

TAXATION OF CRYPTOCURRENCIES

(PIV_23162)

ALL FINANCE MATTERS

Largo das Sete Ruas, 1-B
8800-604 – Tavira

Rua Frederico Lecor, Nº 53 B
8000-247 Faro

E : info@afm.tax

P : +351 281 029 059 | +44 (0) 20 3151 0021

W : www.afm.tax

Taxation of Cryptocurrencies

Tributação de Criptomoedas (PIV_23162)

What is Informação Vinculativa (Binding Information)?

Binding Information, refers to an official response issued by tax authorities in Portugal, addressing specific queries from taxpayers regarding the interpretation or application of tax laws in particular situations. These rulings hold legal authority and must be followed by both the taxpayer and the tax authority, provided that the circumstances remain unchanged.

Importance of Binding Information:

Formality: They provide an official and authoritative interpretation of tax legislation.

Obligation: Both the tax authority and the taxpayer must adhere to the ruling, provided the facts presented remain unchanged.

Legal Certainty: Binding rulings offer taxpayers clarity and legal certainty regarding their tax obligations. By outlining how tax laws apply to their specific circumstances, taxpayers can plan and conduct their financial activities with confidence.

Procedure: Taxpayers must formally request binding information by detailing their specific circumstances for accurate analysis.

Facilitating Planning: Provides confidence for taxpayers in planning their financial activities.

Avoiding Disputes: Ensures compliance with tax laws, thereby reducing potential disputes with tax authorities.

Ensuring Fairness: Promotes fairness in tax treatment by providing consistent interpretations of tax laws.

Example Scenario:

Legislation: Personal Income Tax Code

Article/Item: Article 10 – Capital Gains

Subject: The applicant seeks binding information regarding the IRS framework to be applied to the sale of cryptocurrencies in 2022, which were acquired in 2013.

Details of the Scenario:

1. The applicant intends to maintain her residence in Portugal for a period exceeding 183 days, considering that in the year 2022, she should be treated as a tax resident in Portuguese territory.

2. In 2013, the applicant acquired sixty-two Bitcoins for the amount of 1,500 euros.

3. The applicant sold five Bitcoins in 2017, one in 2020, and another in 2021.

4. In 2022, the applicant possesses fifty-five cryptocurrencies, which she intends to sell by exchanging them for real currency.

5. In the petition, the applicant states that she does not engage in, nor does she intend to engage in, any professional or business activity on a regular basis related to the purchase and sale of cryptocurrencies.

6. The applicant seeks clarification on the following questions:

a) The tax framework applicable to the sale of the mentioned cryptocurrencies and their exchange for euros under the Personal Income Tax (IRS);

b) Whether the sale of the fifty-five cryptocurrencies is subject to declaration under IRS and, if so, which form and annex(es) should be used;

c) If the sale of cryptocurrencies (Bitcoins) and their exchange for real currency (Euros) results in a capital gain, whether this gain will be subject to taxation under personal income tax and in which category.

II – Tax Framework

During the year 2022, the applicant, having remained in Portugal for more than 183 days, either consecutively or intermittently, within any 12-month period beginning or ending in the relevant year, was considered a tax resident in Portuguese territory (paragraph a) of no. 1 of Article 16 of the IRS Code).

7. As a resident in Portuguese territory, the IRS applies to all her income, including that obtained outside this territory.

8. During the year 2022, after conducting the necessary searches, there is no record in the AT (Tax Authority) database that the applicant earned income in national territory, nor did she submit any income tax declaration.

9. From January 2023 onwards, the applicant is considered a non-resident in Portuguese territory and is taxed only on income earned within this territory.

III – Analysis of the raided questions

11. Based on the previously stated information, we must inform the following:

Regarding the taxation of the sale of cryptocurrencies or virtual currencies, the Tax and Customs Authority has already expressed its position in the binding information related to process 5717/2015.

12. The following is the understanding endorsed in this binding information, applicable only to sales occurring until December 31, 2022:

Regarding Category G

Article 10(1) of the IRS Code states that the following are taxable as capital gains:

a) The onerous transfer of shares and other securities;

b) Transactions related to derivative financial instruments, except for gains provided for in Article 5(2)(q);

c) Transactions related to certificates that grant the holder the right to receive a value of a certain underlying asset, except for remunerations provided for in Article 5(2)(r);

d) The onerous assignment of credits, ancillary contributions, and supplementary contributions.

Since the legislator established this taxation rule in a closed-ended manner, taxation applies only to gains derived from the specific events described therein. In the case of cryptocurrencies, they do not constitute shares, nor do they grant any rights to receive a monetary amount. Furthermore, the appreciation of cryptocurrencies is not based on any underlying asset, as their value is solely determined by supply and demand (and cryptocurrency creation based on usage). Therefore, cryptocurrencies cannot be considered a derivative financial product. Finally, given the definition of securities in Article 1 of the Securities Code, cryptocurrencies do not currently fit into the definition of securities. As a result, it is concluded that this reality is not taxable under Category G.

