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This briefing analyses the tax measures that have been approved in recent weeks as a result of COVID-19, with the aim of alleviating the economic and social consequences of the crisis.

The regulations in which these measures have been included are as follows:

- (i) Royal Decree-law 7/2020, of 12 March, adopting urgent measures to mitigate the economic impact of COVID-19 (“**RDL 7/2020**”).
- (ii) Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19 (“**RD 463/2020**”).
- (iii) Royal Decree-law 8/2020, of 17 March, on extraordinary urgent measures to address the economic and social impact of COVID-19 (“**RDL 8/2020**”).
- (iv) Royal Decree 465/2020, of 17 March, amending Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19 (“**RD 465/2020**”).
- (v) Royal Decree-law 11/2020, of 31 March, adopting additional urgent social and economic measures to deal with COVID-19 (“**RDL 11/2020**”).
- (vi) Royal Decree-law 14/2020, of 14 April, extending the deadline for filing and payment regarding certain tax returns and self-assessments (“**RDL 14/2020**”).
- (vii) Royal Decree-law 15/2020, of 21 April, on urgent complementary measures to support the economy and employment (“**RDL 15/2020**”).
- (viii) Royal Decree-law 17/2020, of 5 May, adopting measures to support the cultural sector and tax measures to deal with the economic and social impact of COVID-19 (“**RDL 17/2020**”).

These measures can be grouped as follows: (i) measures relating to the payment of tax debts arising from tax returns and self-assessments, (ii) measures relating to tax procedures, (iii) the introduction of a new exemption from the Stamp Duty, (iv) the reduction of VAT rates, (v) measures relating to the method of calculating interim CIT payments, (vi) measures relating to the objective estimation system for personal income tax (“**PIT**”), VAT and the Canary Islands General Indirect Tax (“**IGIC**”), (vii) incentives for film and audiovisual production in terms of CIT, (viii) increased tax incentives for patronage and (ix) measures relating to customs and ports.

## **A. Measures relating to the payment of tax debts arising from tax returns and self-assessments**

Both RDL 7/2020 and RDL 14/2020 have introduced various measures related to the payment of tax debts arising from the filing of tax returns and self-assessments. However, these measures only apply to taxpayers who do not exceed certain quantitative thresholds in terms of their volume of operations.

RDL 15/2020 established the delay in the start of the enforcement period in the case of self-assessments for which financing had been requested from a credit institution, in accordance with the conditions set out in article 29 of RDL 8/2020.

## (i) Measures introduced by RDL 7/2020

Firstly, RDL 7/2020 made it possible to defer the payment of the tax debts relating to all tax returns-settlements and self-assessments whose deadline for presentation and payment is from the date of entry into force of RDL 7/2020 (13 March 2020) until 30 May 2020, including certain types of debts which, in general, cannot be deferred (tax obligations of a withholder or a person obliged to make payments on account, those arising from taxes which must be legally charged, and those arising from interim payments on account of Corporate Income Tax (“CIT”)).

The deferral is granted for a period of six months, and will not accrue interest during the first three months.

However, the scope of this measure was limited, since only taxpayers with a volume of operations below EUR 6,010,121.04 in 2019 were eligible for these deferrals, and the total amount of debt that can be deferred cannot exceed EUR 30,000.

## (ii) Measures introduced by RDL 14/2020

RDL 14/2020 states that, in relation to the powers of the Spanish Tax Authorities, the deadline for filing and paying tax returns and self-assessments whose original deadline was between 15 April and 20 May 2020 will be extended until 20 May 2020 for taxpayers with a volume of operations below EUR 600,000 in 2019. The deadline will be extended until 15 May for self-assessments that give rise to payments which the taxpayers intend to make via direct debit.

This extension will also apply to public administrations whose approved annual budget is below EUR 600,000.

However, the measure is not applicable to taxpayers who form part of (i) a consolidation group for CIT purposes, irrespective of their net turnover, or (ii) a VAT group, irrespective of their volume of operations. The Spanish Tax Authorities have also clarified that this exclusion only affects tax returns that are presented as part of a group (forms 322, 353 and 222).

Since RDL 14/2020 does not refer to the corporate groups in article 42 of the Commercial Code, it can be concluded that, as with the deferrals provided for in RDL 7/2020, companies that form part of a corporate group but are not part of a CIT or VAT consolidation group may benefit from this measure, provided that their volume of operations does not exceed the aforementioned limit of EUR 600,000.

Consequently, and in view of the foregoing, this moratorium includes the obligation to file and, if applicable, pay interim payments on account of income tax (form 130) and corporate and non-resident income tax for taxpayers with a permanent establishment (form 202), the withholdings and payments on account for the first quarter (forms 111, 115 and 216, among others), the non-resident income tax return for non-resident taxpayers without a permanent establishment (form 210), the VAT return for the first quarter (form 303), and the recapitulatory return of

intracommunity transactions (form 349), among others. These tax returns and self-assessments can be submitted until 20 May, or 15 May if the amount is to be paid by direct debit.

Customs declarations are expressly excluded from this measure in accordance with section 2 of the sole article of RDL 14/2020.

