

Royal Decree-law 15/2020, of 21 April, adopting additional urgent measures to support the economy and employment

Madrid, 22 April 2020

On 22 April 2020, Royal Decree-law 15/2020 of 21 April on additional urgent measures to support the economy and employment (“RDL 15/2020”) was published in the Official State Bulletin. RDL 15/2020 establishes a new range of measures, mainly of a social and economic nature, which expand upon and enhance those already adopted by means of the Royal Decree-laws approved in recent days, as well as Royal Decree 463/2020 of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19, and its subsequent extensions.

In this legal briefing we provide a general analysis of the measures adopted in different areas, including links to specific notes for the areas of real estate, finance, employment and tax.

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- Measures relating to sports law and audiovisual rights in sports.

Measures relating to real estate

- A. The first block of measures regulated under RDL 15/2020 are measures adopted in relation to non-residential and industrial leases with the aim of reducing the costs of small and medium-sized enterprises (“**SMEs**”) and freelancers, and aims to protect and support SMEs and freelancers, regardless of whether they are natural or legal persons, who have leased premises and who, due to the measures adopted by Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19 (the “**RDEA**”), have been forced to suspend or drastically reduce their activity.
- B. The main measures relating to non-residential and industrial leases established in RDL 15/2020 are related to the implementation of a moratorium on or a temporary and extraordinary deferral of the payment of the rent.
- C. Tenants who are SMEs or freelancers are eligible to benefit from these measures, regardless of whether they are natural or legal persons, if they have not already reached a prior agreement with their landlord in relation to deferring or reducing the rent payment, and (i) if their activity has been suspended as a result of the entry into force of the RDEA or due to orders issued by the relevant authorities, or (ii) if their activity has not been suspended, if their revenue for the calendar month prior to the month in which the deferral is requested decreased by at least 75 per cent in relation to the average monthly revenue for the same quarter in the previous year.

When the landlord is a public housing company or entity, or a great property holder for the purposes of RDL 15/2020, the deferral will be applied automatically, and the landlord must accept it.

When the landlord is not a public housing company or entity, or a great property holder for the purposes of RDL 15/2020, the parties may freely agree to use the mandatory legal deposit amounting to two monthly rent instalments, which was provided by the tenant upon the signing of the lease agreement, to totally or partially cover one or more monthly rent payments.

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Measures relating to finance

RDL 15/2020 provides for a package of financial measures consisting mainly of the following:

- A. The Spanish Institute for Energy Diversification and Saving (*Instituto para la Diversificación y Ahorro de la Energía*) (the "IDAE") is authorised to defer payments under refundable subsidy programmes or aid provided in the form of a loan which is payable from March 2020 until two months after the end of the current state of alarm.
- B. The Spanish Insurance Compensation Consortium (*Consortio de Compensación de Seguros*) ("ICC") is authorised to carry out credit and surety reinsurance activities from 2020 and, consequently, to enable this body to reinsure credit insurance risks assumed by private insurance companies.
- C. Article 29 of RDL 8/2020 (which approves the guarantee facility for the amount of EUR 100 billion referred to above) is modified, reinforced and/or extended, in order to, *inter alia*:
 - specify that the financing transactions which are eligible to be covered by the guarantees issued under this guarantee facility include discounting and collection management transactions (such as factoring agreements) as well as payment management transactions (such as confirming agreements) which are necessary to maintain economic activity and employment;
 - extend the deadline for the issuance of guarantees under this facility until 31 December 2020;
 - provide that the guarantees issued under this guarantee facility may be issued in favour of Spanish Reinsurance Company, S.A. ("CERSA"), in order to increase the latter's capacity to issue guarantees securing the payment at first demand of guarantees issued by third parties in relation to transactions entered into by SMEs and self-employed workers; and
 - provide that guarantees issued under this guarantee facility may be used to secure promissory notes listed in the Fixed Income Market of the Association of Financial Intermediaries (AIAF) and the Alternative Fixed-Income Market (MARF), in order to encourage the maintenance of sources of liquidity other than traditional banking sources (i.e. capital markets).
- D. Certain financial support measures are provided for science and technology parks and the debt of the Barcelona Supercomputing Centre (*Centro Nacional de Supercomputación Consortium*) (BSC-CNS) is authorised up to a maximum amount of EUR 47,888,247.62 for 2020.

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Measures relating to employment

