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# CRYPTO ASSETS IN PORTUGAL

## **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](mailto:info@afm.tax)  
P : +351 281 029 059  
W : [www.afm.tax](http://www.afm.tax)

## **What you need to know about crypto assets in Portugal and what changes from January 2023**

The Portuguese Government introduced in the 2023 State Budget proposal the taxation of crypto assets (this exceeds the concept of cryptocurrencies), and short-term capital gains (up to one year) with cryptocurrency transactions will be taxed at 28%, but not all gains are liable to tax. Please find here what are the proposed changes for 2023 and how these may affect you.

### **Up until the end of 2023, what was the tax regime applicable to Crypto?**

There was no tax regime and no specific law for cryptocurrencies until now, which made Portugal one of the most crypto-friendly countries.

### **Do I have to declare to the Portuguese tax authorities, that I own cryptocurrencies?**

No, there is no wealth tax in Portugal, therefore you will only need to report income received from cryptocurrencies or gains made for the sale of these assets. The State Budget proposal now considers mining operations, as a business activity and the gains obtained with the sale of crypto are taxable at 28%, provided the crypto was bought less than a year ago.

### **I made a profit from selling cryptocurrencies I bought less than a year ago. Do I have to declare?**

If the State Budget proposal for 2023 is approved, you will have to report the sale operations when submitting your Personal Income Tax and the gain obtained (difference between the market value at the date of sale and the acquisition value, net of necessary expenses and effectively carried out, inherent to acquisition and disposal) will be liable to tax.

### **How and when do I have to declare?**

The tax year in Portugal is from January 1st to December 31st and the tax submission is normally available between April 1st and June 30th. When submitting the tax return – to be done mandatory online – you will have to include the crypto assets sales operations you had in the previous tax year.

### **How much tax will I pay for the gains I made from selling cryptocurrencies?**

If you held the cryptocurrencies for a period of fewer than 365 days, and if you

made capital gains, you will be subject to a tax rate of 28%. If you aggregate this income with your other source of income, you will be taxed at the progressive tax rates and the tax rate will be the one corresponding to your income bracket.

### **Can I be punished if I don't submit the tax return or do not include this information on my tax return?**

Yes, failure to report income and or earnings or failure to submit the tax return constitutes an administrative offence, subject to penalties. The amounts of the fine depend on the specific situation. If there is a voluntary regularization, the waiver or reduction of fines may apply, depending, among other factors, on the date on which the fault committed is regularized, as well as whether or not a report was raised, a report or complaint was received or initiated tax inspection procedure.

Compensatory interest (at an annual rate of 4%) will also be payable on the missing tax.

### **How do the tax authorities know about my crypto assets?**

In the proposed state budget, there is now a reporting obligation by intermediaries. Thus anyone who provides custody and administration services of crypto-assets on behalf of third parties or manages one or more crypto-assets trading platforms must notify the Portuguese Tax Authorities, up to at the end of January of each year, for each taxable person, through an official model, the operations carried out with their intervention, concerning crypto assets.

### **What can I offset against my gains on the sale of crypto?**

In the case of the sale of crypto assets, the gain liable to tax is made "by the difference between the sale value and the acquisition value", net of the necessary and effectively incurred expenses, related to the acquisition and disposal. For this purpose, the sale value corresponds to the market value of the crypto assets at the date of sale.

### **What happens to cryptocurrencies I bought more than a year ago?**

Capital gains related to cryptocurrencies held for a period equal to or greater than 365 days will be exempt from tax.

**I have two units of the same cryptocurrency purchased at different times: one more than a year ago and the other less than a year ago. I made a profit by selling one of them, but I don't know which one. Do I have to declare profit?**

The PIT Code provides for the application of the FIFO method (First In, First Out) in the calculation of capital gains obtained from the sale of securities, according to which the securities sold are those acquired the longest. This rule has not undergone any change in the proposed State Budget for 2023, to ensure its application to the calculation of gains obtained from the sale of crypto-assets that do not constitute securities.

**The value of my cryptocurrency portfolio increased last year, but I haven't made any transactions. Do I have to declare it?**

If you did not carry out any transaction in the previous year, it means that you did not have any capital gains from the sale of cryptocurrencies, so you will have nothing to declare to the Tax Authorities since the PIT one taxes realized gains.

**I do mining of cryptocurrencies. Do I have to declare it? Is this a gain or a business activity income?**

Cryptocurrency mining is now considered a commercial/industrial activity covered by the IRS under category B (self-employment). The income obtained from the exercise of this activity will be liable to the IRS, and the taxable income will be taxed at progressive tax rates.

The rule contained in the State Budget proposal for 2023 is not clear concerning the coefficient to be applied under the simplified regime, but it seems to imply that the taxable gain will correspond to 15% of the income obtained from the activity.

**I received cryptocurrencies from a friend. Do I have to declare too?**

In the case of a free transmission (for example, a donation of cryptocurrencies) there is a 10% Stamp Duty fee. This is not an income, so it won't be reported in the tax return, only when it is sold.

**I received cryptocurrencies as part of my salary, how is this taxed?**

The cash equivalence of income in kind will now apply in situations where the

income takes the form of a crypto asset. This means that in case the crypto is received as a payment, then it will be taxed under the income category rules (salary if it refers to salary, business income if it refers to business, etc). These assets will only be liable for capital gain tax if they are sold within less than a year and if there is a gain.

