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Since the beginning of the 2010's, the crypto asset market has been facing a rampant booming followed by the shortage of regulations to wrap up the whole extent of the innovations which came along. Thus, it has created a regulatory tax void where players could freely navigate through.

Over the years, it's been hard for regulators to embrace the multitude of economic interactions among players, and, as such, countries are still struggling to comprehend this sophisticated ecosystem and to regulate crypto assets' transactions accordingly.

1. EU and Portuguese Tax Regulatory Approach

The European Union sought to follow the principle of neutrality regarding the application of tax regulations within each of its member-state, giving them a great deal of autonomy to determine their domestic tax policy, especially the taxation of incomes, except for the general principles regarding consumption taxes, such as the Value Added Taxes, which aims at reducing the risks of tax arbitrage¹ between member-states.

As a result, Portugal has moved towards the opposite side of the European countries' policies and became one of the most crypto-friendly environments for investors in Europe due to its limited cryptocurrency taxation and a lack of regulations pertaining other aspects of the crypto asset's market, without prejudice to the mandatory AML/KYC² compliance as per the FATF³ recommendations, as well as occasional consumer protection rules.

So far, if any individual wants to hold or perform an independent work with crypto assets in Portugal, he should simply comply with the provisions regarding money laundering and terrorist financing (AML/CFT).

In October 2022 a Tax Bill incorporated to the National Budget Plan for the year 2023 has been introduced by a couple of members of the Parliament.

¹ Tax arbitrage is the practice of profiting from differences that arise from the ways various types of income, capital gains, and transactions are taxed. The complexity of many countries tax codes allows for individuals to seek out legal loopholes or restructure their transactions in such a way that they are able to pay the least amount of tax.

² Although AML/KYC compliance is only mandatory for companies who are willing to set up a business pertaining virtual assets transactions, individuals must also comply with such terms, and be ready to show proof of origin of its crypto assets to Portuguese authorities when requested, especially if they perform crypto-fiat swaps involving high amounts of money.

³ The Financial Action Task Force (on Money Laundering) (FATF) is an intergovernmental body created to develop policies to combat money laundering and terrorism financing. The objectives of FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.



Thus, we shall below assess the main changes such Bill may bring to the Portuguese crypto tax environment.

2. Individual Taxes Applied for Tax Residents in Portugal

Currently, there are six Categories that essentially cover most of resident's gains, which must be declared in the Personal Income Tax (IRS) declaration, including those on illicit activities, in accordance with the Portuguese legal system.

The IRS is levied on the annual amount of income in the following categories:

- (i) Category A – Income from Dependent Work.
- (ii) Category B – Business and Professional Income.
- (iii) Category E – Capital Revenues/Passive Income.
- (iv) Category F – Real Estate Income.
- (v) Category G – Capital Gain.
- (vi) Category H – Pensions.

3. IRS Categories that May Apply to Cryptoassets

The Tax Categories falling over revenues from cryptoassets shall depend both on the analysis of the activity carried out by the taxpayer and on the analysis of the source that generated the gain, that is, first we must analyze whether the activity carried out by him falls within those of the activities that the law provides as taxable, then we must analyze whether the source that generated his earnings is outside or within the country and therefore subject to taxation.

From the analysis of the main characteristics of the current blockchain, we assume that there is a great likelihood of taxation in the following Categories when it comes to the gains from those activities:

3.1. Category B (Business and Professional Income)⁴

When it comes to cryptoassets activities, Category B may cover capital gains, passive income or gains from sales and purchase earned by an individual who is mainly engaged in commercial activities, as defined by law, who register before the tax authorities as such, being liable to 'open an activity' and issue invoices to receive the proceeds, and as such differs from a company or even a sole proprietorship on a legal perspective.

Note that, for taxable reasons, Category B prevails over Category E and Category G below.

⁴ Crf. Articles 3 and 4 of the IRS Code.



