

### Special Information Briefing COVID-19 (No. 12):

Tax measures included in Royal Decree-law 11/2020 of 31 March, adopting additional urgent social and economic measures to deal with COVID-19

## Index

A. Deferral of customs debts

B. Measures in relation to tax procedures

C. Measures in relation to ITP-AJD

Madrid, 2 April 2020

On 1 April 2020, **Royal Decree-Law 11/2020 of 31 March** was published in the Official State Bulletin, **adopting additional urgent social and economic measures to deal with COVID-19 (“RDL 11/2020”)**, which entered into force on 2 April.

Despite the fact that the main measures adopted by RDL 11/2020 focus on aspects such as rental agreements, moratoriums on the payment of mortgages and deferrals of the payment of social security contributions, RDL 11/2020 also contains a series of tax measures, the main purpose of which is to clarify some of the questions that arose following the publication of Royal Decree Law 8/2020 of 17 March, on extraordinary urgent measures to deal with the economic and social impact of COVID-19 (“**RDL 8/2020**”).

In this briefing, we provide a general analysis of the approved tax measures.

## **A. Deferral of customs debts**

Firstly, 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 Royal Decree Law 7/2020, of 12 March, adopting urgent measures to mitigate the economic impact of COVID-19, for self-employed workers and small and medium-sized enterprises in relation to tax debts.

## **B. Measures in relation to tax procedures**

A series of measures related to the processing of tax procedures and the calculation of their deadlines are introduced, for the purpose of developing and clarifying the content of the measures included in RDL 8/2020. These measures are as follows.

- (i) Under article 53 of RDL 11/2020, the measures suspending tax deadlines provided for in article 33 of RDL 8/2020 are extended to actions, formalities and procedures carried out and processed by the tax authorities of the Autonomous Communities and local tax offices, provided that the procedures were initiated before 18 March (the date on which the aforementioned RDL 8/2020 came into force).

In the absence of further specification in the aforementioned article 53, the extension must be deemed to apply to all the measures contained in RDL 8/2020: the extension of the deadline for the payment of tax debts, the extension of the deadlines for replying to information requests and making submissions, the interruption of the calculation of the maximum duration of proceedings, etc.

This solves one of the shortcomings of RDL 8/2020, whose measures only affected procedures processed by the state administration, thus creating an imbalance in relation to regional and local procedures that could not be justified.

Likewise, 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 appeals.

- (ii) One of the main measures contained in RDL 11/2020 is included in its Eighth Additional Provision, and especially in section 2 thereof. Its purpose is to clarify the confusion that has arisen among legal operators as a result of RDL 8/2020 in relation to the calculation of the periods given for filing internal administrative appeals against tax acts or for filing an economic-administrative claim (mainly in those cases in which the filing period had already begun before the declaration of the state of alarm).

In particular, RDL 8/2020 established that these periods would not begin until 30 April 2020 (or until the date of notification of the contested act, if later). The use of the verb 'to begin' implied that this measure applied only to new periods starting from the entry into force of RDL 8/2020, but not to periods which had already begun before that date, the expiry of which would be subject to the ordinary rules.

RDL 11/2020 clarifies this issue by confirming that the start date of 30 April 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 the state of alarm, as well as to acts served previously, thus confirming the interpretation expressed by the Spanish Tax Authorities in the FAQs published on their website.

While this clarification is welcome, two issues remain which, in our opinion, have not been adequately resolved.

The first of these is whether, in cases where the period had already begun before the entry into force of RD 463/2020, only the proportion of the period which remained before the declaration of the state of alarm will be available from 30 April, or whether, on the contrary, a new period of a month will be granted.

RDL 11/2020 uses the expression “shall begin to be counted”, which lends itself to the interpretation that a new period of a whole month will be granted, which also fits better with the fact that it is a period counted in months and not in days. However, the situation calls for the utmost caution and, as far as possible, appeals or claims should be filed on the understanding that, as from 30 April, only the proportion of the period that remained before the declaration of the state of alarm will be available.

The second issue is the possible consideration as “premature” of the appeals or claims that may have been (or may be) filed between the entry into force of RD 463/2020 and 30 April. In fact, given that Eighth Additional Provision of RDL 11/2020 sets 30 April 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. The reason for this is that, for the latter, the period had already begun, without prejudice to the fact that this period is now being extended. In any case, once again, it would be prudent to avoid filing any appeal or claim until after 30 April 2020.

- (iii) On the other hand, the Ninth Additional Provision (section 2) of RDL 11/2020 establishes that, during the period from the declaration of the state of alarm (14 March) until 30 April 2020, the statute of limitations and expiration periods of any actions and rights provided for in the tax regulations are suspended. This measure was already set out in RDL 8/2020, but it had established the start of the suspension period for the calculation of these deadlines as 18 March, the date of entry into force of RDL 8/2020, so RDL 11/2020 extends the suspension period by four days.

However, this amendment does not solve another of the problems arising from RDL 8/2020, namely how this suspension of the statute of limitations and expiration periods fits with the fact that both the taxpayers and the tax authorities can carry out actions within the framework of tax proceedings. It is not legally consistent that one of the parties in the proceedings can continue to conduct actions in such proceedings (or even initiate new proceedings) when the limitation periods on their rights have been suspended.

- (iv) The Ninth Additional Provision (section 1) of RDL 11/2020 also establishes that the period between 14 March and 30 April 2020 will not count towards the maximum enforcement period in relation to decisions handed down by the economic-

administrative bodies.

- (v) The measures indicated in the two previous paragraphs will apply both to the General State Administration (Spanish Tax Authorities and the Ministry of Finance) and also to procedures, actions and formalities carried out or processed by the tax authorities of the Autonomous Communities and local tax offices, as set forth in section 3 of the Ninth Additional Provision.

## C. Measures in relation to ITP-AJD

Lastly, the First Final Provision of RDL 8/2020, which introduced a new exemption from Property Transfer Tax and Stamp Duty (“**ITP-AJD**”), in its Stamp Duty form (“**AJD**”), for contractual novations of loans and mortgage credits that take place under said RDL 8/2020, was amended.

In particular, a subparagraph has been added 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*” (see the First Final Provision. Nineteen of RDL 11/2020).

The information contained in this Briefing is of a general nature and does not constitute legal advice. This document was prepared on 2 April 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.