### **In case I use crypto assets to buy a house, how does the IMT apply?**

The value of the crypto-assets given in exchange (determined under the Stamp Duty Code) must be considered for the purposes of calculating the deed value and therefore the IMT – Property Transfer Tax, will be based on this value.

My income comes from my activity of buying and selling cryptocurrencies. How do I declare?

If this is a repeated and continued practice, then you need to report this to the tax authorities and register your business activity, declaring the income as a sole trader.

### **Can I offset losses?**

If you made losses the negative balance calculated in each year, related to the sale of crypto assets, can be carried forward for the following five years, if you opt for the inclusion of this income in category G and chose to aggregate this income to your other income, in order to be taxed at the progressive tax rates.

### **Do Crypto Asset Pay Stamp Duty?**

The State Budget for 2023 proposes to tax "free transmission of crypto assets, when they are deposited in institutions in Portugal or, if they are not deposited, if the author is domiciled in Portugal, in the case of inheritance by death, or if the beneficiary is domiciled in Portugal, in the case of another free transmission". Stamp Duty will be applicable at a rate of 10%, of free transmission of crypto-assets, understanding as crypto-assets any digital representation of value or rights that can be transferred or stored electronically, using distributed ledger or similar technology.

### **What are the rules for determining the taxable value of a crypto asset for Stamp Duty purposes?**

It is expected that the valuation will be determined under the official quotation value if any and this will be the value declared by the inheritor/beneficiary.

## **How are legacy crypto assets taxed?**

As the stamp duty will only apply to crypto assets in Portugal, there is a tax on inheritances by death when the author of the transfer is resident in the country. In the case of donations, it applies if the beneficiary is also domiciled in the national territory. In both cases, the rate will be 10%. As is what happens currently with shares or securities the withdrawal of crypto-assets that have been subjected to a free transmission cannot be authorized, without the respective Stamp Duty having been paid.

## **When are crypto assets considered to be located in the national territory?**

In what concerns to residency rules, the State Budget 2023 determines that crypto-assets deposited in institutions with headquarters, effective management or permanent establishment in the national territory are considered situated in Portugal, or, in the case of non-deposited crypto-assets, in successions upon death, when the author of the transmission is domiciled in national territory; in other free transmissions, when the beneficiary is domiciled in the national territory.

## **Do commissions charged for providing cryptocurrency services (so-called intermediaries) pay stamp duty?**

The State Budget for 2023 includes the taxation of Stamp Duty, at 4%, in commissions and fees charged by or with the intermediation of crypto-asset service providers. This means that CASPs (Crypto Asset Services Providers) will have to pay stamp duty at a rate of 4% on the transactions they intermediate and on the commissions they charge.

This means that CASPs domiciled in Portugal will have to settle this tax. If the commissions are charged by service providers not domiciled in Portugal, this responsibility will fall on CASPs domiciled in the national territory that has intermediated the operations and on fiscal representatives who are mandatorily appointed in Portugal, if the operations have not had any intermediation in Portugal.

## **I bought NFT (non fungible token). Do these rules also apply?**

Yes, an NFT is included in the definition of cryptocurrency provided in the IRS code.




## Do I also declare income with stacking (crypto interest)?

The proposed State Budget for 2023 did not establish any specific rule for this income, therefore this income will only be taxed if it results from business and professional income (taxed under category B – sole traders).

A brief overview of the asset in each country, type of taxation, and the applicable tax rate if, applicable.

Country	Classification	Type of tax	Tax rate
Australia	Property	Progressive income tax   GST	19-45%   10%
Belarus	Digital asset	N/A	N/A
Brazil	Asset	Capital gains tax	15%
Canada	Asset	Progressive income tax	15-33%
China	Virtual commodity	Progressive income tax (for international trading)	3-45%
Denmark	Private money	N/A	N/A
France	Property	Capital gains tax	30-34%
Germany	Private money	Progressive income tax	0-45%
India	Digital asset	Progressive income tax   GST	0-30%   18%
Israel	Digital asset	Progressive income tax   VAT	10-50%   17%
Japan	Property	Progressive income tax Consumption tax	5-45% 8%
Malta	Commodity	N/A	N/A
Netherlands	Asset	Income tax	30%
Panama	Digital asset	N/A	N/A
Portugal	N/A	N/A	N/A
Russia	Digital asset	Income tax	13%
Singapore	Property	N/A	N/A
Slovenia	Movable property	N/A	N/A
South Africa	Intangible asset	Progressive income tax	18-45%
South Korea	Property	Income tax   VAT	20.9%   7%
Sweden	Digital asset	Progressive income tax	0-57%
Switzerland	Movable property	Progressive wealth tax Progressive income tax	0-0.67% 7-34%
Turkey	Commodity	Progressive income tax	15-35%
UAE	N/A	N/A	N/A
UK	Private money or Asset	Corporation tax Progressive income tax	19% 0-45%
USA	Property	Capital gains Progressive income tax	0-20% 10-37%

Source: <https://3commas.io/blog/cryptocurrency-taxes-guide>



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THAT SAYS YOU NEED TO LEAVE A TIP."**