

## Legal Status in Spain

APR 24, 20

- 1) Employment
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# 1. Employment

# Employment

**Royal Decree-Law 15/2020 of 21 April on urgent complementary measures to support the economy and employment.**

## **1. Measures to facilitate the adjustment of the economy to the present crisis and to protect employment.**

The scope of force majeure in an ERTE in accordance with Article 22 RD 8/2020 of 17 March is clarified. Consequently, it is established that force majeure may be partial and may not extend to the entire workforce.

The rights to adapt or reduce the working day is extended, as well as the priority of teleworking over presential work, where possible.

These measures shall remain in force for three months after the lifting of the State of Alarm.

## **2. Measures to protect citizens.**

Article 22 of this Royal Decree provides that as of 09.03.20, it extends the coverage of its benefit to employees whose employment contracts have been terminated during the trial period of a new job. Consequently, they are considered to be in a legal situation of unemployment.

The employees who voluntarily ended their relation of employment from 01.03.20 because they had a firm job offer that has not materialized as a consequence of the crisis derived from the Covid-19 are also to be considered legally unemployed and registered as such. This will require a written communication from the company to the employee withdrawing from the employment contract offered as a result of the crisis arising from Covid-19.

## **3. Penalty system for incorrect and fraudulent use of ERTEs**

Royal Decree-Law 9/2020, of 24 March, was amended by introducing the following:

*Conduct by a company consisting of requesting measures in relation to employment that are not necessary or have insufficient connection with the cause that gives rise to them, shall also be punishable, in accordance with the provisions of this law, when said circumstance is deduced from the false or incorrect data provided by it and provided that it gives rise to the generation or receipt of benefits to which it is not entitled or the application of deductions in Social Security contributions to which it is not entitled.*

In such cases, the company concerned must pay the amounts received by the employee to the management entity in accordance with the provisions of the revised text of the Law on Infractions and Penalties in Social Order (Ley sobre Infracciones y Sanciones en el Orden Social).

However, the employee retains the right to the salary corresponding to the period of employment regulation initially authorized, discounting the amounts they would have received as unemployment benefit.

#### **4. Self-employed professionals**

Self-employed professionals who have not exercised the option of choosing a mutual fund (the option provided for in Article 83(1)(b) of the consolidated text of the General Law on Social Security (Ley General de la Seguridad Social) must submit this document within three months of the end of the State of Alarm (it shall take effect from the first day of the second month following the end of this three-month period).

#### **5. Deferral of Social Security payments**

The eighth final provision of the Royal Decree-Law provides for the amendment of Article 35 of Royal Decree-Law 11/2020 of 31 March, adopting additional urgent measures in the social and economic field to deal with Covid-19, concerning the deferment of payment of social security debts.

It includes that the deferment will be granted by means of a single resolution, regardless of the months involved, that it will be amortized by means of monthly payments and a period of amortization will be established of four months for each monthly payment requested as from the month following that in which it was issued, without it exceeding a total of 12 monthly payments.

The request for this deferment will determine the suspension of the collection procedure with respect to the debts affected by it and that the debtor will be considered to be up to date with their social security obligations until the corresponding resolution is issued.

Finally, the deferment referred to in this article is incompatible with the moratorium on social security contributions. Thus, requests for deferment for periods for which the aforementioned moratorium has also been requested will be considered as not having been submitted if the applicant has been granted the latter.

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## 2. Real Estate

# Real Estate

## Commercial Property Leases

The Government has finally decided to modify its initial position and has enacted specific regulations on the effect of the State of Alarm on commercial property leases. It must be recalled that there were already very detailed regulations issues on housing leases, but nothing had been said regarding commercial property leases, which created great legal uncertainty and much legal debate.

On April 22, 2020, Royal Decree Law 15/2020 was published in the Official State Gazette, establishing the following:

### 1. Who is affected?

The measure affects leases in which the tenant is a self-employed entrepreneur or an SME, and provided that this entrepreneur or SME has had its business activity suspended by the State of Alarm, or if it has not been suspended, has had a reduction in its turnover from the previous month of at least 75%.

### 2. Effects

#### 2.1. Cases where the lessor is a large property owner.

The regulations differ depending on whether the lessor is a large property owner or not. A large property owner is considered to be a natural or legal person who owns more than 10 urban properties (not counting garages or storage rooms) or more than 1,500m<sup>2</sup>.

In the case of a lease with a large property holder, the tenant may request, within one month from the entry into force of this Royal Decree Law (i.e. until 22 May 2020), a moratorium on the payment of rent, and the lessor must accept this.

