

## Main measures set out by Royal Decree-Law 15/2020, of 21 April, which adopts additional and urgent financial and employment measures

On 22 April 2020, Royal Decree-Law 15/2020, of 21 April, which adopts additional urgent actions to support financial and employment measures ("**RDL**"), was published in the BOE (Spanish Official Gazette). This regulation has been approved within the state of alarm in which Spain has been since the entry into force of Royal Decree 463/2020, of 14 March, which declared the state of alarm to manage the health emergency caused by COVID-19 ("**RDL 463/2020**"). The RDL contains additional measures aiming to respond to the requirements derived from the extension of the exceptional situation caused by the COVID-19 pandemic on the economy and employment, with a particular focus on small and medium businesses and self-employed workers.

The new measures are primarily addressed to companies and workers. Their goal is to ensure the cash flow of companies and strengthen their capital, avoid the negative impact of the current situation on employment figures, and ensure the protection of workers. In short, their aim is to protect the productive and social fabric. The most relevant measures included in the RDL are detailed below, together with their legal implications in different sectors:

### 1. Real Estate measures

The RDL sets out the following real estate measures:

- **Deferment of rent in lease agreements not related to housing or industry**

The RDL sets out measures that seek to regulate the rental payments of natural and legal persons, as lessees in a lease agreement of property not used for housing, under article 3 of Law 29/1994, of 24 November, of Urban Leases, or industry. These tenants have been forced to suspend their activity or have seen it drastically reduced as a result of COVID-19.

Specific measures based on type of lessor:

- **Lessors that are entities or public companies or large owners, (understanding these as natural or legal persons that own more than 10 urban properties, excluding parking and storage rooms, or that own a built surface of over 1,500 square meters.)**

In this case, the RDL sets out that if the parties do not reach an agreement, the lessee may request deferring the rent payment, without penalizations or accrued interests, as from 23 April 2020 and within a month. The acceptance of the deferment is mandatory for the landlord.

The deferment until the end of the state of alarm, including any extensions. Once the state of alarm is lifted, and for a maximum of four months, monthly instalments may also be deferred if the impact of COVID-19 continues to affect businesses negatively.

Deferral is applied from the next monthly payment, by distributing the instalments over 2 years from the declaration of the state of alarm, or when the above 4-month period has ended, provided that the lease agreement is still in force.

- **Lessors that are not large owners, entities or state companies**

If the parties do not reach an agreement, the lessee may request the temporary and extraordinary deferral of the payment or the reduction of the rent. To that end, the parties may access the security deposit and use it to pay the rent every month, in full or partially. In this case, the lessee must refund the security deposit within 1 year from the execution of the agreement or during the remaining period of the contract if it is less than 1 year.

- **Requirements that lessees must comply with to benefit from the measures set out in the RDL**

Lessees that are self-employed workers or small/medium companies must meet the following requirements:

#### **General requirements**

- The lease of the property must be related to the economic activity of the lessee.
- Lessee's activity:
  - The activity must have been suspended as a result of the entry into force of RD 463/2020, which declared the state of alarm to deal the health emergency caused by COVID-19, or because of orders issued by the competent authorities authorised under this royal decree. (Authorization is provided with a certificate issued by the State Tax Authorities (*Agencia Estatal de Administración Tributaria (AEAT)*), or the competent agency of the regional government, as applicable, based on the suspension of activity declared by the interested party).
  - If the entry into force of RD 463/2020 has not caused the suspension of the activity, the interested party needs to prove that its turnover was reduced by at least 75% in the month prior to the one in which it is requesting a deferral, in respect of the monthly average turnover in that month's quarter compared to the previous year. The lessee will prove this reduction by submitting a responsibility statement, and will show its financial records at the lessor's request.

#### **Specific requirements**

- Self-employed workers: on the date when the state of alarm was declared, lessees should have been affiliated to and registered under the Special Regime of the Social Security for freelance or self-employed workers, or the Special Regime of the Social Security of Seafarers or, if applicable, under one of the Benefit Societies replacing the Special Tax Regime For Self Employed Workers (RETA).
- Small and medium companies should respect the limits set out in article 257.1 of the Spanish Companies Act. These are:
  - That the total value of the assets does not exceed 4 million euros
  - That the net value of the annual turnover does not exceed 8 million euros.
  - That the average number of employees during the fiscal year does not exceed 50 workers.
- ***The lessee must prove it meets the requirements***

The lessee must prove the landlord that it meets the requirements above and, therefore, it needs to provide the following documentation:

- The lessee needs to prove the reduction of the activity by providing a responsibility statement. This statement should specify a minimum 75% decrease in turnover, compared to the monthly average turnover during the same quarter the year before.
- The suspension of the activity needs to be verified with a certificate issued by the Spanish Tax Authorities (AEAT) or the regional government's competent agency, as the case may be, based on the lessee's declaration of the suspension of its activity.
- ***Consequences of unduly applying the suspension of the payment***

Natural or legal persons that have benefitted from a rent payment suspension, and do not meet the requirements set out in the RDL, are liable for any damages and expenses derived from applying these extraordinary measures.

