February, 2013

MEASURES TO SUPPORT ENTREPRENEURS, STIMULATE GROWTH AND CREATE EMPLOYMENT

Royal Decree-Law 3/2013 on measures to support entrepreneurs and create employment, and other measures contained in Royal Decree-Law 4/2013

February 23, 2013 saw the publication in the Official State Gazette of Royal Decree-Law 4/2013, of February 22, 2013, on measures to support entrepreneurs, stimulate growth and create employment (**"Royal Decree-Law 4/2013"**), which contains a raft of tax, labor, corporate/commercial and administrative law measures which we summarize in this newsletter. We also summarize in this newsletter some of the final provisions of Royal Decree-Law 3/2013, of February 22, 2013, amending the regime governing judicial fees and the free legal aid system (**"Royal Decree-Law 3/2013"**), given their tax and corporate/commercial law content.

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1. MEASURES TO FOSTER ENTREPRENEURSHIP AND SELF-EMPLOYMENT

Royal Decree-Law 4/2013 establishes a series of social security-related measures to foster entrepreneurship and self-employment, including most notably the following:

- It creates **social security deductions and reductions applicable to young self-employed workers**, who may elect the following systems:

  (i) Workers who have been included in the special social security regime for self-employed workers ("RETA"), following the entry into force of the Self-Employed Work Statute, and who are aged under 30 (or under 35 in the case of women), may apply to the relevant contribution for the nonoccupational contingencies, depending on the contribution base chosen and the applicable contribute rate, according to the scope of protection elected:

  (a) a reduction for the 15 months immediately following the effective date of social security registration, equal to 30% of the contribution that results from applying the minimum contribution rate in force from time to time to the minimum base;

  (b) and a deduction, in the 15 months following the end of the reduction period, in the same amount as the reduction.

  (ii) As alternative to the above system, self-employed workers who are aged under 30 and who initially register for social security purposes or who have not been registered for social security purposes in the immediately preceding five years, as from the effective date of registration under RETA, may apply the following reductions and deductions to the contribution for nonoccupational contingencies, except for temporary disability, resulting from applying the minimum contribution rate in force from time to time to the minimum base, for a maximum period of 30 months, according to the following scales:

  (a) A reduction equal to 80% of the contribution for the 6 months immediately following the effective date of registration.

  (b) A reduction equal to 50% of the contribution for the 6 months following the period indicated in letter a).

  (c) A reduction equal to 30% of the contribution for the 3 months following the period indicated in letter b).

  (d) A deduction equal to 30% of the contribution for the 15 months following the end of the reduction period.

  These reductions/deductions will not apply to self-employed workers who employ workers.

Self-employed workers who elect the second system may apply the reductions and deductions from the first system provided that the total computation of those reductions and deductions does not exceed the maximum period of 30 months.

- It also provides for reductions and deductions in specific contributions for **persons with disabilities** who set up as self-employed workers.

- It also establishes that **the receipt of unemployment benefits will be compatible with self-employed work** where so established by an employment promotion program aimed at groups that encounter greater difficulties to find a job.

- It allows beneficiaries of the contributory unemployment benefit who set up as self-employed workers to combine the receipt of the benefit to which they are entitled with self-employed work for a maximum of 270 days, or for the remaining period of entitlement, if shorter, provided that:

  (i) The beneficiary of the contributory unemployment benefit is aged under 30 on the start date of the self-employed work and does not employ any workers.

  (ii) The application is made to the management entity within 15 days after the start date of the self-employed work.

- It expands the possibilities for **receiving the unemployment benefit in a lump sum**.

  Beneficiaries of unemployment benefits, aged under 30 (or under 35 in the case of women) may receive 100% of their benefit in a lump sum in order to make a contribution to the capital stock of a commercial company, provided that a professional or employment relationship is established for an indefinite term.

  The lump sum in respect of unemployment benefit can be used to acquire advisory, training and information services, as well as to cover the costs of forming a new company.

- It expands the cases in which the unemployment benefit is held in abeyance or resumed to cases where the holder of a right is initially registered under RETA, is under the age of 30 and performs self-employed work for less than sixty months.

- Protection against occupational accident and disease contingencies, which includes coverage to protect against the cessation of activity, is established as voluntary for self-employed workers aged under 30.

2. TAX INCENTIVES

As part of the overall aim of this royal decree-law to establish an environment that fosters an entrepreneurial culture, and encourages the creation and implementation of business projects that create jobs and add value, in the area of corporate income tax and personal income tax, the tax burden has been reduced for the first two years in which new companies engage in their activity.

2.1 Corporate income tax

Entities created on and after January 1, 2013 will be taxed according to the following scale in the first tax period in which they have taxable income and in the following period:

(a) On the portion of the tax base between €0 and €300,000, at a rate of 15%.

(b) On the rest of the tax base, at a rate of 20%.

If the tax period is shorter than a year, the portion of the tax base that will be taxed at 15% will be the result of applying to €300,000 the proportion resulting from dividing the number of days of the tax period by 365 days, or the base for the tax period if it is lower.

