

## **COVID-19: These are the additional urgent measures introduced by Royal Decree-Law 15/2020 to support the economy and employment**

We analyze from the standpoint of corporate law/commercial contracts, labor, tax, litigation and administrative law, the main new legislation introduced by Royal Decree-Law 15/2020, of April 21, 2020, adopting additional urgent measures to support the economy and employment (RDL 15/2020), published in the Official State Gazette -BOE- on April 22, 2020.

RDL 15/2020 comes into force the day after the date of its publication in the BOE, namely April 23, 2020, except for the urgent measures in relation to marketing audiovisual rights for professional football competitions, which will be applicable to marketing agreements relating to audiovisual rights for competitions held on or after the date of entry into force of RDL 15/2020.

### **MEASURES RELATING TO CORPORATE LAW/COMMERCIAL CONTRACTS**

#### **1. Non-residential leases**

According to the Preamble to RDL 15/2020 these measures are necessary as a result of the insufficiency of the provisions in the Urban Leasehold Law and in the Civil Code to tackle the current situation following the declaration of the state of emergency, and there is a need (according to the Preamble itself) “to provide specific legislation in line with the “rebus sic stantibus” clause, created by case law, which allows contractual obligations to be modulated or modified if the specified requirements are met: an associated risk that is unforeseeable and unavoidable, an owed obligation that is too onerous and contractual good faith”; and all of this is directed at reducing the operating costs of small and medium-sized companies and the self-employed.

##### **1.1. Lessees that can benefit from the measures in RDL 15/2020**

Under article 3 of RDL 15/2020, the following persons may benefit from the measures it contains: lessees who are self-employed or small and medium-sized companies, and meet the following requirements:

##### **Common requirements:**

- a) The leases must be on properties used for the lessee’s economic activity
- b) In relation to the lessee's activity:
  - That activity must have been suspended as a result of the entry into force of Royal Decree 463/2020, or as a result of orders delivered by the competent authority or the competent authorities authorized under that royal decree (substantiated with a certificate issued by AEAT (Spanish tax agency) or the competent body of the autonomous community governments, if applicable, on

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the basis of the declaration of cessation of activity made by the interested party); or

- If the activity has not been suspended directly as described above, evidence must be provided of a reduction in revenues in the calendar month before the month when the deferral is requested, by, at least, 75%, with respect to the average monthly revenues in the same quarter in the previous year as the quarter to which that month belongs. That reduction must first be supported by filing a solemn declaration by the lessee, although the lessee will have to show its accounting records to the lessor if the lessor so requests.

## Specific requirements:

- a) Lessees who are self-employed must, on the date of the declaration of the state of emergency under Royal Decree 463/2020, be members of, and registered for making contributions with, the Special Social Security System for Self-Employed Workers (RETA) or the Special Social Security System for Seafaring Workers, or, if applicable, any of the mutual insurance companies substituting the RETA.
- b) Lessees that are small and medium-sized companies must not exceed the thresholds determined in article 257.1 of the Capital Companies Law. Those thresholds are:
  - Total assets of €4 million or lower.
  - Net revenues of €8 million or lower.
  - Average number of employees 50 or lower.

## 1.2. Measures in RDL 15/2020

The specific measures are grouped according to the type of lessor:

### **1.2.1 Company or public entity or large owners (more than 10 urban properties, excluding storage facilities or garages, or a built area measuring over €1,500 square meters)**

In this case, article 1 of RDL 15/2020 determines that, in the absence of an agreement between the parties, the lessee may request within a one-month period starting on April 23, 2020 a moratorium on rent payments, without any penalties or interest. That moratorium will be an obligation for the lessor.

The moratorium will apply over the period while the state of emergency and its extensions are in place and to the following monthly payments, which may be extended for each individual monthly payment, if that period is insufficient in relation to the impact caused by COVID-19, and it cannot, under any circumstances, go over four months.

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The rent will start to be deferred with the second monthly rent payment, by splitting the payments over a period of 2 years, running from the date when the state of emergency period ends, or from the end of the four month period mentioned above, and in every case within the period of validity of the lease agreement or any of its extensions.

## 1.2.2 Other lessors

Under article 2 of RDL 15/2020, in the absence of an agreement between the parties, the lessee may request within a one month period starting on April 23, 2020, a temporary and extraordinary deferral for payment of the rent.

For these purposes, the parties will be free to use the legal deposit delivered by the lessee, which may serve to pay all or part of one or more months' rent under the lease agreement. If all or part of the legal deposit is used, the lessee will have to restore the used amount of the legal deposit within a year from the conclusion of the agreement or in the remaining period of the term of the contract, if this period is below a year.