The moratorium is to last for as long as the State of Alarm remains in force and for the following monthly payments in which the business continues to be affected, for a maximum of four months following the lifting of the State of Alarm. The rent for these months will be paid on a pro-rata basis starting from the end of the period of the moratorium.

#### 2.2. Other contracts

In cases where the lessor is not a large property holder the tenant can request the same moratorium but the lessor is not obliged to grant it so it must be negotiated between the parties.

The regulations provide that the parties may agree to use the rental deposit as a partial or complete rental payment. If they do so, then the tenant must replace the deposit with a year of the agreement being made.

This new regulations provides much-needed legal certainty, although their practical application may give rise to doubts, especially in order to demonstrate whether or not the lessor is a large property owner, and to demonstrate whether or not the tenant is a self-employed entrepreneur or an SME that meets the required subjective criteria.

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### 3. Tax

# Tax

## Real Decree – Law 15/ 2020

On April 21, the government approved a new Royal Decree Law 15/2020 with urgent complementary measures to support the economy and employment.

This Royal Decree Law has effects, among others, on the reduction of VAT rates, extension of deadlines for instalment payments of corporate income tax, changes in tax module computation, availability of pension plans and new extension of deadlines in tax procedures.

Below is a summary of the main new features:

### **1. Reduction of VAT rates**

The VAT applicable to the supply of medical material by national producers to public bodies, non-profit organizations, and hospitals and medical centers is temporarily reduced to 0%.

From 23 April 2020 until 21 July 2020, the 0% VAT rate will be applied to the supply of goods, imports and intra-community acquisitions of goods referred to in the Annex included in the Royal Decree-Law, whose recipients are public law entities, clinics or hospitals, or private social entities referred to in Article 20.3 of the VAT Law. These operations will be documented in the invoice as exempt operations.

### **2. VAT on books, magazines and electronic newspapers is reduced to 4%.**

The rate applicable to books, newspapers and magazines on paper is made equal to the rate applicable to those considered to be electronically supplied services.

### **3. The option period for IS (corporate tax) payment in instalments is extended.**

The option of paying in instalments provided for in Article 40.3 LIS is permitted, on an extraordinary basis, for IS taxpayers whose tax period began on or after 1 January 2020:

- By submitting the first IS instalment payment, extended until May 20 for taxpayers to whom the extension applies: taxpayers with a turnover of less than 600,000 euros in 2019.
- By making the second instalment payment of the IS on the first 20 calendar days of October 2020, for those taxpayers who are not eligible for the extended period and whose net turnover has not exceeded 6,000,000 euros during the 12 months prior to the date on which the tax period began. It does not apply to groups of companies in the tax consolidation regulated in Chapter VI of Title VII LIS.
- The taxpayer who exercises the option in accordance with the provisions of this article shall be bound by this method of payment by instalments only in respect of payments corresponding to the same tax period.

### **4. The module waiver in 2020 is non-binding for 3 years.**

It limits the temporary effects of the tacit waiver of the objective estimation method to the year 2020.

Those who waive the application of the objective estimate method for personal income tax (IRPF) within the deadline for presentation of the payment in instalments corresponding to the first quarter of the financial year 2020, can revoke said waiver during 2021 provided that they meet the regulatory requirements for its application.

This waiver shall have the same effect as regards the special VAT or IGIC arrangements.

##### **5. Calendar days during the State of Alarm do not count in modules.**

For the calculation of the instalment payments in the objective estimation method of the Personal Income Tax (IRPF) and the quarterly payment of the simplified VAT regime as a consequence of the alarm state declared in the tax period 2020 it is established that:

- The calendar days on which the State of Alarm was in force in that quarter are not counted as days of activity.
- This is restricted to activities defined in Annex II as “Other activities” identified in Order HAC/1164/2019 of 22 November on modules for 2020. Agricultural, livestock and forestry activities are therefore excluded from this measure.

##### **6. Tax debts for the provision of guarantees.**

The possibility of making payment of tax debts conditional on obtaining financing through the Guarantee Line is established.

It is established that the enforcement period will not commence for tax debts arising from the granting of financing referred to in Article 29 Royal Decree Law 8/2020.

- Applicable within the scope of the State Tax Administration’s competencies.
- To the declarations-settlements and self-assessments presented by a taxpayer on time, without making the corresponding payment for the tax debts resulting from them.
- If the taxpayer has requested in due time the financing provided for in Royal Decree-Law 8/2020 for the payment of the tax debts resulting from such returns-settlements and self-assessments and for at least the amount of such debts.
- The taxpayer must provide the Tax Authorities with a certificate issued by the financial institution demonstrating that the request for financing has been made, including the amount and the tax debts involved, within a maximum of 5 days from the end of the period for presentation of the tax return-settlement or self-assessment.
- This request for financing has been granted for at least the amount of the debts mentioned.
- The debts are effectively, completely, and immediately paid when the financing is granted. This requirement shall be deemed not to have been met if the debts are not paid within one month of the end of the period referred to in the first subparagraph of this section.
- It is established that this measure is applicable to returns-settlements and self-assessments for which the deadline for submission is between 20 April 2020 and 30 May 2020.