However, the following restrictions have been established:

- The measure will not apply to entities that, in accordance with article 28 of the Revised Corporate Income Tax Law (the "TRLIS"), should be taxed at a rate other than the standard rate.

- Entities that form part of a group within the meaning of article 42 of the Commercial Code will not be considered to be newly created entities, regardless of their residence or the obligation to prepare consolidated financial statements.

- An economic activity will not be deemed to have started for these purposes: a) where the economic activity has been performed previously by other persons or entities that are related parties within the meaning of article 16 of the TRLIS and has been transferred to the newly created entity by any means; or b) where the economic activity has been performed, in the year before the year when the entity was formed, by an individual holding a direct or indirect ownership interest above 50% in the capital or equity of the newly created entity.

- Where the taxpayer is subject to the tax prepayment method established in article 45.3 of the TRLIS (tax base method), the reduced tax scale will not apply to the quantification of the tax prepayments.

2.2 Personal income tax

(a) 20% reduction for start of economic activity

As with the measure adopted for corporate income tax purposes, taxpayers who start an economic activity on or after January 1, 2013 and determine their net income under the direct assessment method may reduce their net income from that activity, less any applicable reductions, by 20% in the first tax period in which they record income and in the following period.

The economic activity is deemed to start if no economic activity was performed in the year before the date on which it started, without taking into consideration any activities that were ceased without having recorded any net income since they started.

This reduction can also be applied where after the activity starts a new activity is started without having ceased the first activity; in this case, the reduction will apply to the net income obtained in the first tax period in which positive income is recorded and in the following tax period, reckoned from the start of the first activity.

The amount of net income to which the reduction will be applied cannot exceed €100,000 per year.

This reduction will not apply in the tax period in which more than 50% of the revenues of the period originate from a person or entity from which the taxpayer has earned salary income in the year before the start date of the activity.

(b) Exemption for unemployment benefits

The law establishes an exemption for unemployment benefits where they are received in a single payment under Royal Decree 1044/1985, of June 19, 1985, governing the payment of unemployment benefit in a single payment, provided that the amounts received are used for the purposes and in the cases envisaged in that law.

This exemption will be conditional on the share or ownership interest being held for five years, where the taxpayer has joined an associated worker-owned company or cooperative or has made a contribution to the capital stock of a business entity, or on the activity being carried on for the same period of time in the case of a self-employed worker.

Until now, this exemption was restricted to €15,500; the new measure introduced means that this restriction has been eliminated.

In addition, the new legislation has eliminated the special rule on the timing of recognition of these kinds of benefits received as a single payment, whereby these benefits could be recognized in each tax period in which, had there been no single payment, the taxpayer would have been entitled to the benefit (in proportion to the time which in each tax period they would have been entitled to the benefit). Accordingly, the general rule on the timing of recognition of salary income will apply, that is, it will be recognized in the period in which it is due and payable.

3. MEASURES TO STIMULATE HIRING

The main labor and social security measures approved to stimulate hiring are as follows:

- **First job for young people**

  A new temporary employment contract has been created for people aged under 30 without prior occupational experience or with less than 3 months' experience, which will be governed by the provisions of article 15.1.b) of the Workers' Statute, except for the following special rules:

(i) The purpose of the contract will be for them to acquire their first experience of a professional occupational.

(ii) The contract will be a for a minimum term of 3 months and a maximum of 6 months (unless a longer term is established by an industry collective bargaining agreement at national level or, otherwise, by an industry collective bargaining agreement with a smaller scope, although the term cannot exceed 12 months under any circumstances).

(iii) The contract will be for full- or part-time working hours provided that, in the latter case, the working hours are more than 75% of the working hours of a comparable full-time worker.

The employer must not have adopted any unjustified dismissal decisions in the six months before the contract was executed. This restriction will only affect terminations that have occurred after the law took effect, and for positions from the same occupational group and at the same workplace or workplaces.

An incentive has been provided to convert these kinds of contracts into indefinite-term contracts (once at least 3 months have elapsed since they were executed), consisting of a reduction in the employer's social security contributions equal to €500 per year for 3 years if the agreed working hours are at least 50% of those of a comparable full-time employee. The reduction will be €700 per year where contracts with women are converted.

To apply these benefits, the employer must maintain the level of employment reached with the above-mentioned conversion for at least twelve months. If this requirement is not met, the employer must return the incentives received. This requirement will not be considered breached in cases of terminations on objective grounds or due to disciplinary dismissals where one or the other is held or recognized as justified, due to resignation, death, retirement or total, absolute permanent disability or comprehensive disability of the workers or due to the expiration of the agreed term or the completion of the work or service forming the subject matter of the contract, or during the trial period.

The contract must be executed on the form provided by the State Public Employment Service.

- Incentives for **work-experience contracts for the worker's first job**

As a new measure, the legislation establishes that employers may execute work-experience contracts with young people under the age of 30 even if five or more years have elapsed since they completed their studies.