- A. Extension of the preferential nature of remote working and the right to adapt and reduce working hours.** The preferential nature of remote working and the right to adapt work schedules and reduce working hours is extended for two months after the period foreseen by RDL 8/2020.
- B. Extension of the status of being legally unemployed in the event of termination of the employment contract during the probationary period.** Employees whose employment contracts have been terminated at the request of the company during the probationary period and after 9 March will be considered legally unemployed.
- C. Regulations on the possibility of exercising vested rights in pension plans as a result of situations generated by COVID-19.** Requirements are established for members of pension plans and policyholders of assured pension plans and corporate and mutual social welfare plans to exercise their vested rights.
- D. Contributions to the Special Social Security System for the Self-Employed during the period of inactivity.** RDL 15/2020 provides that self-employed workers who have worked a maximum of 55 actual contributory working days in 2019, with effect from 1 January 2020, will benefit from a 19.11 per cent reduction in contribution quotas during periods of inactivity in 2020.
- E. Suspension of the deadlines of the Labour and Social Security Inspection Authorities.** The deadlines for certain Labour and Social Security Inspection actions are suspended.
- F. Penalty scheme.** The control and penalty mechanisms of (i) the penalty scheme implemented by Royal Decree-law 9/2020, of 27 March, adopting complementary measures relating to employment to alleviate the effects of COVID-19, and (ii) the Labour Infringements and Penalties Law, are reinforced.
- G. Extraordinary benefit due to the cessation of activity of self-employed workers.** Section 7 of article 17 of RDL 8/2020 is amended to establish that self-employed workers who have not used the option provided in article 83 of the Spanish Social Security Act must file a request before a mutual insurance company which collaborates with the Social Security Authorities in order to be entitled to this benefit.
- H. Unemployment benefit for permanent intermittent employees.** Protection of permanent intermittent employees and those who carry out seasonal work, repeated on certain dates, is strengthened.

- I. **Extension of force majeure events leading to suspensions of contracts and reductions of working hours.** The concept of force majeure set out in article 22.1 of RDL 8/2020 may be partial and does not need to be extended to the entire workforce in those companies that carry out activities considered essential during the COVID-19 crisis.
- J. **Special regulations for requesting deferrals under RDL 11/2020.** The procedure is simplified and special features are introduced in respect of the common system for deferring social security payments.

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Measures relating to tax

RDL 15/2020 also contains a series of tax measures, the main purpose of which is to increase the protection of SMEs and freelancers, extend the suspension of tax deadlines and allow the fast and effective supply of medical equipment. These measures are the following:

- A. **Deferral of rent payment:** RDL 15/2020 aims to provide a response that allows the regulation of a procedure so that certain tenants can defer the payment of rent for non-residential premises. From a tax perspective, anything that involves the tenant and the landlord deviating from the initially agreed economic conditions can affect CIT and VAT. In this briefing, we indicate the main points in which measures such as those adopted in this RDL may have a tax impact, in particular, if any agreement reached can give rise to expenses that should be classified as a gift (*liberalidad*) for CIT purposes or if the usage of premises without any consideration could constitute self-consumption for VAT purposes, with reference to the Information Briefing prepared by the Tax team of Pérez-Llorca: [Rental income reductions in the context of COVID-19](#), where these aspects were analysed in more detail.
- B. **Zero per cent VAT rate for medical equipment:** Temporarily, until 31 July 2020, a zero per cent VAT rate will be applicable to internal supplies, imports and intra-community acquisitions of a large variety of medical products used in the fight against COVID-19 (e.g. masks, gloves, ventilators, etc.) whose recipients are public law entities, clinics or hospital centres, or private social organisations. These transactions will be documented on the relevant invoice as VAT exempt, but this will not imply the limitation of the right to deduct input VAT.

- C. Extraordinary option to use the “base” method to calculate interim CIT payments:** An extraordinary option is established for CIT taxpayers who are not part of a CIT group whose net turnover has not exceeded the amount of 6 million euros during the previous 12 months to use the “base” method to calculate interim CIT payments for the tax periods starting from 1 January 2020 and with effect exclusively for the said periods. Taxpayers with a volume of operations below 600,000 euros in 2019 who are not part of a VAT group may exercise the option by making the April interim payment, the deadline for which was extended by Royal Decree-law 14/2020, from 14 April, until 20 May 2020 (or 15 May if paying by direct debit). Other taxpayers must opt for this method when making the interim CIT payment in October 2020.
- D. Measures relating to the objective estimation system for PIT, VAT and IGIC:** In order to provide greater flexibility to the system for SMEs and self-employed workers, the three-year mandatory holding period established in the Personal Income Tax Act when waiving the objective estimation system for PIT and the simplified VAT or IGIC scheme is eliminated. Therefore, exclusively for the 2020 financial year, taxpayers can calculate their net income on the basis of actual income. Such taxpayers will be able to apply the objective estimation system again in 2021 if they request it and fulfil the requirements for that purpose. Finally, for taxpayers who are still taxed under the objective estimation system for PIT or the simplified VAT or IGIC scheme, it is established that the calendar days in which the state of alarm has been in force will not be counted as days of carrying out the activity.
- E. Non-starting of the enforcement period for certain tax debts after the end of the voluntary payment period provided the financing regulated in article 29 of RDL 8/2020 has been granted:** As a consequence of the numerous requests for government-backed loans in order to be able to pay taxes and the delay in granting them, it is established that, under certain conditions, if requests for the financing provided for in article 29 of RDL 8/2020 have been made, the enforcement period due to the lack of payment of tax returns and self-assessments will not commence. This applies even for those that should have submitted their tax returns or self-assessments by 20 April and for which the enforcement period has already started.
- F. Deferral of port tax debts:** A deferral of the tax debt due to port taxes which has accrued since the entry into force of Royal Decree-law 7/2020 of 12 March, adopting urgent measures to mitigate the economic impact of COVID-19, may be granted until 30 June, without interest and up to a maximum period of six months.
- G. Four per cent VAT rate for digital books, newspapers and magazines:** Because of the increased uptake of digital formats of cultural and information products, the VAT applicable to digital books, newspapers and magazines is permanently reduced from 21 per cent to 4 per cent, so it is in line with the VAT rate applicable to these products in a paper format.

