

### Special Information Briefing COVID-19 (No. 14)

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

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# Pérez-Llorca

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On 22 April 2020, Royal Decree-law 15/2020, of 21 April, adopting additional urgent measures to support the economy and employment ("**RDL 15/2020**") was published in the Official State Bulletin ("*Boletín Oficial del Estado*").

RDL 15/2020 introduces a package of measures aimed at supporting corporate financing, as well as labour, consumer protection and tax measures. The main purpose of such tax measures is to allow the rapid and effective supply of medical equipment, to increase the protection of small and medium-sized enterprises ("**SMEs**") and freelancers through certain amendments to the interim payment system for Corporate Income Tax ("**CIT**"), to the Personal Income Tax ("**PIT**") objective estimation method and to the Value Added Tax ("**VAT**") and the Canary Islands General Indirect Tax ("**IGIC**") simplified systems, as well as extending the suspension of certain tax deadlines established in Royal Decree-law 8/2020 of 17 March on urgent extraordinary measures to address the economic and social impact of COVID-19 ("**RDL 8/2020**") and Royal Decree-law 11/2020, of 31 March, adopting additional urgent social and economic measures to deal with COVID-19 ("**RDL 11/2020**").

In this legal briefing, we provide an analysis of the approved tax measures which were included in RDL 15/2020.

It is important to note that RDL 15/2020 sets out certain situations in which rent payments under non-residential lease agreements can be deferred. This is not actually a tax measure, but given that this rule, as well as other agreements signed between the parties that affect the lease agreement, could lead to changes in the taxation of the parties, we have considered appropriate to mention it briefly in this briefing. This measure is analysed in detail in the [briefing on measures related to real estate](#).

## 1. Deferral of rent payments

In order to deal with the inability of certain freelancers and SMEs that meet certain requirements<sup>1</sup> to fulfil their payment obligations under non-residential lease agreements due

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<sup>1</sup> The requirements that tenants must meet, according to article 3 of RDL 15/2020, are the following:

- (i) In the case of freelancers, they must be affiliated and registered as of 14 March 2020 (when the state of alarm was declared) with the Special Social Security Scheme for Freelancers, the Special Social Security Scheme for Maritime Workers or with one of the mutual insurance companies which act as an alternative to the Special Social Security Scheme for Freelancers; and in the case of SMEs, they must not exceed the limits set forth in article 257 of the Spanish Companies Act, approved by Royal Legislative Decree 1/2010, of 2 July. In view of the reference contained in article 3, only the limits of the aforementioned article 257 should be considered, and it is not necessary to assess whether or not the companies can formulate an abbreviated balance sheet. The aforementioned limits are that: (a) the total amount of assets does not exceed 4,000,000 euros; (b) the net annual revenue does not

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to a lack of or reduction in revenue during the state of alarm, RDL 15/2020 has sought to provide a response that will regulate a procedure for the parties to reach an agreement to adjust rental payments for the relevant premises.

In particular, in the absence of a prior agreement between the parties, RDL 15/2020 provides for two situations in which rent payments can be deferred:

- If the landlord is considered as a “great property holder” (i.e. the landlord owns more than 10 properties or a built surface area of more than 1,500 sq. m.) or is a public housing company or entity, the tenant can request a deferral of the rent payment from their landlord within one month from the entry into force of RDL 15/2020. Such deferral will correspond to the duration of the state of alarm and its extensions and the following monthly rent payments, for a maximum period of four months. This request must be accepted by the landlord.

The rent payment will be deferred without penalties or delay interests, and the tenant will be able to pay the deferred rent payments in instalments over two years.

- For any other type of landlord, the tenants can request a temporary and extraordinary deferral of the rent payment from their landlord within one month from the entry into force of RDL 15/2020.

RDL 15/2020 also states that, for the purposes of any agreements that may be reached, that the parties use the legal deposit established in article 36 of Law 29/1994, of 24 November, on Urban Leases, to cover the rent payments, provided that the tenant replaces the amount used within a year or, if less, within the period remaining until the end of the term of the lease agreement.

For more details on the scheme, its regulation and the real estate-specific aspects, please see the [briefing on measures related to real estate](#).

From a tax perspective, anything that involves the tenant and the landlord deviating from the initially agreed economic conditions can affect CIT and VAT. That is why the parties must analyse their specific situation and determine, for example, if the agreement reached could

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- exceed 8,000,000 euros; and that (c) the average number of workers employed during the financial year does not exceed 50.
- (ii) That the tenant’s activity has been suspended as a consequence of the entry into force of Royal Decree 463/2020 declaring the state of alarm, or due to orders issued by any competent authority as established in said Royal Decree; or that the revenue for the calendar month prior to the one in which the deferral is requested has decreased by at least 75% in relation to the average monthly revenue for the same quarter in the previous year.

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be considered to be a gift (*liberalidad*) for CIT purposes or if the use of premises without any consideration in exchange could constitute self-consumption for VAT purposes.