Companies or self-employed workers who enter into a work-experience contract with workers under the age of 30 will be entitled to a 50% reduction in employer social security contributions for nonoccupational contingencies relating to the worker hired for the entire term of the contract (or 75% if the worker was carrying out internships without employment rights at companies under agreements with the Public Employment Services in accordance with Royal Decree 1543/2011).

- **Incentives for hiring on part-time basis for training purposes**

  The new legislation provides for reductions in employer social security contributions of 75% for companies with more than 250 workers and of 100% for the rest, for the hiring on a part-time basis for training purposes of unemployed young people under the age of 30 (i) with no prior, or less than 3 months', occupational experience, (ii) or who come from another business sector as will determined by the regulations or (iii) who are unemployed and were registered at the employment office for at least 12 of the 18 months before being hired.

  The workers must combine the job with training, or evidence that they have completed it in the six months before the execution date of the contract. The training need not be specifically linked to the job under the contract, and may be:

  (i) Training officially recognized or promoted by the Public Employment Services.

  (ii) Training in languages or information and communication technology lasting at least 90 hours on an annual basis.

  The reduction in employer social security contributions will be for twelve months and may be extended a further twelve months provided that the worker continues to combine the job with training or has completed the training in the six months before that period ends.

  The contract may be entered into for an indefinite or definite term, and must be executed in writing and on the official form. The agreed working hours may not exceed 50 percent of those of a comparable full-time worker.

  To qualify for this measure, the employer must not have adopted unjustified dismissal decisions in the six months before the contract was executed. This restriction will only apply to terminations that have occurred after the law took effect, to cover positions in the same professional group and at the same workplace or workplaces.

  The employer must maintain the level of employment for a period at least as long as the term of the contract up to a maximum of twelve months since it was executed. If this requirement is not met, the employer must return the incentives received. This requirement will not be considered breached in cases of terminations on objective grounds or due to disciplinary dismissals where one or the other is held or recognized as justified, due to resignation, death, retirement or total, absolute permanent disability or comprehensive disability of the workers or due to the expiration of the agreed term or the completion of the work or service forming the subject matter of the contract, or during the trial period.

- **Indefinite-term hiring of a young person by microenterprises or self-employed entrepreneurs**

  Self-employed workers and companies with up to nine workers will qualify for a 100% reduction in employer social security contributions for nonoccupational contingencies for the first year where they hire an unemployed person under the age of 30 for an indefinite term, provided that:

  (i) They have not had any prior employment relationship with the worker.

  (ii) They have not adopted unjustified dismissal decisions in the six months before the contract was executed. This restriction will only apply to terminations that have occurred after the law took effect, to cover positions in the same professional group and at the same workplace or workplaces.

  (iii) They have not previously executed another contract of this type.

  These provisions will not apply where employers enter into indefinite-term contracts to support entrepreneurs, contracts for intermittent work or those contracts established in article 2 of Law 43/2006, of December 29, 2006, to boost growth and employment.

  The employer will have to meet the following maintenance of employment requirements:

  (i) To maintain the worker in employment for at least 18 months after the start date of the employment relationship (unless the contract is terminated for reasons not attributable to the employer or during the trial period; in this last case the requirement not to have executed another contract of this type would not apply, although the total period for the social security reduction cannot exceed 12 months in aggregate).

  (ii) To maintain the level of employment at the company reached with the contract for at least one year from when it was executed. If this requirement is not met, the employer must return the incentives received. This requirement will not be considered breached in cases of terminations on objective grounds or due to disciplinary dismissals where one or the other is held or recognized as justified, due to resignation, death, retirement or total, absolute permanent disability or comprehensive disability of the workers or due to the expiration of the agreed term or the completion of the work or service forming the subject matter of the contract, or during the trial period.

  The contract must be executed on the form provided by the State Public Employment Service.

- Incentives for hiring in **new projects by young entrepreneurs**

  Self-employed workers aged under 30, and without workers on their payroll, who since the law has taken effect hire for the first time, for an indefinite term on a full- or part-time basis, unemployed persons aged 45 or older, who were uninterruptedly registered as job seekers at the employment office for at least twelve of the eighteen

months before being hired or who are beneficiaries of the occupational requalification program for persons who have used up their unemployment protection, will qualify for a 100% reduction in employer social security contributions for the first year.

The employer must maintain the hired worker for at least 18 months after the start date of the employment relationship, unless the contract is terminated for reasons not attributable to the employer or during the trial period. In this last case, another contract of this type may be executed, although the total period for the social security reduction cannot exceed 12 months.

If the hiring of a worker could give rise to several reductions or deductions, only one of them may be applied.

- In accordance with transitional provision one, the measures to stimulate hiring mentioned in the above points **will remain in effect until the unemployment rate falls below 15%.**

- Incentives have also been established for the hiring of young people by social economy entities.