It should be noted that, although RDL 14/2020 makes no mention of it, the Spanish Tax Authorities have confirmed that self-assessments that had already been submitted on the date of publication of RDL 14/2020 with a direct debit order will not be debited from the taxpayer's bank account until 15 May.

While the adoption of this measure is to be welcomed, it is questionable whether it will be effective (payment is only postponed by one month) and whether it is sufficient for the purpose of restarting the economy, especially in comparison with the measures adopted by other surrounding jurisdictions. In view of the limits in terms of quantities, we consider that the measure is aimed at alleviating the organisational difficulty of these "small contributors" - in line with what is stated in the explanatory memorandum of the regulation - rather than alleviating their economic and financial situation.

## (iii) Measures introduced by RDL 15/2020

As a consequence of the numerous requests for government-backed loans in order to be able to pay taxes, article 12 of RDL 15/2020 prevents, within the scope of the powers of the Spanish Tax Authorities, the commencement of the enforcement period for those debts arising from a self-assessment which have not been paid by the deadlines set out in article 62.1 of the General Tax Code -the deadlines set out for payments arising from self-assessments in accordance with the provisions of each tax- provided that the following requirements are met:

- The taxpayer has requested, within the period provided in article 62.1 of the General Tax Code or before the beginning of such period, the financing provided for in article 29 of RDL 8/2020, for the payment of tax debts resulting from tax returns and self-assessments and for at least the amount of such debts.
- A certificate issued by the financial entity stating that the application for financing has been submitted, including the amount and the tax debts involved, is provided to the Spanish Tax Authorities within five days following the end of the period for submitting tax returns or self-assessments.
- The financing is granted for at least the amount of the aforementioned debts.
- The debts are paid effectively, completely and immediately when the financing is granted. This requirement would not be fulfilled if a period of one month elapses since the end of the period for submitting tax returns or self-assessments and the payment has not been made.

With regard to the scope of application of the measure, we consider that RDL 15/2020 should have used the term tax obligor when regulating the first of its requirements, and not the term taxpayer. This is because, on the one hand, the "guarantee facilities" regulated in article 29 of RDL 8/2020 are offered not only to small entities, but also to larger entities liable to submit certain monthly self-assessments by a deadline within the period regulated in the First Transitional Provision analysed below. On the other hand, this measure is also applicable to debts corresponding to self-assessments for which the deadline would have expired on 20 April. Moreover, it should be noted that article 29 of RDL 8/2020 establishes that the purpose of the "guarantee facilities" is to meet the needs arising from, among others, the management of invoices, working capital requirements, maturities of financial or tax obligations or other liquidity needs, so it seems that the financing is not intended to be limited to tax concepts where the applicant has to be the taxpayer.

Consequently, nothing ought to prevent companies which fall within the scope of the "guarantee facilities" from applying this measure in relation to the payment of PIT, CIT or NRIT withholding taxes, where the taxpayer and the tax obligor for payment do not coincide. It would be particularly helpful if the Spanish Tax Authorities could issue its interpretation of this provision in order to allow these taxpayers to benefit from this measure in relation to the aforementioned debts, which generally cannot be deferred.

RDL 15/2020 also clarifies that, if any of the aforementioned requirements are not met, the enforcement period will be deemed to have begun in accordance with the period provided for in article 62.1 of the General Tax Code. This specific provision is worthy of criticism since the financing set out in said article 29 of RDL 8/2020, pursuant to the rules contained in the Resolution of 25 March 2020, of the Secretary of State for the Economy and Business Support<sup>1</sup>, requires the approval of the financial entity in accordance with its usual internal policy. The provisions leave the taxpayer with no room for manoeuvre in the event that the financial institution refuses to grant financing. In such a case, it would no longer be possible to make the payment or request a deferral in the voluntary period.

With regard to the temporary duration of this measure, the First Transitional Provision of RDL 15/2020 states that article 12 of RDL 15/2020 will only apply to tax returns and self-assessments due between 20 April and 30 May 2020. However, this provision states that debts arising from tax returns and self-assessments submitted prior to the entry into force of RDL 15/2020, and for which the enforcement period had already started, will be deemed to be in the voluntary period of payment again, provided all the following requirements are met:

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<sup>1</sup> Resolution of 25 March 2020, of the State Secretariat for the Economy and Business Support, Resolution of the Council of Ministers of 24 March 2020, approving the details of the first tranche of the ICO guarantee facility for businesses and the self-employed, to alleviate the economic effects of COVID-19 (Official State Bulletin of 26 March).

- The taxpayer provides, within a maximum period of five days from the entry into force of RDL 15/2020, a certificate issued by the financial entity stating that the request for financing provided for in article 29 of RDL 8/2020 has been made.
- The financing is granted for at least the amount of the aforementioned debts.
- The debts are paid effectively, completely and immediately when the financing is granted. This requirement would not be fulfilled if a period of one month elapses since the end of the period for submitting tax returns or self-assessments and the payment has not been made.

## B. Measures relating to tax procedures

Before analysing the measures taken in relation to tax procedures in more detail, it is worth making some general comments in this regard:

- Many of the measures taken in this area were aimed at providing certainty against the doubts generated by the Third Additional Provision of RD 463/2020, which established the interruption of deadlines “*for the processing of procedures of public sector bodies*”. As there are multiple tax procedures (regarding the application of taxes, penalties and reviews), following the publication of RD 463/2020, many doubts arose regarding how to apply the suspension contained in said RD to each procedure.

