

Special Information Briefing COVID-19 (No. 23):

Royal Decree-law 19/2020 of 26 May adopting additional agricultural, scientific, economic, employment, social security and tax measures to mitigate the effects of COVID-19

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Madrid, 29 May 2020

On 27 May 2020, **Royal Decree-law 19/2020 of 26 May was published in the Official State Bulletin, adopting additional agricultural, scientific, economic, employment, social security and tax measures to mitigate the effects of COVID-19 (RDL 19/2020)**. The RDL establishes a new package of measures in different areas, which extend and enhance those already adopted by means of the Royal Decree-laws approved in recent months, 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 their respective extensions.

In this legal briefing, we analyse the corporate, tax, financial, and employment measures provided for by RDL 19/2020.

1. Corporate measures

The eighth final provision of RDL 19/2020 amends Article 40 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**”), which established extraordinary regulations on the deadlines for the preparation, verification, and approval of the annual accounts of private-law legal entities that do not fall within the scope of Article 41 of that law, which relates to listed companies.

In this regard, paragraph 3 of the eighth final provision of RDL 19/2020 amends paragraph 3 of Article 40 of RDL 8/2020. By virtue of the new wording of this article, the obligation to prepare the annual accounts, ordinary or abridged, individual or consolidated, within three months of the end of the financial year incumbent on the governing or administrative body of a legal entity and, where legally required, the management report and other documents required under company law, is suspended until 1 June 2020 and will be resumed for a further three months from that date.

Until the publication of RDL 19/2020, this obligation had been suspended until the end of the state of alarm. In any case, the legal provision that considers valid the preparation of the accounts by the governing body or administration of a legal entity during the state of alarm is retained, and it may also be verified for accounting purposes within the legally established period or by making use of the extension provided for in paragraph 4 of Article 40 of RDL 8/2020.

On the other hand, section 4 of the eighth final provision of RDL 19/2020 amends section 5 of Article 40 of RDL 8/2020, so that the ordinary Shareholders General Meeting, to approve the accounts of the previous year, must meet within two months of the end of the period for preparing the annual accounts, instead of three months, as established until now.

Therefore, under this new amendment, all non-listed companies ending their financial year on 31 December will have to have prepared the 2019 accounts by 1 September 2020, and approved them by 1 November 2020.

2. Tax measures

In the area of tax, RDL 19/2020 establishes three relevant measures: (i) the option of submitting a second Corporate Income Tax (“CIT”) form for 2019 in the event that the first CIT form does not include the information included in the approved financial statements as a result of the moratorium established for their approval; (ii) the extension of the interest-free period for tax debt deferrals granted under RDL 7/2020 from three to four months; and (iii) the exemption from Transfer Tax and Stamp Duty of public deeds formalising moratoria on mortgage payments, on unsecured loans or conventional moratoria.

A. Corporate Income Tax

Corporate measures relating to the deadlines for the preparation, verification and approval of the 2019 financial statements, introduced by RDL 8/2020 and RDL 19/2020 and referred to in section 1 of this briefing, undoubtedly have an impact on the preparation and presentation of the CIT form of 2019, since its calculation is based on the company's accounting profit.

In view of the foregoing, and to resolve any discrepancies that may arise between the deadlines for the preparation and approval of the financial statements and those established for the submission of the CIT form -which have not been amended-, Article 12 of RDL 19/2020 introduces the following provisions:

- (i) CIT taxpayers who have not been able to approve their financial statements before the deadline to submit the CIT form (27 July 2020 in general or 20 July 2020 for direct debits in case of taxpayers whose fiscal year coincides with the calendar year) are authorised to submit the relevant CIT form according to the financial statements available at that time.

For these purposes, it shall be understood that the financial statements available at that time are the audited annual accounts; failing that, the prepared accounts; and, failing the two previous items, the accountancy of the entity carried out in accordance with commercial regulations (the Commercial Code and accounting regulations applicable to the entity). In the case of listed companies, only the audited accounts may be used.

- (ii) Subsequently, once the annual accounts have been approved as specified in section 1 of this briefing, two potential scenarios could be addressed:
 - If the CIT form to be issued according to the financial statements finally approved does not differ from the one submitted within the ordinary deadline, no further steps are necessary.

