

Spain, week between April 27 and May 3, 2020

COVID-19: Critical plans for a return to activity, taxes on the renegotiation of loans, notification of judicial decisions, and doubts regarding leases

For another week running, Garrigues summarizes the key issues that companies need to be aware of over the coming days. We analyze doubts that have emerged over leases, a few tax elements to be noted such as stamp tax on the renegotiation of loans and credit facilities resulting in novation of clauses, indirect tax on donations to tackle the COVID-19 outbreak, critical plans for a return to activity in the labor field, and the rules on notifications of judicial decisions while the state of emergency is in place, among other subjects. This week, close attention will also be needed to the de-escalation plan that the council of ministers will foreseeably approve on Tuesday.

Corporate law / Commercial contracts

Doubts regarding leases. In the area of corporate and commercial contracts, this week we discuss a few doubts about interpretation that arise from the provisions enacted during the state of emergency in relation to residential and nonresidential lease agreements, such as the requirements the parties have to meet in order to benefit from the approved measures, whether consequences arise from forming part of a group, or whether the rules enacted regarding the conditions to be entitled to a supervening temporary alteration of contracts restrict the ability for it to be claimed by “nonvulnerable” lessees. Further information [here](#).

Tax

1. Stamp tax. By reason of the economic situation arising from the health crisis, loans and credit facilities are being renegotiated, which results in novation of clauses in those agreements. The stamp tax implications will largely depend on the contents and scopes of those clauses and how they are recorded. In [this commentary](#) we analyze the tax on the most common types of novation in the current situation and the opportunities that may arise in this respect.

2. Donations and VAT. Imports of necessary goods to combat the effects of COVID-19 have been granted import duty relief and a VAT exemption as a result of Commission Decision (EU) 2020/491. The requirements regarding the eligible parties and items to apply these benefits have been implemented in various notices issued by the Customs Department. This treatment for imports gave rise to discrimination with respect to goods acquired in domestic supplies or intra-Community acquisitions. For that reason, Royal Decree-Law 15/2020, of April 21, 2020 determined that domestic supplies and intra-Community imports and acquisitions of goods to be used to combat COVID-19 will benefit from zero-rated VAT, where the customers in those transactions are public entities, non-profits and hospital institutions. The various notices and laws published in this respect create doubts over the treatment of donations of the specified products for VAT purposes. We summarize the treatment in [this commentary](#).

3. Corporate income tax prepayments. The current economic situation is causing major losses for companies, which will foreseeably mean that on their 2020 corporate income tax returns they will report tax losses or reduced corporate income tax bases. Small and medium-sized companies, however, are required to calculate their prepayments by reference to the latest

reported amount of corporate income tax payable, which might have been a positive amount, unless they elected within the time limit to calculate their prepayments by reference to the tax base for the months to which each prepayment relates. Many companies will not have done this within the time limit because, as a general rule, this option had to be elected in February, before the state of emergency was declared. To avoid prepayments having to be made that bear no relation to companies' economic situations, in Royal Decree-Law 15/2020 a new opportunity has been granted to elect the "tax base method" for 2020. We summarize this issue in our alert on [Royal Decree-Law 15/2020](#). On its website, AEAT (Spanish tax agency) has also published instructions making it straightforward for any taxable persons that could not elect this option to do so ([view here](#)).

4. Administrative procedure. When the declaration of the state of emergency took place various administrative time periods were suspended along with the running of the time periods for statutes of limitations, time bars and maximum lengths of audits. The original dates for the new time periods and calculations fell between April 30 or May 20, 2020, depending on the particular case. They have now been extended until May 30, as we recalled in our [alert on Royal Decree-Law 15/2020](#).

Labor and employment

In the labor and employment field, the design of plans for a gradual return to activity has come to play a central role in labor matters and human resource management. Meanwhile, the government has approved a new royal decree-law broadening certain measures and amending a few pieces of legislation approved in recent weeks.

SEPE (Public Employment Service) has published guidance in relation to ending ERTE temporary layoff procedures, and the CGPJ (General Council of the Spanish Judiciary) has sent the government its proposals concerning the labor courts.

1. Critical points of plans for a return to activity. Some critical, and most probably controversial, labor components are the scope of the preferential nature of working from home; personal protection measures and supply of individual protective equipment (where required); procedures for detecting contagion or possible contagion; when to carry out temperature measurements, health questionnaires and medical examinations; determining vulnerable employees; organization of work times and shifts; or prevention policies and measures for travel and short trips.

