

TELLES 

State Budget Proposal for 2023

HIGHLIGHTS

October 10th, 2022

1. TAXATION OF CRYPTO ASSETS

Personal Income Tax ("PIT")

Under the current legislation, capital gains on crypto assets not classed as securities are out of scope of PIT. In fact, nowadays, only gains on the disposal of crypto assets classed as securities are subject to PIT.

Now, the State Budget Proposal for 2023 foresees that capital gains resulting from the sale of crypto assets not classed as securities will be subject to tax at a rate of 28%. For this purpose, "crypto asset" means any digital representation of value or rights that can be transferred or stored electronically using distributed repository or similar technology.

There is, however, an exemption for gains derived from the disposal of crypto assets not classed as securities held for 365 days or more, the holding period prior to the entry into force of the proposed amendments (January 1st, 2023) counting for this purpose.

Besides, following on from what was already the implied understanding of the law, it is proposed that income resulting from operations related to the issue of crypto assets, including mining or validation of transactions, are classed as business and professional income (Category B for PIT purposes), thus being subject to the general and progressive rates.

When the business activity is carried under the simplified regime (i.e., when the annual income does not exceed €200,000), a coefficient of 0.15 applies, which means that only 15% of the income is subject to tax (similarly to what is proposed in the simplified regime for CIT purposes, also with a coefficient of 0.15).

Entities providing custodian and administration services for crypto assets on behalf of third parties or managing crypto platforms will be obliged to communicate to the Portuguese tax authorities, through an official form, for each PIT taxpayer residing in Portugal, the operations in which they are involved.



Taxation of gains from the disposal of crypto assets not classed as securities at a 28% rate, except for those held for at least 365 days.



Application of the 0.15 coefficient under the simplified regime, both for PIT and CIT purposes.

1. TAXATION OF CRYPTO ASSETS

Stamp Duty

Besides PIT, the new State Budget Proposal provides for a series of changes in what relates to the Stamp Duty framework for crypto assets, proposing new tax rules for the commissions charged by service providers, donation and inheritance.

One of the proposed amendments relates to the addition of a new item to the General Stamp Duty Table, which provides for a 4% tax rate on commissions and consideration charged by crypto asset service providers. This tax is due whenever the service providers, or the client, are resident in Portugal, therefore covering both scenarios.

The burden of this 4% tax should ultimately fall on the client, but crypto asset providers will be responsible for paying the duty. This will be a direct responsibility, for crypto assets providers resident in Portugal, or through a mandatorily appointed representative, when the operations are not intermediated by entities domiciled in Portugal.

Further proposed changes to the Stamp Duty code introduce new specific rules regarding the principle of territoriality in respect of the donation and inheritance of crypto assets, which will now be subject to the 10% flat rate of gift tax, unless an exemption applies (e.g. when the gift is made in the direct ascending or descending line).

In this context, the donation of inheritance of crypto assets deposited with entities based in Portugal will always be subject to Stamp Duty, although all applicable exemptions can still apply. Besides, even when that's not the case:

- For inheritance purposes, the operation will be deemed as located in Portugal where the transferor is domiciled in national territory;
- For donation purposes, the operation will be deemed as located in Portugal when the beneficiary is domiciled in national territory.

For donation and inheritance purposes, the Proposal also foresees specific criteria for the calculation of the taxable amount.



4% tax on commissions and consideration charged by crypto assets service providers.



10% tax on donation and inheritance when no exemption applies.

2. CORPORATE INCOME TAX

Tax losses

Relevant changes are proposed with regard to the reporting of tax losses for CIT purposes, namely:

- Elimination of a carryforward period;
- Limitation to 65% of the taxable period's taxable profits of the year against which the losses can be used;
- Elimination of the need to submit a request for the maintenance of the tax losses whenever 50% of the share capital changes ownerships.



Elimination of a carryforward period

Amendments to tax benefits applicable to inland territories

The taxable amount to which the 12.5% rate applies will be increased from € 25,000 to € 50,000 for micro, small and medium sized companies, as well as small mid cap companies.

These companies may also benefit from a 20% increase in the deduction of expenses corresponding to the net creation of jobs.

For PIT purposes, the proposal also sets out a number of benefits for students and workers established in inland territories, such as a 10% increase on the expenses related to education or rental costs.



Increase of 20% in expenses related to the net job creation

2. CORPORATE INCOME TAX

Creation of a tax incentive for salary improvement

According to the terms of the Proposal, the expenses with wage increases relating to employees with no fixed term labor agreements will be considered at 150% of the respective amount, as long as these salary increases are agreed upon in a collective negotiation process, and as long as certain requirements are met, such as:

- Only expenses relating to workers whose remuneration has increased by at least 5.1% and above the minimum monthly guaranteed wage are considered for this purpose;
- The maximum amount of the increased deductible expenses, per worker, is four times the minimum monthly guaranteed wage (for 2023, the limit is € 3,040 per year, per worker).



*Increase in wage expenses:
costs considered at 150%*

Incentive to the capitalization of companies

The creation of a new benefit named "Incentive to the Capitalization of Companies" is also proposed, alongside the revocation of the Deduction for Retained and Reinvested Profits regime.

This new benefit provides that CIT taxpayers may deduct, from the respective taxable profit, 4.5% of net eligible equity increases (plus 0.5% in case of micro, small and medium-sized companies and small mid cap companies). For this purpose, contributions in cash or in kind (namely the conversion of credits into capital), share issue premiums, retained earnings, reserves and share capital increases are accounted for.

The deduction is limited, in each tax period, to € 2,000,000 or 30% of the profit before depreciation, amortization and financing costs and taxes, whichever is higher, and applies in the tax period in which the equity increases occur and the following nine tax periods (except where the company reduces its share capital with a refund to the shareholders).

Contributions made until the date of entry into force of the State Budget for 2023 (January 1st, 2023) will continue to benefit from the Remuneration on Conventional Share Capital, which will also be revoked by this entry into force.



*Creation of a tax benefit that
replaces the conventional
remuneration of share capital
and DLRR for contributions
made from January 1st, 2023,
onwards*



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The Tax Team works together with other practice areas of TELLES to provide tax advice to all businesses in which our Clients (individuals and companies) are involved.

We are also especially geared towards the uncompromising defense of our Clients' interests in tax procedures and litigation (judicial and arbitration), as well as in criminal proceedings (namely related to tax fraud) and administrative offences.

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