- Otherwise, that is to say, if there are differences, the taxpayer must submit a new CIT form for which the voluntary deadline for submission is 30 November 2020.

Said tax form will be considered as a complementary form when the amount to be paid is higher or the amount to be refunded is less than that determined in the initial CIT form submitted within the ordinary period. Delay interest will accrue as from the end of the ordinary period to submit the first CIT form, but no surcharges for late filing will be imposed.

In the remaining cases, this second CIT form will have the automatic effect of an amendment of the tax form submitted in July, and will take effect by its mere submission, without the need for a decision by the Tax Administration on the origin of the form (non-application of Article 120(3) of the General Tax Code) and will not have preclusive effects so that it may be subject to full verification.

In the event that a refund arises from these complementary forms or amendments, the Tax Administration must deal with the refund within 6 months of 30 November 2020. In the case of an amount to be refunded as a result of a payment due in the CIT form submitted within the ordinary period, delay interest in favour of the taxpayer will be accrued as from the end of the ordinary period of the CIT submission.

Finally, Article 12 provides that the possibility of exercising, requesting or waiving any tax options available to the taxpayer would not be restricted in any of the abovementioned situations (complementary or amendment).

B. Deferral of tax debts

The Seventh and Ninth Final Provisions of RDL 19/2020 extend to four months the period during which no delay interest will be due for the deferral of tax debts provided for in Article 14 of RDL 7/2020 and Article 52 of RDL 11/2020 relating to debts arising from customs declarations.

The extension of this period during which no delay interest will accrue will only be applicable, as provided for in the second transitional provision, to deferral requests submitted during the time the abovementioned RDLs are in force.

This measure does not apply to deferrals of port-related debts covered by Article 20 of RDL 15/2020, insofar as no delay interest accrues on such deferrals during their duration.

C. Exemption under ITP-AJD for deeds establishing moratoriums of mortgage debt, unsecured mortgage loans, and conventional moratoriums

Finally, RDL 19/2020, through its first final provision, introduces a new exemption from the Transfer Tax and Stamp Duty (“**ITP-AJD**”), for those deeds that establish a moratorium on the payment of the different financing methods, provided for in the different Royal Decree-laws approved to date by which measures are adopted to combat the COVID-19 crisis. In particular, the exemption extends to deeds that establish the following moratoriums:

- (i) The moratoriums provided for in Article 13(3) of RDL 8/2020, in respect of mortgage debt for the acquisition of the primary residence, of property used for economic activity and of housing other than the primary residence under leasehold, by those who are experiencing extraordinary difficulties in meeting their payments as a result of COVID-19.
- (ii) The moratoriums provided for in Article 24(2) of RDL 11/2020, concerning obligations deriving from loan agreements without mortgage guarantees signed by individuals in a situation of economic vulnerability.
- (iii) The conventional moratoriums provided for in Article 7 of RDL 19/2020.

3. Financial measures

RDL 19/2020 establishes four significant measures in the financial sector:

- (i) the suspension of the obligation of banking foundations to make allocations to the reserve fund;
- (ii) the regulation of a conventional moratorium applicable to all types of loans between debtors and financial institutions provided they are covered by a sector-specific framework agreement;
- (iii) the amendment of RDL 11/2020, so that finance leases are included within the objective scope of the legal “non-mortgage” moratorium; and
- (iv) the amendment of Article 55 of Law 11/2015, of 18 June, on the recovery and resolution of credit institutions and investment services companies, so that the President of the Spanish Executive Resolution Authority (“**FROB**”) can continue in office until the appointment of his successor.

A. Amendment of Royal Decree 877/2015 of 2 October implementing Law 26/2013 of 27 December on savings banks and banking foundations, regulating the reserve fund to be set up by certain banking foundations (“Royal Decree 877/2015”)

RD 877/2015 regulates the reserve fund that banking foundations with a controlling interest in a credit institution are required to set up following the approval of Law 26/2013 of 27 December on savings banks and banking foundations, to cover contingencies. Thus, Royal Decree 877/2015 establishes the amount, form, term, and frequency of the establishment of this reserve fund.

