
Measures relating to foreign trade to mitigate the COVID-19 crisis

Legal Flash | Finance and Tax

April 2020

As we have explained in previous Legal Flashes, the tax-related measures the Spanish government has adopted in royal decree-laws published over the last days to tackle the situation caused by COVID-19 do not address the procedures and deadlines for payment of customs debt. The Spanish government has finally turned to the EU customs regulations.



In an attempt to respond to the concerns of foreign trade operators, the European Commission published a set of guidelines on March 30, 2020, providing tips, measures and suggestions to tackle the main problems affecting foreign trade.

On March 31, 2020, the Spanish government approved Royal Decree-Law 11/2020, of March 31, adopting additional emergency measures to tackle the social and economic impact of COVID-19 (“RDL 11/2020”), which entered into force on April 2. For the first time in national law, RD 11/2020 provides that the payment of customs debt can be deferred, although certain restrictions apply, as explained below.

Also, it is worth drawing attention to the recent informative notes the Spanish tax authorities’ customs department issued on March 23, 2020, and April 2, 2020, on the system of relief from customs duty, and the conditions to apply the exemption from customs duties and VAT to the export by public or private entities of health care material or equipment to help victims of disasters.



Guide published by the European Commission (DG Taxud)

Below we highlight the main measures adopted or identified by the European Commission.

> **Ecommerce**

To free the flow of trade, Member States' customs authorities are empowered, under Article 19.2 of Regulation (EU) 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ("UCC"), to waive the requirement for persons acting as customs representatives to provide evidence of their empowerment by the person represented.

> **Decisions and authorizations**

To prevent a collapse, the UCC urges economic operators to only apply for essential authorizations and customs decisions. It also reminds economic operators that under Article 22(3) UCC, an extension is granted to the time-limit to take customs decisions.

> **Customs debts and guarantees**

The European Commission states that although a blanket exemption or payment extension is not possible, it does allow the customs authorities to grant this in cases where evidence is provided as to the serious economic or social difficulties in respect of the debtor.

- Article 45(2) and (3) UCC allows customs to suspend payment of contested customs debts, even without a guarantee, if it is established that a guarantee could cause the debtor economic and social difficulties.
- Article 112(1) and (3) UCC provides that customs authorities may grant further payment facilities beyond the 30-day extension, even without a guarantee, if it is established that this would cause the debtor serious economic or social difficulties.
- Article 114(3) allows customs to refrain from charging interest on arrears if it is established that it would cause the debtor serious economic or social difficulties.
- Article 89(3) of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 with rules implementing certain provisions of the UCC (the "UCC-DA") provides that while an application for remission is being processed under articles 117 to 120 UCC,



customs will suspend the time limit for payment of a customs debt, without even requiring a guarantee, if it is established that providing one could cause the debtor serious economic and social difficulties.

- Article 91(2)(b) UCC-DA regulates the suspension of the time limit for payment of a customs debt incurred through non-compliance. This can be granted even without a guarantee, if it is established that providing one could cause the debtor serious economic and social difficulties.

> Imports and entry of goods

- Instead of an entry summary declaration, it is possible to use commercial or transport documents as long as they contain the necessary particulars regarding the medical, surgical and laboratory equipment (Article 127(7) UCC).
- It also enables the oral customs declaration of medical, surgical and laboratory equipment.
- To ensure the timely delivery of human organs, bone marrow, other human tissue and blood destined for transplant in the EU, the UCC-DA has been amended (entering into force on March 15, 2020) so that they can be declared for release for free circulation.
- Economic operators are encouraged to use the transit procedure, TIR or pre-lodged customs declarations to speed up border crossing. They are also encouraged to move goods provided under Article 119(2) UCC-DA, establishing the presumption of the EU customs status, and TL2 copies are temporarily accepted, although original copies must be submitted once the health crisis comes to an end.

> Customs procedures

When goods have been in temporary storage for longer than 90 days and a customs debt occurs, the economic operator may invoke *force majeure*. Customs authorities may apply equity figures or extinguish the customs debt in accordance with Articles 120 and 124(1)(h) UCC respectively.

