
Royal Decree-Law 15/2020: main legal consequences for businesses

Legal flash

April 22, 2020

The Spanish Council of Ministers has approved Royal Decree-Law 15/2020, of April 21, adopting a new set of additional emergency measures to support the economy and employment (["RDL 15/2020"](#)). It enters into force on April 23.



This document analyzes the main consequences for businesses arising from the set of measures approved under RDL 15/2020:

- > Deferral of non-residential property lease payments
- > Measures aimed at providing liquidity to companies
- > Moratorium period for debts
- > Tax measures
- > Employment and social security measures
- > Measures concerning public procurement
- > Measures affecting ports
- > Exceptional provision concerning vested rights in pension plans and other social welfare systems
- > Extensions to the deadlines to submit certain reports within the supervisory framework of the Spanish Directorate-General for Insurance and Pension Funds



Deferral of non-residential property lease payments

- The main measures adopted regarding non-residential lease agreements are listed below.
- **Moratorium on paying rent to lease non-residential property in the case of large housing asset holders.** Self-employed workers and SMEs that are lessees under non-residential or industrial lease agreements, the lessors of which are a company or public entity providing housing, or a large housing asset holder (an individual or legal entity owning over 10 urban properties, excluding parking lots and storage spaces, or a built surface area of over 1,500 m²) have one month from April 23, 2020, to request a moratorium on paying rent for the duration of the state of emergency and its extensions, and in the following months (if the deadline is too tight due to the impact caused by COVID-19), which in no case can exceed four months.
- The lessor must accept the moratorium unless the parties otherwise previously agreed to a moratorium or to reduce the rent. This rent will be paid in installments over two years.

These measures are available to self-employed workers registered with the Special Social Security Scheme for Self-employed and Freelance Workers (RETA) and SMEs that do not exceed the limits established under article 257.1 of the Spanish Companies Act (i.e., their assets do not total over €4 million; their net yearly turnover does not exceed €8 million; their average headcount during the year is not over 50, although RDL 15/2020 does not clarify how this applies to this case); and

- (a) whose activity has been suspended as a result of the state of emergency; or
 - (b) whose activity has not been directly suspended due to the state of emergency, but whose turnover in the month before the one corresponding to the requested deferral has dropped by at least 75% with respect to the average monthly turnover in the same quarter that month belongs to in the previous year.
- **If the lessor is not a company or public entity providing housing, or a large housing asset holder,** self-employed workers and SMEs that fulfill the requirements specified in the above section, provided they have not already reach an agreement with the lessor to a moratorium or to reduce the rent, have one month from April 23, 2020, to request a temporary and extraordinary moratorium on the rent. In this case, RDL 15/2020 does not state that the lessor is obliged to accept the request or its duration, although it does provide that the parties may use the deposit to fully or



partially cover some of the monthly payments. If the deposit is used, the lessee has one year to pay back the amount to the lessor.

- **Lessees must prove** to the lessors that they **fulfill the requirements set out under RDL 15/2020**, using the channels established under the law (if owing to the suspension of an activity, submitting a certificate issued by the Spanish tax authorities or the competent regional authority; if owing to a reduction of activity, submitting a statement of compliance).
- Any lessees **that have unduly benefited from the temporary and extraordinary moratorium on rent payment**, without meeting the legal requirements, **will be liable for any damages caused**, as well as all expenses arising due to these exceptional measures being applied (without prejudice to any other liabilities they may incur).
- RDL 15/2020 does not establish any tax measures applicable to this moratorium, so it will be necessary to assess, in each case, how this will affect value added tax and corporate income tax.

Measures aimed at providing liquidity to companies

The main measures adopted to provide liquidity to companies are listed below.

