

Spain, June 15 to June 30

### **COVID-19: Extension of ERTes, end of personal income tax and wealth tax season, cyber security risks and restructurings**

Garrigues has been publishing this newsletter since March 23 in an effort to bring you all the regulatory matters that week in week out required particular attention by companies in every area of business law. Since the state of emergency is about to finish, this will be the last edition of a publication that we hope has served its purpose. From now on, we will continue to keep you informed in our usual formats (Alerts, Commentaries, Viewpoints or Newsletters).

In this last edition, we run through the labor and employment news related to the scaling down of lockdown restrictions, including matters such as the negotiations for a potential extension of ERTE temporary employment procedures or the rules on working from home arrangements. In the tax area, we look at the forthcoming end of the personal income tax and wealth tax season, transfer pricing news, and the arrival of new taxes. Regarding litigation, we recall that the justice system has moved to phase 3 of the scaling-down plan and look at the legal risks related to cybercrime, which has now joined the top legal risks for businesses. Lastly, on the subject of restructuring and insolvency, we remind you of the main elements to be considered, together with the measures that companies can start preparing in this field.

### Labor and employment

The scaling down process continues and the various areas of Spain have moved on a phase towards the new normal. From a labor and employment standpoint, the parties involved in industrial relations are focusing on a possible extension of the ERTE temporary layoff procedures, the rules that will apply after the end of the state of emergency define the measures to be implemented at workplaces encouraging the use of working from home arrangements, and the “Noticias RED” bulletins continue to provide interpretation methods. A more complete set of rules on working from home arrangements is precisely one of the forthcoming legislative proposals in the post-COVID 19 era. Lastly, without a doubt it is a good sign that other labor and employment matters unrelated to COVID-19, such as the future implementation of rules on equality and work on platforms are coming back to take center stage.

**1. Parties involved in industrial relations address potential new extension and renewal of ERTE temporary layoff procedures.** Government, employers and unions are engaged in talks over the possible extension of ERTes due to force majeure beyond June 30, 2020. The employers’ association is seeking to keep them in force until the end of the year, and the unions are aiming for the extraordinary measures enabling individuals to be eligible for and retain unemployment benefits to continue to be applicable.

**2. Approval of measures to apply after the end of the state of emergency.** **Royal Decree-Law 21/2020** sets out the specific measures and obligations to be adopted at workplaces, relating to ventilation and cleaning, shifts, workplaces or phased return, among others, together with increased use of working from home arrangements, and regarding workers showing symptoms compatible with COVID-19.

**3. New Noticias RED bulletin published.** Despite not having legal validity or being binding, the new June 5, 2020 edition of the **Noticias RED bulletin**, issued by the Social Security General Treasury, continues to provide interpretation advice to resolve uncertainty over the application of labor and employment and social security legislation approved in the context of COVID-19.

**4. The government pushes ahead with future provisions on working from home arrangements.** The widespread use of working from home arrangements during the pandemic has sparked a debate on working from home arrangements and the need for provisions governing them. The Work Ministry is submitting for **public consultation the preparation of a bill consisting of amendment and preparation of the conditions for employees working remotely**. Alongside the advantages of that system, the ministry highlights that there are also a number of possible drawbacks such as a need for data protection, security breaches, techno stress, continuous timetable, computer fatigue, permanent digital connectedness, greater social isolation of employees, loss of corporate identity, deficiencies in the exchange of information among individuals working at the workplace and those working at home and the transfer of the cost of productive work to employees without any compensation, among others. The period for submitting comments and proposals ends June 22, 2020.

**5. Resumed implementation of provisions on equality.** The draft royal decrees on equality plans and their registration, and for equal pay between women and men, require greater participation and involvement of the workers' representatives. Namely, among other measures, they introduce the obligation to consult the workers' statutory representatives before preparation of the pay register or the creation of an ad hoc committee for negotiating equality plans where the company has no workers' representatives.

**6. The provisions on work related to online platforms are submitted for public consultation.** The Work Ministry has submitted for **public consultation** the provisions on work related to online platforms. For the ministry, the use of technology or digital media cannot detract from the nature of the activity performed, nor do all activities performed with the support of digital tools have the same characteristics or the same objective. It takes the view that the new online business models must be subject to the same rules as classic business models and that there is a need to articulate with certainty for the various parties involved a new economic reality that needs to ensure protection for anyone who is a worker, even if their work differs from the way in which work has traditionally been carried out -sporadic or intermittent work, with no specific physical place, no predefined working hours or timetable, being paid by the hour-, although they are or may be subject to control over their work, to a higher level of power in computing and technology terms over processes and deliverables.

The time period for submitting comments and proposals also ends on June 22, 2020.

## Tax

**1. Personal income tax and wealth tax.** We are nearing the end of the personal income tax and wealth tax season in the common tax area (excluding Navarra and the Basque Country), without any alteration to filing periods despite the health crisis (unlike in the Basque Country, which has had the new periods we discussed in our **Basque Country tax blog** , and in Navarra, as we discussed in our **alert dated May 6, 2020**). It is important to remember that, although filing periods end, generally, on June 30, 2020, if the taxpayer specifies payment out of their account of the first installment of the balance due on their personal income tax return, the time limit ends on June 25. In our **alert dated March 19, 2020** we examined the new features of this year's season; and in our **alert dated March 27, 2020** we ran through a few elements of interest to be taken into account when preparing returns (exemption for work performed abroad, deductible expenses in relation to the rental of real estate, treatment of gifts or certain types of corporate transactions, or income requiring particular attention due to its complexity or special nature, such as income obtained from transactions with a deferred price, among others).