(i) Taxable Revenues in Category B

Regarding economic activities performed by independent professionals, the taxable gains in Category B, they can fall into one of the two tax regimes below:

(a) Organized Accountancy⁵

The taxpayer can deduct some expenses from taxable gains and deductions of losses upon carry-over to subsequent years, but he shall need an accountant to organized costs and revenues.

In this option, the taxpayer must apply a sliding scale that may go from 14,5% to 48%⁶.

(b) Simplified Regime⁷

When you have a gross annual income equal to or less than EUR 200 (two hundred thousand euros), you can opt for the simplified regime. Despite of this limit, if the income is higher at some point, this cannot occur in two consecutive years.

In this option, you must also apply a sliding scale that may go from 14,5% to 48%⁸, but when you calculate the income that will be subject to IRS, a 15% coefficient is applied, meaning that the rate pick from the sliding scale falls over 15% of the whole gains.

The Bill has included the sales of cryptoassets in article 31 (1) (a)⁹ which allows for activities in Category B to benefit from the simplified regime if they perform an individual professional economic activity, which shall be assessed on a case-by-case basis.

In the simplified regime the tax authorities assume that part of the income corresponds to expenses, exempting them from tax. Thus, a further tax deduction from the gains with cryptoassets in this regime is not allowed.

3.2. Category E (Capital Revenues/Passive Income)¹⁰

In general terms, Category E mainly refers to revenues from passive income, i.e., when someone handles a movable asset¹¹ to obtain economic advantages from its use or allocation with no incurrence in further efforts or expenses, meaning the asset does not dissipate, but solely generates yields and/or revenues simply by using or allocating it for a specific purpose, generally depositing the asset for a certain amount of time into a business or a fund management scheme.

⁵ Crf. Article 32 and 33 of the IRS Code

⁶ Crf. Article 68 of the IRS Code.

⁷ Crf. Article 31 of the IRS Code

⁸ Crf. Article 68 of the IRS Code.

⁹ Art. 31 (1) (a) of the IRS Code: '0.15 for sales of goods and products, **including crypto assets**, as well as for the provision of services carried out within the scope of restaurant and beverage activities and hotel and similar activities, with the exception of those carried out within the scope of the exploitation activity of local accommodation establishments in the form of housing or apartment'.

¹⁰ Crf. Article 5 of the IRS Code.

¹¹ Article 5(1) of the IRS Code.



Thus, the sales, purchase, and exchange of crypto to fiat are not deemed as falling into Category E since the cryptoassets do not remain in the possession of the taxpayer but replaced for another asset (fiat).

(i) Taxable Revenues in Category E

Taxable gains on Capital Revenues are levied on a 28% rate basis.

Note that the gains declared before the IRS as an income in the scope of **Category E** shall be deemed as the total income acquired by the taxpayer in this category, without any rebates, i.e., it does not allow the taxpayer to make specific deductions, nor deductions of losses upon carry-over to subsequent years.

3.3. Category G (Capital Gains)

For crypto related transactions, Category G usually applies to value-added (positive difference between the acquired price and the sold price) resulting from the disposal of an asset, which are delineated in a long exhaustive list of transactions as set forth in Article 10, item 1 of the IRS Code¹² and do not accept analogical interpretations, i.e., if it's not in the list, it's not deemed as added value for tax purposes.

The sales and purchase of crypto is still not in the list, thus to this date, it does not fall into the scope of Category G.

Value-Added is the gain generated from the sales of goods or rights which, at some point, were acquired for a lower value and sold for a higher value, i.e., when there is an appreciation of goods or rights that you already had in your possession.