The UCC also provides the possibility to use simplified declarations without requesting prior authorization and the time limit for submitting the supplementary declaration in cases of *force majeure* have been made more flexible, as long as this circumstance is notified to the competent customs authority.

Certain goods can be presented to customs from the operator's facilities (Article 139(1) UCC).



The three-year term to request the amendment of the customs declaration is maintained for declarations lodged during the COVID-19 crisis.

> **Special procedures**

All goods entering the customs territory of the EU to counter the effects of COVID-19 (such as ambulances or some support medical equipment) should be eligible to be declared for temporary admission with total relief from import duty, through acts such as crossing the border (being declared for release for free circulation) or by presenting an oral declaration up to 120 days after the release of the goods if customs authorities allow it.

Under Article 251(3) of the Vienna Convention on the Law of Treaties, it is possible to ask customs authorities to prolong the time limit for re-export of goods declared for temporary admission owing to exceptional circumstances.

> **Exports and exit of goods**

Ship supplies are goods and equipment for use on board the ship by the crew, and not for export. Ships leaving EU ports are considered to be leaving the EU (even if this is a voyage between two EU ports). Therefore, medical supplies on board are subject to export formalities, even if they are not formally placed under the export procedure.

As ships must have on-board pharmacies, they should be allowed to leave EU ports carrying protective gear and medication for the on-board pharmacies catering for their crews. This specific type of “ship supplies” is exempted from the export restrictions.

Customs offices are advised not to invalidate export declarations, even when the 150-day period has passed to finalize that export, owing to the current exceptional circumstances, unless this is explicitly requested by the declarant of the declaration concerned.

Customs measures approved under RD 11/2020

Article 52 of RD 11/2020 allows for the deferral of payment of customs and tax debt to be requested when it arises from declarations filed between April 2, 2020, and May 30, 2020, specifying that this measure is not applicable to VAT on the imports of individuals subject to the deferral regime.

To apply this deferral, RD 11/2020 states that the following requirements must be met: (i) the business volume of the individual requesting it cannot have exceeded €6,010,121.04 in 2019, and (ii) the amount of debt to be deferred must be between €100 and €30,000.



The deferral requested must be guaranteed as provided under article 65.3 of the General Taxation Act, and the guarantee submitted for the goods to be cleared is considered valid and will be subject to the payment of the corresponding debt.

If deferral is granted, the payment of the debt will be postponed for six months from the end of the payment period. Also, no default interest will accrue during the first three months of deferral.

Despite giving economic operators much needed breathing space, this does not sufficiently respond to the demands of the whole sector, as it does not encompass large companies.

In light of this situation, if a large company needs to defer the payment of customs debt, we believe it would be worth looking into the solutions provided by the European Commission, particularly the possibility of invoking Article 112(1) and (3) UCC, under which customs authorities may grant indefinite payment facilities, even without a guarantee, if it is established that this could cause the debtor serious economic or social difficulties.

Informative note 11/2020, of April 2, of the Customs Department, on the VAT exemption on material imported for donation to help victims of disasters

Owing to the public health emergency situation in Spain arising from outbreak of COVID-19 and in response to the need to import equipment and material for the urgent supply of medical staff, in which public and private entities have been involved, the Spanish tax authorities' Customs and Special Taxes Department has published two informative notes, dated March 23, 2020 ([NI 06/2020](#)), and April 2, 2020 ([NI 11/2020](#)), to clarify the system of relief from customs duty applicable to the import of equipment to help victims of disasters.

This system of relief from customs duty is regulated under Article 74 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty,¹ and is subject to a decision by the Commission regulating the scope and conditions for application. This decision, which we examine at the end of this section, was published on Friday, April 3, 2020, granting this relief from import duties.