The approval of the deferral briefly outlined above implies, on the one hand, that in those cases covered by the rule, there will be no doubt about the origin of such deferrals and the accounting and fiscal effects that they entail.

On the other hand, the adoption of measures aimed at alleviating the situation of tenants, even those who fall outside the scope of application of RDL 15/2020, should be considered a timely and even necessary measure in some cases.

In addition, it implies that it could be more complicated to consider force majeure as a reason to argue the suspension of the rent payment, without prejudice to the fact that each tenant will be in a specific situation that will lend itself to one or other measures and some other legal foundations. This is especially applicable to those sectors whose activity is likely to remain suspended after the state of alarm ends (e.g. cinemas, theatres, gyms, etc.), as they will certainly be in an extremely delicate situation.

For this reason, it is worth analysing the situation on a case-by-case basis and identifying the reasons why taking a more benevolent position with respect to the tenant may be the lesser of two evils for the leasing activity. In such a case, from an economic point of view, nothing else could be requested from the landlord. For more detail on the tax effects of this type of agreement, we refer to the Information Briefing on the subject prepared by the Pérez-Llorca Tax team: [Rental income reductions in the context of COVID-19](#).

## 2. 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 percent 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.

### 3. 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 Royal Decree-law 14/2020, of 14 April ("RDL 14/2020"), may exercise this option when paying the referred 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 600,000 euros 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 600,000 euros in 2019, but their net turnover during the previous 12 months did not exceed 6 million euros, may exercise this option as regards the interim CIT payment to be made in October 2020.

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.

It is noteworthy that, in relation to the first group of taxpayers, no reference is made to those

who made an interim payment for April before the 15th of that month. These taxpayers will have submitted a tax return in which they were not able to exercise this extraordinary option and, consequently, they will have to consider whether it is appropriate to file a substitute tax return or to request its rectification from the Spanish Tax Authorities in order to be able to apply this measure.

#### 4. 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 situation of 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, it is worth wondering how this affects taxpayers who submitted the self-assessment 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. As previously stated in relation to interim CIT payments, these taxpayers should submit a substitute tax return or request the rectification of their tax return. Pursuant to the wording of RDL 15/2020, taxpayers who waived the system before the extension of the period was approved may also revoke their waiver.

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 would probably not resume right after the end of the state of alarm.

## **5. 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, 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:

- (i) The taxpayer has requested, within the period provided in article 62.1 of the General Tax Code or before the end 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.
- (ii) 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.
- (iii) The financing is granted for at least the amount of the aforementioned debts.

- (iv) 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 has elapsed since the financing was granted 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, 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 voluntary period.

With regard to the temporary extension 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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- (i) 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.
- (ii) The financing is granted for at least the amount of the aforementioned debts.
- (iii) 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 has elapsed since the financing was granted and the payment has not been made.

## 6. 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 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, until 30 June. Such deferral will not imply late interest and no guarantees will be required.

## 7. 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.

## 8. Extension of the suspension of deadlines

The First Additional Provision of RDL 15/2020 establishes that the references to the dates 30 April and 20 May 2020 in article 33 of RDL 8/2020 and the Eighth and Ninth Additional provisions of RDL 11/2020 shall be understood to be referring to 30 May 2020.

Hence, procedures carried out by the Spanish Tax Authorities or the tax authorities of the Autonomous Communities and local tax offices as described in the [Special Information Briefing COVID-19 \(No. 4\): Royal Decree-Law 8/2020 of 17 March on extraordinary urgent measures to address the economic and social impact of COVID-19](#) and in the [Special Information Briefing COVID-19 \(No. 12\): Royal Decree-law 11/2020, of 31 March 2020, adopting additional urgent social and economic measures to deal with COVID-19](#) are suspended until 30 May 2020.

In particular, and by way of summary, RDL 15/2020 extends until 30 May 2020 the deadline for the payment of debts already communicated (both in the voluntary period and in the enforcement period), the expiry of deadlines and time frames relating to deferrals of payment, the deadlines relating to auctions and the awarding of property provided for 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, deadlines for meeting the requirements and requests for information of the General Directorate of the Cadastre, enforcement proceedings on tax debts and deadlines for filing appeals or economic-administrative claims.

In relation to these last deadlines, those relating to deadlines for filing appeals or economic-administrative claims, it should be pointed out that the Eighth Additional Provision, section 2 of RDL 11/2020, stated that the one-month period for filing internal administrative appeals or economic-administrative will begin again following the lifting of the deadline extension. Consequently, that one-month period will start on the day after 30 May 2020.

However, taxpayers may, if they prefer, validly deal with the requirements or requests or make submissions at any time prior to the new deadline set by RDL 15/2020.

The statute of limitations and expiration periods of any actions and rights provided for in the tax regulations are suspended during the period between the declaration of the state of alarm (14 March) and 30 May 2020.

## 9. Certain measures relating to auctions held by the Spanish Tax Authorities

The Eighth Final Provision amends 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 comes into force.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 22 April 2020 and Pérez-Llorca does not undertake any commitment whatsoever to update or review its content.