These doubts were resolved both by RDL 8/2020 (which introduced a significant set of measures regarding the processing of tax procedures) and by RD 465/2020, which amended RD 463/2020 to clarify that the suspension of administrative deadlines provided for in its Third Additional Provision “*shall not apply to tax deadlines, subject to special regulations, nor shall it affect, in particular, the deadlines for filing tax returns and self-assessments.*” This last issue might have seemed obvious, but its express mention in RD 465/2020, and the fact that the Spanish Tax Authorities published a link to RDL 8/2020 on their website expressly emphasising this point, should be welcomed.

This amendment to RD 463/2020 is effective from the date of its publication in the BOE (18 March 2020), which initially raised the question of whether or not the deadlines between 14 March 2020 (the date when RD 463/2020 came into force) and 18 March 2020 were suspended, a matter of paramount importance when the deadlines for submitting appeals or economic-administrative claims expire between the two dates. However, this issue was later clarified both by the Spanish Tax Authorities themselves (via publication on the AEAT website of a compilation of frequently asked questions, the “**AEAT FAQ**”<sup>2</sup>), and, mainly, by

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<sup>2</sup> The Spanish Tax Authorities published a first version of the AEAT FAQ on 18 March 2020, which coincided with the publication of RDL 8/2020. Subsequently, on 8 April 2020, they published an updated version of the AEAT FAQ, and on 23 April 2020, a new update following the approval of RDL 15/2020.

RDL 11/2020, the main objective of which was to complement the measures adopted in RDL 8/2020 and to clarify the doubts that arose as a result of it.

- The set of measures adopted establishes a mechanism for deferring the deadlines for processing tax procedures and suspending the statute of limitations and expiration periods which, however, is somewhat vague: this is not a suspension of the procedures in the strict sense, but rather what the regulation itself calls an “extension of deadlines” in some of its sections. The reason for this is that the method of considering a certain period of time unsuitable to justify the cessation of the calculation of deadlines has not been chosen, since during this period of time both the taxpayer and the Spanish Tax Authorities can perform actions.

In particular, as far as the taxpayer is concerned, he or she is entitled to take action without invoking the extension of deadlines. The Spanish Tax Authorities are also granted such power, both to continue notification of procedures and to “*further, order and carry out essential actions*” as regards tax procedures. In other words, both the taxpayer and the Spanish Tax Authorities can continue to drive the procedures forward.

In this respect, it is questionable whether such a configuration of powers is balanced. The Explanatory Memorandums of the various regulations adopted (and especially RDL 8/2020) justify the extension of the deadlines in view of the difficulties that the situation generated by COVID-19 entails for taxpayers. The design of this extension not only benefits the taxpayers, but also the Spanish Tax Authorities, which may or may not act at their discretion by providing notification of procedures or by furthering, ordering or carrying out essential actions. This issue means that it is necessary to consider its effect with respect to the maximum periods for resolving the procedures and the statute of limitations periods when the Spanish tax authorities can carry out actions during these periods.

Unfortunately, procedural issues, and in particular those relating to the calculation of deadlines in tax procedures (especially in audit procedures) have been a very significant source of litigation, and it would not be desirable for this reform to encourage this situation. However, given that, for procedures where only the resolution of the administrative body is pending and no further action by the taxpayer is necessary, the Spanish Tax Authorities may not issue the resolution required thereof within the period established for that purpose, it is difficult to understand how the taxpayer benefits (the main reason for the reform). The practical significance will depend on the specific case, but we believe that proportionality will be key in terms of the Spanish Tax Authorities applying this rule. The use of expressions such as “*the Spanish Tax Authorities may*” without establishing any requirement or limit, or that such power refers to (among other actions) carrying out “essential” actions, raises the possibility of questioning unjustified delays in court.

- It was decided to set a definitive final date for the extension of the deadlines (up to 30 May, in accordance with the provisions of RDL 15/2020). This criterion is contrary to what was established in this respect in RD 463/2020, which referred to the suspension of procedural

and administrative deadlines for the duration of the state of alarm and the extensions thereof.

Without prejudice to the fact that setting one date or another is a matter that falls under the remit of the Council of Ministers, perhaps it would have been easier to follow the method of RD 463/2020, but adding a period of 10 days (or whatever was considered appropriate) to the end date of the state of alarm, since the end thereof will not mean an immediate return to normality.

