

Trading Bitcoins MAY NOT BE SUBJECT to taxation in Portugal

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The Portuguese Tax Authority has issued a binding information regarding the tax framework on the income obtained from the purchase and sale of cryptocurrency and has concluded that *the income generated from the gains obtained from the purchase and sale of virtual currency units or swap at the exchange rate at the time of the cryptocurrency, by real currency, does not fall into any of the possible categories of taxable income in Portugal.*

Cryptocurrency or virtual coins are not technically considered "currency" since they do not have a legal course or legal tender power in Portugal. However, they can be exchanged for real currency (euros, dollars, or others) near specialized companies for this purpose. Its value against the real currency is determined by the online search of the cryptocurrency.

According to the Portuguese Tax Authority, income generated by trading bitcoins cannot be considered **capital gains**, in view of the closed classification provided for by the legal provision on the concept of capital gains (article 10.º of the CIRS). Indeed, in the case of cryptocurrencies, we are not, in the presence of shares, nor do they constitute any right to receive any sum. On the other hand, their valuation is not based on any underlying asset since their value is merely determined by their supply and demand, and therefore they cannot be considered as a financial derivative product. Finally, considering the legal definition of securities (Article 1 of the Securities Code), the crypto-coins do not fall within this definition and therefore they cannot be considered capital gain income.

As for the possibility of being classified as **capital income**, the same can't also apply according to the understanding of the Portuguese Tax Authority. Article 5.º of the CIRS provides that only capital income that is generated by the mere application of capital is taxable. In its turn, the income obtained with the cryptocurrencies results from the sale of a right.

Lastly, regarding the possibility that its activity may be considered a business or professional income, the Portuguese Tax Authority understand that this can only occur if the trading of cryptocurrency is considered, in the light of its habituality, to be a professional or business activity of the taxpayer. In this case, the taxpayer must issue an invoice whenever he makes a sale or provides a service related to the purchase and sale of cryptocurrency.