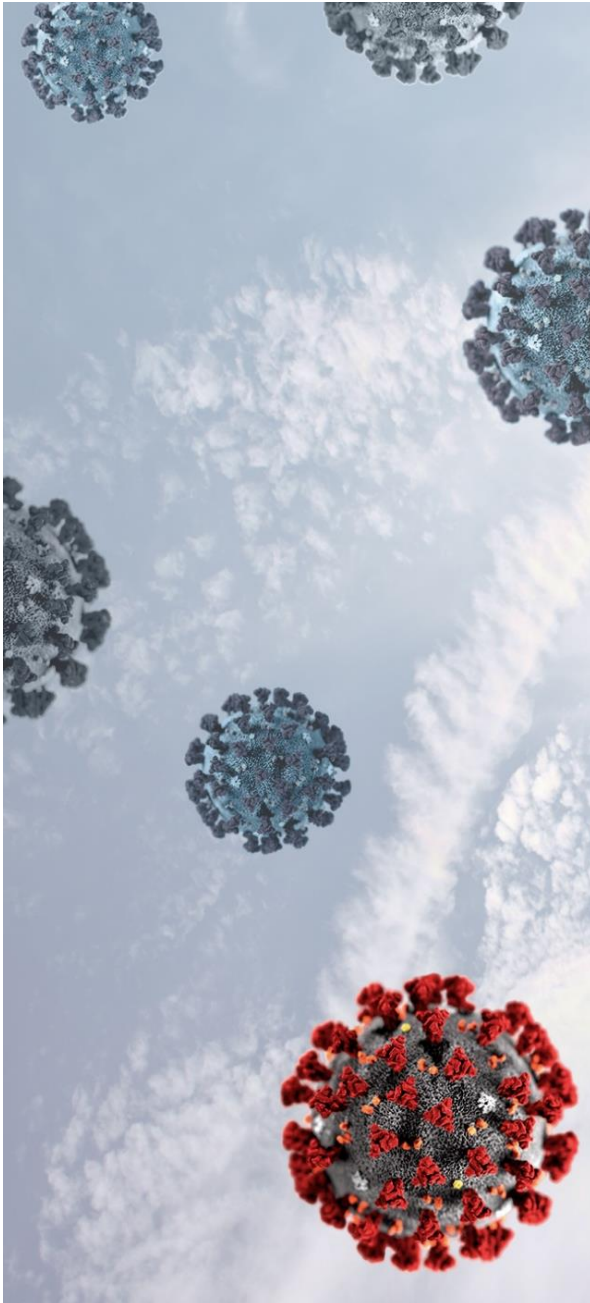

Royal Decree-Law 17/2020: main legal consequences for businesses

Legal flash

May 6, 2020

The Spanish Council of Ministers has approved Royal Decree-Law 17/2020, of May 5, adopting measures to support the cultural sector and tax measures to face the social and economic impact of COVID-19 (“[RDL 17/2020](#)”). It will enter into force on May 7.



This document analyzes the main consequences for businesses arising from the set of measures approved under RDL 17/2020.

Public procurement

- › Reopening of public tenders and **new contracting procedures, as long as they are processed electronically**
- › Amendments to public procurement measures adopted to confront the impact of COVID-19
- › Other measures concerning public procurement

Tax measures

- › Higher tax deduction for investments in cinema productions and audiovisual series
- › Higher tax deduction for donations to beneficiaries of the patronage
- › Events of particular public interest



Public procurement

Reopening of public tenders and new contracting procedures, as long as they are processed electronically

- **The suspension of deadlines for public procurement procedures are lifted:** Royal Decree-Law 17/2020 (“RDL 17/2020”) approves the lifting, from May 7, 2020, of the suspension of the terms and of the interruption of deadlines for procurement procedures issued by entities belonging to the public sector, previously established under [RD 463/2020](#), declaring the state of emergency, as long as these procedures are processed electronically.
- **New bidding procedures:** It also allows new public procurement procedures to begin, as long as they are processed electronically.
- **Special appeals in contracting matters:** The measure to lift the suspension of deadlines also applies to special appeals in contracting matters in both cases.

Amendments to public procurement measures adopted to confront the impact of COVID-19

Article 34 of [RDL 8/2020](#) has been amended with regard to public procurement measures adopted to mitigate the impact of COVID-19. The new provisions are explained below.

- **Advance payments of compensation for suspended service and supply agreements:** In the case of successive service and supply agreements that were suspended in compliance with Royal Decree-Law 8/2020 (“RDL 8/2020”), it is now possible for the procurement body to make advance payments of the estimated compensation amount corresponding to the contractor. The procurement body can request, on making the advance payment, that it be secured by any of the forms of guarantee established under the Act on Public Sector Contracts ([LCSP](#)).
- **Contracts for the concession of works and the concession of services:** RDL 17/2020 establishes a mechanism for reestablishing the economic and financial balance of contracts that were unable to be performed in cases where performance was partially impossible, and it specifies that this will only apply to the part of the contract affected by this impediment.



- **Clarification of the scope of application of the measures provided under article 34 of RDL 8/2020:** RDL 17/2020 clarifies the definition of “public contracts” with regard to the measures adopted under RDL 8/2020 in relation to public procurement to mitigate the effects of COVID-19, including contracts in force, regardless of the public procurement regulations they may be subject to under the administrative clauses.

