



## THE BEGINNING OF TAXATION ON DIGITAL INCOME

### STATE BUDGET FOR 2023 AND THE TAXATION OF INCOME DERIVED FROM CRYPTOACTIVE ASSETS

The State Budget for 2023, approved by Law 24-D/2022, of 30 December, introduced in Portugal the taxation of cryptoactive assets under Income and Property Tax.

Under the Law, a cryptoactive is defined as any digital representation of value or rights that can be transferred or stored electronically using distributed ledger or similar technology. Unique cryptoactive assets that are not fungible with other cryptoactive assets (NFTs) are expressly excluded from this definition.

#### PERSONAL INCOME TAX - IRS

##### Category B: Business or Professional Income

Income resulting from operations related to the issuance of cryptoactive assets, including mining, or validation of cryptoactive transactions through consensus mechanisms, are considered as business or professional income and, as such, taxed according to category B rules.

Under the simplified regime, the determination of taxable income is obtained by applying the following coefficients:

- 0.15 to cryptoactive transactions;
- 0.95 to income from cryptoactive mining.

Cryptoactive mining is understood as the operations of validation and inclusion of new Blockchain transactions.

For all due purposes, income is deemed to be earned at the time of the onerous disposal of cryptoactive assets.

For tax purposes, the assignment of activity, as well as the loss of the quality of resident in the Portuguese territory are equivalent to a disposal for consideration and, as such, eventually subject to taxation.

##### Category E: Capital Income

Remuneration derived from cryptoactive transactions (e.g. staking), which do not fall under Category B and Category G of the IRS Code, are considered as capital income and, therefore, subject to taxation under Category E.

However, where remuneration takes the form of crypto-assets, it is taxed as capital gains upon disposal of the crypto-assets received and taking into account the acquisition value of the crypto-assets disposed of.



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## Category G: Capital Gains

The gains resulting from the onerous alienation of cryptoactive assets which do not constitute securities, are now considered for capital gains purposes and, therefore, taxed under IRS according to Category G.

The referred gains are taxed at an autonomous rate of 28%, without prejudice to the option for aggregation, except when the following situations are verified, in which there is a tax exclusion:

- Gains are derived from cryptoactive assets held for a period of one (1) year or more. The holding period of cryptoactive assets acquired before 01.01.2023 is taken into account for counting purposes.
- crypto-to-crypto transactions, i.e. where the consideration for the disposal of cryptoactive assets also takes the form of cryptoactive assets. In such cases, the cryptoactive assets received are attributed the acquisition value of the cryptoactive assets delivered.

These exclusions from taxation do not apply to income earned by taxpayers or due to any person or entity when they are not resident for tax purposes in another Member State of the European Union or the European Economic Area or in another State or jurisdiction with which an international double taxation treaty, bilateral or multilateral agreement providing for the exchange of information for tax purposes is in force.

### Communication of Transactions with Cryptoactive Securities to the Tax Authority

Entities providing cryptoactive assets custody and administration services on behalf of third parties or managing one or more cryptoactive assets trading platforms, shall report to the Tax Authority, until the end of January of each year, for each taxpayer, the operations carried out with their intervention, with cryptoactive assets.

## CORPORATE INCOME TAX - IRC

In terms of IRC and following on from what has already been mentioned in terms of IRS, the following coefficients are now applicable for the purposes of determining the taxable amount and the simplified regime:

- 0.15 to cryptoactive transactions;
- 0.95 to income from cryptoactive mining.

## Stamp Duty

With the new tax regime, free transfers of cryptoactive assets will now be subject to Stamp Duty at a rate of 10%.

For this, it is necessary to take into consideration, cumulatively, the territoriality rules introduced, which are considered to be verified when the crypto-assets are deposited in institutions having their registered office, effective management or permanent establishment in national territory, or, in the absence of crypto-assets

deposited in Portugal, in successions due to death, when the transferor is domiciled in national territory, and in other free transfers, when the beneficiary is domiciled in Portugal.

On the other hand, this new regime has added item no. 30 to the General Stamp Duty Table, and this time it started taxing at a rate of 4% the commissions and consideration charged by or with the intermediation of cryptoactive service providers. In these cases, the tax will be due by the service provider, even though the burden of the tax occurs at the level of the investor / beneficiary, who is the holder of the economic interest.

For the purposes of determining the taxable value of cryptoactive assets, the following rules shall be considered in the following order:

- a) By application of specific rules provided for in this Code;
- b) At the value of the official quotation, if any;
- c) At the value declared by the spouse or beneficiary, which should, as far as possible, approximate the market value. In these cases, when the Tax Authority justifiably considers that there may be divergence between the declared value and the market value, it has the option to determine the taxable value based on the market value.

## MUNICIPAL TAX ON REAL ESTATE TRANSFERS - IMT

In terms of IMT, it is now foreseen that when real estate is acquired with cryptoactive assets, the respective value will be considered for the purposes of determining the IMT taxable value applicable to the transfer, to be determined under the Stamp Duty Code.

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