The fourth final provision of RDL 19/2020 suspends the obligation of banking foundations to make allocations to the reserve fund, as well as the time limit for setting up the fund. This suspension does not have to be offset against the following year's contribution so that the remaining contributions until the target amount established in Article 4 of RD 877/2015 is reached will be distributed on a linear basis over time, in accordance with Article 6(3) of RD 877/2015.

This measure is a consequence of the European Central Bank's recommendation of 27 March 2020 on dividend distributions during the COVID-19 pandemic and repealing Recommendation ECB/2020/1, by which the European banking supervisor recommends that, at least until 1 October 2020, credit institutions should refrain from distributing dividends or entering into irrevocable commitments to distribute them for the financial years 2019 and 2020.

For this reason, and because dividends are the main source of income received by banking foundations, RD 19/2020 suspends, for the year 2020, the obligation to set up the reserve fund and the calculation of the period for its constitution, leaving the pending provisions deferred to the period 2021-2024.

B. Regulation of the conventional moratorium

RDL 8/2020 established a legal moratorium system for debtors of loans with mortgage guarantees for the acquisition of their primary residence. A few days later, this moratorium system was extended to loans secured by real estate intended for the economic activity of entrepreneurs and professionals.

Along with the moratorium on mortgage loans, Royal Decree-law 11/2020 of 31 March, which adopted urgent supplementary measures in the social and economic sphere to address COVID-19 (“**RDL 11/2020**”) also established a moratorium on any type of financing without a mortgage guarantee arranged by any individual, both as a consumer and in the exercise of his or her professional activity.

These legal moratoriums are restricted only to those individuals who are in the circumstances of vulnerability specified in Article 16 of RDL 11/2020.

To encourage the application of measures and agreements for the deferment of credit and loan payments with an even broader scope than that initially provided for in the legal moratoriums and as a supplement to these, RDL 19/2020 incorporates a special system for moratorium agreements reached between lending institutions and their clients, even where these clients are not in the circumstances of vulnerability indicated in Article 16 of RDL 11/2020.

Thus, RDL 19/2020 regulates the system of implementation for conventional moratoriums signed between debtors and their corresponding financial institutions provided that they are covered by a sector framework agreement. For these purposes, financial institutions are understood to be credit institutions, financial credit establishments, real estate credit lenders, payment institutions, and electronic money institutions.

The regulation is set out in Articles 6, 7 and 8, as well as in the first transitional provision of RDL 19/2020, the main features of which are as follows:

- (i) *Sector framework agreements promoted by the associations representing financial institutions on the postponement of financing operations for customers affected by the coronavirus crisis*

Article 6 establishes the sector framework within which the moratorium agreements to which the system of RDL 19/2020 applies must be implemented:

- Financial institutions that adhere to Sector Framework Agreements for the granting of conventional moratoriums with their debtors as a result of the health crisis arising from COVID-19, shall be subject to the provisions of Articles 6, 7 and 8 of RDL 19/2020, provided that such Sector Framework Agreements have been communicated to the Bank of Spain for registration, which will publish them on its website.
- It also establishes the duty of financial institutions to communicate specific data on the moratoriums granted on a daily basis (number of requests for suspension presented, number of suspensions granted, number of requests rejected, etc.).
- It establishes that the provisions on the conventional moratorium regulated by RDL 19/2020 amount to rules of order and discipline, which will allow the control of its compliance by the Bank of Spain.

(ii) General provisions on conventional moratoriums signed under a sector framework agreement

In accordance with Article 7 of RDL 19/2020, conventional moratoriums signed between the debtor and their financial institution under a Sector Framework Agreement may cover all types of loans, credits, and finance leases.

Accordingly, two types of measures may be agreed, without prejudice to the accrual of interest agreed in the initial loan contract: (i) that the amount of the deferral is paid through the redistribution of the instalments without modification of the maturity; or (ii) the extension of the maturity by a number of months equivalent to the duration of the moratorium.

