

**End
of
Portugal's crypto tax heaven**

As anything in life, what is really good ends up quickly. So, it happened with Crypto in Portugal!

For many years, Portugal was known as Tax Heaven and a very friendly country for Crypto holders, mainly because of lack of legislation on such matter. However this situation has changed and now Crypto has a tax regime covered by the "CIRS" (Individual Income Tax Code) that came into force on 1st of January 2023.

The new law defines cryptoactive as "any digital representation of value or rights that can be transferred or electronically stored using distributed recording or similar technology".

According to "CIRS" (Individual Income Tax Code), income from Crypto can follow under 3 different categories of income, ie, self-employment (Category B), capital (Category E) and capital gains (Category G).

Category B

Any operations related to the crypto assets emission, including mining, or the validation of crypto transactions through consensus mechanisms are considered a business activity and will be treated as a self-employment income.

Adopting the simplified regime, the self employed will benefit from:

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a 5% fixed presumption of expenses to be offset against the income derived from mining operations;

a 85% presumed expenses on the sale of crypto assets;

So, if the individual invoices, per example, 10.000€/ year, it will be taxed on 9500€ in the scenario predicted on a), or 1500€ in the scenario predicted on b).

Then the taxable income will be taxed at progressive tax rates of between 14.5% and 53%, unless the individual benefits from the non-habitual tax regime.

The cessation of activity as a self-employed or stopping to be a resident of Portugal is considered sale of Crypto and consequently, any of these operations will create taxation.

To not forget that if the individual invoices more than 13500€, he will subject to vat on the following year. Therefore, the invoice will be composed by income plus vat at 23%.

Category E

Any form of Remuneration received from investments in Crypto will be taxed at a flat rate of 28%.

This is a default rule to be applicable when the income does not fall under another Category (employment, self-employment or gains).

Category G

The gain with sale of Cryptoatives is now taxed, when Crypto is owned for less than 365 days.

Under this Category, gains will be assessed by the difference between its market value and its acquisition value determined through FIFO ("first-in, first-out" rule), ie, the Crypto sold will be the one held for a longer period.

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It will be taxed at a flat rate of 28% on the capital gains or at progressive tax rates of between 14.5% and 53%, depending on the choice of the tax payer or if he is resident Portugal or not.

The 365 days exemption is not applicable when the capital gains are earned by a taxable person or paid by an entity residing outside the European Economic Area (“EEA”) or in another State or jurisdiction which doesn’t have a Double Tax Agreement (“DTA”) or another multilateral or bilateral agreement that prescribes the exchange of information for tax purposes.

When Crypto exchanges occurs, e.g., under Category G or B, taxation will be postponed to the exact date it is sold.

Losses will be offset against the gains, except if incurred in Tax Havens.

Stamp Duty

The gift or inheritance of Crypto will be taxed at 10% in Stamp Duty, unless if it occurs between spouses or parents and children or life partners. In this last case, no stamp duty is due.

On the daily life, 4% of stamp duty will be charged together with the fees charged by the providers on the daily operations or with the intermediation of Crypto service providers based on the value, and when operations take place in Portugal.

Although, this new tax regime will work in parallel with any Double Taxation Agreement that can be applicable to the case in question, as well as with the NHR regime or the “Programa Regressar”, it will be important to qualify the type of income / investment, its source and if there were any taxes paid on the country of origin, and check if any possible gains received by a tax resident in Portugal will benefit from non-habitual resident (“NHR”) regime, or if can be include on the beneficial taxation of the “Programa Regressar”.

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Please feel free to contact, in case you want to know more.

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