

OE 23

State Budget

Crypto-Assets Taxation

Crypto-Assets



Taxation of Crypto-Assets

The 2023 Draft OE (State Budget or "OE" as abbreviated in Portuguese) enshrines the tax regime for crypto-assets, with impact both for individual investors and institutional players such as exchanges and other platforms, with the proposed regime being transversal to different taxes, such as IRS (individual income tax as abbreviated in Portuguese) and Stamp Duty.

It is important to note, however, that the proposed 2023 State Budget, which has generated so much discussion due to the options taken, has already been the subject of an amendment proposal presented by the PS (Socialist Party as abbreviated in Portuguese) Parliamentary Group, whose content is reflected below.

Concept of Crypto-Asset

The Draft OE contains a broad definition of crypto-asset, encompassing any digital representation of value or rights that can be transferred or stored electronically using distributed ledger or similar technology.

However, the proposed amendment seeks to exclude single, non-fungible crypto-assets (i.e. NFTs) from this definition.



Impact on Investors

Personal Income Tax - Disposal of Crypto-Assets

- Gains resulting from the sale of crypto-assets that do not constitute securities will now fall under category G (capital gains), being taxed at a rate of 28%;
- However, gains arising from the disposal of crypto-assets held for 365 days or more are exempt from taxation. However, it is proposed that the exemption should not apply where the beneficiaries or paying entities are resident in a country or jurisdiction without an instrument for the exchange of information;
- The (latest) proposed amendments define that no taxation takes place in case of crypto-to-crypto exchange. In other words, it clarifies that taxation is deferred to the moment of conversion into legal tender;
- However, an "exit tax" is now provided for in cases where the taxpayer loses the status of tax resident in Portugal or ceases his/her activity;
- As for forms of remuneration arising from crypto-asset transactions (delegated or off-chain staking), they qualify as capital income and an exemption from withholding tax is established.



**IRS Taxation - Mining and Staking
(when not covered by capital income)**

- Operations related to the issuance of crypto-assets, including mining or the validation of crypto-asset transactions through consensus mechanisms (including proof-of-stake mechanisms when not delegated to third parties) are taxed under Category B (business and professional income);
- Application, under the simplified regime, of a coefficient of 0.95 in the case of crypto-asset mining or of 0.15 in the case of crypto-asset transactions. However, this income from crypto-asset transactions is only considered earned at the moment of their disposal for valuable consideration.

Stamp Duty Taxation - Free Transfer

- The free transfers of crypto-assets will now be covered by item 1.2 of the General Stamp Duty Table, being taxed at a rate of 10%.

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