- **Guarantee schemes for primary residences**

As approved in article 9 of Royal Decree-Law 11/2020, of March 31 ("**RDL 11/2020**"), the Ministry of Transport, Mobility and Urban Agenda (*Ministerio de Transportes, Movilidad y Agenda Urbana*) will be able to grant guarantees for a maximum amount of 1,200 million euros. Thus, the State will use guarantee schemes to provide funds to lessees of primary residences who have become socially and financially vulnerable as a result of the spread of COVID-19.

## 2. Financial and banking measures

The RDL sets out the following financing and banking measures:

- **Formalization in public deeds of mortgage suspensions**

The RDL sets out that if a lending institution's credit rights derived from loans, with or without a mortgage guarantee, are suspended, it will have to formalize unilaterally in a public deed the suspension of the financing. When the state of alarm is lifted, it will file the act with the Land or the Property Registry if funding is guarantee with rights that can be recorded in these registries.

The RDL sets out that the recognition of the suspension of the mortgage debt of the primary residence of natural persons, will not be subject to Law 5/2019, of 15 March, on real estate loans, under Royal Decree-Law 8/2020, of 17 March, which approved additional and urgent social and financial measures as a result of COVID-19 ("**RDL 8/2020**").

## 3. Tax measures

The RDL sets out the following tax measures:

- **Reduced VAT applicable to medical supplies**

From the entry into force of the RDL and until 31 July 2020, the supply of medical material, specifically any listed in the annex of the RDL (from medical devices, such as respirators, to fungible medical supplies, such as syringes, masks or protection products) will be subject to a 0% VAT. The measure is temporary and does not limit the right to deduce input VAT. These materials must be delivered to public law bodies, clinics or hospitals and private social institutions

- **VAT applicable to the distribution of digital books, magazines and newspapers**

VAT applicable to the distribution of digital books, magazines and newspapers will be reduced from 21% to 4%, under Law 37/1992, of 28 December, on Value Added Tax, removing discrimination that existed against paper formats. This measure is justified by the increased demand for these products during the lockdown period. In accordance with the corresponding amendment to Law 37/1992, of 28 December, on Value Added Tax, this is not a temporary measure.

- **Extension of the suspension of tax deadlines**

In general terms, RDL 8/2020 and RDL 11/20 extend the deadlines to pay some tax settlements and debts, deferred or paid in instalments, and of the deadlines of some tax procedure tasks (such as replying to requirements or filing claims). The corresponding deadlines have been extended until 30 April or 20 May (based on when original term started). With the entry into force of RDL, both dates should be understood as 30 May.

- **Suspension of the payment period for certain tax debts**

With this new measure taxpayer will avoid any surcharges of the payment period to any taxpayers. These taxpayers, who have not made any payment during the voluntary period, have requested the special funds guaranteed by the Ministry of Economy and Digital Transformation

under RDL 8/2020. They will need to comply with the strict terms set out, and pay their debt within a month following the end of the voluntary period.

Therefore, in such cases, the payment period is not expected to begin when filing, but not paying for, the settlement statements or self-assessment before the deadline. These payments correspond to taxes managed by the AEAT and that must be filed between 20 April 2020 and 30 May 2020.

- **Mandatory procedures managed through the AEAT portal**

Exceptionally, the RDL allows the cancellation of biddings and the return of deposits in relation to tender procedures that have been affected by the suspension of payment periods and conditions because of the state of alarm (articles 33.1 and 33.2 of the RDL 8/2020).

- **Instalments payments for Corporate Tax**

This measure will only affect taxpayers whose net turnover during the last twelve months does not exceed 6 million euros. Concerning these taxpayers, the following should be highlighted:

- Taxpayers whose annual turnover in 2019 did not exceed 600,000 euros (the extension of the deadlines is applied to these taxpayers under Royal Decree-Law 14/2020, of 14 April, which extends the deadline to submit and pay some tax declarations and self-assessments).

Exceptionally, these taxpayers may pay the first instalment calculated on the accrued taxable base (*base imponible corrida*) (article 40.3 of Law 27/2014, of 27 November, on Corporate Tax), by submitting within the deadline the instalment calculated on such taxable base.

- Those who do not fall under the above assumption

They may also pay the next instalments by submitting the second one, also calculated on the accrued taxable base (*base imponible corrida*), before the deadline (that is, between 1 and 20 October 2020). The first instalment will be deductible from the next instalments of the same exercise.

This measure broadens the possibility of selecting the instalment payment option, bearing in mind that the taxpayer will only be bound to this option for payments corresponding to the fiscal year started in 2020.

- **Areas in the Individual Income Tax objective assessment scheme (EO) and the simplified VAT regimes.**

These regimes only apply to taxpayers who meet specific requirements. One of the requirements of the EO regime is that the taxpayer's untaxed revenues did not exceed 250,000 euros, in the preceding year and for all its activities.