- RDL 15/2020 modifies the following aspects of the liquidity measure approved under article 29 of [RDL 8/2020](#), which involves opening a **state guarantee facility** up to €100 billion, **implemented through the Spanish State Finance Agency (ICO)**:
 - (a) It states that facilities benefiting from the guarantees can be used to pay suppliers.
 - (b) Promissory note programs registered on the Fixed-Income Market of the Association of Financial Assets Intermediaries (*Asociación de Intermediarios de Activos Financieros*, or AIAF) and the Alternative Fixed-Income Market (*Mercado Alternativo de Renta Fija*, or MARF), can benefit from these guarantees, thus fostering the maintenance of liquidity sources that capital markets also provide.
 - (c) The deadline by which the guarantee facility can be granted has been extended to December 31, 2020.
 - (d) As mentioned below in the section on tax measures, the payment of tax debts may be subject to the obtaining of eligible financing under the guarantee facility.



- **The Spanish Institute for Energy Diversification and Saving (*Instituto para la Diversificación y Ahorro de la Energía*, or IDAE) is enabled to defer the payment of installments for loans** granted in the framework of its refundable aid or subsidy programs, which are granted as loans.
- **The Insurance Compensation Consortium has been enabled to carry out activities involving credit reinsurance and security from 2020.** This implies that the Insurance Compensation Consortium can accept as reinsurance the risks assumed by private insurers authorized to operate in the fields of credit and security insurance, if they so request, and they endorse or adhere to the corresponding agreement entered into with the public business entity, in the terms provided by law.

Moratorium period for debts

- RDL 15/2020 provides some clarifications regarding the moratorium period for debts (mortgage debt and credit and loans not secured by a mortgage) that was approved under previous regulations ([RDL 8/2020](#) and [RDL 11/2020](#)), in view of the provisions of [Act 5/2019](#), of March 15, regulating real estate loan agreements. Specifically, it provides that:
 - (a) entitlement to the moratorium period for mortgage debt is not subject to that Act;
 - (b) the financing entity has the one-sided obligation to formalize this entitlement to the moratorium period for mortgage debt in a public deed, so that it can be registered in the land registry; and
 - (c) the financing entity has the one-sided obligation to ensure the execution of the notarized deed or public deed documenting the entitlement to the moratorium on loans or credits not secured by a mortgage, so they can be entered in the movable property registry (as the case may be).
- It also establishes that novation agreements entered into to formalize the moratorium and that involve loans and credits not secured by a mortgage, as the case may be, will also benefit from allowances for notary public fees and registration fees, which the creditors must cover.



Tax measures

The following tax measures have been approved:

- **Payments on account of corporate income tax** corresponding to financial years starting as of January 1, 2020. RDL 15/2020 provides the option of quantifying payments on account in line with the ongoing taxable base for taxpayers that must, in principle, determine their fractioned payments of corporation tax according to the full tax payable from a previous financial year because that type was not chosen before the deadline imposed under the Corporate Tax Act. Specifically, this extraordinary option is granted to the taxpayers (i) with a business volume not exceeding €600,000 in 2019 and that could apply for the extension of the deadline to submit the fractioned payment of April (1P) up until May 20 (or May 15, if they chose to set up a direct debit), approved under [RDL 14/2020](#), so that exercising this option will be effective from the first fractioned payment subject to income tax for financial year 2020; and (ii) with a net amount of turnover lower than €6 million in financial tax year 2019, and that were unable to apply for the extension of the deadline to submit the first payment on account. In this case, the option will become effective from the payment on account corresponding to October (2P), and the amount paid in the payment on account made in April (quantified according to the full tax base) be deductible from the remaining fractioned payments that must be paid during the year and will be determined according to the ongoing tax base. Also, RDL 15/2020 excludes this special option for the quantification of the payments on account according to the ongoing taxable base for groups that apply the consolidated tax system in corporate tax.
- In neither of the above cases does the law require the submission of a tax register declaration to materialize this option. Rather, the option will be exercised directly by submitting the self-assessment of the corresponding fractioned payment, quantified according to the ongoing tax base. Exercising this option will be binding on the calculation of the other fractioned payments attributable to financial year 2020, but not to the fractioned payments made in subsequent years.
- In the **context of value added tax**, and to ensure **health care materials are provided** as quickly and efficiently as possible, a 0% tax rate will apply, from April 23 to July 31, 2020, to the deliveries of goods, imports and intra-Community acquisitions of goods listed in the annex of RDL 15/2020 (e.g., masks, pumps, monitors, ventilators, sterile tubes and gloves) destined for public law entities, clinics and hospital centers, or private social entities, in accordance with the requirements set out in the Vat Act (article 20.3). As this is not a new case of VAT exemption, the explanatory



memorandum specifies that applying a 0% rate does not imply any restrictions to the right to deduct input VAT (i.e., it will not affect the pro rata calculation). Moreover, affected transactions must be documented in an invoice, without modifying billing obligations. This temporary measure will only be in force until July 31, 2020.