The various measures that have been taken in relation to tax procedures are set out below:

(i) Measures relating to tax deadlines:

Article 33 of RDL 8/2020, in accordance with the wording of the First Additional Provision of RDL15/2020, provides for the extension of the deadlines for carrying out certain actions and for paying tax debts until 30 May 2020<sup>3</sup> (provided that the procedure was initiated before 18 March 2020). In particular, the following actions will benefit from the extension of deadlines:

- Deadlines for the payment of debts that have already been communicated (voluntary and enforcement period)<sup>4</sup>.
- Deadlines and time frames relating to deferral of payments.
- Deadlines relating to auctions and the awarding of goods referred to in articles 104.2 and 104 bis of the General Tax Code
- Deadlines for meeting requirements, seizure proceedings and requests for information with tax implications.
- Deadlines for making submissions at the commencement of said proceedings or at a hearing, in proceedings regarding the application of taxes, penalties or declarations of nullity, returns of undue tax payments, corrections of material errors and revocations.
- Deadlines for meeting the requirements and requests for information of the General Directorate of the Cadastre.
- No guarantees encumbering real estate will be enforced until 30 May 2020.

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<sup>3</sup> The initial wording of article 33 of RDL 8/2020 provided for the extension of deadlines until 30 April or 20 May 2020, depending on whether the corresponding period began before or after the declaration of the state of alarm. However, RDL 15/2020 delayed the expiry date of all deadlines to 30 May 2020.

<sup>4</sup> It only affects debts assessed and communicated by the Spanish Tax Authorities, and not debts resulting from self-assessments, which will keep the payment periods established in the specific regulations for each tax.



In addition, the periods granted for filing appeals or economic-administrative claims will not begin until 30 May 2020.

The taxpayer may, however, if he or she prefers, respond to requests for information or make submissions at any time prior to the new deadline set, in which case the action is deemed to have been completed (article 33.3 of RDL 8/2020).

It is also established that the provisions of sections 1 to 3 of article 33 of RDL 8/2020 are without prejudice to the special provisions of the customs regulations in this regard (article 33.4 of RDL 8/2020).

As regards the effects on the duration of the procedures, article 33.5 of RDL 8/2020 establishes that, in the procedures for the application of taxes, regarding penalties and for administrative review, the period elapsed between the entry into force of RDL 8/2020 (18 March 2020) and 30 May 2020<sup>5</sup> will not be counted for the purposes of calculating the maximum duration of the procedures for the application of taxes, regarding penalties and for administrative review processed by the Spanish Tax Authorities.

Subsequently, the Ninth Additional Provision (section 1) of RDL 11/2020 extended this measure to the calculation of the maximum enforcement period in relation to decisions handed down by the economic-administrative bodies, although in this case the period that would not be counted would begin on 14 March (date of entry into force of RD 463/2020), instead of 18 March 2020.

In this regard, it is worth noting that, although this period does not count towards the total duration of the procedures, the Spanish Tax Authorities can still further, order and carry out essential actions.

In terms of statutes of limitations and expiration periods, article 33.6 of RDL 8/2020 established that the period between 18 March and 30 May 2020<sup>6</sup> would not count towards the statute of limitations or expiration periods. However, and without expressly repealing the aforementioned article 33.6, the Ninth Additional Provision (section 2) of RDL 11/2020 established the start date of the suspension of the statute of limitations and expiration periods as 14 March 2020.

Furthermore, article 33.7 of RDL 8/2020 provides that, for the purposes of calculating the statute of limitations, the resolutions that are being reviewed or in economic-administrative proceedings will be deemed to have been communicated when there is evidence of an attempt to communicate the resolution between 18 March and 30 May 2020.

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<sup>5</sup> Initially, the period that would not count in terms of the duration of the proceedings ended on 30 April. However, RDL 15/2020 extended it until 30 May.

<sup>6</sup> Initially, the period that would not count in terms of the statute of limitations and expiration periods ended on 30 April. However, RDL 15/2020 extended it until 30 May.

Although initially all the measures contained in article 33 of RDL 8/2020 only applied to procedures handled by the General State Administration, article 53 and section 3 of the Ninth Additional Provision of RDL 11/2020 extended their application to procedures, actions and formalities carried out or processed by the tax authorities of the Autonomous Communities and local tax offices, provided that the procedures were initiated before 18 March.

Similarly, section 4 of the Ninth Additional Provision of RDL 11/2020 provides that the measures established in article 33 of RDL 8/2020 which are applicable to tax debts (mainly the extension of deadlines) will also apply to other public credits, except social security credits.

Of the measures contained in article 33 of RDL 8/2020, the one that was the subject of most debate among legal operators was that contained in the second paragraph of section 7, which stated that the period for filing internal administrative appeals or an economic-administrative claim would not begin until 30 April 2020 (the period was subsequently extended to 30 May 2020, pursuant to RDL 15/2020). In this regard, the use of the verb “begin” suggested that this measure was only applicable to appeals or claims against proceedings initiated after the entry into force of RDL 8/2020, so the deadlines for bringing actions that were in place before it entered into force did not seem to be affected.

However, section 2 of the Eighth Additional Provision of RDL 11/2020 clarified this issue by confirming that the start date of 30 April 2020 (30 May, following the adoption of RDL 15/2020) established in relation to the period for filing an internal administrative appeal or an economic-administrative claim applies both to acts of a tax nature served from the entry into force of RD 463/2020, as well as to acts served previously, thus confirming the interpretation expressed by the Spanish Tax Authorities in the AEAT FAQ. The AEAT FAQ also clarified that a new period of one full month (ending on 30 June 2020 inclusive) would be available from 30 May 2020, regardless of how much of the period had passed before 14 March 2020.