¹² Article 10, no. 1 of the CIRS establishes that Category G gains are in the following cases:

"1 – Added Value are those gains obtained that, not being considered business and professional income, capital or real estate, result from:

- a) Onerous alienation of rights in rem over immovable property;*
- b) Onerous disposal of shares **and other securities**, including:
 - 1) Redemption and amortization with capital reduction of shares;*
 - 2) The extinction or delivery of shares in companies merged, split off or acquired in the context of merger, spin-off or exchange of shares;*
 - 3) The value attributed as a result of the sharing, as well as as a result of the liquidation, revocation or extinction of fiduciary structures to the taxable persons that constituted them, under the terms of articles 81 and 82 of the IRC Code;*
 - 4) Repayment of bonds and other debt securities;*
 - 5) The redemption of units in investment funds and the liquidation of these funds.**
- c) Onerous alienation of intellectual or industrial property or of experience acquired in the commercial, industrial or scientific sector, when the transferor is not the original owner;*
- d) Onerous assignment of contractual positions or other rights inherent to contracts relating to immovable property;*
- e) Transactions relating to derivative financial instruments, with the exception of gains provided for in paragraph 2 q) of article 5;*
- f) Operations relating to covered warrants, whether the warrant is the subject of a disposition transaction prior to the exercise or whether it is exercised, in the latter case regardless of the form of settlement;*
- g) Transactions relating to certificates that grant the holder the right to receive a value of a certain underlying asset, with the exception of the remuneration provided for in paragraph r) of paragraph 2 of article 5;*
- h) Onerous assignment of credits, accessory payments and supplementary payments.*
- i) Allocation of any private property, with the exception of immovable property, the business and professional activity carried out in an individual name by its owner.*
- j) Onerous assignment of rights over fiduciary structures, including the onerous assignment of the beneficiary position."*



Category G is residual, meaning it shall be considered only when the other Categories do not apply first¹³

(i) **Taxable Revenues in Category G**

Taxable gains on Capital Gains are levied on a 28% rate basis.

Note that capital gains declared before the IRS as an income in the scope of **Category G** allow the taxpayer to make specific deductions, and deductions of losses upon carry-over to subsequent years

4. Current Interpretation of Crypto Taxation by Portuguese Tax Authorities

Notwithstanding the absence of a tax regulatory framework to this date, the Portuguese tax authorities (*'Autoridade Tributária'*) have already issued a few instructions in the form of *'Informação Vinculativa'*, i.e., a binding response to enquiries made from taxpayers to decode ambiguities, usually from taxable events, serving as a groundwork for other taxpayers in similar conditions.

The most significant *'Informação Vinculativa'* on crypto taxation pertains to the revenues originated from sales and purchase of crypto assets¹⁴ which has been supporting the understanding of the tax environment for most crypto asset's transactions in the country so far.

The binding response fundamentally concludes that the cryptoassets may engender three types of revenues:

- (a) Capital Gains earned from crypto assets to fiat swaps, being through the sales and purchase or exchange transactions.
- (b) Transaction fees from services related to crypto transactions (for third parties)
- (c) Sales and Purchase of products and services using crypto assets.

The revenues generated from the sales and purchase of crypto assets, i.e., from the increase in value in fiat subjected to market price swings fall into the scope of item (i) above which could potentially fall into Category B, Category E or Category G, but tax authorities' perception was that only Category B would apply for the following reasons:

- (i) **Category G** - Capital gains are only taxable when it's deemed as a value-added gain, i.e., it must be expressly mentioned in the list of the article 10 of the IRS Code, but except for specific ICOs projects, gains originated from crypto assets are excluded from the list.
- (ii) **Category E** – It only refers to passive income, i.e., gains are generated from the asset, but does not include the discharge of the asset itself. As the sales and purchase of crypto implies the trade of the existing crypto for fiat, it's not deemed as an income generated from a remaining asset anymore.
- (iii) **Category B** – The taxable event is pretty much adherent to the actual execution of an activity rather than the origin of the revenue, meaning that if it constitutes a professional or business activity, any capital gains, passive

¹³ Crf. Artigos 9(1) and 10(1) of the IRS Code.

¹⁴ Binding Information in Case No. 5717/2015, Order of December 27, 2016.



income or sales and purchase originated from crypto transactions would preferably fall into the scope of this Category B, instead of other Categories that would embrace those revenues in different terms.

