitional rule - Entry into force)*

1. Pending the definition of the requirements for the preparation of the consolidated financial statement, constituent entities of a group that are resident for tax purposes in the territory as defined in Article 2 shall be required to file the Country-by-Country report when, according to current legislation, the aggregated revenue of the constituent entities of the same group related to the previous year are equal to or greater than 750 million Euro.





REPUBLIC OF SAN MARINO

Table 2 – List of all the Constituent Entities of the MNE group included in each aggregation per tax jurisdiction

| Name of the MNE group:<br>Fiscal year concerned: |   |         |        |   |                          |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|--|---|---------|--------|---|--------------------------|---|---------------------------|-----------------------------|----------------------------------|--|--|------------------------|------------------------------|-----------|--|---------|--------------------|
| Tax Jurisdiction                                 | Constituent Entities Resident in the Tax Jurisdiction |         |        | Tax Jurisdiction of Organisation or Incorporation if Different from Tax Jurisdiction of Residence | Main activities          |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  | Business Name   | Address | T.I.N. |   | Research and Development | Holding or Managing Intellectual Property | Purchasing or Procurement | Manufacturing or Production | Sales, Marketing or Distribution | Administrative, Management or Support Services | Provision of Services to Unrelated Parties | Internal Group Finance | Regulated Financial Services | Insurance | Holding Shares or Other Equity instruments | Dormant | Other <sup>1</sup> |
|  | 1.  |         |        |   |                          |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  | 2.  |         |        |   |                          |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  | 3.  |         |        |   |                          |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  | 1.  |         |        |   |                          |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  | 2.  |         |        |   |                          |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |
|  | 3.  |         |        |   |                          |   |                           |                             |                                  |  |  |                        |                              |           |  |         |                    |

<sup>1</sup> Please specify the nature of the activity of the Constituent Entity in the “Additional Information” section.





REPUBLIC OF SAN MARINO

Table 3 – Additional Information

Name of the MNE group:  
Fiscal year concerned:

*Please include any further brief information or explanation you consider necessary or that would facilitate the understanding of the compulsory information provided in the Country-by-Country Report.*