



CRYPTOACTIVES AND STATE BUDGET 2023

The State Budget for 2023, presents several amendments to the Personal Income Tax Code (CIRS) and the Stamp Duty Code (CIS), providing for the taxation of transactions related to cryptoactive assets, which until now, in most cases, were not taxed.

Until now, in the absence of specific legislation, Portugal was considered a crypto-friendly jurisdiction as cryptoactive transactions were, as a rule, not subject to taxation. However, it is important to note that the non-existence of taxation was a myth since there were concrete situations - namely when falling under B category of IRS - in which cryptoactive transactions were taxed.

The taxation of these (crypto)assets had long been anticipated in view of the growing popularisation of these assets and the proclaimed increase in wealth of some investors.

The first major novelty concerns the fact that, finally, a concept of crypto-asset is introduced in the Law. This concept, in fact, goes beyond the mere digital currency or cryptocurrency.

It is then considered cryptoactive:

“For the purposes of this Code, any digital representation of value or rights that can be transferred or stored electronically using distributed repository or similar technology is considered cryptoactive.”

In terms of IRS, "operations related to the issuance of cryptoactive assets, including the mining or validation of cryptoactive transactions through consensus mechanisms" are now expressly considered commercial activities and therefore fall under B Category.

Thus, all those who, in an organised manner and with a view to profit, carry out any of the said activities will be subject to tax.

In this scope, the taxation regimes already foreseen will be applicable, and if the taxpayer falls under the simplified taxation regime, the applicable coefficient will be 0.15.

In cases where taxpayers sell, with a gain, cryptoactive assets that do not constitute securities, the income received will be classified as an increase in assets (Capital Gains), so it will be subject to taxation at a rate of 28%.

In effect, according to the provisions of article 10 of the CIRS, gains obtained that are not considered business and professional income but result from the disposal of cryptoactive assets (which do not constitute securities) will be considered capital gains. In these situations, taxable income is made up of the difference between the realisation value and the acquisition value, net of the part qualified as capital income, if any. It should be noted, that in this “G” category (capital gains) only gains resulting from the disposal of cryptoactive assets held for a period of 365 days or less are subject to taxation.

Therefore, it can be concluded that, as long as the crypto-assets are held for a period exceeding 365 days, and as long as the income does not fall under B category of IRS, the exclusion from taxation of gains resulting from the disposal for consideration of these assets is effectively maintained.

As regards Stamp Duty, gifts of cryptoactive assets (as defined in the IRS Code) will now be subject to this tax, at a rate of 10%. It should be noted that, also in this context, the existing subjective exemptions will apply, namely when the beneficiary of the free transfer is the spouse, ascendant or descendant. Financial intermediaries are now subject to this tax.

In summary, there is an equivalence to traditional financial operations and the commissions and consideration charged by or with the intermediation of cryptoactive service providers are subject to a 4% tax on the amount charged.

Similarly, several declarative obligations directly applicable to transactions with digital assets are established - the obligation to communicate to the Tax and Customs Authority, until the end of January of each year, the transactions carried out with the intervention of each taxpayer.



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