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**Switzerland
and
San Marino**

Agreement between the Swiss Confederation and the Republic of San Marino for the exchange of information on tax matters. Rome, 16 May 2014

Entry into force: *20 July 2015 by notification, in accordance with article 11*

Authentic texts: *English, German and Italian*

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**Suisse
et
Saint-Marin**

Accord entre la Confédération suisse et la République de Saint-Marin sur l'échange de renseignements en matière fiscale. Rome, 16 mai 2014

Entrée en vigueur : *20 juillet 2015 par notification, conformément à l'article 11*

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[ENGLISH TEXT – TEXTE ANGLAIS]

**AGREEMENT BETWEEN
THE SWISS CONFEDERATION AND THE REPUBLIC OF SAN MARINO
FOR THE EXCHANGE OF INFORMATION ON TAX MATTERS**

The Swiss Federal Council and the Government of the Republic of San Marino, desiring to facilitate the exchange of information with respect to taxes have agreed as follows:

**Article 1
Object and Scope of the Agreement**

1. The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement.
2. 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.
3. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 7.
4. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly delay or prevent effective exchange of information.

**Article 2
Jurisdiction**

The requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.

**Article 3
Taxes Covered**

1. The taxes which are the subject of this Agreement are:
 - a) in Switzerland,
 - i) the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income);
 - ii) the federal, cantonal and communal taxes on capital;
 - iii) the cantonal and communal inheritance and gift taxes;

- b) in San Marino,
the general income tax which is levied:
 - i) on individuals;
 - ii) on bodies corporate and proprietorships;even if collected through a withholding tax.

2. This Agreement shall apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the competent authorities of the Contracting Parties so agree. The competent authorities of the Contracting Parties shall notify each other in writing of any substantial changes in their laws which may affect their obligations pursuant to this Agreement.

Article 4 **Definitions**

- 1. For the purposes of this Agreement, unless otherwise defined:
 - a) the term “Contracting Party” means Switzerland or San Marino as the context requires; “Switzerland” means the territory of the Swiss Confederation as defined by its laws in accordance with international law; the term “San Marino” means the territory of the Republic of San Marino, including any other area within which the Republic of San Marino, in accordance with international law, exercises sovereign rights or jurisdiction;
 - b) the term “competent authority” means,
 - i) in the case of Switzerland, the Head of the Federal Department of Finance or his authorised representative;
 - ii) in the case of San Marino, the Central Liaison Office (CLO);
 - c) the term “person” includes an individual, a company and any other body of persons;
 - d) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - e) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
 - f) the term “principal class of shares” means the class or classes of shares representing a majority of the capital or of the voting power of the company;
 - g) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
 - h) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of its legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
 - i) the term “tax” means any tax to which the Agreement applies;

- j) the term “requesting Party” means the Contracting Party requesting information;
- k) the term “requested Party” means the Contracting Party requested to provide information;
- l) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information; and
- m) the term “information” means any fact, statement or record in any form whatever.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means within its own territory, except where recourse to such means would give rise to disproportionate difficulty.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authorities, for the purposes specified in Article 1 and in accordance with Article 2 of this Agreement, have the authority to obtain and provide upon request:

- a) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees;
- b) information regarding the ownership of companies, partnerships, trusts, foundations and other persons, including ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries. Further, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective

investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. The competent authority of the requesting Party shall provide, in writing, the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

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

6. The competent authority of the requested Party shall forward the requested information as promptly as possible to the requesting Party. To ensure a prompt response, the competent authority of the requested Party shall:

- a) confirm receipt of a request in writing to the competent authority of the requesting Party and shall notify the competent authority of the requesting Party of deficiencies in the request, if any, within 60 days of the receipt of the request;
- b) if the competent authority of the requested Party has been unable to obtain and provide the information within 90 days of receipt of the request, including if it encounters obstacles in furnishing the information or it refuses to furnish the information, it shall immediately inform the requesting Party, explaining the reason for its inability, the nature of the obstacles or the reasons for its refusal.