

---

# Royal Decree-Law 19/2020: main legal consequences for businesses

Legal flash

May 27, 2020

The Spanish Council of Ministers has approved Royal Decree-Law 19/2020, of May 26, adopting additional measures on agriculture, science, economic matters, employment and social security, and tax to mitigate the effects of COVID-19 ("[\*RDL 19/2020\*](#)"). It will enter into force on May 28.



---

This document analyzes the main consequences for businesses arising from the set of exception measures approved under RDL 19/2020, the most noteworthy of which are highlighted below.

- > RDL 19/2020 sets new deadlines for **drawing up and approving the 2019 annual accounts** in the case of unlisted companies (until September 1 and November 1, respectively).
- > It establishes a time limit for filing a second self-assessment of **corporate income tax ("CIT")** for 2019.
- > It provides a **new moratorium on financial debt**, the so-called "moratorium by agreement," for agreements reached between the debtor and the financial institution that are subject to the provisions of sectorial framework agreements between financial institutions through their associations. This moratorium complements the so-called "legal moratorium" applicable in circumstances of special vulnerability, established under Royal Decree-Laws 8/2020 and 11/2020.



---

## Corporate measures: new deadlines to draw up and approve annual accounts for 2019

A new deadline is set to draw up and approve annual accounts with the period beginning on June 1, 2020 (instead of the date on which the state of emergency ends). Thus, in the case of unlisted companies whose financial year coincides with the calendar year, the deadlines to draw up and approve the accounts are set as follows:

- **Drawing up of annual accounts.** The period to draw up the annual accounts will run until September 1, 2020, without prejudice to companies that wish to draw them up earlier.
- **Approval of annual accounts.** The period to approve the annual accounts will run until November 1, 2020, without prejudice to companies that wish to approve them earlier.

Note that in the case of listed companies, a special rule had already been established enabling them to hold their ordinary general meeting within the first 10 months of the financial year, which means that following RDL 19/2020, the timing for approval of accounts essentially coincides.

---

## Tax measures

### Time limit established for filing a second self-assessment of corporate income tax for 2019

Article 12 of RDL 19/2020 regulates the period to submit the corporate income tax return for the 2019 financial year, thus solving a problem that had already been identified.

Because the taxable base for CIT is determined based on the accounting results, the tax authorities consider that companies must “*determine the taxable base according to the information reflected in the annual accounts once they have been approved,*” given that “*tax regulations provide sufficient time to approve the annual accounts that will determine the taxable base*” (Directorate General of Taxation resolution [1323-03](#)). The period for submitting the CIT return (within 25 calendar days following the six months after the close of the tax period) begins later than the period planned to approve the annual accounts (six months following the end of the financial year).

However, because of the measures adopted as a result of COVID-19, this situation has changed given that the deadline to draw up and approve the annual accounts has been extended. Specifically, as mentioned above, under RDL 19/2020, the deadline to draw up



accounts is September 1, 2020, and the deadline to approve them is November 1, 2020, in the case of companies whose financial year coincides with the calendar year. These periods exceed the deadline to file the CIT return (July 27 this year because July 25 falls on a Saturday). In view of this situation, the lawmaker has specified that, if on the closing date of the period to file the CIT return (July 27, 2020), the annual accounts have not been approved, the return will be calculated based on the annual accounts available, as follows:

- In the case of **listed companies**, the audited accounts, which they will have had to publish by that date.
- In the case of **all other taxpayers** the following order must be observed (depending on the degree of preparation):
  - Audited annual accounts
  - Drafted annual accounts
  - Accounts available

Once the annual accounts have been approved, if there is a difference between the accounts used and those approved definitively, a later return can be filed (until November 30), subject to the following requirements:

- If the result of the return reflected in the approved annual accounts entails making an additional payment or requesting a lower return, a second return must be submitted. If an additional amount must be paid, the company must pay the corresponding interest, with no surcharges.
- All other cases will be processed as a rectification of the self-assessment, and a new self-assessment must be submitted instead of a rectification statement. If the amount to be returned results from a payment made for the first return, the tax authorities will pay interest on that excess from July 28.

