



15/03/2020: Latest developments concerning COVID-19

Alert



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Urgent measures relating to COVID-19.

11 March 2020 saw the publication in the Official State Gazette of **Royal Decree-Law 6/2020 of 10 March 2020, adopting certain urgent economic measures and measures to protect public health** (Royal Decree-Law 6/2020), while 13 March 2020 saw the publication of **Royal Decree-Law 7/2020 of 12 March 2020, adopting urgent measures to address the economic impact of COVID-19** (Royal Decree-Law 7/2020), followed by the publication of **Royal Decree 463/2020 of 14 March 2020** (Royal Decree 463/2020) on 14 March 2020, declaring a state of emergency for the management of the health crisis occasioned by COVID-19, all of which entered into force on their publication dates.

These three pieces of legislation seek to set in place measures to address the adverse impact on both public health and the economy at large, with a particular emphasis on the tourism industry, SMEs and the self-employed, as well as on the persons affected by the containment measures adopted by the competent authorities.

Royal Decree-Law 6/2020 is the government's first legislative initiative in this area and sets out a series of health-related and economic measures, noteworthy examples of which include those aimed at guaranteeing the welfare of workers taking leave due to isolation and illness.

This was followed just two days later by the approval of Royal Decree-Law 7/2020, with measures aimed at reinforcing the public health system, supporting the most vulnerable workers and families affected by this exceptional, extraordinary situation, guaranteeing the liquidity of companies in the tourism industry and shoring up the finances of small and medium-sized enterprises and the self-employed.

And finally this week, Saturday 14 saw the approval of Royal Decree 463/2020, containing the Government's declaration of a nation-wide state of emergency for 15 calendar days, renewable by the Lower House of the Spanish Parliament, as well as setting out a battery of exceptional measures to centralise powers at central government level, granting extraordinary administrative powers that may take in everything from seizures and mandatory personal service to measures to guarantee the supply and provision of essential goods and services and restrictions on the

freedom of movement, as well as the suspension of the rights of certain premises and retail outlets and on-site educational establishments to open to the public.

Given the seriousness and speed with which the events brought about by the illness are unfolding, it is safe to say that these are but the first of many laws, decrees and ministerial orders set to be enacted in the days to come (presumably including some of those announced for the next cabinet meeting, potentially affecting SMEs/the self-employed, temporary collective layoffs, company subsidies and R&D investment), which we will continue to monitor here at KPMG.

Broken down by area, the key economic measures of most practical interest to Spanish companies envisaged in the above legislation are as follows:

Employment measures

A range of measures have been set in place to safeguard the welfare of the self-employed and salaried workers taking leave due to isolation or illness.

In this regard, on an exceptional basis, **workers subject to periods of isolation or contagion as a result of the COVID-19 virus** are to be deemed in a **situation akin to an occupational illness**, exclusively as regards the temporary disability benefit under the social security system.

In both cases, the duration of this exceptional benefit will be determined by the relevant certificates of sick leave and fitness for work.

Any worker registered for any of the social security regimes on the date on which the relevant event occurs may be entitled to this benefit. In terms of the date of the relevant event, this will be the date on which the worker is required to isolate or declared sick, even where the certificate of sick leave is issued at a later date.

Meanwhile, on an exceptional basis, Royal Decree-Law 7/2020 also extends the above situation akin to occupational illness (exclusively for the purposes of the temporary disability benefit) to administrative mutual insurance arrangements for periods of isolation or contagion caused by COVID-19.

It is important to note that the declaration of a state of emergency has placed restrictions on people's right to use the public thoroughfare, although travel to workplaces to provide employment, professional or business services remains permitted.

All of which means that workers, traders and the self-employed may continue traveling to work using public transport (which remains operational, albeit scaled down) or private means, without any time or territorial restrictions.

Elsewhere, note that the declaration of a state of emergency means that **a series of economic activities have been suspended**, namely, the list of activities set out in an appendix to Royal Decree 463/2020 (essentially catering, restaurant and leisure/entertainment businesses and educational centres), and any companies engaged in such activities must therefore remain closed to the public until the state of emergency has come to an end.

With this in mind, since interacting with the general public is no longer possible (although online sales are), companies may make use of a range of mechanisms to address their inability to open for business, whether in the form of reductions to and/or modifications of working hours, irregular working hours, vacation, leave or the holding in abeyance of contracts. Note that such companies may suspend contracts on grounds of force majeure.

As far as companies not covered by the appendix to the Royal Decree are concerned, they may organise their activities with their existing resources, setting in place telecommuting arrangements or changes to working hours, or suspend employment contracts, on objective grounds in this case.

Significant modifications are expected with respect to these employment mechanisms and to any unemployed workers affected by such measures.

New developments concerning procedural and administrative deadlines

Additional Provisions Two, Three and Four of Royal Decree 463/2020 contain various unprecedented measures of extraordinary legal interest, which will apply until the state of emergency under the current Royal Decree or, where applicable, any of its extensions, comes to an end.

