



Royal Decree-Law 8/2020 on urgent measures to address COVID-19

Alert



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18 March 2020 saw the publication in the Official State Gazette of **Royal Decree-Law 8/2020 of 17 March 2020, on extraordinary urgent measures to address the economic and social impact of COVID-19** (Royal Decree-Law 8/2020), entering into force on its publication date.

The same day also saw the publication of **Royal Decree 465/2020 of 17 March 2020**, the single article of which amended Royal Decree 463/2020 of 14 March 2020, declaring a state of emergency, notable for its key clarification of the suspension of statutory periods in tax-related administrative procedures.

While Royal Decree-Law 8/2020 is essentially economic in nature, it also has a social component, seeking as it does to protect workers and families, while also supporting the continuity of productive activities and the maintenance of jobs, to this end granting liquidity.

Note that, in general terms, this represents the lawmakers' fourth attempt to address the adverse impact of COVID-19 in the form of containment measures. The previous pieces of legislation were:

- Royal Decree-Law 6/2020 of 10 March 2020, setting 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 self-isolation and illness.
- Royal Decree-Law 7/2020 of 12 March 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.
- Royal Decree 463/2020 of 14 March 2020, containing the Government's declaration of a nation-wide state of emergency for 15 calendar

days, as well as setting out a battery of exceptional measures to centralise powers at central government level, granting extraordinary administrative powers and limiting freedom of movement, as well as suspending the rights of certain premises and retail outlets and on-site educational activities to open to the public.

Elsewhere, the impact of other central government implementing provisions and decisions and a host of autonomous regional and local legislation should also be analysed.

The measures envisaged in Royal Decree Law 8/2020 will remain in force for one month as from its entry into force, notwithstanding any extension that may be approved by the Government on analysis of the situation. Nonetheless, the moratorium on mortgage payments will have a specific duration.

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

1. Provision of extraordinary liquidity to businesses and the self-employed, essentially in the form of lines of bank financing secured by the central government or backed by CESCE (Spanish export credit agency).

2. Streamlining and promotion of the use of temporary collective layoff procedures (ERTEs), adapted to the crisis brought about by COVID-19, widening unemployment protection and granting exemptions on social security contributions in a bid to prevent dismissals and enable companies to adjust their employment costs.
3. Adjusting the deadlines for tax procedures, which have for the most part (albeit not across the board) been extended to 30 April or 20 May. Significant exceptions include the obligation to self-assess taxes or file informative returns, which remain subject to the usual deadlines.
4. Recognition of the right to an economic benefit for self-employed workers ceasing their activities due to the crisis or experiencing a drastic drop-off in revenues.
5. Broadening the protection granted to vulnerable mortgage holders in the form of a moratorium on mortgages over main residences and the non-enforcement of bad debt claims.
6. Adaptation of the corporate regulations governing Spanish companies (above all listed companies) as regards the functioning of their managing bodies, the preparation and approval of annual accounts and audits.
7. Significant public procurement-related measures to protect contractors against awarding entities in respect of any delays or failures to comply as a result of the crisis, as well as against the economic damage in such connection.
8. Restrictions on the freedom of foreign (non-EU) investment in Spain's strategic sectors, which are now subject to administrative authorisation.
9. Measures to support SMEs in terms of R&D&i and the financing of projects to support remote working.
10. Guaranteeing the provision of essential services, such as telecommunications, as well as water, electricity and gas for vulnerable groups.

Measures to provide businesses and the self-employed with liquidity

First of all, a €100,000 million **line of guarantees** is expected to be **approved** by the government, accounting for around 10% of GDP and using up the margin granted by the Eurogroup.

This line of guarantees will transfer a portion of borrowers' bad debts to the State and will apply to both new financing and renewals of financing already granted. The aim is thus to ensure that liquidity flows through the financial sector to reach otherwise solvent businesses and self-employed workers experiencing temporary liquidity problems, in order to enable them to pay their invoices, meet their needs for working capital and deal with their financial obligations and tax and social security payments, among others.

Second, **the net indebtedness limit of the Spanish official credit institute (ICO) under the General State Budget Law may be raised by €10,000 million** to provide companies, particularly SMEs and self-employed workers, with additional liquidity via existing ICO lines of credit.

Lastly, with a view to shoring up the liquidity of export firms, **the coverage of internationalisation risks on the part of the central government has been strengthened and increased**, in the form of a line of insurance coverage of up to €2,000 million in two successive tranches of €1,000 million each, with a charge to the Internationalisation Risks Reserve Fund, lasting for 6 months.

Employment and social security measures

The key employment-related measures centre on the so-called **ERTEs**, the name given to the mechanisms envisaged in the Workers' Statute, enabling employers to temporarily suspend employment contracts or reduce working hours, whether based on economic, technical, organisation and production-related grounds or on grounds of force majeure:

- Losses of business due to COVID-19 are specifically deemed to constitute force majeure, and **the concept of "force majeure" has been defined** for the purposes of temporary contract suspensions/reduced working hours, to which end there must be a direct causal relationship between COVID-19 and the relevant business activity.