In addition, the debtor and the financial institution may also agree to extend the payment protection or loan repayment insurance that had been taken out for the same period of time in which the maturity of the loan to be novated is extended, subject to the same conditions and premium initially agreed.

However, RDL 19/2020 states that moratoriums may not, under any circumstances, be applied: (i) to modify the agreed interest rate; (ii) to charge expenses or commissions except in the case of an interest-free loan, and where the effect of the expense or commission does not entail an increase in the Annual Equivalent Rate (AER) agreed in the initial contract, or in the case of the premium for the extension of the insurance contract referred to in the previous section; (iii) to be marketed together with any other linked or combined product; and (iv) to establish other additional guarantees, personal or real, that were not included in the original contract.

An important aspect of this provision is the operational coordination between the legal and the conventional moratorium signed under a sector framework agreement in circumstances where they apply to the same loan. In other words, where the financial institution grants, simultaneously or successively, a legal moratorium and a conventional moratorium, the conventional moratorium agreement signed with the debtor will expressly include recognition of the legal moratorium, suspending the effects of the conventional moratorium until the time when the latter ends, thus guaranteeing the prevalence and effects of the legal moratorium at all times.

In other words, in the event that the debtor who is the beneficiary of a conventional moratorium signed under a sector framework agreement is also the beneficiary of the legal moratorium because he is in the situation of economic vulnerability provided for in Article 16 of Royal Decree 11/2020, the terms of both moratoriums will be applied successively in such a way that no ordinary interest or default interest will accrue during the three-month period provided for in Article 14 of said legislation.

Finally, the provision establishes a series of information obligations on the part of the financial institution which translate into the obligation to deliver to the debtor, together with the proposal for an agreement to establish the conventional moratorium, simplified information on the terms of the loan which, at a minimum, must include: (i) the legal and economic consequences of the postponement, with or without extension of the term, of the loan concerned; and (ii) where appropriate, the terms of the extension of the payment protection or loan repayment insurance that was initially taken out with the loan which is being novated.

With this duty of information, RDL 19/2020 seeks to ensure that the debtor understands the scope and effects of the moratorium as a necessary mechanism for the adequate provision of consent and acceptance of the moratorium.

(iii) Exceptional system for the establishment of conventional moratoriums under sector framework agreements

Article 8 of RDL 19/2020 establishes an exceptional system for the granting of notarial instruments in which conventional moratoriums are established, when necessary. The main features of this system are as follows:

- When the moratorium only provides for a deferment of the principal or principal and interest of a loan or credit with a real guarantee or a finance lease whose registration requires the execution of a public document and, if applicable, the extension of the payment protection or loan repayment insurance, the financial institution may unilaterally notarise the moratorium agreement signed by the debtor and, if applicable, the guarantors and sureties, provided that (i) the moratorium is implemented through the extension of the maturity period; and (ii) the debtor does not expressly express his willingness to appear before the notary for the bilateral grant.
- Together with the moratorium agreement, the notary must notarise: (i) the extension of the payment protection insurance or loan repayment insurance, if applicable; (ii) the simplified information; (iii) the proof of its receipt by the debtor; and (iv) a responsible statement signed by a person with sufficient power to act on behalf of the financial institution stating, among other things, that the debtor has received the simplified information and that the debtor's consent has been given in accordance with the provisions of RDL 19/2020.
- The notary shall provide the debtor, free of charge, with a simple copy of the notarial instrument in which the conventional moratorium agreement is unilaterally made public.

Similarly, the eleventh final provision of RDL 19/2020 amends Royal Decree-law 15/2020 of 21 April on urgent additional measures to support the economy and employment by adding an additional fifteenth provision whereby the notary must also provide to the debtor a simple copy of the notarial deed in which the legal moratorium agreement is unilaterally made public.

Finally, the first transitional provision establishes the application of the provisions of RDL 19/2020 to moratoriums signed by the debtor and his financial institution before the entry into force of RDL 19/2020, so that the procedure is adjusted to make this application possible without reducing its agility or the guarantees for debtors, who will receive at all times the documentation explaining the effects of the moratorium before the contract is made public. In circumstances where the documentation cannot be delivered before the signing of the moratorium, the debtor will have the right to withdraw from the moratorium for 10 days, all before the notarisation of the agreement.