## 2. Measures for financial support or adjustment of the economy

### Credit and surety reinsurance

The Spanish state-owned insurer of last resort (Consortio de Compensación de Seguros), following a resolution by its board of directors, is authorized to accept as reinsurance the risks assumed by any private insurance companies authorized to operate in the credit and surety lines, which so request and sign the relevant agreement. The state-owned insurer of last resort will determine the economic terms and conditions that must be applied in the cover, which may be applied, from January 1, 2020, to any insurance transactions that will be carried out by authorized insurance companies operating in the credit line with a significant level of business, and with insureds domiciled in Spain. Their period of validity will remain in force while the reasons of public interest that justified their adoption continue to exist and for a period of at least two years.

### Cooperative Education and Promotion Fund

While the state of emergency is in place and until December 31, 2020, all or part of the Cooperative Education and Promotion Fund may be used by cooperatives, by decision of their governing board, where protection of the health of the cooperative members continues to require the cooperative company's general assembly to be held remotely, and this will not be possible due to a lack of suitable or sufficient means, and it must be used for the following purposes:

- a) As a financial resource, to provide the cooperative with liquidity where needed for it to continue operating. The Cooperative Education and Promotion Fund used for this purpose must be restored by the cooperative with, at least, 30% of the unrestricted earnings that will be generated each year, until the Fund is at the level of the amount

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it had when the decision to make exceptional use of it was made and within up to 10 years.

- b) For any activity that contributes to ending the COVID-19 health crisis or to softening its effects, either through own actions or through donations to other public or private entities.

New rules are provided to allow early withdrawal on an exceptional basis of vested rights in pension plans in situations arising from the health crisis caused by COVID-19, introduced previously by Royal Decree-Law 11/2020, of March 31, 2020, adopting additional urgent social and economic measures to confront COVID-19

These rules are:

- a) Without altering the scenarios justifying withdrawal, the royal decree-law provides that the only parties that will be able to exercise their vested rights without any restrictions will be participants in individual or associated pension plans, and participants in employment pension plans with respect to any contingences defined in a defined contribution scheme.

By contrast, in relation to contingencies defined in a defined benefit scheme or associated with that type of scheme, the participants in employment pension plans may only make withdrawals where the pension obligation so permits and it is allowed in the specifications approved by their control committee.

- b) Production of the following documents is specified to substantiate satisfaction of the requirements allowing a request to withdraw the funds:

- If the participant is an employee included in an ERTE temporary layoff procedure, a certificate from the company evidencing that the participant has been included in the temporary layoff procedure, stating its effects on the employment relationship for the participant.
- If the participant is an entrepreneur who owns an establishment that has been temporarily prevented from opening to the public, a declaration by the participant stating, under its responsibility, that it satisfies the requirements.
- If the participant is a self-employed worker, a certificate issued by Spanish tax agency AEAT or the competent body of the autonomous community government, if applicable, on the basis of the declaration of cessation of activity reported by the interested party.
- If the participant cannot produce any of the documents, a solemn declaration including express explanation of the reasons, related to the consequences of the COVID-19 crisis, which prevent the participant from producing them. After the end of the state of emergency and its extensions, the participant will have a one month period to produce any documents they have not submitted.

- c) The available amount of vested rights will be that justified by the participant to the pension fund management company, subject to a maximum limit, for all pension plans held by them, equal to the lower of two amounts determined, according to the case concerned, by reference, respectively, to the actual or

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estimated revenues that the participant has stopped receiving and the Spanish Public Multi-Purpose Income Indicator.

The participant will be responsible in all cases for truthfulness of the documents evidencing satisfaction of the factual requirements laid down to request the benefit, and for accuracy of the quantification of the amount to be received.

Reimbursement must take place within seven days from when the participant files the complete set of substantiating documents. In the case of employment pension plans, that time period will be extended until thirty business days from when the participant files the complete set of substantiating documents.

These rules are applicable to insureds under the insured benefit plans, company employee benefit plans, and employee benefit mutual insurance companies that are referred to in article 51 of Personal Income Tax Law 35/2006, of November 28, 2006, except, in the latter case, if they act as alternatives to the Special System for Unemployed Workers.