The measures make it possible to waive the EO regime and the corresponding VAT and IGIC (indirect Canary Islands tax) regimes in a more flexible way. Taxpayers that continue to apply these regimes may include the days affected by the state of alarm to calculate the returns of the corresponding instalment payments or quarterly instalments.

- **Deferral of port duty debts**

Special measures are approved for ports, such as the voluntary postponement of tax debts on port fees accrued since 13 March 2020 to 30 June 2020, for a maximum of 6 months, and without accruing interests for late payment or requiring guarantees.

#### **4. Consumer measures**

The RDL sets out the following for consumer and user rights:

- **Clarifying the calculation of termination right deadlines for specific agreements with consumers and users**

Article 36.1 of the RDL 11/2020 is modified to clarify the origin of the rights of termination in favour of a consumer that is party to a purchase and sale agreements of goods and services (including continuing-performance contracts), and which cannot be complied with because of the measures adopted during the state of alarm. Thus, the 14-day termination period of any such agreement starts from the moment it cannot be executed. The 60-day period to confirm if a proposal is needed to review the agreement that will restore the parties interests, starts once the consumer requests the termination of the agreement (not when the cause impeding compliance appears, as set out in RDL 11/2020).

## 5. Employment measures

The following employment measures stand out:

- **Extension of the preference for teleworking/homeworking, as well as the right to adapt and reduce work schedules**

The preference for teleworking is extended for two months, as well as the right to adapt and reduce work schedules.

- **Recognizing the existence of partial force majeure events in certain essential activities**

Possibility of authorizing temporary workforce adjustments in essential activities, provided that it applies to workers whose tasks are not essential.

Therefore, for those activities classified as essential, it will be understood that force majeure events are converging in relation to the suspension of contracts and the reduction of working hours applicable to part of the workforce or the unaffected activity.

- **Probationary period and waiver by the worker: recognition of employment benefits**

Workers will be considered legally unemployed under the following circumstances:

- Their contracts have been terminated during the probationary period, at the request of the company and from 9 March, regardless of the reason that terminated the previous employment relationship.
- They have willingly terminated their employment contract, from 1 March, for a firm job offer that has not materialized as a result of COVID-19.

- **Extension to protect permanent seasonal workers**

Agreement to apply the extraordinary measures on matters of unemployment welfare (as set out in article 25 of Royal Decree-Law 8/2020) for permanent seasonal workers, and for those who have a stable regular job on certain dates.

Specifically, workers who have not been able to carry on with their intended activities because of COVID-19, may receive benefits under the following circumstances:

- Have made enough social security contributions, but are not legally unemployed.
- Have not contributed long enough to receive unemployment benefits.

- ***Deferral of deadlines falling under the Labour Inspection and Social Security Department.***

During the state of alarm the following deadlines are postponed:

- Deadlines for supporting tasks and requirements by the Social Security and Labour Inspection Department. Except for any tasks, or deferral requirements and orders because of the state of alarm or that are essential.
- The description of the actions to demand accountability regarding compliance with social order and Social Security regulations.

- ***Reinforcement of monitoring and sanction mechanisms***

Modification of the sanction corresponding to the submission of business applications that include misrepresentations and inaccuracies in the data provided. Companies are directly responsible for returning any benefits wrongly received by workers, if the latter are not responsible or have been deceitful.

Also, it is understood that the company is committing an infraction for each worker that has requested, obtained or enjoyed, fraudulently, any Social Security benefits.

- ***Deferral of debt payments to the Social Security***

Companies and self-employed workers may request a deferral if they have no current postponements. The request is for the deferral of debts whose legal payment deadline takes place in April and June. The deferral will be carried out taking into account the following items:

- Application of a 0.5% interest .
- Requests must be submitted within the first ten calendar days of each legal payment deadline as specified.
- The request will determine the deferral of the collection period of the affected debts. Debtors must be up-to-date with their Social Security obligations.
- The deferral is not compatible with the postponement of any other Social Security contributions.

- ***Other employment and Social Security measures***

- Within the three months following the end of the state of alarm, self-employed workers may appoint a benefit society, which cooperates with the Social Security, to manage financial aid for the suspension of activity, or choose a collaborating society to manage any extraordinary aid for the suspension of activity because of the state of alarm. In both cases, if they have not notified their decision after three months, it will be understood that they have chosen the collaborating society with the most significant number of self-employed workers affiliated in the province where they are located.
- The period of doctorate research contracts for staff in training that should be terminated within the next 12 months may be extended, and for the duration of the state of alarm.
- The requirements to classify employee owned companies are relaxed.

The RDL came into effect on 23 April 2020. The government and those in charge of governmental departments, within their competences, may decree as many provisions as necessary to develop and execute this RDL. However, any measures set out in the RDL and with a specific period will be subject to the same.

This publication constitutes the individual opinion of Osborne Clarke. It is based on a particular interpretation of the existing laws. It should be used with caution since it is intended for information purposes only and should not be construed as legal advice.