4. OTHER NEW LABOR LEGISLATION WITH SIGNIFICANCE

New legislation has been introduced in relation to **labor intermediation** to permit the State Public Employment Service and the competent bodies of the autonomous community governments to conclude on a joint basis master agreements to set the conditions that must be met by the service contracts that are considered appropriate to enable labor intermediation by the Public Employment Services. In addition, the new legislation sets out the creation of a Single Employment Portal on which job searches can be carried out and which contains useful guidance for young people and provides them with tools to help them search for jobs and start a business activity.

The new legislation eliminates the last paragraph of article 11.1.c) of the Workers' Statute, which prohibited the arrangement of a work-experience contract on the basis of a vocational competence certificate obtained as a result of a training contract previously executed with the same company.

Law 14/1994, of June 1, 1994, on **Temporary Employment Agencies**, has been amended to allow manpower supply contracts to be concluded in cases of contracts for training and apprenticeship. The temporary employment agency must fulfill the training obligations, although the user company has stewardship obligations. Royal Decree 1529/2012, of November 8, 2012, implementing the contract for training and apprenticeship and establishing the bases for dual occupational training, has been amended along similar lines.

5. MEASURES TO FOSTER BUSINESS

Among the measures aimed at fostering business, Royal Decree-Law 4/2013 contains the following:

5.1 Amendment of the Private Insurance (Regulation and Supervision) Regulations approved by Royal Decree 2486/1998, of November 20, 1998

Insurers may invest in securities admitted to trading on the Alternative Stock Market (MAB) or another multilateral trading system specified by royal decree, and these investments will be considered fit for covering technical provisions, although the investment cannot be computed in an amount exceeding 10% of the total technical provisions to be covered.

Investments in shares issued by the same venture capital firm or in a company that is listed on the MAB, or on another multilateral trading system, cannot exceed, jointly, 3% of the technical provisions to be covered. This limit is extended to 6% where the securities in question are issued or backed by entities from the same group.

5.2 Amendment of Pension Plans and Funds Regulations approved by Royal Decree 304/2004, of February 20, 2004

Similarly, pension funds may be invested in securities that are traded on the MAB or another multilateral trading system specified by royal decree, as well as in venture capital firms, and the Pension Plans and Funds Regulations has been amended to establish a maximum limit of 3% of the fund's assets for these types of investments.

Investments in securities that are traded on the MAB or other multilateral trading systems that may be established, as well as investments in a single venture capital firm, may reach 3% of the pension fund's assets. This limit will be 6% where the securities are issued by entities belonging to the same group.

5.3 Amendment of Securities Market Law 24/1988, of July 28, 1988

To help Spanish companies have access to non-bank lending, the new legislation eliminates the ceiling on issuing debentures or other securities representing debt (established at capital plus reserves, in accordance with article 405 of the Corporate Enterprises Law), provided that the securities are targeted at qualified investors or at investors who acquire a minimum amount of €100,000 or they are issues in which the denomination per unit of the securities offered is at least €100,000.

6. MEASURES TO FINANCE PAYMENT TO SUPPLIERS OF LOCAL AUTHORITIES AND AUTONOMOUS COMMUNITY GOVERNMENTS

A second phase has been established for the special mechanism for financing the payment and discharge of debts incurred with certain suppliers of local authorities and autonomous community governments implemented through Royal Decree-Law 4/2012, of February 24, 2012, determining certain reporting requirements and procedures necessary to establish a mechanism to finance payment to suppliers of local authorities ("Royal Decree-Law

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4/2012"), Royal Decree-Law 7/2012, of March 9, 2012, creating the fund for financing payments to suppliers ("Royal Decree-Law 7/2012"), and the Decision of the Council of Tax and Financial Policy of March 6, 2012.

For these purposes, the new legislation (i) broadens the scope of the parties and the subject matter to which the mechanism applies, and (ii) establishes certain special features of the procedure necessary for this new phase which make it possible to discharge outstanding payment obligations with certain suppliers that were net, due and payable before January 1, 2012.

Where Royal Decree-Law 4/2013 is silent, Royal Decree-Law 4/2012, Royal Decree-Law 7/2012, and the Decision of the Council of Tax and Financial Policy of March 6, 2012 will apply secondarily.

6.1 Payment to suppliers of local authorities

6.1.1 Parties and subject matter

The mechanism for paying suppliers has been broadened to be available to the following local authorities and payment obligations:

- Local authorities of the Basque County and Navarra included in the model for participation in central government taxes (following execution of the relevant agreement) and intermunicipal joint ventures in relation to:

  (a) Outstanding payment obligations that have been applied to the budgets of the authority relating to fiscal years before 2012 derived from: (i) cooperation agreements, (ii) administrative concessions, (iii) outsourcings of management in which the outsourcer has the status of instrument and technical service of an autonomous community government or of the central government, (iv) real estate lease agreements, (v) the contracts envisaged in Law 31/2007, of October 30, 2007, on procurement procedures in the water, energy, transportation and postal services industries, (vi) public works concession contracts, (vii) public-private partnerships, (viii) public service management contracts, of the concession type, relating to the subsidy that has been agreed to be borne by the local authorities, provided that it was supposed to be paid to the contractor before January 1, 2012, as provided for in the Public Sector Contracts Law (the "TRLCSP").