Note that, according to Portuguese law and scholars understanding, a professional activity is subject to a few requirements, such as:

- (a) It must be performed on a regular basis, and
- (b) There was an actual business activity with a systematic profit-oriented coordination to carry out the activities that triggered the revenues.

As a result, currently Portuguese tax authorities only levy taxes over crypto assets transactions from individuals gains when they fall under Category B, i.e., they need to confirm the existence of a business or a professional activity performed on a regular basis, and tax payment must comply with Article 6 of the Portuguese IRS Code, that is, the taxpayer must issue an invoice or equivalent document (integrated invoice-receipt), whenever he sales or provide a service to a third party.

Note that Category B prevails over the other two Categories and any capital gains, passive income or gains from sales and purchase should fall into this Category once a professional activity is identified when the activity is performed.

Finally, the other two types of revenues from crypto assets transactions in item 2.1 (b) and (c) above, were not assessed by tax authorities so far and they have still neither taxed such transactions nor responded to any requests on this regard.

In a nutshell, currently crypto individual investors in Portugal should only be aware of professional activities involving crypto gains, ICO projects, and AML and KYC compliance when swapping crypto into high amounts of fiat.

5. The Portuguese Crypto Tax Bill 2022

Portuguese members have recently submitted the State Budget Bill to the Parliament¹⁵ ('Bill') which includes taxable events for some crypto activities.

Following the assessment of the proposed Bill, a few changes are likely to occur, as follows:

5.1. Sales and Purchase of Cryptos

The scope of the gains from the sales and purchase may fall into Category B or G.

(i) Category B

Category B implies the existence of a commercial, or a professional activity performed on a regular basis with the intent of making profits.

¹⁵ Bill n.º 38/XV/1.ª



The Bill acknowledges the issuance of crypto assets as commercial and industrial activities, including mining (proof of work) and validation within a consensus mechanism (proof of stake), meaning that the gains acquired with such activities fall now into Category B.

The Bill does not specifically include gains from the sales and purchase of cryptoassets in the realm of commercial activities, but the Portuguese Tax Authority (AT) has already issued a Binding Information¹⁶ where those are perceived as such and therefore fall into Category B.

(ii) Category G

The Bill has specifically included item (k) to article 10 (1) of the IRS Code¹⁷, including the onerous withdrawal of cryptoassets in the definition of value-added gains, meaning that gains from the sales and purchase of cryptoassets are fall into the scope of Category G.

Note that it only includes onerous withdrawal of cryptoassets when there's a positive difference between the acquired price (in crypto) and the sold price (in fiat), excluding securities.

Note that according to the new Bill specifically excludes securities-like cryptoassets from its realm. Thus, whenever we are dealing with sales and purchase of cryptoassets, securities do not apply.

As a result, any assets falling into the definition of "securities" found in the Portuguese Securities Code - CdVM¹⁸ should not be taxed in Category G.

(i) (Crypto to Crypto) and/or (Crypt to Fiat) Swaps as Taxable Events

As mentioned above, the Bill has added sub-item (k) to the Article 10 (1) of the IRS Code, which means that it expressly deems as value-added gains the earnings from onerous withdrawals of crypto assets and, as such, this should be the taxable event in **Category G** in this case.

On the other hand, item 3 of the same Article 10 of the IRS Code sets forth that those value-added gains are deemed as acquired in the very moment that the onerous withdrawal of the gains of the cryptoassets occurs¹⁹.

¹⁶ Binding Information in Case No. 5717/2015, Order of December 27, 2016.

¹⁷ Article 10 (k) of the IRS Code: "Onerous withdrawal of cryptoassets, except for those who are deemed as securities"

¹⁸ The Portuguese Securities Code (Decree-Law No. 157/2014) defines security in its Art. 1 as follows:

"Art 1 of Decree-Law No. 157/2014:

1 – In addition to other security-like gains that the law may qualify as such, we can define securities as:

a) The shares;

b) The obligations;

c) Participation bonds;

d) Participation units in collective investment institutions;

e) Covered warrants;

f) The rights detached from the securities referred to in lines a) to d), provided that the detachment covers the entire issue or series or is provided for in the act of issuance;

g) Other documents representing homogeneous legal situations, as long as they are susceptible to transfer on the market."