Lastly, RDL 15/2020 amended article 33.3 of RDL 8/2020 to establish that in auctions carried out by the Spanish Tax Authorities and which are affected by the suspension of administrative deadlines, the bidder may request the cancellation of the bid and the release of the deposit.

The provision states that the bidders and successful bidders will also have the right to a refund of the deposit and, if applicable, the price of the auction paid in auctions in which the phase of presentation of bids has been completed and provided that a certificate of declaration of award has not been issued or the purchase deed had not been granted when RDL 15/2020 came into force.

(ii) The following issues still require clarification:

Although the measures included in RDL 8/2020 and RDL 11/2020 resolve the vast majority of taxpayer doubts regarding compliance with tax deadlines and provides certainty about how to act during this exceptional situation, there are a number of issues that have not been clarified yet. In this regard, the AEAT FAQ have done little to address the shortcomings of the RDLs.

The issues that still require clarification are essentially the following:

- Firstly, section 2 of article 33 of RDL 8/2020 (in its current wording following the approval of RDL 15/2020), which establishes 30 May 2020 as the deadline for responding to requests, seizure orders, requests for information or the commencement of submissions or hearings that are communicated as from the entry into force of RDL 8/2020, does not include a list of the proceedings to which this deadline extension applies, as is the case in section 1.
- Similarly, RDL 8/2020 makes reference to the fact that the period for submitting “*administrative appeals against decisions handed down in economic-administrative proceedings*” will not begin until 30 May 2020, but the scope of this is not clear, given that decisions handed down in economic-administrative proceedings are only subject to appeals via economic-administrative or contentious-administrative proceedings.
- Although RDL 11/2020 sheds light on how to calculate the deadlines for filing internal administrative appeals and economic-administrative claims, doubts still arise as to whether appeals or claims that may have been (or may be) filed between the entry into force of RD 463/2020 and 30 May can be considered “premature”. In fact, given that the Eighth Additional Provision of RDL 11/2020 (in its current wording following the approval of RDL 15/2020) sets 30 May 2020 as the starting date of the period for appeals, it could be understood that appeals or claims filed before that date predate the beginning of the period therefor, which, in accordance with the recent doctrine of some economic-administrative tribunals, would make them inadmissible.

In our opinion, this interpretation would only be acceptable in relation to appeals or claims against acts served after the entry into force of RD 463/2020, but not in relation to those served prior to its entry into force. This is for two reasons.

Firstly, for acts served prior to the entry into force of RD 463/2020, the filing period had already begun, without prejudice to the fact that said period is now being extended. Therefore, it cannot be understood that the filing was made when the period had not begun.

And secondly, and more importantly, in the event that the acts being challenged give rise to a debt to be paid, the voluntary period for paying it would end on 30 May 2020. Therefore, refusing to accept the filing of internal administrative appeals and economic-administrative claims against these acts until after 30 May 2020 would make it de facto impossible to request the suspension of payment of these debts during the voluntary period, since it should not be forgotten that the suspension of the payment of debts must occur at the same time as or after filing an internal administrative appeal or an economic-administrative claim, but never before such filing.

- We believe that the wording of section 3 of article 33 of RDL 8/2020 generates some confusion regarding how the taxpayer should act in terms of the right they have been given to advance the procedure. The meaning of the conjunction “or” is not clear: *“If, however, the taxpayer is able to benefit from the extension of the deadlines in the preceding sections or without expressly reserving this right, he or she complies with the request for information with tax implications or makes submissions, the procedure will be deemed to have been completed”*. Is it necessary for the taxpayer to expressly reserve his or her right to defer in order to carry out actions that depend on him or her, such as those referred to in the article? What are the effects of taking such action without reserving that right?

In this regard, the AEAT FAQ expressly state that the extension of deadlines provided for in the RDL will apply automatically, and the taxpayer does not need to expressly request it. However, what remains unresolved is whether it is possible for the taxpayer to make progress with the actions that depend on him or her before the deadlines set out in RDL 8/2020, but reserving the right to complete them during the planned extension of the deadlines or even to urge the completion of certain administrative actions (which may be advanced) and suspending the payment that may result from such actions. We do not believe that urging the completion of certain procedures should be construed as waiving the suspension of payment. This interpretation does not make sense and is not supported in the wording of the regulation.

- In relation to the uncertainty generated by the power granted to the Spanish Tax Authorities to further, order and carry out “essential” actions in the period between the entry into force of RDL 8/2020 and 30 May, even though the statute of limitations is suspended, doubts arise, for example, regarding how to act in the face of inaction by the Spanish Tax Authorities: if there are actions that correspond to the Spanish Tax Authorities and that can be carried out, and the Spanish Tax Authorities do not do so to the detriment of the taxpayer (depending on the specific case), can the affected taxpayer request that these actions be carried out? How would making such a request affect the taxpayer? Can it only affect the specific action that has been requested, or is there a risk that the Spanish Tax Authorities will interpret the request as a waiver of the application of the suspension with respect to the procedure? Such an interpretation would clearly be contrary to the interpretation of the regulation in view of its purpose (a key criterion for interpretation according to article 3.1 of the Civil Code).