## *Extensions of time periods for companies supervised by the Directorate-General for Insurance and Pension Plans*

With the intention of alleviating administrative regulatory reporting obligations, and making them more flexible and effective, article 24 of RDL gives permission to the Directorate-General for Insurance and Pension Plans so that, by decision and following a report by the Consultative Insurance Board, it may order an extension of the time periods provided generally for the filing, by the parties supervised by it (insurance and reinsurance companies, pension funds and their management companies and depositaries and, lastly, insurance and reinsurance distributors) of specific information relating to fiscal year 2019 and to the first quarter of fiscal year 2020 (e.g. Periodic Supervision Report, Report on Financial and Solvency Position, Financial Actuarial Review, accounting information and statistics).

In relation to insurance and reinsurance companies, that permission also allows the Directorate-General for Insurance and Pension Plans to bring forward and/or give priority to, in line with what is decided by EIOPA, the reporting of the most recent information, which makes sense in view of the desirability of giving priority to the supervisory authority's analysis of the data relating to the impact of the crisis on the metrics of supervised companies. And in the case of pension funds and their management companies and depositaries, simplifying the contents of forms.

### 3. Other measures

#### *Guarantee facilities for lessees*

In relation to the guarantee facilities for the government to underwrite funding for lessees in a social or economically vulnerable situation as a result of the spread of COVID-19, as approved in article 9 of Royal Decree-Law 11/2020, of March 31, 2020, the Ministry of Transport, Mobility and Urban Agenda is allowed to grant guarantees for up to an aggregate amount of €1,200 million.

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## *Arrangement of moratoriums*

The recognition of application of the suspension of the mortgage debt for a three-month period as allowed in article 13.3 of Royal Decree-Law 8/2020, of March 17, 2020 will not be subject to the formalities in Law 5/2019, of March 15, 2019 on real estate loans.

The lending institution will have a unilateral obligation (i) to have recognition of the suspension recorded in a public deed for the purposes of being able to register extension of the original time period at the Property Registry; and (ii) to promote completion of the certified agreement or public deed documenting recognition of the suspension of the contractual obligations in the credit facilities or loans not secured by a mortgage and the registration, if applicable, on the Movable Property Registry, if the credit facility or loan is secured by a right that may be registered other than a mortgage or has been entered at the registry.

These rules apply to any moratorium application filed under Royal Decree-Law 8/2020 or under Royal Decree-Law 11/2020, of March 31, 2020 even if the borrower's application or even its acceptance by the lending institution took place before the entry into force of this royal decree-law.

Additionally, while the state of emergency is in place and until freedom of movement has been fully reestablished, even if the notarized instruments cannot be completed, this will not suspend application of the moratorium, which will have to be applied automatically, regardless of whether that suspension has been recorded in the instrument concerned.

Notary's fees and registry fees are reduced for certified agreements recording the temporary suspension of contractual obligations under any loan or credit facility not secured by a mortgage as specified in article 21 of Royal Decree-Law 11/2020, of March 31, 2020.

## *Clarification of the calculation of time periods for the right to termination of certain types of contracts with consumers and users*

Article 36.1 of Royal Decree-Law 11/2020 is amended to clarify the time when the right to termination of certain types of contracts by consumers and users arises. For example:

- It specifies that the start date for the time period for the right to terminate the contract is the day on which it becomes impossible to perform, and its expiry date is 14 days later.
- The 60 day time period for considering that an agreement has not been reached between the parties will start to run when the consumer or user requests termination of the contract.

## TAX MEASURES

### 1. Corporate income tax: prepayments

In the field of corporate income tax, two exceptional measures are specified in relation to calculation of the prepayments of small and medium-sized companies, in order to adapt their amount to the current economic climate:

#### 1.1 Use of the “tax base method” for small and medium-sized companies with revenues lower than €600,000 in 2019

The “tax base method” defined in article 40.3 of Corporate Income Tax Law 27/2014, of November 27, 2014, allows the amount of the prepayments to be calculated by reference to the portion of the tax base for the first three, nine or eleven months of the fiscal year.

This method is an obligation for taxpayers whose net revenues were higher than €6 million in the 12 months before the first day of the tax period to which the prepayment relates, and is voluntary for all other taxpayers. Taxpayers who are not required to use this method and do not elect it must apply the “tax payable method”, under which calculation of the prepayment is based on the gross tax payable on the tax return for the latest tax period for which the filing deadline had expired on the first day of the period for filing the relevant prepayment.

In order to elect to use the “tax base method”, the election must generally be made on the business taxation status notification form in February (if the fiscal year is the calendar year) or in the two months following the start of the tax period (in other cases), or in the period between the start of the tax period and the end of the period for making the first prepayment relating to that tax period, if this latter period is shorter than 2 months.