  (b) Outstanding payment obligations to contractors as referred to in Royal Decree-Law 4/2012 and Royal Decree-Law 7/2012 (construction contracts, service contracts, supply contracts and public service management contracts).

- The local authorities to which the models for participation in central government taxes apply, only in relation to the outstanding payment obligations derived from the contracts included in letter (a) above.

6.1.2 Special features of the procedure for supplying information and paying invoices

The following steps and deadlines have been established:

- Until March 22, 2013:

  (a) Contractors may apply to the local authority debtor for the issue of a certificate acknowledging the existence of outstanding payment obligations. The certificate will be issued within not more than five calendar days after the application was submitted. If there is no reply, the application will be deemed rejected.

  (b) Intermunicipal joint ventures must (i) send to the Ministry of Finance and Public Administration (the "MINHAP") a duly authenticated copy of their bylaws (duly approved by the member municipal councils sitting in plenary session); (ii) specify the membership percentage, as of December 31, 2011, of each of the municipal councils of which it is composed; and (iii) apply for inclusion in the General Database of Local Authorities and of the Inventory of Local Public Sector Entities, if they were not included in it.

- Before March 29, the controller or internal control body of the local government will send the MINHAP a certified list of the applications for individual certificates admitted.

6.1.3 Special features of the adjustment plan:

The local authorities must file an adjustment plan that complies with the provisions of Royal Decree-Law 4/2012 and Royal Decree-Law 7/2012. For these purposes:

- Once the certificates have been sent to the MINHAP, it falls to the plenary session of the government corporation or body in question (in the case of intermunicipal joint ventures) to approve the adjustment plan which must contain the related report from the controller.

- After it is approved, it must be sent before April 15, 2013 to the MINHAP for assessment. The result will be sent to the government before May 20, 2013. If this deadline passes with no notification from the MINHAP, the assessment will be deemed favorable.

- If the local authorities had already approved an adjustment plan with a favorable assessment from the MINHAP, they will send a revision of that plan approved by the plenary session within the first fifteen days of April. Failure to do this will give rise to the application of the corrective measures provided for in Budgetary Stability and Financial Sustainability Organic Law 2/2012, of April 27, 2012.

6.2 Mechanism for paying suppliers of autonomous community governments

6.2.1 Parties to which the mechanism applies

This new phase of the mechanism established in the Decision of the Council of Tax and Financial Policy of March 6, 2012 is available to autonomous community governments, by which is meant the autonomous community government itself and any other entities, agencies and attached organizations over which the autonomous community government has decision-making power over their management and internal rules or bylaws, as well as any partner entities in which the autonomous community government participates directly or indirectly, provided that they are all classified as falling within the public administration sector for the purposes of SEC-95.

6.2.2 Subject matter to which the mechanism applies

- All autonomous community governments that avail themselves of this new phase may include the outstanding payment obligations derived from (i) cooperation agreements, (ii) administrative concessions, (iii) outsourcings of management in which the outsourcer has the status of instrument and technical service of the government and is not included in the definition of autonomous community government of article 9, (iv) real estate lease agreements, (v) the contracts envisaged in Law 31/2007, of October 30, 2007, on procurement procedures in the water, energy, transportation and postal services industries, (vi) public works concession contracts, (vii) public-private partnerships, (viii) public service management contracts, of the concession type, relating to the subsidy that has been agreed to be borne by the autonomous community government, provided that it was supposed to be paid to the contractor before January 1, 2012, as provided for in the Public Sector Contracts Law (the "TRLCSP").

- If the autonomous community government did not participate in the first phase of this mechanism, it may avail itself of it now in order to meet, as well, the payment of the debts derived from the contracts envisaged in Royal Decree-Law 4/2012 and 7/2012 (construction, supply, service and public service management contracts).

6.2.3 Special features of the procedure

- Before March 6, 2013, the autonomous community government must send the MINHAP a list certified by the Controller-General of the autonomous community government setting forth the outstanding payment obligations to which the mechanism is to be applied.

- Until March 22, 2013, suppliers can consult this list, and accept, if they agree, the payment of the debt through this mechanism.

- Suppliers not included in the initial list may apply for the issue of an individual certificate acknowledging the outstanding payment obligations. The individual certificate will be issued by the Controller-General within

five calendar days after the application was submitted. If there is no reply to the application by the deadline, it will be deemed rejected.

- Before March 29, 2013, the Controller-General of the autonomous community government will send the MINHAP a complete certified list of the invoices that have been accepted by the suppliers.

6.2.4 Adjustment plan

Before April 15, 2013, the autonomous community governments must send the MINHAP an adjustment plan or a revision of the plan it already has, for assessment within 15 days after it was submitted.

7. MEASURES TO COMBAT LATE PAYMENTS

Several amendments have been made (i) to Law 3/2004, of December 29, 2004, establishing measures to combat late payment in commercial transactions ("Law 3/2004") and (ii) to the TRLCSP, in order to bring the Spanish legislation into line with the requirements in Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011.