Without prejudice to the fact that, in principle, the Spanish Tax Authorities will only carry out essential actions, as regards audit procedures, the AEAT FAQ establish that the taxpayer may request that and agree to actions continuing, thereby ensuring compliance with the preventative health measures. Similarly, the AEAT FAQ also provides for expediting the procedure in cases where the signing of settlements and agreements is close, provided that the taxpayer gives his or her consent. However, the AEAT FAQ do not state whether the suspension of the calculation of statutes of limitation and the duration of proceedings is maintained in these cases.

- No mention is made of the initiation of new proceedings. In other words, a tax audit, for example, may be initiated at any time, but under the Third Transitional Provision of RDL 8/2020, such proceedings would not be covered by the provisions of article 33 of this regulation. A certain misalignment arises here because the taxpayer who would be affected by such proceedings would be negatively affected. The practical effect of this situation will be closely related to the proportionality referred to previously. In our opinion, and given that the calculation of the statute of limitations for the period between 14 March and 30 May 2020 has been “frozen”, the initiation of proceedings would entail a clear lack of proportionality that could be appealed against in the courts.
- On the other hand, article 33.7 of RDL 8/2020 does not pronounce on the deadlines for filing statements within economic-administrative claims, so it must be understood that such deadlines are governed by general regulations, which does not seem to be in line with the spirit of the measures implemented.
- With regard to the effects of the extension of the deadlines on the amount of the tax debt, it should be noted that RDL 8/2020 does not include any pronouncement on the accrual of interest for late payment that may be generated by the extension of the deadlines for the resolution of tax procedures as a result of the provisions of this RDL. It should therefore be understood that such interest continues to accrue, as has been confirmed by the AEAT FAQ.

In this sense, it is worth remembering that the purpose of the regulation is to assist with the situation of the taxpayers affected by the current situation. It would also seem appropriate for the Spanish Tax Authorities’ approach to this situation to take into account that there will be cases in which it is possible for the taxpayer to stop generating interest for late payment (for example, by paying the debts within the deadlines set out in sections 2 and 5 of article 62 of the General Tax Code), but in other cases it will not be within their control (this is the case for the suspension of procedures such as verification procedures in which it may be impossible for the taxpayer to make progress) and only the Spanish Tax Authorities will be able to advance, or not. In such cases, it does not seem very consistent with the purpose of the measures taken that this cost be borne by the taxpayer.

- Finally, it is worth noting the possibility of the Government “forgetting” taxes that are notified periodically and collectively (Property Tax, for example). Although these tax debts derive from an administrative settlement, since the enacted RDL provides for the suspension applying exclusively to section 2 and 5 of the General Tax Code, the payment of these debts would not have suspension effects. Apart from the management competence of the City Councils, we do not believe that there is a compelling reason for this differentiation given that, as these are genuine “administrative settlements” and only the form of notification is different, we believe suspensions should also have been applied here (62.2 and 62.5 of the General Tax Code). Consequently, a rectification by or action from City Councils would be advisable in areas where the voluntary period for

payment of these taxes is already open or will open in the coming weeks (for example, that of the property tax in Barcelona).

## C. Stamp duty exemption for deeds documenting mortgage loan novations under the RDL

The First Final Provision of RDL 8/2020 introduced a new Stamp Duty exemption for any deeds that formalise contractual novations of mortgage loans that take place within the scope of this RDL. RDL 11/2020 subsequently added a subparagraph which specifies that the new exemption will apply “*when they are based on the cases regulated in articles 7 to 16 of the aforementioned royal decree-law, referring to the moratorium on mortgage debt incurred for the purchase of the primary residence*”.

Despite the fact that the Government has introduced this new exemption with the clear aim of eliminating the tax cost of possible mortgage loan novations that may occur under RDL 8/2020, the effective scope of this measure will be limited.

Firstly, with the approval of Royal Decree-law 17/2018, of 8 November, a new rule for determining the payer of the Stamp Duty was introduced into the regulations governing such tax. In accordance with this rule, the lender became the payer of the Stamp Duty in the deeds of mortgage-backed loans (as well as in the novations, according to the General Directorate of Taxes rulings V1133-19 and V1134-19, of 23 May 2019). Therefore, under this new rule, the payer of the Stamp Duty in the event of a mortgage novation would be the financial institution and not the mortgagor.

Secondly, and for mortgage novation transactions, there was already a specific Stamp Duty exemption regulated by Law 2/1994 of 30 March on the subrogation and modification of mortgage loans. In particular, article 9 of the aforementioned Law provides for Stamp Duty exemption for deeds of novation of mortgage loans agreed by mutual agreement between creditor and debtor, provided that the creditor is a financial institution and the modification refers to the conditions of the interest rate or term. This applies on the understanding, according to the tax ruling V3127-18, of 5 December 2018 (among others), that the establishment of grace periods is considered to be a modification that affects the term.

Therefore, in the event of a novation of the mortgage loan, the introduction of the above measure will have no direct impact on the mortgagor, as they are not liable to pay the tax. With regard to the financial institution, the measure will bring it a very limited benefit, since this new exemption would only have a practical application in the event that the novation concerns aspects other than the term and the interest rate – we expect such cases to be the minority.