¹⁹ Article 10(3) – [value-added] Gains are considered to have been obtained at the time of performing the acts provided for in Item 1 [onerous withdraw].



The Bill also includes a new writing to sub-item (a) to Article 10 (4)²⁰, i.e., it states that value-added gains are the net gains from the positive difference between the purchase price and the sold price resulting from the sales and purchase of cryptocurrencies (sub-item (k) of Article 10(1)), and should be subjected to taxation as such (**Category G**).

We assume that the sold price is the gain that were effectively received or disposable to the taxpayer, i.e., it happens in the moment of the onerous withdrawal, and while such event does not happen, there's only a potential gain (a dormant revenue) to occur, not a value-added gain is in place yet and, as such, there's no taxable event whatsoever²¹

This led us to the understanding that while a swap from crypto to fiat (onerous withdraw from crypto to a legal tender, or fiat) does not take place, there's no taxable event and, thus, no taxes could be levied on crypto gains as **Category G**.

Finally, the Bill has added item (4) to the Article 52 of the IRS Code which sets forth that when it comes to cryptoassets, the alienation value, i.e., the one following the onerous withdrawn, is the market value (i.e., in fiat) on the date of the withdrawal.

(ii) 365 days of Vesting Period for Category G

The Bill has also added item (18) to Article 10 of the IRS Code setting forth those gains acquired as a result of onerous withdrawals of cryptoassets are exempt from taxation whenever they are held by a period equal or greater than 365 days.

Yet, there's a provisional rule in the Bill specifically stating that the holding period shall cover the cryptoassets acquired before the law is in full force²².

If the Bill is approved by the Parliament and it turns into Law, it shall be in full force in 2023 and any onerous withdraw from cryptoassets therefrom shall apply the vesting period as per item 18 of Article 10 and Article 153 of the IRS Code, i.e., the tax exemption shall be counted back from the withdrawal day back to the period equal to or greater to 365 previous days, including any day previous to 2023.

5.2. Gains from Initial Offerings (ICOs, ITOs, IDOs)

These are tokens or coins that represent an investment to a specific crypto project, initiative, good or service of a company, via blockchain, usually in an early stage.

²⁰ 4 – The gain subject to IRS consists of:

(a) *The difference between the realization value and the acquisition value, net of the part qualified as income from capital, as the case may be, in the situations provided for in subparagraphs a), b), c), i) **and k)** of Article 1, without prejudice to the provisions of Article 18;*

²¹ Teixeira, Glória, Manual de Direito Fiscal

²² Article 153 of the IRS Code: **'Transitional rule on personal income tax**

For the purposes of paragraph 18 of article 10 of the IRS Code, as amended, given by this law, the holding period of crypto assets acquired before the date of entry into force of this law is considered for the purposes of counting the period of detention referred to in that article.'



It's worth to note that, when it comes to tokens issued for coin offerings (Initial Coin Offerings – ICO, Initial Token Offerings – ITO...) they may or may not represent value-added gains from securities.

In order to disclose whether there are grounds to qualify ICO gains as security gains we must first assess the project whitepaper, as well as the legal requirements as per the Portuguese securities law.

If we want to investigate whether an asset may be deemed as security, the first step is to assess the Portuguese Securities Code – CdVM which sets out in its Article 1 (1) that any assets that the law qualifies as such [securities] can suit in the definition of **securities**, meaning that if a cryptoasset is duly qualified as security, it shall not be assumed as value-added gains as per item (k) to article 10 of the IRS Code, which expressly excludes securities from its scope and would be critical to classify it as taxable in Category G.