Due to the current economic situation, and exceptionally for tax periods commencing on or after January 1, 2020, taxpayers with revenues of €600,000 or lower in 2019 are allowed to elect to calculate their prepayments using the “tax base method” before May 20, 2020. This date coincides with the end of the period for filing the April prepayment for these taxpayers, due to the extension of the period approved by Royal Decree-Law 14/2020, of April 14, 2020 ([see our Alert](#)). .

#### 1.2 The “tax base method” must be used for all other small and medium-sized companies

All other taxpayers that were not entitled to delay the filing and payment of their prepayment for April 2020 (i) whose tax period commenced on or after January 1, 2020, and (ii) that did not have net revenues of €6,000,000 or lower in the 12 months before the first day of their tax period, can elect to calculate their following prepayments for the fiscal year using the “tax base method”. In this case, the prepayment made in the first 20 calendar days of the month of April 2020 will be

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deductible from the tax payable for the other prepayments that will be made in respect of the same tax period

Any taxpayers who elect to use the “tax base method” to determine their prepayments as described in the preceding paragraphs will be required to use this prepayment method exclusively with respect to the prepayments for the tax period that commenced in 2020.

The comments outlined above will not apply to any tax groups that are taxed under the special consolidated tax regime for corporate income tax purposes.

## **2 Objective assessment of personal income tax and simplified regime for VAT and Canary Islands general indirect tax (IGIC)**

### **2.1 Exceptional waiver of the objective assessment regime for personal income tax and the simplified regime for VAT and IGIC**

Personal income taxpayers who carry on economic activities and are taxed under the objective assessment regime can waive that regime and be taxed under the direct assessment method (i) in the month of December preceding the start of the calendar year in which that waiver should take effect, or (ii) in the regulatory filing period for the prepayment relating to the first quarter of that calendar year. However, this waiver (and, therefore, the obligation to be taxed under the direct assessment regime) remains in effect for a minimum of three years, after which the waiver is deemed extended for one-year periods, unless it is revoked on a timely basis.

Exceptionally, any taxable persons that waive the objective assessment regime in the first prepayment of 2020 can apply that regime again starting in 2021, provided they meet the requirements for applying it and they revoke their previous waiver in December 2020, or in the prepayment for the first quarter of 2021.

You are reminded that although the ordinary filing period for the first prepayment ended on April 20, Royal Decree-Law 14/2020, of April 14, 2020 ([see Alert](#)) extended this period until May 20 for taxpayers with revenues of €600,000 or lower in 2019 (May 15, where payment is made by direct debit).

The waiver of the objective assessment for personal income tax purposes and the subsequent revocation will have the same effects with respect to the special VAT and IGIC regimes.

### **2.2 Reduction of the indices, signs and modules for calculating prepayments under the objective assessment method for personal income tax and the quarterly tax payable under the simplified VAT regime**

Under article 110 of the Personal Income Tax Regulations, prepayments under the objective assessment regime for personal income tax purposes are calculated by applying 4% to the net income calculated under that method according to the base data for the first day of the year to which the prepayment relates or, in the case of taxpayers that commenced operations, for the day they commenced (3% if there is only one salaried employee and 2% if there are no salaried personnel). Where any of the base



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data cannot be determined on the first day of the year, the data relating to the immediately preceding year must be used, and if no base data can be determined, the prepayment will be 2% of the volume of sales or revenues in the quarter.

In the current context, when calculating the amount to be paid in the prepayment by reference to the base data, taxpayers are allowed not to include in the days they carried on their activity (in each calendar quarter) the calendar days falling within the state of emergency in that quarter.

The same rule will apply with respect to the simplified VAT regime, for calculating the payment on account of 2020 to which article 39 of the VAT Regulations refers.

## 3 Value Added Tax

### 3.1 Supplies of medical materials

To date, the tax benefits established in the area of indirect taxes and applied in relation to the acquisition of equipment and materials necessary to combat the effects of Covid-19 have been those authorized by Commission Decision 2020/491 for importations made on or after January 30, 2020 by “entities entitled to exemption” (state organizations, public bodies and other bodies governed by public law or authorized charities or philanthropic organizations,) or by private entities acting on behalf of those entitled entities (it must be envisaged at the time of their importation that they will be donated or transferred to an entity entitled to exemption).

This gave rise to a discrimination between products coming from third territories and those coming from the Spanish or other EU markets.