Regarding Category E

Concerning capital income, the taxation rule is broadly constructed, providing a general rule and exemplifying various taxable realities (though not exclusively). This category taxes income generated merely by capital application—i.e., legal fruits, produced without depleting the principal. However, in the present case, the income results from selling a right, meaning it is not taxable under Category E.

Regarding Category B

First and foremost, it should be noted that Category B applies in concurrence with any of the previous categories, but it prevails over them. In Category B, income is taxed based on the exercise of an activity rather than the origin of the income.

Thus, this category may tax income regardless of whether it originates from sales, yields, or any other nature, as stated in Article 3(1) of the IRS Code. The exercise of an activity is determined by its habitual nature and its orientation toward profit-making.

If there is an established business or professional activity, the taxpayer is then required to comply with the reporting obligations outlined in Article 3(6) of the IRS Code, meaning they must issue an invoice or an equivalent document (such as an electronic invoice-receipt) whenever they make a sale or provide a service.

13. It is therefore concluded that the sale of cryptocurrency is not taxable under Portuguese tax law unless, due to its habitual nature, it constitutes a

professional or business activity of the taxpayer, in which case it will be taxed under Category B.

14. The applicant sporadically sold cryptocurrency in 2017, 2020, and 2021.

15. In 2022, the applicant intends to sell the remaining Bitcoins in her portfolio, totaling fifty-five units.

16. The applicant claims that she does not intend to develop a business or professional activity (which cannot be verified in this procedure). If confirmed, the income obtained from the sale of cryptocurrency would not fall under Category B.

17. Thus, in accordance with the doctrinal note related to process no. 5717/2015, it is concluded that the income earned by the applicant is not subject to IRS taxation, as the sale of cryptocurrency does not constitute a business or professional activity.

18. Furthermore, it is reiterated that the sale of cryptocurrency until December 2022, under Category G – Capital Gains – was not subject to taxation due to the absence of a legal provision for its taxation. Therefore, any income generated from such sales in 2022 does not need to be reported in the IRS Model 3 form or any of its annexes.

19. It should be noted that with the enactment of Law No. 24-D/2022, of December 30, a taxation regime for crypto-assets, including cryptocurrencies, was introduced into the Portuguese tax system.

20. Thus, from January 1, 2023, onwards, income from the sale of crypto-assets may be subject to taxation under Category B, E, or G.

21. If no business or professional activity is conducted, gains from the sale of cryptocurrency are classified as capital gains under Category G, thereby excluding taxation under Categories B and E.

22. Under Article 10(1)(k) of the IRS Code, capital gains include profits that, while not classified as business or professional income, capital income, or rental income, result from the sale of crypto-assets that do not qualify as securities.

23. Based on the above, the sale of cryptocurrencies, as long as it does not constitute business, professional, capital, or rental income, would be subject to taxation under Category G from January 1, 2023, onwards.

24. According to Article 10(19) of the IRS Code, gains obtained, as well as losses incurred, from transactions covered under Article 10(1)(k) related to crypto-assets held for a period of at least 365 days, are exempt from taxation.

25. In Article 220 of Law 24-D/2022, of December 30, the legislator established a transitional regime, which states that for the purposes of Article 10(19) of the IRS Code, the holding period of crypto-assets acquired before the entry into force of this law shall be considered for the calculation of the required holding period.

Conclusion:

Until December 31, 2022, the sale of cryptocurrencies was not subject to taxation in Portugal, as there was no legal provision classifying such transactions under any taxable income category. This meant that, unless the sale of cryptocurrency constituted a habitual business or professional activity (which would fall under Category B), no taxation was applicable.

However, with the introduction of Law No. 24-D/2022, effective from January 1, 2023, a taxation framework for crypto-assets was established. Under this new regime, cryptocurrency transactions may now be subject to Category B (business or professional income), Category E (capital income), or Category G (capital gains), depending on the nature of the activity.

For individuals who do not engage in cryptocurrency trading as a business, Category G applies, taxing capital gains from crypto-assets. However, gains derived from crypto-assets held for 365 days or more are exempt from taxation, as stipulated in Article 10(19) of the IRS Code.

Additionally, a transitional regime ensures that the holding period of crypto-assets acquired before the new law's enactment is counted for tax exemption purposes.

In summary, prior to 2023, cryptocurrency sales were not taxable unless classified as a business activity. From 2023 onwards, crypto sales are generally taxable, but exemptions apply for assets held for over a year.



afm
all finance **m**atters

For any inquiries or support with tax compliance for businesses or individuals, our team is here to assist you. From understanding tax obligations to ensuring full compliance with the latest regulations, we provide expert guidance tailored to your needs. Feel free to reach out to us at info@afm.tax or call us at +351 281 029 059.

**"YOU MUST PAY TAXES, BUT THERE'S NO LAW
THAT SAYS YOU NEED TO LEAVE A TIP."**