

TAXATION OF CRYPTO INCOME: NEWS FROM PORTUGAL

NEWS FROM PORTUGAL

The Portuguese Government has recently announced that it is currently analysing the taxation of income from cryptocurrencies under the Personal Income Tax (PIT), with no expected date for the presentation of the legislative measures to be implemented on this matter.

It is important to remember that in Portugal there has been no taxation of income from cryptocurrencies only due to the gap in tax legislation that has not allowed such taxation (in most cases).

Much has been written about “tax exemptions” on income obtained using virtual currencies, mainly based on the content of the Binding Information of the Tax Authority issued in 2016.

We should point out that the aforementioned binding information, besides only binding the Tax Authority in the specific case and for a limited period of time, deals exclusively with income from the purchase and sale of cryptocurrencies.

We believe it is relevant to note that reality has largely overcome the reductionist idea that the only income that can be generated is related to the purchase and sale of virtual currencies. We have seen the emergence of new types of virtual assets (even indexed to the value of non-virtual currencies) and new contracts associated with their use that generate the most diverse types of income.

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PORTUGUESE
GOVERNMENT IS
STUDYING
CRYPTO TAX

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We believe that, in light of the legislation currently in force, several situations involving cryptocurrencies are likely to generate taxable income in Portugal.

Due to the urgency in clarifying the applicable rules we welcome the law amendments for the sake of legal certainty, hoping the regime will be attractive, objective and steady.

We remind you of the general features of the Binding Information referred to above:

The Portuguese Tax Administration first noted that crypto-currencies are not technically considered as “currencies” as they have neither legal tender nor power of release in Portugal, but can however be exchanged, benefit from real money from specialised companies, and the value in relation to real money is determined by the online search for crypto-currencies.

In view of this specific type of income – income from gains (capital gains) from the purchase and sale of virtual currency units -, the Portuguese Tax Administration has considered that it could potentially be included in three separate categories of income tax...

- **Category G (income derived from capital gains)**

The legislator, when constructing this provision, has used a closed typification, i.e. taxation only applies to gains arising from facts specifically described in the law. The Tax Authority considers that “in the case of crypto-money, we are not dealing with shares, and it does not constitute a right to receive an amount.

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On the other hand, the valuation of the crypto-money is not based on any underlying asset, its value is only determined by the law of supply and demand (and the creation of a crypto-money according to its use), which is why it cannot be considered as a financial derivative and, in view of the definition of a security given in Article 1 of the Securities Code, the crypto-money is not a reality that can, today, be included in the definition of securities". The Tax Authorities have concluded that income derived from gains made on the purchase and sale of units in virtual currency does not constitute a taxable reality within the scope of category G.

- **Category E (capital income)**

As regards to category E, the Tax Authority notes that the tax rule is openly constructed (as indicated in the point concerning the sale of gold above), indicating a general rule and merely illustrating various realities, subject to taxation. This means that, in category E, income generated by the mere investment of capital is taxed.

By the fact that income analysed under this Binding Opinion Request does not come from the investment of capital but from the sale of crypto-currencies, the Tax Authority concluded that this income will not be taxable in category E either.

- **Category B (income from self-employed work)**

Finally, it should be noted that, in Category B, income derived from the carrying on of an activity is taxed rather than the source of the income. In that case, the income will be considered as income from a business or profession (self-employment income) and taxed in category B of the IRS.