In order to prevent this discrimination and give the same treatment to both, a 0% VAT rate is established temporarily (until July 31, 2020) for domestic supplies, intra-Community acquisitions or importations of the goods listed in the annex of the Royal Decree-Law, for which the customers are public entities, non-profits and hospitals.

A 0% rate is equivalent to an exemption with a right to deduct the tax paid in the preceding phase. For this reason, in order to simplify tax management procedures, the transactions will have to be documented in an invoice as if they are exempt transactions.

### 3.2 Electronic books, newspapers and magazines

Moreover, e-books, newspapers and magazines (any classed as services supplied electronically) are to be given the same treatment as those printed on paper. Both types of publications will be subject to the 4% “super reduced” rate, on identical conditions to those being applied to paper publications, and, in particular, they must not contain solely or mainly advertising, which requirement from now on is deemed to be fulfilled if more than 90% of the revenues they provide to their publisher comes from advertising (up to now, the percentage was 75%).

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The purpose of this is to enable access to these types of publications at a time when there is a particular increase in demand due to the lockdown).

## 4 Administrative procedure

### 4.1 Extension of suspensions and lengthening of tax time periods under Royal Decree-Law 8/2020 and under Royal Decree-Law 11/2020

- a) The timing references made to April 30 and May 20, 2020, contained in article 33 of Royal Decree-Law 8/2020, of March 17, 2020 ([see our Alert](#)), and in additional provisions eight and nine of Royal Decree-Law 11/2020, of March 31 ([see our commentary](#)), must now be considered to say **May 30, 2020**.

You are reminded that those provisions lengthened various tax time periods and modified the rule for calculating the time periods for certain procedures. Below we remind you of those changes, emphasizing that the new date of reference is May 30, 2020:

- The time periods mentioned below are lengthened until April 30, 2020, if they had started before the entry into force of the Royal Decree-Law 8/2020 (March 18, 2020) and had not ended on that entry into force date):
  1. The voluntary payment periods for tax debts resulting from administrative assessments and the payment periods once the enforced collection period has commenced and the enforced collection order has been notified (excluding the filing and payment periods for self-assessments).
  2. The expiry dates for time periods and split payments under deferred and split payment agreements that have already been granted.
  3. The time periods related to (i) the making of electronic bids when the auctions have commenced, and (ii) the allocation of property or lots when the phase for submitting bids has ended.
  4. The time periods for complying with demands, attachment orders and requests for information with tax relevance, together with the time periods for submitting pleadings in relation to decisions commencing the period for pleadings or for inspection of the case file in proceedings relating to the application of taxes, penalties, declarations of nullity, refunds of amounts incorrectly paid, corrections of material errors and revocations.
  5. The time periods for foreclosure of real estate collateral in the context of administrative enforced collection procedures.
  6. The time periods for complying with demands and requests for information from the Directorate-General of the Cadaster.
- The expiry dates for the following time periods notified on or after March 18, 2020 were extended to May 20, 2020 (unless the time periods provided in the general law are longer, in which case those periods would apply):

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1. Those identified in paragraphs i., ii. and iii. above.
  2. The time periods relating to demands, attachment orders, requests for information or decisions commencing the period for pleadings or for inspection of the case file and comments by the taxpayer; including any communications from the Directorate-General of the Cadaster.
- The period between the entry into force of Royal Decree-Law 463/2020 declaring the state of emergency (on March 14, 2020) - [see our Alert](#) - and April 30, 2020, will not be included for the purpose of calculating the maximum length of any procedures for application of taxes, penalty and review procedures conducted by AEAT (Spanish state tax agency); or of any procedures commenced by the Directorate General of the Cadaster

In the same way, that period will not be included to calculate the statute of limitations periods for tax purposes or the time bar periods. For the sole purpose of calculating the statute of limitations periods mentioned above and those relating to appeals for reconsideration and economic-administrative proceedings, the decisions bringing them to an end will be deemed notified where it is evidenced that any single attempt was made at notification between March 18, 2020 and April 30, 2020.

These provisions will apply to procedures, steps and formalities governed by the General Taxation Law (and its implementing regulations) carried out and conducted by AEAT, attached to the ministry of finance, or by the tax authorities of autonomous community governments and local governments, as well as, in the case of local governments, those governed by the Local Finances Law.

- It is established that the time period for lodging appeals for reconsideration or economic administrative claims governed by the General Taxation Law and its implementing regulations, will start to run from April 30, 2020, in cases where the time period had already started running and had not ended on March 13, 2020, and also where the administrative act or decision that is the subject-matter of the appeal or claim had not yet been notified.