- In cases of temporary contract suspensions/reduced working hours on grounds of force majeure, an **exemption** has been granted throughout the relevant period on 100% of **employer social security contributions** at companies with less than 50 employees at 29 February 2020, and 75% in the case of companies with more than 50 employees.
- In cases of **suspension on objective grounds**, the composition of negotiating committees has been modified to include persons designated by the most representative trade unions, and negotiation deadlines have been shortened.
- Any workers affected by a temporary collective layoff procedure (ERTE) based on the exceptional circumstances provided for in Royal Decree-Law 8/2020 will receive **contributory unemployment benefit**, including those that would not ordinarily be entitled, having failed to meet the minimum contribution requirements, and the benefit will not be factored in for the purposes of the maximum periods for receiving future benefits.

The extraordinary measures in this area **are conditional on an undertaking on the part of employers to maintain jobs for a 6-month period as from the date on which activity is resumed.**

Elsewhere, the most noteworthy new developments are as follows:

- **Priority is given to working from home** over other measures such as contract suspensions.
- Employees able to evidence certain family responsibilities may **voluntarily adapt or reduce their working hours** during the COVID-19 crisis where certain exceptional circumstances have arisen.
- The self-employed may receive an **extraordinary benefit for cessation of activity** (the "self-employed unemployment benefit") where their activities are temporarily suspended due to the situation deriving from the state of emergency, or, alternatively, where their revenues fall by at least 75% on the average for the preceding quarter.

The benefit will account for 70% of the regulating base, will be payable even where the minimum period generally required in such

connection has not been met, will last for one month or until such time as the state of emergency has been lifted, and will not reduce the relevant periods in the event of a future cessation of activity.

- A temporary limitation has been placed on the effects of **late filing of applications for unemployment benefits.**

Suspension of statutory periods envisaged for tax procedures

First off, Royal Decree 465/2020 of 17 March 2020 clarifies that the suspension of the statutory periods envisaged for administrative procedures referred to in Royal Decree 463/2020, declaring a state of emergency, **does not apply to** tax-related deadlines subject to special regulations and, specifically, that it does not affect **deadlines for filing tax returns and self-assessments**. The State Tax Agency (STA) website confirms [this decision](#).

The above refers to state-level taxes, as the autonomous regions and even local bodies have powers to adopt further-reaching measures.

Elsewhere, Royal Decree-Law 8/2020 provides as follows as regards **procedures already underway prior to 18 March 2020:**

- The following deadlines for tax procedures are **automatically extended, with no need for prior request, until 30 April 2020**, provided the relevant procedures were already **underway prior to 18 March 2020 and had not concluded at such date:**
 - o Deadlines for **payment of the tax debt resulting from assessments issued by the authorities**, both during the voluntary payment period and during the enforcement period where notice of commencement of enforced collection proceedings was served prior to 18 March 2020, and the payment deadline falls between that date and 30 April 2020.
 - o Instalment and payment deadlines falling between 18 March 2020 and 30 April 2020 under **deferral and instalment payment** agreements already in place, notice of which was served prior to 18 March 2020. Such extensions apply without any increase in the relevant amounts. Likewise, in the case of applications filed in the voluntary payment

period, notice of rejection of which was served prior to 18 March 2020, and the payment period for which ends after such date, except where such rejection is due to dismissal or rejection of the application.

- Deadlines relating to the conduct of **auctions and awarding of assets**.
- Deadlines to be met: (i) **demands**, answers to **attachment orders and requests for tax-relevant information**; and (ii) for filing **submissions** in respect of decisions opening the case file inspection phase rendered in tax enforcement procedures (management, inspection and collection), penalty proceedings or proceedings for the declaration of nullity, the refund of amounts unduly paid, rectification of material errors or revocation. **The submissions phase in economic-administrative claims is not expressly included in the wording, which raises some doubt as to whether this important formality is eligible for suspension of the statutory time periods.**
- Moreover, between 18 March 2020 and 30 April 2020, **guarantees will not be enforced** against real estate assets in administrative enforced collection proceedings.
- The special provisions existing under **customs legislation** as regards the deadlines for filing submissions and meeting requirements continue to apply.
- In all of the above scenarios, deadlines are extended **until 20 May 2020**, where notice is served as of 18 March 2020, except where the deadline under the general rule falls later, in which case such later deadline shall apply.
- The relevant formality will be deemed completed where the taxpayer responds to the demand or request for tax-relevant information or files its submissions without making use of the right to an extension.
- The period running from **18 March 2020 to 30 April 2020** will not be factored in for the purposes of calculating the maximum duration of **tax enforcement, penalty and review proceedings** conducted by the STA.
- The period running from **18 March 2020 to 30 April 2020** will not be counted for the purposes of **limitation periods with respect to the rights**

of either the tax authorities or the taxpayer, or for the purposes of **time barring**.

