



SOCIEDADE DE ADVOGADOS, SP,RL  
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# NEWSLETTER

## INCOME DERIVED FROM CRIPTOASSETS IN THE CONTEXT OF THE PORTUGUESE PIT (2023)

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### SUMMARY

With the 2023 State Budget, the Government intends to move forward with a framework for taxation of income from cryptoactive assets, more specifically by including this type of income in the IRS, proposing that it be expressly provided for under Categories B (business and professional income), Category E (investment income), and Category G (asset increases).

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## THE CONCEPT OF “CRYPTOASSET”

The 2023 State Budget introduces a legal concept of cryptoasset, to be included in the Personal Income Tax Code ("PIT Code"), with reference to the Regulation on Cryptoasset Markets (MiCA).

We then find in said Code the conceptualization of the term cryptoasset in the following terms: "It is considered a cryptoasset any digital representation of value or rights that can be transferred or stored electronically using distributed register or similar technology."

Similarly, the normative precept that conceptualizes the term cryptoasset excludes some realities from the concept of cryptoasset: "the unique cryptoasset and not fungible with other cryptoasset". Thus, there is an intention to exclude from taxation the realities identified as NTF's ("Non-fungible tokens").

In the scope of the PIT, a tax incidence is foreseen within three distinct income categories: Category B (business and professional income), Category E (investment income) and Category G (asset increases).

## THE TAXATION UNDER CATEGORY B (BUSINESS AND PROFESSIONAL INCOME)

Within the scope of Category B, income from "cryptoasset issuance operations, including mining, or the validation of cryptoasset transactions through consensus mechanisms" will now be considered as income derived from a commercial and industrial activity.

The general and progressive PIT rates should be applied to this income deriving from business activity aimed at these types of operations, as is already the case with the rules applicable to Category B income. The 0.15 coefficient will be applicable to this income, insofar falls under the simplified taxation regime.

By applying the 0.15 coefficient, 85% of the income obtained in this type of operations is not taxed under Category B.

Additionally, considering the environmental impact associated with the mining activity, and as recommended by the European Commission in its Communication: "Digitizing the Energy System - An EU Action Plan", it is proposed to penalize this activity, in the context of simplified regimes, by providing for an applicable tax coefficient of 0.95.

We also highlight the possibility of applying this other coefficient of 0.95, in the case of capital income or capital gains resulting from treasury operations and/or financial investments in cryptoassets.

Finally, in terms of the moment of taxation, income from cryptoassets is considered to be earned at the moment of their sale.

It is also foreseen that the loss of status as resident in the national territory, as well as the termination of activity, are equated to a disposal of cryptoassets for consideration.

Thus, Portugal integrates for the first time in its PIT Code an "exit tax" mechanism, under which taxpayers will be taxed if they wish to change their tax residence to another jurisdiction, as described.

## THE TAXATION UNDER CATEGORY G (CAPITAL GAINS)

The 2023 State Budget also introduced a new item in the PIT Code, under which the concept of capital gain is unfolded, now also considering as such the income from the onerous sale of cryptoassets that do not constitute securities. A special rate of 28% is applicable to this type of income.

It is important to point out, however, that a tax exemption is foreseen for this type of income, under which it is exempted from taxation income from the onerous sale of cryptoassets when they result from cryptoassets held for a period equal to or greater than 365 days.

Regarding this topic, it is important to highlight the transitional provision that is introduced and under which the counting of the period of holding cryptoassets for the purposes of levying the generated capital gain within PIT begins even before the entry into force of this diploma.

Indeed, the legislator intends that the year 2023 to be considered as the period for holding cryptoassets, even though this began before the law. It is important to point out, again, that when the cryptoasset is held for a period longer than one year, the legislator applies the exemption of the capital gain arising from this income.

Within this topic, it is also foreseen that the negative balance calculated in a given tax year, related to operations resulting from the onerous sale of cryptoassets, may be carried forward for the following five years, when the taxable person opts for aggregation.

With regard to the calculation of the gain arising from the onerous disposal of cryptoassets, such gain shall be determined “by the difference between the realization value and the acquisition value, net of the part qualified as investment income”, being considered to be the value of the sale of cryptoassets the market value on the date of the disposal.

The possibility of deducting the expenses inherent to the acquisition and disposal of cryptoassets, for the purpose of calculating the capital gain, is also accounted for.

Still with regard to anti-abuse rules, it is proposed that residents in tax havens cannot deduct possible losses with cryptoassets.

Lastly, this new regime promotes the integration of the “first in first out” (FIFO) rule, from which the yield determination method results, in a logic of coherence with other realities of securities.

### **THE TAXATION UNDER CATEGORY E (INVESTMENT INCOME)**

As for income resulting from cryptoassets, it is also important to highlight the rule included in the regime

laid down for investment income (Category E).

In regard to the forms of remuneration resulting from operations related to cryptoassets (e.g., delegated staking or off-chain) it is envisaged to categorize them as investment income (Category E).

In the latter case, the taxation that falls on this income is of 28%, when the taxpayer resident here for tax purposes does not opt for the aggregation of these income.

Additionally, with regard to investment income derived from cryptoassets, the waiver of withholding tax is established, considering the specificities of the product and its nature.

### **THE COMMUNICATION OF THE OPERATIONS**

As a complement and for inspection purposes, a new declarative obligation is added, which applies to natural and legal persons, organizations and other entities without legal personality that provide custody and management services for cryptocurrency on behalf of third parties or who manage one or more cryptocurrency trading platforms.

Thus, these entities will have the obligation to communicate to the Tax Administration, by the end of January of each year, the operations carried out with their intervention, in relation to cryptoassets, in respect of each taxable person, through the delivery of an official model to be approved for this purpose.

## CONCLUSIONS

With the 2023 State Budget, the Government intends to move forward with a framework for the taxation of income from cryptoassets, more specifically, proceeding with the integration, as part of the PIT of this type of income, proposing that they be expressly provided for in the scope of Categories B (business and professional income), Category E (investment income), and Category G (asset increases).

It is relevant to mention that it will now be mandatory to communicate to the Tax Administration, by the end of January of each year, the operations carried out with its intervention on all persons, natural or legal, organizations and other entities without legal personality, which provide custody and management services for cryptoassets on behalf of third parties, or which manage one or more cryptoasset trading platforms.

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