Crypto-assets

Tax regime

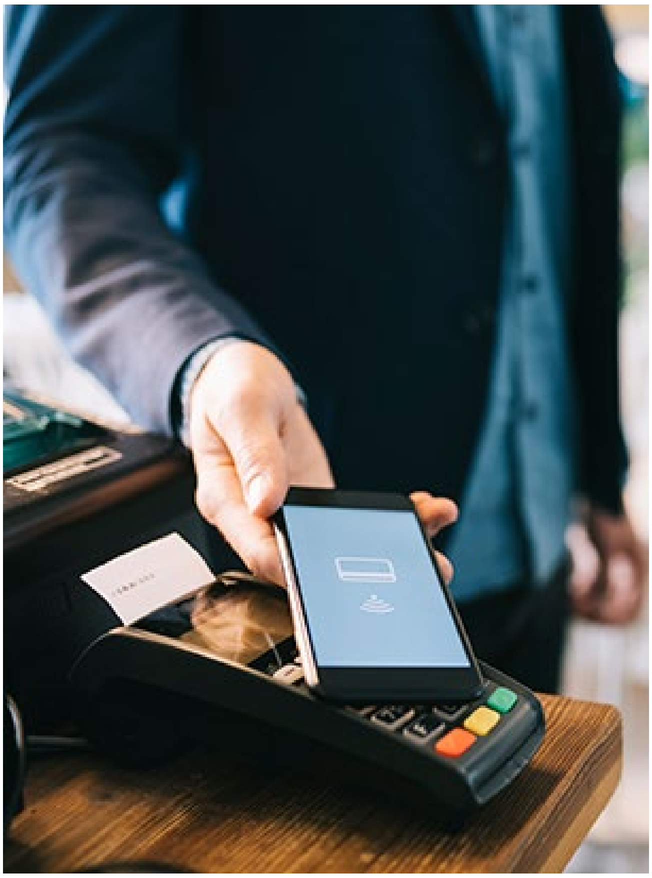
State budget law proposal for 2023

Up until now, the absence of specific tax rules has made Portugal a "crypto-friendly country". However, the 2023 Portuguese State budget law proposal foresees a new tax framework that will affect crypto investors/service providers.

A broad definition of crypto-assets is being proposed (based on the concept laid down in Markets in Crypto-Assets "MiCA" EU directive proposal), which includes any digital representation of value or rights which may be transferred and stored electronically, using distributed ledger or similar technology.

This broad definition comprises crypto-currencies, as well as other digital representations of value or rights (such as NFTs).

Upon approval by the Portuguese parliament, the proposed measures should become effective as from 1 January 2023.



Main features of the proposed tax framework

Personal Income Tax (PIT)

- Gains resulting from the disposal of crypto-assets will qualify as capital gains.
- PIT rates:
  - 28% => balance between gains and losses on the sale of crypto-assets held for less than 365 days;
  - 0% => balance between gains and losses on the sale of crypto-assets (not classified as securities) held for a period of 365 days or more.
- Carry forward for 5 years of the tax losses on the sale of crypto-assets (if gains are included in the income subject to the progressive tax rates of, up to, 53%).
- The sale's value of crypto-assets is presumed to be its market value at the date of disposal.
- Operations related to the issuance of crypto-assets (such as mining or validation of transactions of crypto-assets through any other blockchain consensus mechanisms) will qualify as commercial activities, subject to tax as business income.
- For investors under the simplified regime (not exceeding in the previous fiscal year € 200k of gross annual amount of business income), 15% of the income arising from such activities will be taxable at the progressive tax rates (up to 53%).

Corporate Income Tax (CIT)

- No relevant CIT rules regarding crypto-assets included in the State budget law proposal.
- Any profit or loss accounts should be relevant for tax purposes.

Stamp Duty

- 10% on free transfers of crypto-assets (borne by the beneficiary of the transfer).
- 4% on commissions or any consideration received and charged by or through crypto-assets' service providers (borne by the clients).

Value Added Tax (VAT)

- New taxation provisions not expected until the EU legislator redefines the VAT framework applicable to digital or crypto-assets within the VAT Directive.

Real Estate Transfer Tax (RETT)

- On the acquisition of an immovable property, RETT will be due on the value of the crypto-assets given in exchange (assuming the taxable patrimonial value of the property is lower).

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