- **Likewise, the statutory period for filing economic-administrative claims and appeals against tax decisions and bringing administrative appeals against decisions rendered in economic-administrative proceedings** will not commence during the period running from 18 March to 30 April 2020 or until notification is served, where this is later.
- Decisions terminating **appeals for reconsideration in economic-administrative proceedings** shall be deemed served for the purposes of calculating limitation periods where **one attempt at service** of the decision can be evidenced between 18 March and 30 April 2020.

The State Tax Agency has published catalogue of frequently asked questions (FAQs) which can be accessed here [link](#). Elsewhere, the STA is to permit the use of expired certificates on its website in the case of taxpayers whose electronic certificate has expired or is about to expire.

Measures to protect mortgage holders

Royal Decree Law 8/2020 ushers in urgent measures aimed at **protecting vulnerable mortgage holders**, the main purposes of which are:

- **To set in place a moratorium on payments under mortgage loan agreements**, for mortgage holders facing extraordinary difficulties to service their mortgage debts as a result of the COVID-19 health crisis.
- **To prevent the enforcement of mortgage debts** and loss of homes in the case of mortgage holders covered by the moratorium, and
- To contain bad debt for mortgage lenders.

The above measures under Royal Decree-Law 8/2020 apply to:

- **Mortgage-backed loans and credit agreements for the acquisition of a main residence**, which were in force at the time of entry into force of the Royal Decree-Law, and the mortgage holder under which is deemed to be in one of the **scenarios of financial vulnerability** provided for in the Royal Decree Law and

- **Guarantors of the principal mortgage holder**, with respect to their main residence and subject to the same terms as those envisaged for the mortgage holder.

Application for a moratorium will entail a **stay of enforcement of the mortgage debt** for the envisaged period and non-application throughout the moratorium of the early repayment clause contained in the mortgage loan agreement.

For the duration of the moratorium, the lender may not demand mortgage payments and no interest will accrue.

Final provision one of Royal Decree-Law 8/2020 **amends** the revised Transfer Tax and Stamp Duty Law to declare **deeds formalising the novation of mortgage loan and credit agreements** executed in line with this Royal Decree Law **exempt from the progressive stamp duty fee** for notarial documents.

Corporate-commercial law measures

This chapter sets out a number of measures relating to the **workings of the managing bodies of private law legal entities, as well as specific measures relating to the running of listed corporations**.

Particularly noteworthy among the measures adopted are:

- The adoption of resolutions by video-conference and in writing without a meeting.
- The three-month period from financial year-end within which the managing bodies of the relevant legal entities are to authorise ordinary or abridged individual or consolidated annual accounts for issue is suspended until the state of emergency ends, to be resumed for a further three months as of that date.
- In the case of listed corporations, a series of exceptional measures are introduced for 2020 in respect of the obligations concerning publishing and submission of their annual financial report to the Spanish National Securities Market Commission (CNMV) and issue of the auditor's report in respect of their annual accounts, which may be met within 6 months as from year end, and holding of the ordinary general shareholders' meeting, which may take place within the first ten months of the financial year, giving them until

October 2020, inclusive, to meet this requirement.

This set of measures is supplemented by suspension of the limitation period as regards Mercantile Registry entries that may be cancelled during the state of emergency.

Insolvency measures

Royal Decree-Law 8/2020 provides that **insolvent debtors will not be obliged to apply to the courts for an insolvency order** while the state of emergency is in force.

Public procurement measures

Royal Decree-Law 8/2020 provides for a **specific regime for the suspension of public-sector contracts** in force at 18 March 2020, performance of which is rendered impossible as a result of COVID-19 or the measures adopted by the state, the autonomous regions or the local authorities to combat it. **This suspension will apply as from the date on which de facto scenario preventing the relevant service arises and shall last until the service in question can be resumed** i.e., when, the circumstances or measures that prevented enforcement having ceased to exist or apply, the contracting body notifies the contractor of termination of the suspension.

Other measures directly affecting SMEs

The Fund for Technical Provisions linked to the R&D&I Cervera Network is amended to permit the financing of business-related R&D&I projects of SME and mid-cap companies by means of aid in the form of loans managed by the Spanish Centre for Industrial Technological Development (CDTI).

Elsewhere, a financing project consisting of the activation of aid and credits for SMEs has been set up as part of the ACELERA PYME programme of the public company RED.ES.

Measures relating to foreign investment in strategic industries

The regime for the liberalisation of direct foreign investment in Spanish companies in strategic industries is suspended until further administrative notice.

Measures affecting the telecommunications sector

A series of measures are introduced to guarantee the provision of universal fixed and mobile telecommunications services for the duration of the state of emergency, with a view to guaranteeing access to telecommuting, electronic trade and the electronic activities of the administration.

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