C. Amendment of RDL 11/2020

The ninth final provision of RDL 19/2020 amends Article 21(1) of RDL 11/2020, which establishes measures leading to the temporary suspension of contractual obligations arising from any loan or credit without a mortgage guarantee that was in force on the date of entry into force of this Royal Decree-law, where it is entered into by an individual who is in a situation of economic vulnerability as a result of the health crisis caused by COVID-19. The ninth final provision of RDL 19/2020 includes finance leases within the objective scope of the regulation.

This broadens the objective scope of the legal moratoriums known as "non-mortgage moratoriums" established by RDL 11/2020 to include finance-leasing contracts, which are particularly important for the self-employed. Although their classification as loans is not a conclusive fact and is subject to differences of opinion at the theoretical level, this is a type of legal transaction that is highly significant in terms of financing the economic activity of self-employed workers and it is therefore considered appropriate that they should benefit from the regulation of RDL 11/2020.

D. Amendment of Law 11/2015 of 18 June on the recovery and termination of credit institutions and investment services companies

Finally, the current wording of Article 55 of Law 11/2015 of 18 June on the recovery and resolution of credit institutions and investment services companies prevents the renewal of the President of the FROB after the end of the term for which he was appointed and determines his dismissal at the same time. Taking into account that the President is the only executive officer of the FROB Governing Committee and in order to ensure the operational continuity of the institution and to avoid the risk of a vacant period between two Presidents, RDL 19/2020 amends Article 55(3)(a) of such regulation so that the end of the said period of office will not prevent the continuity of the President until the appointment of his successor.

4. Employment measures

A. Tacit administrative approval of wage guarantee procedures

The fifth final provision of RDL 19/2020 amends Article 33 of the Workers' Statute, and introduces a new paragraph establishing that failure to resolve salary or compensation claims by the Salary Guarantee Fund within 3 months of their application will result in tacit administrative approval, provided that the persons who so request may legally be beneficiaries and for the amount resulting from the application of the limits provided for in that article.

B. Clarification on the obligation to provide by electronic means the data related to company registration, affiliation, registrations, cancellations and variations of data, as well as those related to the contribution and collection for the exoneration of the contributions of companies subject to ERTes arising from Covid-19

In paragraph two of its eighth final provision, RDL 19/2020 amends Article 24(2) of RDL 8/2020, adding that for the purposes of recognising periods of contribution by companies subject to ERTes under Covid-19, only Article 20(1) of the General Law on Social Security does not apply to it, and not Article 20 in its entirety as indicated above. The obligation to provide by electronic means the data relating to company registration, affiliation, registration, cancellation, and variations of data, as well as those relating to the contribution and collection for the recognition of the exemption of contributions of companies that have made an ERTE as a result of Covid-19, remains.

C. Consideration of illnesses suffered by health personnel as a consequence of the spread of Covid-19 as an occupational hazard

The Social Security benefits due to personnel who provide services in health or social-health centres because they have contracted the SARS-COV2 virus during the epidemic and until the month after the end of the state of alarm because they were exposed to the risk of infection during the provision of their services, will be considered to be the result of accidents at work.

D. Adjustment of extraordinary access to unemployment benefits for artists in public performances not affected by RSTes derived from Covid-19

The unemployment benefit for artists in public performances provided for in Article 2 of Royal Decree-law 17/2020, of 5 May, which approves support measures for the cultural sector and tax measures to deal with the economic and social impact of COVID-2019, is adjusted and establishes the extraordinary access to the benefit itself as a response to the COVID-19 health crisis, without it being up to the artists to prove that their specific situation of unemployment results from it. Similarly, the requirement to be in the period of voluntary inactivity is eliminated. It also clarifies that it is possible to suspend the payment of the

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benefit in order to carry out work for oneself or for others and to resume it later. Finally, artists who have had their applications rejected may resubmit them under the new provisions introduced.

The information contained in this Information Briefing is of a general nature and does not constitute legal advice. This document was prepared on 29 May 2020 and Pérez-Llorca does not assume any commitment to update or revise its contents.