## D. Reduction of VAT rates

As regards VAT, RDL 15/2020 introduced a reduction in the tax rates applicable to some medical equipment, as well as the rates applicable to digital books, newspapers and magazines.

## (i) Zero per cent VAT rate for medical equipment

To enable the rapid and effective supply of medical equipment, article 8 of RDL 15/2020 establishes, on a temporary basis, until 31 July 2020, a zero per cent VAT rate applicable to internal supplies, imports and intra-community acquisitions of a large variety of medical products to be used in the fight against COVID-19 (RDL 15/2020 includes an Appendix with a list of the medical products affected by this measure, including masks, gloves, ventilators, etc.) whose recipients are public law entities, clinics or hospital centres, or private social organisations (referred to in article 20.3 of Law 37/1992, of 28 December, on VAT). This measure would therefore not apply to establishments such as pharmacies and other public service establishments.

To avoid the need to adapt invoicing systems, these transactions shall be documented on invoices as exempt transactions, but in no case shall this imply a limitation of the right to deduct input VAT of the taxable person carrying out the transaction.

## (ii) Four per cent VAT rate for digital books, newspapers and magazines

Because of the increased uptake of digital formats of cultural and information products during the state of alarm, article 91. Two.1.2<sup>o</sup> of Law 37/1992, of 28 December, on VAT has been amended by means of the Second Final Provision of RDL 15/2020, which extends the VAT rates of books, newspapers and magazines in paper format to their digital counterparts. Therefore, the VAT rate drops from 21 per cent to 4 per cent.

It should be noted that this measure, in contrast to the changes to VAT in relation to medical equipment, is permanent and not temporary.

## E. Extraordinary option to use the "base" method to calculate interim CIT payments

In accordance with article 40 of Law 27/2014, of 27 November, on Corporate Income Tax (the "**CIT Law**"), taxpayers whose net turnover did not exceed EUR 6 million in the preceding 12 months must calculate interim CIT payments using the "quota" method, unless they choose to calculate them using the "base" method by means of an option exercised in the corresponding census form, generally within a period of two months from the start of the corresponding tax period (i.e. until February if the tax period is the same as the calendar year).

Given that the ordinary deadline for exercising the aforementioned option has already expired and that the current economic climate may give rise to the advance of a tax calculated on the result of another, probably more favourable, tax year; in order to adapt the calculation applicable to interim CIT payments to this situation, article 9 of RDL 15/2020 establishes an extraordinary option for the aforementioned CIT taxpayers to use the "base" method for tax periods commencing as from 1 January 2020 and with effect exclusively for said periods. In particular:

- Taxpayers that fall under the scope of application of the extension of the period to submit tax returns and self-assessments regulated in RDL 14/2020 may exercise this option when paying the aforementioned interim CIT payment. That is, until 20 May or 15 May (if paying by direct debit).

This would be the case for taxpayers with a volume of operations of no more than EUR 600,000 in 2019 and that do not form part of a CIT or VAT group.

- Taxpayers who are not part of a CIT group and have a volume of operations greater than EUR 600,000 in 2019, but their net turnover during the previous 12 months did not exceed EUR 6 million, may exercise this option as regards the interim CIT payment to be made in October.

The article clarifies that interim payments made in April will be deductible from the quota of the rest of the interim payments for the same tax period.

It should be noted that taxpayers who exercise this option will be tied to this method of calculating interim payments with respect to the remaining interim payments of the same tax period, so if they want to apply this method in the following years, they will need to opt to do so by the ordinary deadline.

In relation to the first group of taxpayers, RDL 15/2020 does not refer to those who made their interim payment for April before the 15th of that month, so these taxpayers will have submitted a self-assessment in which they were not able to exercise that extraordinary option. However, the Spanish Tax Authorities have announced the implementation of a simple system whereby these taxpayers can cancel the self-assessments already submitted (and receive a refund of the amounts paid and cancel direct debits) and submit a new self-assessment of the interim payment using this method.

Specifically, these taxpayers must submit a new self-assessment of the interim payment, completed in application of the base method and, additionally, a form identifying the first self-assessment submitted.

Submitting both documents will speed up the process of rectifying the first self-assessment, with the cancellation of its economic effects (as regards direct debits, requests for deferrals of payments or compensation, etc.) and the appropriate refunds will be agreed in each case.

Although the form will be available until 20 May 2020, it is important to note that, if a request has been made to make the first self-assessment payment by direct debit, the form and the second tax return must be submitted by 15 May at the latest in order for the direct debit to be cancelled.



## F. Measures relating to the objective estimation system for PIT, VAT and IGIC

Article 10 of RDL 15/2020 establishes that PIT taxpayers who calculate their net income by means of the objective estimation system or "modules" – depending on the result of the previous financial year – may, in the first interim payment of the 2020 financial year waive, exclusively for said year, the application of the objective estimation system and, consequently, start to calculate their net income by means of the application of the direct estimation system – depending on the real income in the financial year–. For the 2021 financial year, and if they fulfil the requirements to apply the objective estimation system again, such taxpayers must revoke their waiver during the period for making the first interim PIT payment of 2021.