- H. **Extension of the suspension of deadlines:** All the tax deadlines that had already been extended to 30 April or 20 May in previous Royal Decree-laws are extended to 30 May 2020.
- I. **Auctions held by the Spanish Tax Authorities:** The right to a refund of the deposits paid to participate in auctions held by the Spanish Tax Authorities and which are affected by the suspension is established.

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Measures to protect mortgage and non-mortgage debtors

RDL 15/2020 introduces the following new measures aimed at protecting mortgage and non-mortgage debtors, thus amending some aspects of Royal Decree-law 8/2020 and Royal Decree-law 11/2020:

- A. It is the creditor's unilateral obligation to notarise the recognition of the mortgage moratorium in a public deed, so that the extension of the initial term can be registered with the relevant Land Registry, as well as the notarisation of the moratorium on non-mortgage loans in a public deed and the registration, if applicable, with the Registry of Personal Property, if the loan was secured by any other registrable right. Although RDL 15/2020 does not expressly specify it, we understand that the registration of the mortgage moratorium with the Land Registry must also be carried out by the creditor. The above will apply even if the request or the creditor's acceptance of the moratorium was prior to the entry into force of RDL 15/2020.
- B. The recognition of the application of the moratorium shall not be subject to the provisions of Law 5/2019, of 15 March, on real estate credit. We understand that the RDL 15/2020 intends to clarify that the formalities and requirements for the formalisation of the moratorium in a notarial document do not need to comply with the formalities and requirements established in Law 5/2019, in order to expedite the whole process of the moratorium.
- C. For the formalisation of the moratorium on non-mortgage loans (once freedom of movement is fully restored), both notarial and registrar fees shall be paid by the creditor. Also, RDL 15/2020 establishes that: (i) the notarial fees arising from the formalisation of the moratorium in a policy (*póliza*) will be those established in the Decree of 15 December 1950, and will be reduced by 50%, with a minimum threshold of 25 euros and a maximum of 50 euros for all items; and (ii) the registrar's fees, if applicable, will amount to a fixed amount of 6 euros.

Measures relating to sports law and audiovisual rights in sports

- A. In addition, RD 15/2020 also introduces the establishment of the Spanish Global Sport Foundation (*Fundación España Deporte Global, F.S.P*), with the aim of promoting, boosting, and broadcasting federated, Olympic and Paralympic sport, as well as the international development of Spanish sport. According to point VI of the Explanatory Memorandum of RDL 15/2020, on Measures for the Protection of Citizens, the Foundation was established as a response to the current standstill in sports competitions and, therefore, of the revenue generated by sports activity. This is particularly critical due to the difficulty in sustaining the sports federations and the preparation programmes for the Tokyo Olympic Games.

The Foundation, which will be attached to the High Council of Sports (*Consejo Superior de Deportes*), to which it will provide support, includes the participation of the Royal Spanish Football Federation, the Professional Football League as well as the remaining Spanish sports federations and official and non-official competitions (art. 26.4), with the Chairman of the High Council of Sports assuming the Presidency of the foundation. Among the objectives of the Foundation, and where the real innovation lies, is the management and marketing of the audiovisual rights of the Sports Federations and competitions other than football in circumstances where they do not wish to manage those themselves.

Until now, the Spanish legal system did not contain specific provisions regarding ownership and commercialisation of the audiovisual rights of sports competitions, with the exception of football, which is regulated by the Royal Decree-law 5/2015 of 30 April on urgent measures concerning the marketing of the rights to the commercialisation of audiovisual content of professional football competitions. From now on, the rights to sporting events, which are not commercialised by their federations, will be entrusted to the Spanish Global Sports Foundation, under a framework to be determined in its bylaws, which must be approved within one month (Third Transitional Provision). In the meantime, the High Council of Sports would assume its collection capacities.

- B. Similarly, the Fifth Final Provision of RDL 15/2020 amends RD 5/2015 on the marketing of audiovisual rights in professional football, regarding three fundamental issues: (i) the purpose of the RDL, essentially removing what is understood as included in the concept of "audiovisual content" of such events (art. 1); (ii) the duration of the marketing contracts regarding sports competitions, which will no longer be limited to a maximum term of three years but will be subject, in the abstract, to the European Union's competition rules – it is understood that they will have to comply with the provisions set by the competition authorities at any given time, regarding the criteria for marketing and awarding of the outlined audiovisual rights. The objective is to promote and ensure competition in the pay-TV market, in circumstances where professional football is an essential factor (art. 4.4(f)); and (iii) the percentages of the revenue to be shared by the clubs and entities participating in the National

League Championship, in favour of the Royal Spanish Football Federation and the High Council of Sports (art. 6.1).

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