Namely:

- **Suspension or tolling of the statutory periods envisaged in procedural laws across all jurisdictions.**

In the criminal jurisdiction, such suspension or tolling will not apply to habeas corpus proceedings, proceedings entrusted to on-call services, proceedings involving arrest, protection orders, urgent penitentiary supervision proceedings or any precautionary measures concerning violence against women or minors. Moreover, at the examination phase, the competent court or tribunal may resolve to take any steps that, due to their urgent nature, cannot be deferred.

As far as the other jurisdictions are concerned, the above tolling of the relevant statutory periods will not apply to the following scenarios:

- a) The proceedings for the protection of fundamental personal rights envisaged in articles 114 et seq of Judicial Review Jurisdiction Law 29/1998 of 13 July 1998, or the processing of the judicial authorisations or ratifications provided for in article 8.6 of the above Law.
 - b) The proceedings concerning collective disputes and the protection of fundamental rights and public freedoms regulated in Law 36/2011 of 10 October 2011, on the employment jurisdiction.
 - c) Judicial authorisation for sectioning due to psychological disorder provided for in article 763 of Civil Procedural Law 1/2000 of 7 January 2000.
 - d) The adoption of measures or provisions for the protection of minors provided for in article 158 of the Civil Code.
- The provisions of the preceding sections notwithstanding, courts and tribunals may resolve to

take any legal steps required to prevent irreparable damage to the legitimate rights and interests of the parties to the relevant process.

- **Tolling of statutory periods for the conduct of proceedings of public sector entities.**

The suspension and tolling of statutory periods will apply across the entire public sector defined in Common Administrative Procedural Law 39/2015 of 1 October 2015, with the exception of situations closely linked to the events justifying the state of emergency.

Nonetheless, under a reasoned ruling, the competent body may approve the supervisory measures and instructions strictly required to prevent serious detriment to the rights and interests of the relevant party to the proceedings and provided such party grants his/her consent or agrees with the decision not to toll the relevant period.

- **Tolling of limitation periods and expiration dates.**

The limitation periods and expiration dates of any actions and rights will be suspended throughout the state of emergency and, where applicable, any extensions approved.

Tax measures

The tolling of statutory periods for the processing of procedures with the public authorities (at state, regional and local levels) is of major practical importance for tax purposes.

It effectively means that the time limits (terms and periods) ordinarily applicable for the "processing" of all administrative tax procedures are suspended until the date on which the state of emergency ceases to be effective.

The depth and breadth of each of the terms of this measure will be revealed over the coming days. With this in mind, let us recall the various phases of tax procedures:

- **Commencement:** Be it on an ex officio basis (tax management acts such as the issue of tax assessments, data verification proceedings, tax checks, the commencement of inspection proceedings or imposition of penalties and the commencement of enforced collection proceedings) or at the request of the taxpayer (by means of a self-assessment, tax return, communication, application, notice

commencing an appeal procedure, an appeal for reconsideration or economic-administrative appeal, a request for review, rectification of errors or refund of amounts unduly paid, or an application for deferral or for payment in instalments).

- **Processing:** Notifications, demands, official notices, formalities for the processing of procedures such as suspensions, submissions, evidence, extension of deadlines, verification and processing of refunds, enforcement of guarantees, ordering of attachments and provisional notings of claims against property, declaration of shifting of tax liability, issue of certificates, issue of a taxpayer identification number, tax information and assistance, etc.
- **Termination:** Tax assessments, inspection reports, resolutions, withdrawals, waivers, expiry, etc.

With a much more limited scope and with a view to supporting the self-employed and small and medium-sized enterprises (SMEs), Royal Decree-Law 7/2020 provides for more **flexible terms for the deferral** of small debts in respect of **state-level taxes**.

This measure merely permits taxpayers to request a deferral of a past-due tax debt, subject to the fulfilment of certain strict requirements, without exonerating them from completing the relevant self-assessments.

The terms of this measure are as follows:

- The deferral is only available to individuals or entities with a **volume of business not exceeding Euros 6,010,121.04 in 2019** (there is no reference to calculation at group level).
- Subject to a **request by the relevant taxpayer**, a deferral of payment will be granted in respect of tax debts arising from assessments and self-assessments with filing and payment deadlines falling **between 13 March 2020 and 30 May 2020**. This thus covers monthly self-assessments for February, March and April and quarterly self-assessments for the first quarter of 2020. This does not apply to PIT returns, but does include debts resulting from the definitive corporate income tax self-assessment of companies with tax periods ending between August and November 2019 (depending on the dates covered in each case).

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- A cap of **Euros 30,000** is set for tax debts that may be deferred on these special terms.
- This deferral also applies to certain tax debts that would ordinarily be excluded from this option, such as:
 - o Withholdings and payments on account.
 - o Those deriving from taxes that taxpayers themselves are required to charge by law, such as VAT.
 - o Instalment payments in respect of corporate income tax, which will permit the measure to be applied to the first corporate income tax instalment payment of this year.
- The deferral will be granted for a **fixed period of six months**.
- **No late-payment interest will accrue for the first three months**. However, these deferrals will necessarily accrue interest for the remaining three months.