This amendment was deemed necessary because article 33.3 of the Personal Income Tax Act, approved by Royal Decree 439/2007 of 30 March, provides that the waiver of the objective estimation system will be effective for a minimum period of three years.

Although calculating net income by means of the objective estimation method is usually more favourable to taxpayers anyway, the reality is that, in view of the current cessation of economic activity, the calculation of net income by means of the direct estimation system will probably be much more beneficial to these taxpayers.

With regard to the application of the change of the estimation system, RDL 15/2020 establishes that the request must be submitted together with the first interim payment of 2020. It should be noted that RDL 14/2020 provided for a one-month deferral (until 20 May or 15 May in the case of direct debit) for certain taxpayers in relation to interim PIT payments (form 131) (including those who calculate their net income using the objective estimation system). Therefore, taxpayers who intend to waive the application of the objective estimation system must apply to do so by 15 or 20 May at the latest.

Once again, taxpayers who submitted the self-assessments before the entry into force of RDL 14/2020, prior to the extension of the deadline for submitting these self-assessments, without waiving the application of the objective estimation system, may use the rectification mechanism implemented by the Spanish Tax Authorities which we have mentioned when analysing the measure relating to the modification of the system for calculating interim payments.

Regarding indirect taxation and considering that, as a general rule, the PIT objective estimation system is applied together with the special systems established for VAT or the IGIC, RDL 15/2020 clarifies that the provisions that waive the application of the PIT objective estimation system will also affect special systems established for VAT and IGIC.

Lastly, for taxpayers who carry out economic activities other than agriculture, livestock and forestry activities, and have decided to continue to calculate their net income based on the PIT

objective estimation system and the simplified VAT scheme, the calendar days in which the state of alarm has been in force will not count as days of carrying out the activity.

The measure is certainly suitable for adjusting objective taxation to this unusual situation, and one might consider if the legislature should not think about introducing similar measures in relation to other types of objective taxation on economic income. This would be the case of the Business Activity Tax for companies operating in sectors where activity has been suspended (especially if the suspension of activity continues when the state of alarm is lifted) or where an above-average negative impact is foreseen and the activity will probably not resume right after the end of the state of alarm.

## G. Incentives for film and audiovisual production in terms of CIT

In accordance with the provisions of RDL 17/2020, with effect for tax periods beginning on or after 1 January 2020, the percentage deductions for film and audiovisual productions are increased for fiction, animation or documentary series in relation to the production costs, as well as for foreign filming (to between 25% and 30% of the related expenses). The maximum amounts available per year are also considerably increased (from EUR 3 million to EUR 10 million per year).

## H. Increased tax incentives for patronage: deductions for donations by individuals

RDL 17/2020 also stipulates that, with effect from 1 January 2020, the percentage deductions for donations made to non-profit organisations by individuals and non-resident taxpayers operating in Spain without a permanent establishment under Law 49/2002 will be increased by 5%, as follows:

Basis for deduction amounting to	Percentage deduction
EUR 150	80%
Remaining basis for deduction	35%

## I. Customs and ports measures

In relation to customs and ports, three amendments have been made regarding: (i) expediting customs procedures, (ii) the deferral of customs debts, and (iii) the deferral of port tax debts.

### (i) Expediting customs procedures

Article 32 of RDL 8/2020 includes a series of measures aimed at expediting customs procedures. This article addresses the important objective of expediting customs procedures for imports in the industrial sector and, to a lesser extent, for exports. The aim is to avoid the risk of the supply chain of goods from non-EU countries being affected by clarifying the content of article 16 of RD 463/2020, which already provided that the delegated competent authorities would take the necessary measures to ensure customs transit at entry points or border inspection points located in ports or airports.

For this reason, and in order to avoid the possibility that, as a result of COVID-19 affecting some officials, the Customs and Excise Units and Administrations might be closed or that some of them might experience delays due to an excessive administrative burden, the Explanatory Memorandum of RDL 8/2020 points out the benefit of the measure contained in article 32: that the Director of the Customs and Excise Department may agree that the declaration procedure, and the customs clearance that it includes, be carried out by any body or official in the Customs and Excise Area using the existing computer applications for customs clearance without the need to modify them.

## (ii) Deferral of customs debts

Article 52 of RDL 11/2020 provides for the possibility of requesting the deferral of the payment of the customs and tax debt corresponding to the customs declarations presented from the date of entry into force of RDL 11/2020 until 30 May 2020 inclusive, provided that the amount of the debt to be deferred is greater than EUR 100.

This possibility only applies to taxpayers with a volume of operations of less than EUR 6,010,121.04 in 2019 and for an accumulated total of debts of EUR 30,000. The deferral is granted for six months, and will not accrue late payment interest during the first three months. Therefore, it is structured as a deferral with the same characteristics as the one provided for in RDL 7/2020 for self-employed workers and small and medium-sized enterprises in relation to tax debts.

## (iii) Deferral of port tax debts

Article 20 of RDL 15/2020 provides that, upon request, the Port Authorities may grant the deferral (for up to a maximum of six months) of the tax debt arising due to port fees which accrues since the entry into force of RDL 7/2020 until 30 June. Such deferral will not imply late payment interest and no guarantees will be required.

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