- Also in the **context of value added tax**, and with effect from April 23, 2020 (without any temporary limited validity) RDL 15/2020 has approved a 4% tax rate applicable to **books, newspapers and magazines** when these **services are provided electronically**.

In any case, it clarifies that this reduced tax rate does not apply when these publications consist entirely or predominantly of video or audible music content. Also, the law specifies that for the reduced 4% tax rate to apply, these publications cannot contain solely or fundamentally advertising. This means that, compared with the previous regulation, this has raised the percentage of income from advertisements that publishers must receive to understand that books, newspapers and magazines solely or fundamentally contain advertising. Thus, income has risen from over 75% to over 90%, which also increases the margin available to publishers to be able to apply the reduced rate.

- RDL 15/2020 **extends the terms** of several tax measures adopted under Royal Decree-Laws [8/2020](#) and [11/2020](#). First, the terms of tax-related administrative procedures that had been extended to April 30 or May 20, 2020, under article 33 of RDL 8/2020, have now been extended to May 30, 2020. Second, although under RDL 11/2020 the period for bringing appeals and administrative and economic-administrative claims was to begin on April 30, 2020, under RDL 15/2020, it will begin on May 30, 2020.
- RDL 15/2020 establishes that the **enforcement period** will not begin if taxpayers do not settle debts arising from their tax declarations-assessments and self-assessments, as long as (i) they have requested the financing referred to under article 29 of [RDL 8/2020](#); (ii) they submit a certificate substantiating their request for financing; (iii) the financing granted is at least the same amount as the tax debt; and (iv) they pay the debt on being granted the financing, or no later than one month following the end of the period to submit the self-assessment. Under the first transitory provision of RDL 15/2020, this measure is applicable to tax declarations-assessments and self-assessments, the submission deadlines of which are between April 20 and May 30, 2020.



- Tax debts corresponding to port fees accruing between March 13 and June 30, 2020, inclusive, will be deferred. The deferral will be granted for up to six months by the port authority at the request of the taxpayer, who will not incur any late payment interest and will not be required to seek any guarantees.

Employment and social security measures

RDL 15/2020 also includes a series of measures that modify or supplement the set of measures adopted until now concerning employment and social protection (see [Legal Flash on key employment issues](#)), the most noteworthy being those listed below.

- **Extension of measures affecting remote working and work-life balance.** Two measures adopted under [RDL 8/2020](#) have been extended: remote working as a preferred organizational measure, provided this is feasible and proportionate for the company, and special arrangements to adjust and reduce the working hours of employees having to care for family members. Validity has been extended by two additional months following the month after the end of the state of emergency (e.g., if the state of emergency ended on May 10, these measures would be in force until August 10, 2020). This extension is of major significance given the likelihood of the school year ending early, the lack of nursery resources and children's entertainment, and the regulation on the staggered deconfinement of children, which will require adjusting employees' working hours so they can cater to their children's needs.
- **ERTE on the grounds of *force majeure* may be partial.** RDL 15/2020 clarifies that companies can file for an ERTE on the grounds of *force majeure* if they carry out activities considered essential under [Royal Decree 463/2020](#), of March 14, and other regulations, along with the different orders issued by the competent authorities, if that ERTE applies to a part of the activity or workforce that is not considered essential.
- **Extension of unemployment protection**
 - (a) Legal unemployment is considered to occur when an employment relationship is terminated during the trial period at the company's request as of March 9, 2020, and while the state of emergency is in force, regardless of the reason for the termination of the previous employment relationship.
 - (b) It is also considered to occur in cases of employees' voluntary leave from March 1, 2020, and while the state of emergency is in force, if there was a firm commitment from another company to enter into an employment contract



and then that company later could not meet that commitment as a result of the COVID-19 crisis.