Moreover, the period between March 14, 2020 and April 30, 2020, will not be included to calculate the maximum time period for enforcing the decisions of economic-administrative bodies.

- b) Furthermore, article 33.3 of Royal Decree-Law 8/2020 establishes that if, despite the lengthening of the time periods stipulated in its subarticles 1 and 2 (discussed above), the taxpayer complies with a requirement or request of information with tax relevance or files submissions, the formality will be deemed validly fulfilled.

Final provision eight of the royal decree-law introduces two new points in this provision, in order to give taxpayers that have participated in any auctions with time periods that have been affected by the suspension ordered in Royal Decree-Law 8/2020, the option to request cancellation of the bid and release of the deposit. Also, the bidders and winners of auctions in which the bid submission phase has ended will be entitled to a refund of the deposit and, if applicable, of the paid successful bid price, provided that a certificate of the minutes recording

allocation of the property or an executed public deed of sale has not been issued on the entry into force date of the royal decree-law.

## 4.2 Non-commencement of the enforcement period for certain tax debts where financing underwritten by the government is granted

Royal Decree-Law 8/2020 raised the limit on the net debt of ICO (Spanish official credit institute), in order to increase the ICO facilities for companies and the self-employed.

On March 24, 2020, the council of ministers of the Spanish government approved the conditions and requirements to access the first tranche of guarantees for an amount of up to €20,000 million, and on April 10, the second tranche of the credit facility for an additional amount of up to €20,000 million.

It is now established (article 12 of the royal decree-law) that the enforcement period will not commence for any tax debts arising from tax returns and self-assessments for which the filing period ends between April 20, 2020 and May 30, 2020, even if the taxpayer has not made the relevant payment, where the following requirements are met:

- a) The taxpayer must have requested, within the aforementioned filing period, financing from the ICO facilities under Royal Decree-Law 8/2020, for payment of those tax debts in an amount at least equal to those debts.
- b) It must have provided, within five days from the end of that filing period, a certificate issued by a financial institution evidencing the financing application, including the amount and the tax debts for which the application is made.
- c) That financing application must have been granted at least for the amount of the debts in question.
- d) The tax debts must be paid in full and immediately when the financing is provided. A breach of this requirement will occur if the payment is not made within one month from the end of the mentioned filing period.

Transitional provision one of the royal decree-law establishes that any tax debts arising from tax returns and self-assessments included in that filing period but that have been filed before the entry into force of the Royal Decree-Law, will be treated as paid in the voluntary payment period, even if the enforcement period has commenced, if:

- a) The taxpayer produces, within five days running from the day after the date of entry into force of the royal decree-law, a certificate issued by the financial institution evidencing that the financing application has been made, and
- b) The requirements identified in letters c) and d) above are satisfied

In both cases, a breach of any of the requirements will determine the commencement or continuation of the collection proceedings in enforcement period.

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## Measures in the field of ports

Measures in the field of ports have been adopted to mitigate the adverse impact being endured by port logistics and shipping companies. To this end, the port authorities may independently modify port fees in order to adjust them, reduce the minimum traffic and activity requirements and, to the extent necessary, grant deferrals for the payment of port fee assessments.

Accordingly, companies that hold port concessions will be able to adjust the minimum levels of traffic and activity laid down for 2020 in their enabling instruments, without this triggering the penalties stipulated for cases of noncompliance.

With regard to the adjustment of port fees, the royal decree-law provides that they may be modulated to mitigate the effects that have arisen for companies that have had to dock and anchor their vessels in ports without being able to operate them due to the heavy restrictions existing since the state of emergency was declared.

1. In particular, the occupancy fee may be reduced by up to 60% for passenger station and terminal concessions, based on the sharp drop in passenger traffic. For all other concessions, it may be reduced up to a maximum of 20%, on a reasoned basis.
2. Regarding the activity fee, subject to a request by the taxpayer, the authorities may modify the conditions for it falling due, and establish measures to defer its payment.
3. As for the ship fee, shipowners and shippers seriously affected by the COVID-19 crisis, with ships that have been forced to dock or anchor in a port as a result of an order by the competent authority may be exempted from the duty to pay it. Various reductions are applied to ships with extended stays that have been rendered inactive (as in the case of cruise ships), as well as to ships that provide services, which are also affected, and those which provide short-sea services. In the particular case of ships that provide regular passenger or roll-on/roll-off cargo services, they may qualify for reductions of 50% provided that they guarantee the continuity of their services.
4. Deferrals for the payment of port fee assessments may be granted for six months, free of interest and without requiring any additional guarantees.