Following the same rationale, once we thoroughly analyze the sentence ***“other documents representing situations homogeneous legal entities, as long as they are susceptible to transfer on the market.”*** found in same article 1(1), sub-item (g) of the Portuguese Securities Code, we may open the avenue to find out whether ICOs may be deemed as securities, hence **NOT** falling into the scope of **Category G**, as per the new Bill.

To support this rationale, when we analyze the sentence above, we need to go through the four main elements from the highlighted sentence below, which should help us to identify if such cryptoassets can be deemed as security:

Thus, coin/token offerings indeed meet all the required requirements previously assessed, as follows: (i) they are electronic documents²³, (ii) they represent a legal status, as long as the project's whitepaper²⁴ confers them the rights and duties of investors towards issuers, (iii) it's an fungible (homogeneous) legal situation, since the tokens issued, in general, grant equal rights and duties to all investors and, (iv) it's susceptible to transmission, as they are transferable and tradable on the market.

Note that tokens (digital coins)²⁵ issued in public offerings can qualify as investment tokens (securities) in the European Union, just like what happens with the security tokens in the US jurisdiction.

Despite such coins/tokens usually fulfill the four above-mentioned requirements, before deem them as securities, we still must assess them on case-by-case basis as per their whitepaper content before acknowledge them as securities, as per the binding information issued by the CMVM (Portuguese Securities Commission), through a AT Binding Information in the entity's FAQ section on their website²⁶.

Thus, CMVM considers them securities if one or more shares of the token issuer can generate (i) an expectation of investment return (interest or profits), or if (ii) it represents rights and duties on the token issuer.

²³ The conjunction of article 362 of the Portuguese Civil Code with the Legal Regime for Electronic Documents and Digital Signature Securities Code (Decree-Law nº 290-D/99 of 2 August), in its Article 1, we understand that a document is any object created by man with the aim of reproducing or representing a person, thing or fact, and that an electronic document is also considered any document prepared by electronic data processing. In this way, we can easily frame cryptocurrencies as documents in Portuguese Law

²⁴ A white paper is an informational document issued by a company or a non-profit organization to promote or highlight the features of a solution, product, or service that it offers or plans to offer.

²⁵ The definition of a digital coin is an asset that is native to its own blockchain. Think about Bitcoin, Litecoin, or Ether. Each of these coins exists on their own blockchain, while tokens are created on existing blockchains. In fact, thanks to the creation and facilitation of smart contracts, the most common blockchain token platform is Ethereum. Tokens that are built on the Ethereum platform are known as ERC-20 tokens.

²⁶ See Securities and Exchange Commission, Questions and answers on crypto assets for entities, information on the CMVM website, available on the CMVM website https://www.cmvm.pt/pt/AreadoInvestidor/Faq/Pages/FAQs-Criptoativos_industria.aspx



As a result, not all crypto-assets are securities, as their classification as such depends on a case-by-case analysis, but once they are deemed as securities, they must not only be taxed, but also comply with other regulations required by the Portuguese Securities Commission, which are not in the scope of this work.

Finally, when it comes to tokens issued for coin offerings (ICOs, ITOs...), if they are not deemed as security, they would fall in the scope of **Category G**.

On the other hand, when they carry the elements of a security, including the whitepaper assessment, they DO NOT represent value-added gains and **would NOT qualify for Category G but Category E**.

5.3. NFTs (Non-fungible Tokens)

The Bill defines cryptoassets as any digital representation of value or rights that can be transferred or stored electronically using distributed ledger technology or similar technology²⁷.

It depicts the same definition adopted by the Portuguese AML/CFT Law²⁸, which transposed the EU Directive (EU) 2018/843.

As a result, any assessment made in this study also pertains to any other assets such as non-fungible tokens (NFTs) or those representing value or rights that can be electronically assigned.

5.4. Mining

The Bill creates the sub-item (o) to article 4 of the IRS Code²⁹, giving the status of economic activity to any transaction related to the issuance of crypto-assets, including mining, or the validation of crypto-asset transactions through a consensus mechanism.