7.1 Amendment of Law 3/2004

The following amendments have been made to Law 3/2004:

(i) The generally applicable payment period is set at 30 days in the absence of agreement between the parties, although the rule that no agreement is necessary where the period is longer than 60 days is kept in place. It should be noted in this respect that the Spanish reform still does not allow the parties to agree on the period they want provided it is not unfair, which is expressly permitted by Directive 2011/7.

(ii) A special period is granted for cases where a procedure is agreed for accepting and checking products or services, which may not be longer than 30 days and the payment must be made within the following 30 days.

(iii) The period starts to run from the effective date of receipt of the goods or the services, and the start date has been adapted accordingly where invoices are sent electronically.

(iv) The reference to the accumulation of invoices is kept in place, establishing the maximum period of accumulation at 15 days.

(v) The rules on calculating interest and costs due to late payment have been amended. In this respect, the creditor is granted the right to receive a fixed amount of €40 if the debtor is late and the statutory interest rate is set at the sum of the interest rate applied by the European Central Bank plus 8 percentage points.

(vi) The legislation on unfair clauses has been amended to consider null and void any agreement that changes payment periods or the consequences of late payment or the interest rate with respect to the rate established in the law.

Lastly, transitional provision three establishes that all contracts, including those executed before the entry into force of Royal Decree-Law 4/2013, will be subject to Law 3/2004, taking into account the new wording, within one year after the entry into force of that piece of legislation.

7.2 Amendment of the Revised Public Sector Contracts Law approved by Legislative Royal Decree 3/2011, of November 14, 2011 (the "TRLCSP")

Final provision six of Royal Decree-Law 4/2013 has amended, in relation to debts under public contracts, the following provisions of the TRLCSP:

- The provisions relating to the "*payment of the price*" of administrative contracts (article 216 TRLCSP) and relating to the "*performance of contracts and receipt of the service"* (article 222 of the TRLCSP) are amended to specify the moment at which late-payment interest accrues:

  (a) With regard to the *"payment of the price"* of administrative contracts, the following is indicated:

  - The authorities must pay the price within thirty days after the date "*of approval"* (not *"of issue"*) of the construction certificates or of the documents evidencing agreement with what is established in the contract for goods or services supplied.

  - If the authorities are late, they must pay the contractor, as from the end of above-mentioned period of thirty days, late-payment interest and indemnification for the collection costs as provided for in Law 3/2004,

  - However, for interest to start to accrue, the following requirements must be met within thirty days after the effective date of supply of the goods or services:

    - The contractor must fulfill the obligation to file the invoice with the appropriate administrative register. If the contractor fails to do so within the above-mentioned period, interest will not start to accrue until the end of thirty days following the date on which the invoice was filed with the relevant register within which the authorities have not approved the agreement, if appropriate, and made the related payment.

    - The authorities must approve the construction certificates or the documents evidencing acceptance of what is established in the contract for the goods or services supplied (unless expressly agreed otherwise in the contract and in any of the documents governing the tender).

(b) In addition to the above, with respect to the "*performance of contracts and receipt of the service*," it is expressly indicated that within a period of thirty days following the date of the certificate of receipt or acceptance, the final payment under the contract must be agreed and notified to the contractor, with the resulting balance being paid, if appropriate, to the contractor. If the public authorities receive the invoice from the contractor after the date on which their act of receipt or acceptance of the goods or services supplied takes place (that is, after the thirty days following the actual supply of the goods or service), the thirty-day period will start to run from when the contractor files the invoice with the relevant register. If there is a delay in the making of the final payment, the contractor will be entitled to receive late-payment interest and collection costs.

- With regard to the use of electronic, computerized or remote means, the new legislation states that electronic invoices that are issued in procurement procedures will be governed by the provisions in the special legislation that may apply.

- An additional provision (thirty-three) is added under the heading "*obligation to file invoices with an administrative register and to identify bodies*," which provides as follows:

  - The contractor must file the invoices, issued for the services or goods supplied, with the relevant administrative register so that they can be sent to the administrative body or unit responsible for processing them.

  - In addition, in the administrative terms of tender for the preparation of contracts that are approved after this additional provision takes effect, it will be necessary to identify the administrative body responsible for public accounting, as well as the contracting body and the recipient, which must appear in the invoice.

8. MEASURES IN THE RAILWAY INDUSTRY

In order to achieve the utmost efficiency in the management of railway services, promote the deregulation process that has already begun and to unify the management of the national railways, Royal Decree-Law 4/2013 has introduced a raft of measures in the railway industry.

These measures for the "*rationalization of the railway industry*" are contained in Title IV (articles 34 to 38) of the royal decree-law, including most notably the following:

- The railway infrastructure and stations that make up the network owned by the state the management of which is entrusted to the state-owned business enterprise *Administrador de Infraestructuras Ferroviarias* ("ADIF") will be owned by the latter once the royal decree-law takes effect.

So that ADIF can carry out new administrative duties and manage these assets, the new legislation provides that it may receive both current and capital transfers from the General State Budget or from the budget of any other public authorities. In any event, the management of the network must comply with the basic guidelines established by the Ministry of Development.