- If they have been submitted before 23-4-2020 and the enforcement period has already begun, they will be considered as a voluntary period of entry when the following circumstances concur:

- The taxpayer provides the Tax Administration with a certificate issued by the financial institution certifying that the request for financing has been made within a maximum period of five days as from 24-4-2020.
- The application for funding is granted for at least the amount of the debts concerned.
- The debts are effectively, completely, and immediately paid when the financing is granted. This requirement shall be deemed not to have been met if the debts are not paid within one month of the end of the period referred to in the first subparagraph of this section.

## **7. Availability of pension plans**

The rules on the exceptional availability of pension plans in situations arising from the health crisis caused by the COVID-19 are regulated, determining who can apply to make their vested rights effective, how to prove the existence of the circumstances allowing for exceptional availability, the amount of the vested rights available, and the time limit for reimbursement.

## **8. Extension of deadlines in tax proceedings**

The references to 30 April and 20 May 2020 included in Royal Decree Law 8/2020 and Royal Decree Law 11/2020 are extended until 30 May 2020.

- (i) The extensions of the deadlines in Royal Decree Law 8/2020 will be as follows:

The deadlines for the following payments that have not ended on 18 March 2020, or that are communicated as from that day are extended until 30 May 2020 unless the deadline granted by the general rule is longer:

- The deadlines for payment of the tax debt for settlements made by the Administration.
- The deadlines related to the development of the auctioning and awarding of goods.
- The expiration of the terms and instalments of the agreements to postponement and payment in installments granted.
- The deadlines for dealing with requests, seizure proceedings and requests for information, for submitting arguments in tax application, sanctioning, or declaration of invalidity proceedings, return of undue income, rectification of material errors and revocation proceedings.

Within the administrative procedure of constraint, there will be no execution of guarantees on real estate from the entry into force of this royal decree law until 30 May 2020.

The period from March 18 to May 30, 2020 does not count:

- For the purposes of the maximum duration of the procedures for the application of taxes, penalties and reviews processed by the AEAT, although the Administration may carry out the essential procedures.
- For the purposes of time limits and expiration periods.

In appeals for reversal and in the economic-administrative proceedings, the decisions that terminate them shall be deemed to have been notified when there is evidence of an attempt to notify the decision between 18 March and 30 May 2020, for the purposes of calculating the expiration periods

The period for lodging economic-administrative appeals or claims against tax acts, as well as for appealing through administrative channels against decisions handed down in economic-administrative proceedings will not commence until the end of this period, or until notification has been given, if the latter has taken place after that time.

In relation to the land registry:

- The deadlines for responding to requests for information made by the Land Registry (Dirección General del Catastro) that are due to be answered on 18 March 2020 are extended to 30 May 2020.
- They may be heard until 30 May 2020, unless the general rule provides for a further extension, in which case it will be applicable to the process of observations or hearings.
- The procedure is considered to have been completed if the taxpayer complies with the requirement or request for information with tax implications or presents observations.
- The period from 18 March to 30 May 2020 does not count for the purposes of the maximum duration of procedures initiated *ex officio*, although during this period the Administration may carry out the essential procedures.

**ii) The extensions of deadlines included in Royal Decree Law 11/2020 are as follows:**

Extensions of time limits in relation to the lodging of appeals and complaints in certain circumstances and for certain procedures, applicable at state, Autonomous and local level.

The Extension of the deadlines for lodging appeals for reversal and economic-administrative claims will be calculated from the working day following the date on which the State of Alarm ends:

- It applies to the lodging of for reversal or economic-administrative claims governed by the LGT (General Tax Law) and its implementing regulations or in the Law on Local Treasuries (Ley de Haciendas Locales).
- From 14 March to 30 May 2020, the deadline for lodging them will start to run from 30 May 2020.
- It shall apply both if the period of one month from the day following notification of the contested act or decision has begun but has not yet expired on 13 March 2020, and if the

administrative act or decision which is the subject of the appeal or complaint has not yet been notified.

Extension of deadlines for procedures, actions and formalities that are governed by the provisions of the state, Autonomous Community, and local levels. It does not include the period for executing decisions of the economic-administrative courts from 14 March to 30 May, and suspension of the expiry and prescription periods from 14 March to 30 May.

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