On the other hand, according to Portuguese jurisprudence the status of economic activity implies not only the existence of a commercial, or a professional activity, but it also must be performed on a regular basis, with the effort of the issuers and the intent of making profits.

(i) **Mining and Validation through Consensus**

As an economic activity, according to the new Bill, the issuance of crypto-assets, including mining and the validation of crypto assets through consensus shall fall into Category B.

Yet, tax collection procedures must comply with Article 6 of the Portuguese IRS Code, that is, the taxpayer must issue an invoice or equivalent document (integrated invoice-receipt), whenever he sales or provide a service to a third party.

²⁷ Art. 10 (17) of the IRS Code

²⁸ AML/CFT Law, Article 2(1)(II) enacted by Law No 58/2020 of 31 August 2020, which amended Law No 83/2017 of 18 August 2020, known as the law on anti-money laundering and combating the financing of terrorism ('AML/CFT Law').

²⁹ Article 4(o) of the IRS Code: '*Transactions connected with the issuance of cryptoassets, including mining, or validation of crypto transactions via consensus mechanism*'



Regarding the revenues or any gains arising from coins produced for the first time, we first need to split mining (proof of work) from minting (proof of stake) as they may imply legal approaches, as follows:

(ii) Mining (proof of work)

The Bill contemplates any issuance of coins as an economic activity and, i.e., the issuance of coins/tokens comes from a computer program, as well as the efforts and expenses of the miner on a regular basis to obtain the coins, therefore, **Category B** applies.

It's worth to bear in mind that if the issued coins/tokens are sold for currency (legal tender), they will be taxed in **Category B** (if it's an economic activity made on a regular basis with expectation of profits).

However, there's still a legal gap as to the taxable event on the ultimate use of the issued coins, i.e., if they are going to be used for the purchase of products and goods, other than legal tender and virtual currencies, and as such it would probably be deemed as transferable security, and therefore taxable in **Category E**.

(iii) Minting (proof of stake)

Another uncertainty is whether the Bill brings to a close the tax Category of the process of creating coins by the consensus method (minting or proof of stake).

Eventually, there's a deposit of digital coins in a pool of individuals which will economically support certain transactions, whose participation grant them rights, yields and/or revenues, in general the right to acquire new coins that will be produced.

Once we assess this process more deeply, we may assume that it can be taxed in both **Category E** and **Category B**, since they usually use different mechanisms that change the nature of such yields, gains, rights and revenues and, as a consequence, its classification among the tax Categories, as we shall analyze below:

(a) Minting (proof of stake) with no Commercial Activity

It happens when the necessary requirements for the existence of a commercial activity are not present, i.e., there is no habituality and efforts (or expenses) from the taxpayer, only a deposit of coins.

We assume those gains as passive income generated from the deposit of coins in guarantee, falling within the scope of **Category E**.



(b) Minting (proof of stake) with Commercial Activity

It occurs when the deposit of coins/tokens not only gives you the possibility of income, but also the right to manage part of the (or the whole) project, as it happens in DAO³⁰ structures.

In return for the deposit, you may be entitled to manage the project, which might fall in **Category B**, or receive new coins or other gains, meaning you're not only engaged in a commercial activity, but also generating passive income from some coins generated in the process (**Category E**).

A deep assessment should be made to find out the proper categories for each project.

5.5. Liquidity Pools, Stakes and Loans

A usual practice in the crypto market is to deposit a certain number of cryptoassets in pools (between two different currencies), or stakes of a single digital currency in a certain protocol, as DeFIs³¹ and CeFIs³² to maintain the financial stability of the whole system.

As a result, if though the Bill does not mention passive income, we are obviously facing passive income and, as such, the resulting income would be taxed in **Category E**, since the incidence rule for this category is constructed in an open way, indicating a general rule and exemplifying several realities subject to taxation (but not the only ones), meaning that the event does not need to be specifically stated in law as long as one may be able to construe that it has similar legal features.