2. Legislation in the new Royal Decree-Law 15/2020. The decree-law extends the period of validity of the preferential nature of remote working and of the right to adapt timetables and reduce working hours (known as the MECUIDA Plan) for up to three months after the end of the state of emergency. It also determines that the ERTE temporary layoff procedure due to force majeure may be used for certain essential activities, redefines the deferral of social security contributions, and reinforces the inspection and penalty measures in the event of irregular conduct when applying for temporary layoff procedures.

3. Public Employment Service publishes notification guidance in relation to ending ERTE temporary layoff procedures.

Last week SEPE issued two sets of guidance in relation to way in which companies must notify that agency **when they stop applying the temporary layoff procedure** and when they have recovered part of their activities and **decide that a few of their workers included in the ERTE layoff procedure return to work**.

4. General Council of the Spanish Judiciary sends the government its proposals regarding the labor courts. The CGPJ **requests a study of the inclusion of a number of measures in the Royal Decree-Law on urgent measures for the justice system**. In relation to labor matters, it proposes treating as urgent any proceedings related to recovery of hours not worked during recoverable paid leave; a specific regime for challenging ERTE temporary layoff procedures arising from COVID-19; and the preferential holding of trials, deliberations and other procedural events remotely.

Litigation and arbitration

1. Regime for notifying judicial decisions while the state of alarm is in place. Under its **Decision of April 20, 2020**, the General Council of the Spanish Judiciary authorized the courts to notify remotely -unless in exceptional circumstances the court or the recipient of the notification does not have the means to do so- the decisions delivered in any proceeding, declared essential or otherwise. If the notified decision belongs to a non-essential proceeding, the notification will not give rise to a lifting of procedural time periods, which will continue to be suspended under Royal Decree 463/2020, of March 14, 2020, declaring the state of emergency. The Office of the Justice System General Secretary delivered, also on April 20, 2020, Circular 2/2020 along similar lines, as may be seen [here](#).

2. The General Council of the Spanish Judiciary has sent its proposals for the royal decree-law on urgent measures for the justice system that is being prepared by the government. The proposed measures include provisions on the calculation of procedural and substantive time periods suspended by the state of emergency when it is no longer valid. It is proposed, for time periods determined in days, that the remaining days will be calculated as business days or calendar days, depending on whether the interrupted or suspended time period was determined in business days or calendar days. For time periods determined in months or years, to calculate the end date of the time period, the calendar days in the interruption or suspension period must be added after the ordinary expiry date, calculated from the date to date, (see [here](#) for our commentary on the subject).

Furthermore, the proposed measures relating in particular to the civil jurisdiction, include: a new proceeding to process claims regarding the amendment of agreements affected by the measures adopted as a result of the health crisis, in relation to which a condition for accepting them will be that an out of court solution must first have been attempted, and they will be resolved using the procedures defined for trials; amendment of the trial procedures for eviction on the ground of nonpayment, so that tenants can plead impossible performance or a supervening imbalance caused by COVID-19 as a ground for objection; that in cases related to unfair terms, in which the borrower's status as consumer is not disputed and a date has already been scheduled for the pretrial hearing, there should be an option for the hearing not to be held and a judgment to be delivered with no further procedures if the parties so agree; or putting in place a mandatory out of court procedure in relation to air transport for claims regarding cancellations, denied boarding or delays, with the ability to submit to the courts a challenge of the decision bringing that procedure to an end. The document of the General Council of the Spanish Judiciary may be viewed [here](#).

3. Thoughts on the criminal offense of gross negligence manslaughter brought to mind by the COVID-19 crisis, by Eduardo Torres-Dulce. The entry into force of the 1995 Criminal Code implied a considerable change to the criminal offenses that may be committed with gross negligence. We moved from a general clause, contained in article 565 of the former code and applicable to any criminal offenses that could be committed with gross negligence, to a restriction that the only offenses able to be committed with gross negligence were those for which the Criminal Code so specified as determined in article 12, "acts or omissions with gross negligence shall only be punished where the law expressly so provides".

The commission of gross negligence manslaughter is defined in article 142 and article 142 bis of the Criminal Code. Injury offenses committed with gross negligence are defined in article 152 and article 152 bis of the Criminal Code.

The Criminal Code punishes the outcome of a manslaughter, defined in turn in article 138 of the Criminal Code, that is committed with negligence in two degrees; gross negligence (article 142.1) and gross negligence to a lesser extent (article 142.2). Read the complete article [here](#).

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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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