The rule states that any tax options exercised on filing the first CIT return can be amended in the second return, where applicable, and, therefore, the amendment cannot be opposed, as provided under article 119.3 of the General Tax Act.

This system allows the tax authorities to verify the origin of the second return, and they can ask the taxpayer to substantiate that the return is based on the correct accounts following the established order, thus ensuring that the possibility of obtaining an extension on the tax amount provided in the rule cannot be applied.

### Extension of the term to publish the “list of tax debtors”

The third transitory provision of RDL 19/2020 extends the deadline to publish the list provided under article 95 bis of Spanish Act 58/2003, of December 17, the General Taxation



Act until October 1, 2020. This list includes debtors that, on December 31, 2019, fulfilled the requirements specified by law to appear in it.

### **Extension of the term during which default interest will not accrue on the deferrals established under article 14 of Royal Decree-Law 7/2020 and article 52 of Royal Decree-Law 11/2020**

Article 14 of RDL 7/2020, of March 12, implementing urgent measures to respond to the economic impact of COVID-19, allowed certain taxpayers to request a six-month deferral on the payment of their tax debts up to €30,000, with no default interest accruing during the first three months. RDL 19/2020 extends the interest-free period to four months.

Likewise, the term during which default interest will not accrue on deferrals granted for customs and tax debts arising from customs declarations has also been extended from three to four months.

---

## **New measures on the moratoriums on debts**

### **“Moratorium by agreement” and “legal moratorium”**

RDL 19/2020 introduces a new moratorium on financial debt, the so-called “moratorium by agreement” (for agreements reached between a debtor and a financial institution that are subject to the provisions of sectorial framework agreements between financial institutions through their associations, e.g., those entered into between the Spanish Confederation of Savings Banks (CECA) and the Spanish Banking Association (AEB) in April 2020), in addition to those already established under Royal Decree-Laws 8/2020 and 11/2020, now referred to as “legal moratoriums” given that their effects are by operation of law.

In fact, individuals undergoing any circumstances of economic vulnerability defined under either of these Royal Decree-Laws can request a three-month moratorium period from their creditors to pay the principal without any interest accruing on loans and credits secured by a mortgage (mortgage-backed legal moratorium) and those not secured by a mortgage (non-mortgage-backed legal moratorium). For more details on “legal moratoriums,” see our Legal Flash on [RDL 11/2020](#).

### **Modification of the scope of non-mortgage-backed legal moratoriums**

The scope of application of non-mortgage-backed legal moratoriums, initially limited to loans and credits, now extends to financial leasing transactions, given the importance of this financing instrument for the economic activity of self-employed workers.



## Regulation of “moratoriums by agreement”

As a complement to “legal moratoriums,” RDL 19/2020 introduces the so-called “moratorium by agreement,” establishing a special system for agreements reached between financial institutions and their clients that are subject to the provisions of sectorial framework agreements between financial institutions through their representative associations.

Moratoriums by agreement require, as a premise, that the financial institution must adhere to a sectorial framework agreement, that must be notified to the Bank of Spain and be published on its website. Also, the financial institution must assume certain reporting duties towards this regulatory authority, and fulfill certain organizational and disciplinary rules that allow compliance be monitored.

Moratoriums by agreement cover all kinds of loans, credits and financial leases, and they may involve redistributing payments without changing the maturity date, or extending that maturity date by a period equivalent to the length of the moratorium.

The rule does not allow the amendment of certain aspects of the financing transaction that is the purpose of the potential moratorium agreement. Specifically, the moratorium cannot result in:

- an adjustment of the agreed interest rate;
- the collection of expenses or fees;
- joint marketing alongside another linked or combined product; or
- the establishment of additional guarantees, whether personal guarantees or security *in rem*.