The AT Binding Information³³ also provides that the earning from sales or gains, generated by the use of crypto assets, i.e., loan, stake or pool, is ruled by article 3 of the IRS Code³⁴, which means the tax authorities may eventually at some point deem as capital income taxed in **Category E**.

5.6. Stamp Duty for Free Assignment of Cryptoassets

In the event of free assignments of cryptoassets for third parties, the Bill has included cryptocurrencies on stamp duties to be regulated as follows:

³⁰ A decentralized autonomous organization (DAO) is an emerging form of legal structure that has no central governing body and whose members share a common goal to act in the best interest of the entity. Popularized through cryptocurrency enthusiasts and blockchain technology, DAOs are used to make decisions in a bottoms-up management approach. (*In Investopedia*)

³¹ DeFi (or “decentralized finance”) is an umbrella term for financial services on public blockchains, primarily Ethereum. With DeFi, you can do most of the things that banks support — earn interest, borrow, lend, buy insurance, trade derivatives, trade assets, and more — but it’s faster and doesn’t require paperwork or a third party. As with crypto generally, DeFi is global, peer-to-peer (meaning directly between two people, not routed through a centralized system), pseudonymous, and open to all.

³² CeFi, short for centralized finance, offers some of the yield benefits of DeFi with some of the ease of use and security of traditional financial-services products. With CeFi, you can earn interest on savings, borrow money, spend with a crypto debit card, and more.

³³ Binding Information in Case No. 5717/2015, Order of December 27, 2016.

³⁴ Crf. Article 3, n° 1 of the CIRS



The stamp duty falls over an array of legal relationships, including the free assignment³⁵ or acquisition of cryptoassets³⁶ which amounts to 10% of its net value³⁷.

According to the Bill, the stamp duty is due whenever it's located in the Portuguese territory.

Note that cryptoassets are deemed to be located in the Portuguese territory whenever they are deposited in institutions with headquarters, effective management or permanent establishment in the country.³⁸

6. *Non-habitual Residence (NHR) for Cryptoasset Investors*

The NHR tax regime is available for all new tax residents in Portugal who were not tax residents for the 5 years prior to its application. It's granted for 10 years and cannot be renewed.

NHRs are taxed at a flat rate of 20% on their salaries and professional incomes (Category A and B) and are exempt from paying taxes on global income, like dividends (category E), capital gains (Category G), and rental income (Category F), which should be assessed on a case-by-case basis to evaluate which events and tax rates apply.

In a nutshell, salaries and professional income taxes are paid on a sliding scale, and a great range of professional activities may also benefit from the non-habitual tax regime (NHR) when moving tax residency to Portugal, as it also offers a drastic reduction and exemptions on taxes levied over capital gains outside of Portugal.

³⁵ Article 1(1) of the Stamp Duty Code – Objective Tax Incidence – ‘Stamp duty is levied on all acts, contracts, documents, titles, papers and other facts or legal situations provided for in the General Table, including free transfers of goods.’

³⁶ Article 1(3) of the Stamp Duty Code - For the purposes of item 1.2 of the General Table, free transmissions are considered, namely, those whose purpose is:

(...) (i) Cryptocurrencies

³⁷ **Stamp Duty Code** - Article 1(1) of the Stamp Duty Code – Objective Tax Incidence – ‘Stamp duty is levied on all acts, contracts, documents, titles, papers and other facts or legal situations provided for in the General Table, including free transfers of goods.’

General Table Acquisition of goods of the Stamp Duty Code - 1.2. Free acquisition of goods (...) on the value [of] (10%)

³⁸ Article 4 (3) (4) Territoriality

(3) - In the case of free assignment, the tax [stamp duty] is due whenever the goods are located in national territory.

(4) - For the purposes of the provisions of the previous number, the following are considered assets located in national territory:

e) Monetary values and cryptoassets deposited in institutions with headquarters, effective management, or permanent establishment in national territory (...)