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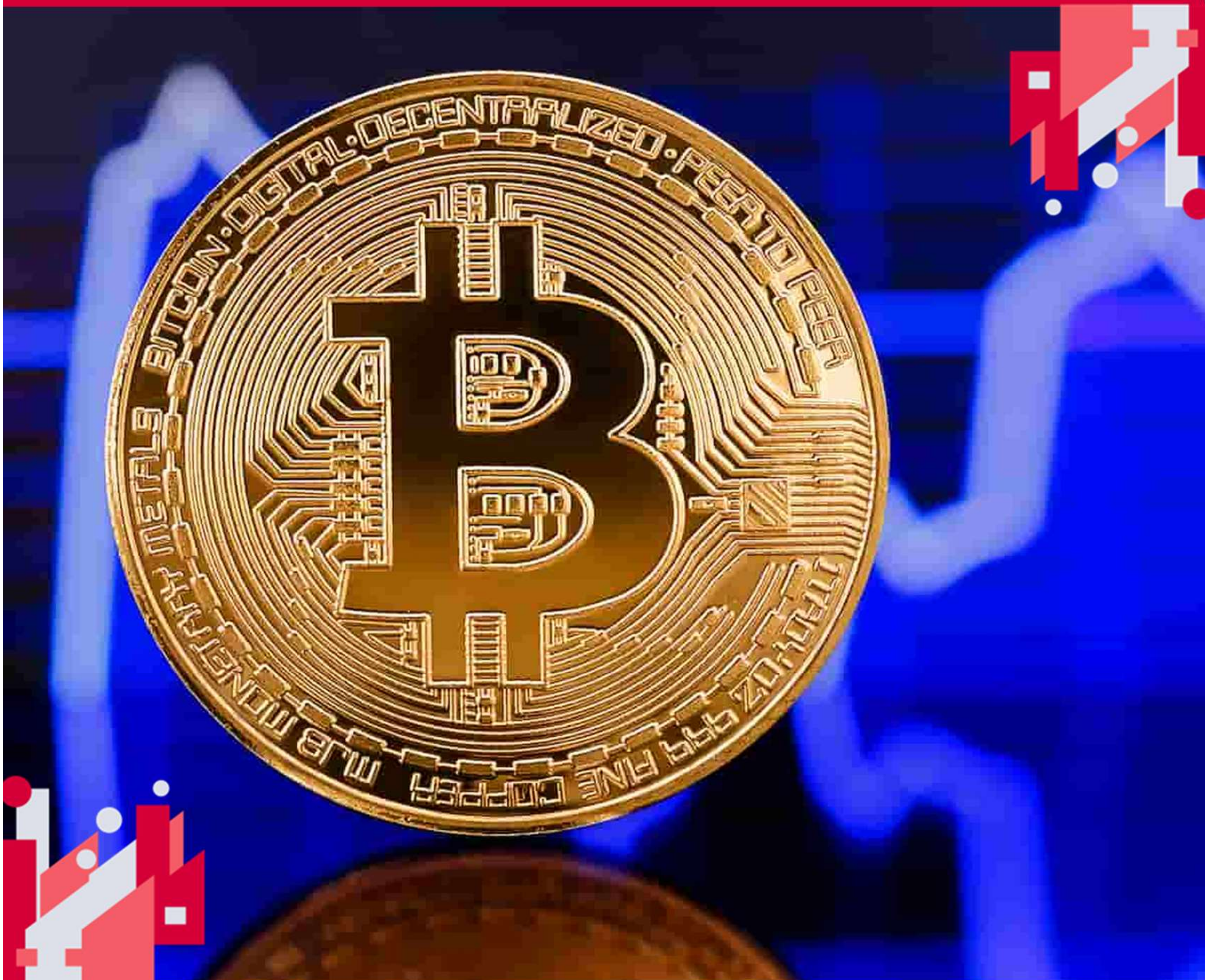

FLASH NEWS: THE PORTUGUESE TAX TREATMENT FOR CRYPTOASSETS

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Considering moving to Portugal? Here are the news about taxation of our Crypto friendly Country

On October 10, 2022, the Portuguese government (finally) took steps on the ground to subject crypto market-related gains to taxation. Some may think this are bad news for the so-called tax-friendly country. However, the Portuguese government establishes a set of measures that give certainty and promise to guarantee the competitiveness of the market.

