

ARE US PERSONS, PORTUGUESE NON HABITUAL RESIDENTS, NOW TAXED ON CRYPTO ASSETS?

The Portuguese State Budget for 2023 has introduced the effective taxation of crypto assets transactions in Portugal.

The income obtained from crypto assets will be qualified as Capital Gains (CAT G) and subject to a 28% tax rate. Nonetheless, we must emphasize that it has also been foreseeing an exemption in case the crypto-active is held for 365 days or more.

Should the income be related to operations concerning the issuance of crypto-active assets, including the mining or validation of crypto-active transactions through consensus mechanisms, it will also be taxable as self-employment income and subject to the usual progressive tax rates of up to 48%.

Finally, we point out that if the crypto assets should be used as a “currency”, the underlying transaction will keep its nature, and the crypto assets will be considered just as a payment method.

For those taxpayers for whom the NHR status is granted in Portugal, the taxation will follow the nature of the income.

Regarding the capital gains on the selling of crypto assets, the general rule is that under the OCDE guidelines, the power to tax is granted to the residency jurisdiction. Hence, the NHR regime, as a general rule, does not grant any benefits.

However, in what specifically concerns the US citizens, and if the income is deemed a source in the US, one must bear in mind that the US has included in the protocol annexed to the double tax treaty the so-called “safeguard clause”. Under this rule, the US has the right to tax its citizens as if there is no double tax treaty. Therefore, in these specific circumstances, we believe that is arguable that the capital gains on the crypto assets selling should be exempt under the NHR. Please be advised that the tax authorities may understand differently and levy taxes on these capital gains.

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