Other measures concerning public procurement

- **In-house procurement:** The Act on Public Sector Contracts ([LCSP](#)) has been amended with regard to procurement by entities that are not classified as contracting authorities to in-house providers. Specifically, it clarifies that the monitoring requirement set out to be classified as an in-house provider with regard to an entity belonging to the public sector that is not considered a contracting authority will be the same as the requirement set out for contracting authorities. RDL 17/2020 also regulates the system applicable to horizontal procurement, namely cases where a state public-sector entity makes an assignment to another entity of the same sector and they are both directly or indirectly controlled by the same entity in that sector, as well as the system for compensation to be paid in these cases by the entity that receives the assignment.
- **Cultural sector agreements:** In the case of agreements related to artistic expression and performances the value of which does not exceed €50,000 and that have been suspended or amended as a result of the impact of COVID-19, the contractor may be paid up to 30% of the contract price as advance payment. If the agreement is terminated, the contractor will receive compensation of between 3% and 6% of the contract price.

Tax measures

For the purposes of the tax periods beginning January 1, 2020, RDL 17/2020 has increased the deduction on corporate income tax (article 36.1 Corporate Income Tax Act) for investments in Spanish productions of feature films, and fictional, animated and documentary audiovisual series. This has also been extended to include short films. The incentives are regulated as follows:

- **Increased tax deduction percentages.** Up to the first million euros of the deductible base, the applicable rate is 30% (previously 25%), and 25% (previously 20%) on amounts exceeding €1 million.



- The maximum deduction amount cannot exceed €10 million (previously €3 million).
- The applicable limit, along with all other financial aid, remains at 50% of the production costs, as a rule, although many cases have been introduced where this percentage is increased. For example, it is increased to 80% for productions filmed entirely in any of the co-official languages in Spain other than Castilian Spanish, as long as they are shown in Spain in that official language or with subtitles. Also, it is increased to 75% in the case of documentaries and productions carried out exclusively by female directors. An 85% limit is set for short films unable to benefit from the deduction prior to RDL 17/2020.

Tax credits have also increased significantly on deductions for expenses in Spain incurred by producers registered in the Registry of Film Companies of the Ministry of Culture and Sport who are in charge of foreign productions of feature films or audiovisual works (article 36.2 of the Corporate Income Tax Act) in the following terms:

- The 20% rate has been increased to 30% on the first million euros of the deductible base, and to 25% on amounts in excess of €1 million.
- The minimum amount for preproduction and postproduction expenses incurred in Spain in respect of animation and visual effects has been reduced to €200,000. The minimum cost in Spain is still €1 million in all other cases.
- The maximum deduction amount has risen to €10 million (from €3 million) for each production.

These measures are vital to the sector, particularly due to the deduction limit being raised to €10 million, which allows audiovisual productions amounting to nearly €40 million to be covered.

Patronage

The Second Final Provision of RDL 17/2020 has amended, with effect from January 1, 2020, article 19 of Act 49/2002, of December 23, on the tax regime of non-profit organizations and tax incentives for patronage, regulating deductions available to payers of personal income tax. To date, the personal income tax deduction was 75% (on the first €150 donated) and 30% (for amounts above €150). With effect from January 1, 2020, these rates have increased to 80% and 35%, respectively. The percentage on the deduction for loyalty or recurrent donations has increased to 40% (previously 35% on amounts in excess of €150).



The deduction limit has not been amended (10% of the net taxable income). Our [newsletter on patronage](#) provides comprehensive, up-to-date information on incentives for patronage.

Events of exceptional public interest

RDL 17/2020 defines the following events as being of exceptional public interest:

Event	Length of program
Tax benefits applicable to the “Plan Berlanga” (Berlanga program)	April 1, 2020, to March 31, 2023
Tax benefits applicable to the “Alicante 2021. Starting point of the Ocean Race” program	May 7, 2020, to December 31, 2022
Tax benefits applicable to the event “Spain as guest of honor at 2021 Frankfurt Book Fair”	May 7, 2020, to November 30, 2021
Tax benefits applicable to the “Plan to promote opera at Calle del Teatro Real”	July 1, 2020, to June 30, 2023
Tax benefits applicable to the event “175th anniversary of the construction of Gran Teatre del Liceu opera house”	December 1, 2020, to November 30, 2023*

* The event “20th Anniversary of the Reopening of the Gran Teatre del Liceu in Barcelona and bicentenary of the creation of the Societat de Accionistes (group of shareholders)” will remain in force until December 31, 2020.

The following events have also been extended:

Event	Length of program
“Program for the preparation of Spanish athletes for the Tokyo 2020 Games”	January 1, 2017, to December 31, 2021
“5th centenary of the first circumnavigation of the Earth made by Ferdinand Magellan’s and Sebastián Elcano’s expedition”	May 8, 2017, to December 31, 2022
“Andalucía Valderrama Masters”	July 1, 2018, to December 31, 2021
“Jacobean Holy Year 2021”	October 1, 2018, to September 30, 2022



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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.

For more details, contact Cuatrecasas or visit our [website](#).

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