The new legislation expressly provides that the transfers will be exempt from any central, autonomous community or local government tax, including taxes the collection of which has been devolved to the autonomous community governments.

- In accordance with the provisions of Royal Decree-Law 22/2012, it has been confirmed that the dissolution of the state-owned business enterprise *Ferrocarriles Españoles de Vía Estrecha* ("FEVE") will be deemed to take place, for accounting purposes, on January 1, 2013.

- Various provisions have been established in relation to the four state-owned commercial companies into which Royal Decree-Law 22/2012, of July 20, 2012, already envisaged restructuring the state-owned business enterprise *Renfe-Operadora*:

  - To enable these companies to provide all the services of transporting passengers and goods by railway that *Renfe-Operadora* has been providing since its effective date of formation, article 36 of Royal Decree-Law 4/2013 establishes that they will succeed *Renfe-Operadora* in its capacity as necessary infrastructure.

    However, it is established that henceforth they must obtain from ADIF the capacity of necessary infrastructure to provide the services they wish to provide, in accordance with the provisions of Order FOM/897/2005, of April 7, 2005, on the Declaration on the Network and on the procedure for awarding railway infrastructure capacity.

    These companies will be deemed to have the railway company permit established in article 44 of Railway Industry Law 39/2003, of November 17, 2003 (the "LSF") and the safety certificate referred to in article 16 of the Regulations on safety in railway traffic of general interest, for the scope of services that each one provides. However, they must evidence compliance with the requirements established for the purpose and apply for the permit and the related certificates within six months and one year, respectively.

- Certain amendments have also been made to the LSF.

  - In order to comply with the Constitutional Court judgment 245/2012 of December 18, 2012, additional provision nine of the LSF has been amended to expressly provide that, within a period of six months, the Ministry of Development will, following a hearing with the autonomous community governments, establish the "*Catalog of Railway Network Lines and Sections of General Interest.*"

    Until the Catalog is approved, the lines and sections that will be deemed to be Railway Network of General Interest provisionally are listed in the Schedule to the royal decree-law.

- Furthermore, new subprovisions 2, 3, 4 and 5 have been added to transitional provision three of the LSF in order to include, among others, the following provisions:

  - The railway transportation services under central government jurisdiction will be opened up to competition in order to guarantee the provision of the services, the safety and the organization of the industry.

  - The transportation of passengers for primarily tourism purposes will be carried out on a free competition basis from July 31, 2013. The provision of these services must meet the conditions established by an Order of the Ministry of Development.

  - It is established, on a transitional basis, that new operators will gain access to railway transportation services (excluding tourism services and railway transportation of public interest) by obtaining enabling instruments. These instruments will be granted by the Ministry of Development, in the number and for the terms established by the Council of Ministers, following the conduct of the appropriate tender processes.

    However, it is established that *RENFE-Operadora* will have an enabling instrument to operate services throughout Spain, with no need to participate in a tender process.

9. MEASURES IN THE OIL AND GAS INDUSTRY

In relation to the oil and gas industry, Royal Decree-Law 4/2013 establishes new measures mainly aimed at increasing competition and at influencing the formation of prices in the market, by amending Oil and Gas Industry Law 34/1998, of October 7, 1998, and Royal Decree-Law 6/2000, of June 23, 2000, on urgent measures to step up competition in goods and services markets (Royal Decree-Law 6/2000), as well as the legislation applicable to biofuels, including most notably the following:

- In the wholesale market, the new legislation reinforces the obligations of owners of fixed facilities for storing and transporting oil products that are required to provide third-party access, including, among others, the obligation to notify the National Energy Commission (the "CNE") of requests for access, the contracts that they execute and the list of prices for the use of their facilities, the tariff methodology they apply, the third-party access system that they apply and the annual investment plan, for publication by the CNE, as well as the obligation to disclose information on the capacity of their facilities. Owners of these facilities are also required to avoid conflicts of interest when managing access to the facilities, thereby treating all users equally, regardless of whether or not they are shareholders of the company that owns or operates the facilities.

  Wholesale operators of oil products with a market share above 30% cannot increase the number of facilities that they own or that pursuant to any other instrument they manage directly or indirectly, nor may they execute exclusive distribution agreements

with retail distributors that operate the facility. However, the contracts in force may be renewed upon expiration even if the above-mentioned market share is exceeded.

- In the retail market, administrative barriers have been eliminated and formalities have been simplified for setting up facilities for the retail distribution of oil-based fuels, by eliminating the need to obtain the mandatory administrative authorizations for each type of facility and encouraging the entry of new operators:

  - From now on, although the facilities must comply with the mandatory checks according to type of facility, as well as with the applicable legislation regarding metrology, measuring technology, and consumer and user protection, the autonomous community governments must ensure that these checks form part of a single procedure conducted by a single autonomous community or local authority. The time limit for resolving and notifying the decision on the procedure will be eight months, and if this time limit passes without notification of an express decision it will be deemed that a favorable decision has been issued.