Exceptionally, it is possible to renew insurance taken out for credit protection (in the case of unemployed debtors and those on temporary disability leave) or for loan repayment (in case of death or disability) when this insurance is linked to the financing transaction, subject to the corresponding cost increase.

If, simultaneously or successively, a legal moratorium and a moratorium by agreement are granted for the same financing transaction, the effects of the moratorium by agreement will begin once the legal moratorium has ended. This means that for the three months the legal moratorium lasts, no ordinary or default interest will accrue.

Moreover, if the moratorium by agreement must be formalized in a notarial public document, this may be carried out unilaterally by the financial institution, as long as it only involves postponing the maturity date by deferring the payment of the principal or the principal and interest, and subject to certain formal requirements set and verifications made by the authorizing notary as regards the duty to provide simplified precontractual



information.

As in the case of legal moratoriums, moratoriums by agreement are fully binding, if applicable, on intermediate creditors, and they also benefit from the same allowances for notary public fees and registration fees.

## Facilities and incentives for all types of moratoriums

To expedite the processing of moratoriums by agreement and legal moratoriums (in this latter case, retroactively), considering the restrictions on movement resulting from the state of emergency, the rule fosters the use of online channels and electronic signatures to execute moratorium agreements, and it eases the procedure, establishing a simplified precontractual information system, which entails waiving some of the precontractual information rules set out under Spanish Act 5/2019, of March 15, regulating real estate loan agreements.

Public deeds executed for legal moratoriums and moratoriums by agreement are expected to benefit from the gradual payment of stamp duty, which implies amending the consolidated text of the Spanish Transfer Tax and Stamp Duty Act approved under Royal Legislative Decree 1/1993, of September 24.

---

## Employment measures

RDL 19/2020 adopts two noteworthy employment measures:

- **It lifts the general suspension** applicable to (i) terms for the Social Security and Labor Inspectorate (“ITSS”) to conduct inspections and for the fulfillment of requirements (in the case of events not related to the state of emergency or not considered particularly serious); (ii) statute of limitations periods for actions to demand accountability for the breach of labor and social security regulations; and (iii) terms related to sanctioning procedures.

To this effect, it is worth pointing out that the ITSS has recently started taking its first steps towards detecting fraud in temporary redundancy plans (“ERTE”) in the framework of a specific national campaign. It has already laid down guidelines for action for inspectors that will help them assess the legality of ERTE on the grounds of *force majeure* in the context of the COVID-19 crisis, as well as other matters, such as remote working.

- Any social security benefits granted to the staff of health care or social health care centers as a result of these employees becoming infected with SARS-CoV-2 during any of



the stages of the epidemic due to their having been exposed to that specific risk while providing health care or social health care services will be considered to derive from a **work-related accident**. In the case of death, this will also be considered a work-related accident if it occurs within the five years following infection.

---

## Other measures

### Telecommunications

In terms of telecommunications, RDL 19/2020 adopts measures to help users pay their bills, offering them the option to postpone any unpaid bills or pay them in installments. This applies to bills submitted for payment from the date the state of emergency entered into force until June 30, 2020, if certain conditions are met.

### Reserve fund of banking foundations

RDL 19/2020 amends article 6 of Royal Decree 877/2015, of October 2, regulating the reserve fund to provide for contingencies, which certain banking foundations are required to establish if they have a controlling interest in a credit institution. This reserve fund must be established, under applicable sectorial law, within eight years through equal annual endowments.

Taking into account the Recommendation of the European Central Bank of March 27, 2020, asking credit institutions to refrain from distributing dividends at least until October 1, 2020, and the fact that the dividends of investee credit institutions are the main source of income of the aforementioned banking foundations (and that banking institutions must allocate at least 50% of this income to the reserve fund), the Spanish government considers it necessary to suspend the requirements related to endowments to these funds in 2020, and to the eight-year period to establish them (which means that, as a rule, the period to establish the fund would be extended to 2024).



---

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 and 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 legal flash is prohibited, unless with the consent of Cuatrecasas.