Personal Income Tax (PIT)

The attractiveness of the regime lies in the exemption from taxation of gains from the sale of cryptoassets held for 365 days or more. In order to calculate the holding period, the proposal states that the date to be considered may include the date prior to the entry into force of the regime.

- **Business income**

The proposal establishes that operations relating to the emission of cryptoassets (mining included) or the validation of cryptoassets' transactions via consensus mechanisms are considered as commercial activities. Therefore, it can be taxed via the simplified regime (where only 15% of sales are taxed) or via organized accounting.

- **Equity Increases (capital gains)**

The taxable amount from the sale of assets will be the difference between the realization value (which is presumed to be the market value on the date of sale) and the acquisition value (net of the part qualified as capital income and of related expenses). The applicable rate is 28% if the taxpayer does not opt for the aggregation of income implying taxation under the general progressive tax rates.

Another type of income to be considered is **capital income**. Although the proposal does not predict any changes to the capital income article, it states that in case cryptoassets generate derivative income classified as financial instruments, these will be taxed under the tax rules applicable to capital income.

Stamp Duty

Portuguese government proposes Stamp duty at a 4% tax rate over commissions and payments charged by or with the intermediation of cryptoassets service providers.

As for cryptoasset donations, a 10% tax rate is proposed, but with generous standard exemptions.

Portuguese Stamp duty is proposed to apply when: *(i)* the cryptoassets are deposited in institutions with registered office, a place of effective management or permanent establishment in national territory; *(ii)* when in case of inheritance the transferor was domiciled in Portugal; *(iii)* or in case of donations when the beneficiary is domiciled in national territory.

Conclusions

Cryptoassets: Could it be a safe play for investors?

The Portuguese government proposes an extensive definition of cryptoasset, embracing a multiplicity of assets and not only cryptocurrencies.

The Distributed Ledger Technology (DLT) refers to the technological infrastructure and protocols that allow simultaneous access, validation, and record updating in an immutable manner across a network that is spread across multiple entities or locations, without the presence of the middleman between the involved parties on the transaction.

The conscious use of this type of technology can increase efficiency and lower remittance costs. In some way the taxation of cryptoassets is a secure affirmation of this technology on our daily basis.

1. Exemption

A PIT exemption is proposed for cryptoassets held for 365 days or more (long-term crypto investments). Investors opting for long-term crypto investments clearly being at a more advantageous position than the ones opting for short-term crypto investments.

2. Tax-loss harvesting

The Proposal establishes that the negative balance arising from cryptoassets yearly transactions (regardless of the holding period) may be carried forward for the next 5 years if the taxpayer opts for aggregation of crypto income with other forms of income, applying the general progressive rates, instead of taxation at the special rate of 28% (which does not allow losses to be carried forward). Of course, this is not relevant for short-term crypto investments.

3. Transfer fees between wallets

A very common question is if moving a cryptoasset from a hot wallet to a cold wallet can be qualified a taxable event.

According to the Portuguese Tax System, moving cryptoassets between an owner's wallets, is not a taxable event since the investor stills hold the asset. So, this would not be deemed as a disposal, and therefore would not be subject to PIT. It is important to note that it is not possible to deduct the transfer fees between owner's wallets (except if taxed as business income).

On the other hand, in accordance with the Proposal in case of alienation all costs directly linked with the acquisition and alienation are deductible. For instance, under those conditions, you can deduct transactions fees.

Taxation of cryptoassets and corresponding regulation is proof that we are moving forward in the digital era and confirms the increasingly remarkable process of dematerialization of wealth. For that matter, taxpayers should pay attention to this new forms of income that are becoming the present, and less the future.

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