## LABOR LAW MEASURES

The new labor law measures notably include the following:

1. The period of validity of the preferential nature of remote working and the right to adapt timetables and reduce working hours (the “MECUIDA” Plan), as envisaged in Royal Decree-Law 8/2020, has been extended two additional months (three months in total, since the effects of the regulation remain in force for one additional month after the state of emergency ends).
2. In relation to “ERTE” temporary collective layoff procedures due to force majeure under article 22 of Royal Decree-Law 8/2020, the new royal decree-law adds, with respect to the activities that must continue operating as specified in the declaration of the state of emergency, that force majeure will be deemed to exist with respect to suspensions of

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contracts and reductions to working hours applicable to the part of the activity not affected by those requirements to continue operating.

3. The terms of the deferral for payment of social security debts subject to a regulatory payment period between April and June 2020 have been redefined. Applications must be submitted before the end of the first ten calendar days of each of the regulatory payment periods and the deferral will be granted in a single decision, will be repaid in monthly installments and will give rise to a repayment period of 4 months for each requested monthly installment, as from the month following that in which the decision is issued, without exceeding 12 monthly installments in total.

The deferral will be incompatible with the moratorium for social security contributions and any applications for deferral for periods with respect to which the moratorium has also been requested will be deemed not to have been submitted, if the moratorium has been granted to the applicant.

4. The termination of an employment relationship during a trial period at the request of an employer which takes place on or after March 9, 2020 will be treated as conferring legally unemployed status. Workers will also have legally unemployed status and be treated as notified for these purposes where they have voluntarily terminated their last employment relationship on or after March 1, 2020, because they have a firm commitment to sign an employment contract with another company, if that company has withdrawn from the contract as a result of the COVID-19 crisis.
5. The period of validity of the state of emergency, and any extensions, will not be included for the purposes of calculating the length of labor and social security inspection procedures or the periods for complying with any requests. Any procedures arising from situations closely linked to events justifying the state of emergency, or any which due to their seriousness or urgency are essential, are excluded. The statute of limitations periods for actions to enforce liability with respect to compliance with labor and social security legislation are also suspended.
6. The provisions relating to the penalty regime and the refund of incorrectly paid benefits with respect to applications submitted by companies that contain misrepresentations or inaccuracies in the data furnished are amended.

Penalties will be imposed for any conduct by a company consisting of applying for employment-related measures that are not necessary or are not sufficiently connected to the cause giving rise to entitlement to them, where that circumstance may be inferred from misrepresentations or inaccuracies in the data furnished by the company and if they give rise to the generation or receipt of incorrect benefits or to the application of incorrect deductions from social security contributions.

The new royal decree-law adds that workers will retain the right to the wages relating to the initially authorized collective layoff period, less any amounts they have received as unemployment benefits.

7. Changes are introduced into the Labor and Social Security Infringements and Penalties Law, including most notably that in the event of an infringement of article 23.1.c) (consisting of making statements, or supplying, reporting or entering false or inaccurate data that result in workers incorrectly obtaining or enjoying benefits, as well as collusion with its workers or with other beneficiaries in order to obtain benefits that are incorrect or above those required in each case, or in order to evade compliance with the obligations incumbent on

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each of them in the area of benefits), the company will be directly liable for refunding the amounts improperly received by the worker, provided that there is no willful misconduct or negligence on the part of the worker.

8. The extraordinary measures relating to unemployment protection for workers under part-time contracts or under permanent contracts for intermittent work and workers who perform permanent intermittent work that is repeated on certain dates are also amended.
9. The new royal decree-law grants a period of three months from the end of the state of emergency for self-employed workers to elect an arrangement with mutual insurance company approved by the social security system.

## MEASURES IN THE FIELD OF ADMINISTRATIVE LAW

### 1. Measures in relation to public procurement

The measures introduced by the royal decree-law in relation to public procurement are found in final provisions 7 and 10. These measures include most notably the following:

- 1.1 Article 159.4.d) of the Public Sector Contracts Law (LCSP) has been amended in order to clarify that, in simplified open procedures, it will not be necessary to hold the ceremony for the public opening of envelopes containing the part of the offer able to be valued using mechanisms in all cases for which the use of electronic means is allowed in the tender.
- 1.2 A new point three has been added to additional provision eight of Royal Decree-Law 11/2020, of March 31, 2020, adopting additional urgent social and economic measures to confront COVID-19 ("Royal Decree-Law 11/2020).