¹ This exemption or relief is subject to the publication of a decision by the Commission regulating the scope and conditions for application. Although this decision has not yet been published, Member States can provisionally authorize the import of these health care materials, which are granted relief from import duties and VAT exemption if certain conditions are met.



Under [NI 06/2020](#), the scope of the relief is extended to the import of goods required to treat individuals affected by coronavirus and to prevent the disease from spreading, as long as the imports are made by state entities or private entities of a charitable or philanthropic nature authorized by the competent authorities, and will be:

- a) distributed free of charge to the victims of disasters affecting one or several Member States;
or
- b) made available free of charge to the victims of these disasters, while remaining the property of the entities in question.

Likewise, article 46 of the VAT Act also refers to the VAT exemption being applied to the import of these goods in the same terms, being subject to administrative authorization by the tax authorities' delegation or office in the territory where the importer's tax domicile is located, as provided under article 17 of the VAT Act. These authorizations can be requested through the Spanish tax authorities' online system:

<https://www.agenciatributaria.gob.es/AEAT.sede/procedimientoini/GZ06.shtml>

The recently published NI 11/2020, of April 2, clarifies that although the above provisions refer to exemptions on the import of goods by public or authorized private entities, given the large number of imports being made by private companies to later be donated to these types of entities, the Customs Department is granting the exemption if the following requirements are met:

- a) It is necessary to prove that the goods have been donated to an entity that has been granted administrative authorization by the tax authorities' delegation or office in the territory where the importer's tax domicile is located, as provided under article 17 of the VAT Act (see NI 06/2020).
- b) It is necessary to submit a guarantee covering the amounts of any corresponding taxes.
- c) Once the donation has been made, it is necessary to prove that the goods have been donated to the entity in question, as well as a copy of the administrative authorization granting a VAT exemption to the beneficiary.

Given that the documents granting this relief are unlikely to be available at the time the customs declaration is submitted, a simplified declaration can be used owing to the lack of documents that are not commonly used (prior authorization is not required).



As mentioned above, this relief is subject to the publication of a decision by the Commission regulating the scope and conditions for application. This decision was approved on Friday, April 3, 2020.

Click on the links to access the [Commission Decision](#) and the [video](#) delivered by Ursula von der Leyen.

The contents of the decision are very much in line with [NI 06/2020](#) and [NI 11/2020](#) issued by the Spanish tax authorities' Customs and Special Taxes Department. However, it does contain one notable difference: while the Spanish authorities' informative notes make it clear that any economic operator making imports is eligible for the relief, as long as it can prove that the goods have been donated to an entity that has been granted administrative authorization by the tax authorities' delegation or office in the territory where the importer's tax domicile is located, the European Commission's decision provides a relief applicable to imports carried out by or on behalf of organizations approved by the competent authorities.

According to the Commission, one of the requirements to apply the relief is that: *"The goods are imported for release for free circulation by or on behalf of State organisations including State bodies, public bodies and other bodies governed by public law or by or on behalf of organisations approved by the competent authorities in the Member States."*

Until now, the Spanish tax authorities have not provided any clarification of this issue, which makes it reasonable to assume that the provisions of NI 11/2020 apply.

As for the temporary application of the European Commission's decision, it has been made retroactive to January 30, 2020 (which means it is advisable to analyze any imports made this year to try to recover VAT and import duties), and will be initially in force for four months, although it is likely to be extended to six months, i.e., until July 31, 2020.

Some other more operational issues have yet to be resolved, namely whether the Spanish customs will continue to demand guarantees now that the European Commission has granted relief, or whether its decision will change the system for declaring imports in the single administrative document. In any case, we expect the Customs and Special Taxes Department to provide some answers in the coming days.



For additional information, please contact Cuatrecasas.

©2020 CUATRECASAS

All rights reserved.

This legal flash is a compilation of legal information prepared by Cuatrecasas. The information or comments included in it do not constitute legal advice.

Cuatrecasas owns the intellectual property rights over this document. Any reproduction, distribution, assignment, or any other full or partial use of this document is prohibited, unless with the consent of Cuatrecasas.