    In addition, it has been prohibited for territorial planning or zoning instruments to determine technical aspects of the facilities or require a specific technology. In addition, it has been established that the economic activity of facilities for the retail supply of fuel must be compatible with the uses of land for individual or group commercial activities, shopping malls, retail parks, technical vehicle inspection establishments and industrial areas or parks, as well as with the uses that are fit for the establishment of activities with similar levels of hazard, waste or environmental impact, which do not expressly require the classification for use as a service station.

  - Article 3 of Royal Decree-Law 6/2000 has been amended to extend authorization to install facilities for supplying oil products to vehicles at individual or group commercial establishments, to shopping malls, retail parks, technical vehicle inspection establishments and industrial areas or parks. To this end, it has been established that the municipal permit for this type of facility for supplying oil products cannot be rejected only by reason of the absence of land classified specifically for the purpose. The surface area of these last-mentioned facilities will not be computed as part of the usable area for display and sale to the public at the commercial establishment of which it forms part.

    The sole repealing provision of Royal Decree-Law 4/2013 repeals transitional provision one of Royal Decree-Law 6/2000. To this end, Royal Decree-Law 4/2013 contains a transitional provision four which establishes that municipal permits that are requested for the construction of supply facilities at the establishments and in the areas referred to in the new wording of article 3 of Royal Decree-Law 6/2000, which already have the municipal operating permit when Royal Decree-Law 4/2013 takes effect, will be deemed granted by positive administrative silence if an express decision is not notified within forty-five days after the date of submission of the application.

- With respect to exclusive distribution agreements:
  - The maximum term of an exclusive distribution agreement is limited to one year, and automatic annual renewals can be authorized up to a maximum of three years, which does not preclude the retail distributor's right to terminate it by giving at least one month's notice before the termination date of the agreement.
  - Exclusive clauses that set or influence the retail sale price have been prohibited.
  - Lastly, wholesale operators are required to notify the Directorate-General of Energy Policy and Mines of the execution these kinds of agreements, which will be posted on the official website of the Ministry of Industry, Energy and Tourism.
  - A transitional period of twelve months has been established for exclusive distribution agreements to be brought into line with the new legislation.

- In the area of biofuels, the new legislation establishes mandatory targets for the sale and consumption of biofuels in 2013 and the following years for (i) wholesale operators; (ii) retail distributors of oil products; and (iii) consumers of oil products, with respect to the portion of their annual consumption that has not been supplied by wholesale operators or retail distributors. These parties must evidence annually that they hold the minimum number of certificates of biofuels, diesel biofuels and gasoline biofuels required to comply with the biofuel sale and consumption targets set.

- Lastly, a grace period has been established for the application of the transitional period envisaged in subprovision one of the sole transitional provision of Royal Decree 1597/2011, of November 4, 2011, regulating biofuel and bioliquid sustainability standards, the National Sustainability Verification System and the dual value of certain biofuels for the purposes of their calculation.

10. OTHER MEASURES CONTAINED IN ROYAL DECREE-LAW 4/2013

10.1 Amendment of Royal Decree-Law 21/2012, of July 13, 2012, on liquidity measures relating to the public authorities and in the financial sphere

Article 15 of Royal Decree-Law 21/2012, of July 13, 2012, on liquidity measures relating to the public authorities and in the financial sphere, has been amended to specify that the resources of the financing system for autonomous community governments under the common regime that avail themselves of the mechanism envisaged in this royal decree-law (Autonomous Community Liquidity Fund) will be liable for the obligations entered into with the central government, by way of a withholding. However, this withholding may not affect the fulfillment of the obligations derived from borrowing transactions with multilateral financial institutions or of the other obligations derived the financial borrowing transaction envisaged in the adjustment plan.

11. OTHER MEASURES CONTAINED IN ROYAL DECREE-LAW 3/2013

11.1 Extension of non-computation of impairment losses in cases of mandatory capital reduction and dissolution

Final provision three of Royal Decree-Law 4/2013 amends the sole additional provision of Royal Decree-Law 10/2008, of December 12, 2008, which, as will be recalled, provided that for the purposes of determining losses for mandatory capital reduction or for dissolution as envisaged in corporate legislation, impairment losses recognized in the financial statements on property, plant and equipment, investment property and inventories were not computed. Royal Decree-Law 10/2008 provided for this exceptional treatment for the 2008 and 2009 fiscal years, and it was extended to the 2010 and 2011 fiscal years in accordance with the provisions of Royal Decree-Law 5/2010 and to the 2012 fiscal year by Royal Decree-Law 2/2012.

Royal Decree-Law 3/2013 now establishes this exceptional regime for fiscal years "ending in 2013."

In addition to the cases already established above for mandatory capital reduction and for dissolution provided in the Corporate Enterprises Law, in which the above-mentioned losses were not computed, Royal Decree-Law 3/2013 adds a new case: fulfillment of the objective prerequisite for formal insolvency proceedings contemplated in the Insolvency Law, the relevance of which seems doubtful.

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