The purpose of this new point is to establish specific measures for the calculation of time periods and the processing of special appeals in procurement procedures whose continuation has been agreed by public sector entities under the provisions of point four of additional provision three of Royal Decree 463/2020, of March 14, 2020, declaring a state of emergency to manage the COVID 19 public health crisis ("Royal Decree 463/2020). These measures consist essentially of the following:

- a) it is clarified that these procurement procedures will be eligible for special appeals under the LCSP (Public Sector Contracts Law), and the appeal procedure cannot be treated as suspended under point one of additional provision three of Royal Decree 463/2020;
- b) it is specified that in these procurement procedures the interruption of time periods under additional provision eight of Royal Decree-Law 11/2020 will not apply and, accordingly, the time period for the special appeal must be calculated as specified in the LCSP.

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## 2. Public aid and subsidies

A summary is provided below of the most significant measures related to public aid and subsidies:

- 2.1 The Institute for the Diversification and Saving of Energy (IDAE) is authorized to grant deferrals for the repayment of loans provided under its repayable subsidy and aid programs, arranged as loans, thereby extending to this public business entity the same option as had already been approved in earlier royal decree-laws for certain repayable loans or advances granted by the Secretary-General for Industry or by the Center for the Development of Industrial Technology (CDTI), among others. In particular, and as detailed in article 6, the deferral can be agreed at the request of the interested party, following submission of a solemn declaration evidencing, inter alia, the existence of periods of inactivity / reduction in the volume of sales and/or gross revenues that could affect the payment obligations. The procedure to be used for ordering the deferral will be the procedure approved by the Board of IDAE, although it will be subject to the conditions set in the article itself.
- 2.2 In the same way, the state-owned insurer of last resort (Consortio de Compensación de Seguros) is authorized to carry on credit and surety reinsurance activities, with a view to enhancing access to liquidity or facilitating the repayment of loans. Thus, if so its Board so decides, the state-owned insurer of last resort can accept as reinsurance, with effect from January 1, 2020, the risks assumed by any private insurance companies authorized to operate in the credit and surety lines of insurance which so request and sign or agree to comply with the relevant agreement with the public business entity.
- 2.3 The wording of article 29 of Royal Decree-Law 8/2020, of March 17, 2020, on extraordinary urgent measures to confront the economic and social impact of COVID-19, is amended in order to allow the guarantees provided by the Ministry of Foreign Affairs and Digital Transformation (and until now used to underwrite the financing provided by credit institutions, specialized credit institutions (EFCs), electronic money institutions, payment institutions to help companies and the self-employed to meet needs arising, inter alia, from invoice management, payment of wages and suppliers, cash-flow needs, etc.) to be used for the Compañía Española de Reafianzamiento, S.A. (CERSA), as well as for promissory notes included on the AIAF Fixed Income Market and the Alternative Fixed Income Market. It also provides that the time period in which to release the guarantees, of up to €100,000 million, will be extended through December 31, 2020.
- 2.4 The maximum amount of the guarantee facilities for the government to underwrite funding for lessees in a social or economically vulnerable situation as a result of the spread of COVID-19, as approved in article 9 of Royal Decree-Law 11/2020, of March 31, 2020, to be granted by the Ministry of Transport, Mobility and Urban Agenda, is determined at €1,200 million.
- 2.5 The repayment of installments due in 2020 under loans or advances granted to developers of science and technology parks as a result of calls for applications managed exclusively by the Ministry of Science and Innovation, or whatever Ministry had jurisdiction over matters of research, development and innovation in previous years, since 2000, is deferred until 2021. Developers of science and technology parks can apply to the Ministry of Science and Innovation for the refinancing of installments falling due in years prior to 2020 under the loans or advances referred to above, which



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will entail the provision of a new loan subject to certain conditions detailed in the legislation.

- 2.6 Lastly, it is important to note a number of extraordinary, transitional measures adopted in relation to ports falling within the powers of central government. First, port authorities are authorized to: (i) reduce, on a reasoned basis, for 2020, the minimum traffic required under the concessions, where the agreed minimum activity cannot be attained as a direct result of the public health crisis; and (ii) adopt certain measures in relation to the fee for the use of port property (reduction of its amount) and the activity fee (modification of the conditions for it falling due, elimination of its advance payment or delay in its settlement periods without having to provide guarantees), where the party obliged to pay provides evidence of the adverse impact of the public health crisis on its activity, in all cases after submitting the related request. There will also be an exemption from the ship fee where the ship docks or anchors in port waters by order of the Port Authority for reasons related to the public health crisis and for as long as the crisis lasts.