**2. Personal income tax - Awarded legal costs.** The DGT has argued in various resolutions that awarded legal costs are taxable for personal income tax purposes as a capital gain to be included in the general component of taxable income, and cannot be reduced by the actual cost of the lawsuit. Following various decisions, by regional economic-administrative tribunals and by the Madrid High Court, TEAC has concluded that those costs are computable for calculating the capital gain. For a summary of this issue, **see our commentary**.

**3. Transfer pricing.** The Corporate Income Tax Law contains a specific penalty regime in relation to controlled transactions. The regime sets out the following infringements: failing to provide, or providing incompletely, or with false information, the documentation that taxpayers have to prepare, both where the tax authorities make pricing adjustments and where they do not; or where the pricing of controlled transactions (and the resulting value reported on the corporate income tax, nonresident income tax or personal income tax return) differs from the value inferable from those documents. In view of the existence of this specific penalty regime, it has been questioned whether a penalty needs to be charged in cases where a pricing adjustment is needed if the taxpayer is not required to document its controlled transactions. In a recent judgment, the Supreme Court concluded that in these cases the penalty regime under the General Taxation Law applies, a conclusion it had drawn in an earlier judgment. We discuss these judgments in our **alert**.

**4. New taxes.** As we discussed in our [commentary dated May 17, 2020](#), the current state of affairs has not stalled the processes for the Google tax (digital services tax) or the Tobin Tax (financial transactions tax). On Thursday (June 11), parliament gave the green light to move forward with the process for the bill on this second tax, after rejecting the proposed amendments, and the process for the bill on the first tax is expected to resume shortly (both bills were approved at the Council of Ministers meeting on February 18, 2020). In our [alert dated February 18](#) we recalled the main characteristics these taxes will have.

## Litigation and Arbitration

**1. Justice system moves to phase 3 of the scaling-down plan.** The justice system has been immersed in the penultimate phase of the scaling-down plan since last June 9, under Ministry of Justice Order JUS/504/2020, of June 5, 2020. Phase 3 of “ordinary activity, with enabled procedural time periods” is the last phase before normal activity (phase 4), and implies the return to work of 100% of public employees. Further information on that scaling-down plan may be found in [this alert](#).

**2. Cybersecurity vaccines and digital delinquency.** While we are in the process of returning to normal life, the virus is starting to retreat, although other threats of infection remain with us, such as cyber attacks which are still lurking, and companies will have to stay, now and at all times, very alert. The need to adopt preventive measures providing technical security to systems, processes and, first and foremost, to people, has overtaken the top items on the list of the threats to businesses to prevent the occurrence of important legal incidents. Simultaneously, it will be necessary for companies to have a contingency plan in case they fall victim to cybercrime, consisting of actions and human teams able to neutralize technical elements and any that can give rise to legal liability. We analyze all the key points on this subject [here](#).

## Restructuring and insolvency

It may happen that, for various reasons, many companies and creditors delay their decisions on restructurings until autumn 2020. In this context, attention should be paid to the following points in this last newsletter in the state of emergency (and a reminder is needed of the main elements of our earlier newsletters [here](#)).

**1. Center stage for valuations, of both businesses or productive units and of assets.** At a time when there are few transactions on the market, valuations of businesses or productive units may play a key role when it comes to making decisions on restructurings and insolvencies, and to supporting any petitions made to the commercial court with jurisdiction, in both refinancing and pre-pack liquidations scenarios.

**2. If you can already see that an insolvency proceeding will be necessary, sooner is better than later.** The extraordinary and temporary measures with an impact on insolvency issued in the heat of the COVID-19 health crisis may cause deciding bodies to relax, which is not conducive to the best restructuring and insolvency decisions. Outside restructurings, for which the tacit timing element may vary in each case, in the case of an insolvency proceeding, having a certain cushion of cash to see the company through this type of proceeding may be a decisive factor for the success of the restructuring. Moreover, after the suspension of time periods was lifted on June 4, 2020, the sooner the decision is made before December 31, 2020, the better the ability of the commercial courts to respond to meet operators' needs.

**3. Entry into force of the Revised Insolvency Law (TRLIC) on September 1, 2020.** On September 1, 2020, the [Revised Insolvency Law \(TRLIC\)](#) comes into force, bringing a number of new provisions, in particular on the disposal of independent productive units, which may provide considerable opportunities for investors in addition to rescuing companies. Companies do not have to wait until then to make an early start with and design preparatory activities to benefit from that regime.

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**Garrigues, a multidisciplinary team of specialists facing COVID-19**

The worldwide health alert triggered by coronavirus is generating a great deal of uncertainty among companies, affecting all aspects of their activity. Since the crisis took hold, Garrigues has been at the disposal of its clients, with multidisciplinary teams specializing in all practice areas in the countries in which it is present. These are also the teams responsible for supervising the contents of this Special section, in which we provide information on all legal developments in relation to the coronavirus crisis, on proposals made by social agents, agreements, decisions, orders, etc.; in short, all the relevant information which companies need to be aware of.

**[Check our special section](#)**

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