The STA has already published provisional [instructions](#) for online application for these deferrals in line with RD-Law 7/2020 on its website.

It should be noted that the above measures taken at national level, are to be supplemented by measures at regional and local level. By way of example, at the Local Government Meeting of 13 March 2020, the Madrid City Council approved a package of tax measures applicable in 2020, namely:

- **A 25% reduction in real estate tax (IBI)**

Applicable to properties used for leisure, hotel and restaurant and retail purposes, subject to maintenance of the average headcount throughout the tax period. Application of this reduction is subject to the relevant request by IBI taxpayers.

- **A 25% reduction in Business Activities Tax (BAT)**

Available to taxpayers who pay the municipal charge under the following headings: leisure and restaurant trade, travel agencies, retail and shopping centres.

Taxpayers must apply for this reduction by 15 June 2020 and, as with the previous reduction, it is subject to maintenance of the average headcount throughout the tax period.

- **Moratorium on taxes applicable to the general public.**

This moratorium applies to payments in respect of the tax on motor vehicles (IVTM), the tax on passage of vehicles (TPV) and the cashpoint charge, that are scheduled for the period running from 1 April to 1 June 2020. It consists of a one-month delay of voluntary payment of these taxes.

Measures to support the tourism industry

Extension of the **line of credit** introduced by [Royal Decree-Law 12/2019, of 11 October 2019, introducing urgent measures to mitigate the effects of commencement of insolvency proceedings at the Thomas Cook group](#).

Royal Decree-Law 7/2020 extends this line of credit, which was initially envisaged for parties affected by the insolvency of the Thomas Cook Group, to all companies and self-employed workers with registered office in Spain engaging in operations thanks to the "ICO Businesses and Entrepreneurs line", and whose activities fall under one of the National Economic Activity Codes for the tourism sector envisaged in the Royal Decree-Law 7/2020. The terms and conditions approved for the line of credit envisaged in Royal Decree-Law 12/2019 are automatically applied to this line of credit and to the relevant extended guarantee, so that no implementing regulations are required.

Elsewhere, an extraordinary measure is adopted for the tourism industry, aimed at companies (excluding those in the public sector) engaging in **tourism-related activities**, as well as in activities in the **retail and hotel and restaurant** sectors where they are connected to the tourism sector, which generate productive activity between February and June this year and which hire or retain workers under permanent seasonal contracts during such months.

The measure consists of a **50 percent reduction, from February to June, of employers' social security contributions for non-occupational contingencies**, and for the joint funding of unemployment benefits, the wage guarantee fund (FOGASA) and vocational training in respect of such workers. This reduction will apply throughout Spain,

with the exception of the autonomous regions of the Balearic and Canary Islands during the months of February and March 2020, as the reduction provided for in Royal Decree-Law 12/2019 referred to above will also be applicable in such territories during those months.

Measures to support families and individuals

With a view to ensuring the basic right to food of vulnerable children affected by the closure of educational centres ordered in different areas of the country as a measure to stop the spread of COVID-19, the Royal Decree-Law provides that children who were the beneficiaries of school meal grants or aid during the school year will be **entitled to receive financial aid or direct food distribution**. With this in mind, the Ministry of Social Rights and Agenda for 2030 has authorised the grant of a supplementary credit of Euros 25,000,000.

Other financial measures

Elsewhere, article 15 of Royal Decree-Law 7/2020 provides that the beneficiaries of financial aid granted by the Secretariat-General of Industry and Small and Medium-Sized Enterprises for industrial projects may request a deferral of repayment of the principal and/or interest for the year underway, where the following requirements are met:

- The relevant amounts are repayable within 6 months as from 13 March 2020.
- The health crisis caused by COVID-19 has resulted in such beneficiaries suffering periods of inactivity, a reduction in volume of sales or interruptions to supply in the value chain making it difficult or impossible for them to make such payments.

Measures relating to administrative contracts

The new provisions also introduce a number of measures concerning administrative contracts. Of these, we would draw particular attention to:

- **Centralised supply by the State of healthcare products.**

With a view to avoiding a potential lack of supply, [Organic Law 3/1986 of 14 April 1986, on Special Measures concerning Public Health](#), is amended to include **additional products necessary for the protection of health which are not by nature healthcare products** (for example face masks) among the medicinal and healthcare products whose supply may be temporarily centralised by the State Health Authority.

- Likewise, article 94.3 of the revised [Law on guarantees concerning and rational use of medicinal and healthcare products](#) is amended to permit the Government to **regulate the mechanism for fixing the price** of products other than prescription-only medicinal products which are necessary to protect the health of the population, and the Inter-ministerial Commission for the Pricing of Medicines to **set the maximum retail price** of medicinal and other products in the event of an exceptional health scenario.
- Lastly, provision is made for **emergency processing for the contracting** of all kinds of goods and services required by the General State Administration to enforce any such measures as may be necessary to combat COVID-19. This authority will also apply to contract processing which commenced prior to 13 March 2020.

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