- (c) Finally, greater protection is afforded to permanent seasonal workers, extending special unemployment benefits to workers unable to return to work on the scheduled dates as a result of COVID-19.

- **Stricter penalties apply to companies.** Screening and sanctioning mechanisms have been tightened to avoid fraudulent attempts to collect undue unemployment benefits. Specifically:
 - (a) Companies are considered to commit a very serious infringement if they present applications containing false or inaccurate information, the maximum fine being set at €187,515.
 - (b) RDL 15/2020 provides for direct business liability, according to which the company must return all benefits an employee incorrectly receives when that employee has shown no sign of willful intent or gross negligence.
- **Social Security and Labor Inspectorate (“ITSS”) and the suspension of deadlines.** Deadlines governing the operation and performance of the ITSS are suspended, except in cases where its intervention is required to safeguard the protection of general interests or because these cases are related to COVID-19. Thus, for example, this suspension applies to terms for the ITSS to conduct inspections; statute of limitations periods for actions to demand accountability for the breach of social order and social security regulations, and for liquidation cases involving social security payments.
- **Deferral of social security debts.** Article 35 of [RDL 11/2020](#) has been modified for the following purposes:
 - (a) To simplify deferral resolution procedures, regardless of the number of monthly payments involved.
 - (b) To lay down a homogeneous criterion for determining repayment terms.
 - (c) To establish the legal effect of the request until the procedure has been resolved, as regards the suspension of administrative deadlines provided under Royal Decree 463/2020.
 - (d) To declare this deferral incompatible with the moratorium regulated under article 34 of RDL 11/2020.



Measures concerning public procurement

- **Regulation of offers opened in simplified procedures.** Article 159.4.d of Act 9/2017, of November 8, on Public Sector Contracts (“LCSP”) has been amended to introduce the possibility, in open simplified procedures, of opening the assessable offer through electronic means, removing the requirement establishing that the envelopes needed to be opened at a public event.
- **Regulation of the special appeal on contracting matters (“REMC”).** RDL 15/2020 includes a provision aimed at clarifying that contracting procedures will be subject to REMC if their continuation has been agreed by public sector entities in accordance with section 4 of the third transitory provision of Royal Decree 463/2020, as they involve situations that are closely related to events justifying the state of alarm, or that are essential to the public interest or to the functioning of basic services. It is highlighted that, in these cases, the appeal procedure cannot be considered suspended, and the terms will be computed under the provisions of the LCSP.

Measures affecting ports

Several exceptional and temporary measures affecting ports have been implemented to mitigate the economic impact caused by the COVID-19 health crisis. Among these measures, specifically, in view of the potential reduction of minimum activity commitments provided under port operating licenses, the port authorities are allowed, based on a reasoned decision, to modify the minimum traffic established in those licenses at the request of concession holders. During financial year 2020, no penalties will apply for failing to perform an activity or to fulfill minimum traffic requirements for reasons attributable to the COVID-19 crisis. Also, specific measures have been adopted regarding occupancy rates and vessel fees.



Exceptional provision concerning vested rights in pension plans and other social welfare systems

- RDL 15/2020 regulates the terms and conditions to enforce the vested rights in pension plans and other social welfare systems under the twentieth additional provision of [RDL 11/2020](#).
- It specifies that available vested rights will be those corresponding to the following social welfare instruments:
 - (a) Individual and associated pension plans.
 - (b) Defined contribution or mixed employment system pension plans, for contingencies specified in the defined contributions scheme.
 - (c) Defined benefit or mixed employment system pension plans, for contingencies specified in the defined benefit scheme or linked to that benefit, when allowed by the pension commitment and provided under the plan specifications approved by the oversight committee under the terms established in the specifications.
 - (d) Insured pension plans.
 - (e) Employer complementary social security plans.
 - (f) Mutual insurance companies. Mutual insurance companies acting as an alternative system to registering with the Special Social Security Regime for Self-Employed Workers will not be able to enforce the economic rights of products or insurance policies used to fulfill that alternative role.
- RDL 15/2020 lists the documents the interested party must submit to the pension plan management company (or to the insurance company or mutual insurance company, where appropriate) to justify fulfillment of the requirements to enforce the vested rights (company certificate, statement of compliance or tax certificate, where appropriate).
- The **maximum available amount** will be the lower of the following two amounts, calculated based on the set of social welfare instruments the holder has, according to the cases provided for by law:



Maximum available amount

Employees that are legally unemployed due to an ERTE implemented due to the public health crisis caused by COVID-19	<p>The lower of the following amounts:</p> <ul style="list-style-type: none">(a) Net salaries that were not paid while the ERTE was in force, with a maximum calculation period equal to the time the state of emergency is in force plus one month, justified with the last payroll before this situation arose.(b) The result of apportioning the annual multi-purpose public income index (<i>indicador público de renta de efectos múltiples</i>, or “IPREM”) for 12 monthly installments in force for 2020 multiplied by 3 in the proportion corresponding to the duration of the ERTE. The maximum period of time to be calculated is the time the state of emergency is in force plus one month.
Entrepreneurs that own establishments that are not allowed to open to the public under article 10 of Royal Decree 463/2020.	<p>The lower of the following amounts:</p> <ul style="list-style-type: none">(a) Net income that was not received owing to the establishment not being allowed to open to the public, the maximum calculation period being the time the state of emergency is in force plus one month. This can be justified through the annual personal income tax return for 2019 and, as the case may be, the installment payment return of personal income tax and value added tax for the last quarter.(b) The result of apportioning the annual IPREM for 12 monthly installments in force for 2020 multiplied by 3 in the proportion corresponding to the time the establishment was not allowed to open to the public. The maximum period of time to be calculated is the time the state of emergency is in force plus one month.
Self-employed workers that were previously under a social security regime or an alternative mutual insurance arrangement and can no longer carry out their activity due to the COVID-19 health crisis.	<p>The lower of the following amounts:</p> <ul style="list-style-type: none">(a) Net income estimated not to have been received owing to the activity being suspended for a maximum calculation period equal to the time the state of emergency is in force plus one month, estimated based on the annual personal income tax return for 2019 and, as the case may be, the installment payment return of personal income tax and value added tax for the last quarter.(b) The result of apportioning the annual IPREM for 12 monthly installments in force for 2020 multiplied by 3 in the proportion corresponding to the time the activity was suspended. The maximum period of time to be calculated is the time the state of emergency is in force plus one month.

➤ The redemption of vested rights must be achieved within seven business days from the date on which the participant submits all supporting documents. In the case of



employment system pension plans, the term will be extended to 30 business days from the date on which the participant submits all supporting documents.

Extensions to the deadlines to submit certain reports within the supervisory framework of the Spanish Directorate-General for Insurance and Pension Funds

The Directorate-General for Insurance and Pension Funds is authorized, once it has obtained a decision and report from the Advisory Board of the Insurance and Pension Funds to extend deadlines to submit the reports listed below.

- In the context of insurance and reinsurance companies:
 - (a) Regular monitoring report throughout 2020
 - (b) Report on solvency and financial condition referring to the closing date of financial year 2019 and the corresponding Special Review Report
 - (c) Annual quantitative or statistical (accounting) information on financial year 2019, and quarterly for the first quarter of financial year 2020

- In the context of pension plans and funds:
 - (a) Report on compliance with the rules of separation between the management company and the depository
 - (b) Report on the effectiveness of internal control procedures
 - (c) Actuarial financial review
 - (d) Statistical (accounting) information related to financial year 2019 and to the first quarter of financial year 2020

- In the context of insurance and reinsurance distributors: statistical (accounting) and business information corresponding to the end of financial year 2019.



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Our Knowledge and Innovation Team continues to manage our collective knowledge in the most efficient way during these uncertain times to provide top-quality, innovative legal advice to our clients in all matters related to this crisis.

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