



Tax & Business Lawyers

NEWSLETTER

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THE TAXATION OF CRYPTOCURRENCY INCOME UNDER THE PERSONAL INCOME TAX

In 2023, the Portuguese government implemented a series of legislative changes regarding the taxation of crypto-assets, which has made Portugal a more "tax-friendly" destination for investors in these types of assets. This new legislation has attracted a lot of interest from those looking to apply this regime. The purpose of this document is to introduce the specific rules currently in effect for the taxation of cryptocurrencies in Portugal.

Private Team



THE "CRYPTO-ASSET" DEFINITION

The [2023 State Budget](#) introduced a legal concept of crypto-assets into the Personal Income Tax Code ("*Código do IRS*"), referencing the Regulation on Markets in Crypto-assets (MiCA).

As a result, the code now includes the following conceptualization of the term crypto-asset: "*A crypto-asset is considered to be any digital representation of value or rights that can be transferred or stored electronically using distributed ledger technology or a similar technology.*"

Similarly, the legal provision that defines the term also excludes certain items from the concept of a crypto-asset: "*unique and non-fungible crypto-assets.*" This indicates an intention to exclude NFTs (Non-Fungible Tokens) from taxation.

For the purpose of Personal Income Tax, a tax incidence exists across three distinct income categories: Category B (business and professional income), Category E (capital income), and Category G (capital gains).

TAXATION UNDER CATEGORY B (BUSINESS AND PROFESSIONAL INCOME)

Under Category B, income derived from a commercial or industrial activity includes the "*operations for the issuance of crypto-assets, including mining, or the validation of crypto-asset transactions through consensus mechanisms.*"

This income from business activities is subject to the general progressive tax rates of the IRS Code. For income that qualifies for the simplified tax regime, a coefficient of 0,15 is applied. The application of this coefficient means that 85% of the income generated from these types of operations is not taxed under Category B.

Additionally, considering the environmental impact of mining, and as recommended by the European Commission in its "Digitalizing the energy system" action plan, this activity is penalized within the simplified regimes. A higher tax coefficient of 0,95 is applied in this instance.

We believe that the application of this same 0,95 coefficient could also be considered for capital income or capital gains resulting from treasury operations and/or financial investments in crypto assets.

Finally, in terms of when the tax is levied, income from crypto-assets is considered to be obtained at the moment of their onerous disposal.

TAXATION UNDER CATEGORY E (CAPITAL INCOME)

Regarding the proceeds from crypto-assets, it is important to highlight the rule included in the capital income regime (Category E).

Remuneration from operations related to crypto-assets (e.g., delegated or off-chain staking) is categorized as capital income under this category. This income will be taxed at a flat rate of 28%, provided the tax-resident taxpayer does not opt to aggregate their income.

Additionally, concerning capital income derived from crypto-assets, a withholding tax exemption has been established, considering the specific nature of this product.

Finally, it is worth mentioning that interest paid to a lender in cryptocurrency will only be taxed under Category G when it is exchanged for fiat currency. The acquisition date and value for tax purposes should be considered as the date the interest was received and its corresponding value in fiat currency.

TAXATION UNDER CATEGORY G (CAPITAL GAINS)

The [2023 State Budget](#) also introduced a new provision in the Personal Income Tax Code, which expands the concept of capital gains. It now includes income from the onerous disposal of crypto-assets that are not considered securities. This type of income is subject to a flat, special tax rate of 28%.

It is important to note, however, that an exemption has been introduced for this type of income. Income from the onerous disposal of crypto-assets is exempt from taxation when the assets have been held for a period of 365 days or more.

Regarding this topic, it is important to highlight the approved transitional provision, which states that the holding period for crypto-assets, for the purpose of calculating capital gains tax, begins even before the current legislation came into force.

The legislator intends for the holding period of crypto-assets to be considered from the start of 2023, even if it began before the [2023 State Budget](#) took effect. This again emphasizes that when a crypto-asset is held for more than a year, the capital gains resulting from its disposal are exempt.

In the context of capital gains, a negative balance (loss) from the onerous disposal of crypto-assets in a given year can be carried forward for the next five years, provided the taxpayer chooses to aggregate the income.

The capital gain from the onerous disposal of crypto-assets is calculated as "*the difference between the sale value and the acquisition value, net of the part qualified as capital income.*"

The sale value of the crypto-assets is considered to be the market value on the date of disposal. It is also possible to deduct expenses related to the acquisition and disposal of the crypto-assets for the purpose of calculating the capital gain.

Furthermore, and as part of the anti-abuse rules, it should be noted that residents in tax havens cannot deduct any losses from crypto-assets.

This regime also promotes the "first in first out" (FIFO) rule for determining the income calculation method, consistent with the rules for other securities.

Finally, the loss of resident status in Portugal, as well as the cessation of a business activity, are considered equivalent to an onerous disposal of crypto-assets, which is taxable under Category G. This means that for the first time, Portugal's Personal Income Tax Code includes an "exit tax" under which taxpayers will be taxed upon changing their fiscal residence from Portugal.

REPORTING OF CRYPTO-ASSET OPERATIONS

To complement the system and for tax inspection purposes, there is a reporting obligation for individuals, legal entities, organisations, and other entities without legal personality. This applies to those who provide crypto-asset custody and administration services on behalf of third parties or who manage one or more crypto-asset trading platforms.

These entities are required to report to the Tax Administration by the end of January each year, detailing the crypto-asset operations they were involved in for each taxpayer. This is done by submitting an official form to be approved for this purpose.

Income from the onerous disposal of crypto-assets is exempt from taxation when the assets have been held for a period of 365 days or more.

CONCLUSIONS

Regardless of whether an individual is a tax resident of Portugal or not, the classification of their income can be complex. Seeking specialized advice and assistance is highly recommended to take advantage of the tax benefits available to cryptocurrency investors under Portugal's current legal framework.

Accurately classifying income and correctly and promptly reporting it on the Model 3 Personal Income Tax return is of the utmost importance. This ensures fair and appropriate taxation, which highlights the need for a precise and proper completion of the Model 3 return.

A final note concerns a change to the Personal Income Tax Code, added by [Law No. 82/2023 of December 29](#), which is now in effect. This change requires that assets held in countries, territories, or regions with a clearly more favourable tax regime, as well as crypto-assets, must be reported on the Model 3 Personal Income Tax return.

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