



Royal Decree-Law 19/2020 on supplementary measures to mitigate the effects of COVID-19

Alert

June 2020

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27 May 2020 saw the publication in the Official State Gazette of **Royal Decree-Law 19/2020 of 26 May, adopting supplementary agricultural, scientific, economic, employment, social security and tax measures to mitigate the effects of COVID-19** (hereinafter, Royal Decree-Law 19/2020), which entered into force on 28 May 2020.

As its name suggests, Royal Decree-Law sets out a number of measures intended to supplement those introduced in previous royal decree-laws to mitigate the adverse impact of COVID-19 in the tax, economic, labour and social security areas, among others. This latest Royal Decree-Law thus extends some of the measures already decreed, while at the same time ushering in other new measures of a labour, economic and tax nature, with a view to alleviating the impact of the crisis on Spain's productive fabric and offering increased protection for the groups most exposed to the crisis, such as healthcare workers.

Broadly speaking, the key measures of most practical interest included in Royal Decree-Law 19/2020 are as follows:

- The late-payment interest-free period envisaged in respect of certain tax deferrals is extended to four months.
- A new deadline is set for companies required to file annual accounts in abridged or ordinary form to authorise these for issue, and the matter of corporate income tax self-assessments of affected companies is dealt with.
- The suspension of statutory periods for employment and social security inspections is lifted with effect from 1 June.
- A new form of agreement-based moratorium is introduced for financial institutions signed up to sector-specific agreements.
- The suspension on telephone portability is lifted and a procedure is set in place for settling defaults on payments to telephone operators.

Grouped by area, the key aspects regulated in Royal Decree-Law 19/2020 are as follows:

Commercial measures: statutory periods for the authorisation for issue and approval of annual accounts

Articles 40.3 and 40.5 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) are amended to provide that **the three-month period granted for authorisation for issue of annual accounts and other documents required by law will begin running from 1 June** rather than the end of the state of emergency. This is a particularly important measure which informs companies of the specific period within which they must authorise for issue their 2020 annual accounts, namely, between 1 June and 31 August. In any event, annual accounts authorised for issue by the governing or managing body of a legal entity before or during the state of emergency will also be valid.

Elsewhere, **the deadline for approving annual accounts as from their authorisation for issue is reduced from three to two months**, so that companies will have their accounts approved and filed at the Mercantile Registry sooner. Also, the above period is standardised for all companies, listed or otherwise, so that all companies must have their annual accounts approved within the first ten months of the year. Article 40.5 of Royal Decree-Law 8/2020 expressly provides that the ordinary general shareholders' meeting for the approval of the annual accounts for the previous year **must necessarily be held within three months of the deadline for authorisation for issue of the annual accounts**.

Tax measures

The tax-related measures approved in the latest Royal Decree-Law are as follows:

- **The filing deadline for corporate income tax returns is adapted to the new deadlines for the authorisation for issue of the annual accounts.**

In this regard, it should first be noted that the deadline for filing CIT self-assessments remains unchanged, i.e. 25 calendar days after the end of the six-month period following the end of the tax period (article 124.1 CIT Law).

However, with a view to adapting the CIT filing deadline to the new deadlines for the authorisation for issue and approval of annual accounts, article 12 of Royal Decree Law 19/2020 allows taxpayers **who have been unable to approve their annual accounts prior to the corporate income tax filing deadline** (25 calendar days after the end of the six-month period following the end of the tax period) **to file their CIT return with the “annual accounts available” at that date**, clarifying for such purpose what is meant by annual accounts available:

- For public listed companies, the audited annual accounts referred to in article 41.1.a) of the above Royal Decree-Law 8/2020.
- For all other taxpayers, the audited annual accounts or, failing that, the annual accounts authorised for issue by the relevant body, or, in the absence thereof, the available accounting records kept in line with the provisions of the Commercial Code or that set forth in the regulations by which they are governed.

Likewise, a **second CIT return** may be filed once the accounts have been approved in line with the law and the accounting result becomes final and provided the second return differs from that filed previously. The deadline for filing this second return is **30 November 2020** and it shall be subject to the following:

- Where it gives rise to greater tax payable or less tax refundable than that resulting from the first return, the second self-assessment will be considered a **supplementary return. Late-payment**

interest will accrue on the amount payable from the day after the end of the period envisaged in article 124.1 of the CIT Law (25 calendar days after the end of the six-month period immediately following the end of the tax period) **but no late-filing surcharges will be generated.**

- In all other cases, this second self-assessment will be treated as a **rectification of the first return**, and will take effect upon filing, with no need for the approval of the tax authorities as it is not subject to the procedure for rectification of self-assessments envisaged in articles 126 *et seq* of the General Regulations on Tax Management and Inspection Procedures and Proceedings and Implementing the Common Rules on Procedures to Manage, Collect and Inspect Taxes.

Under no circumstances will the second self-assessment be final and a full inspection may be conducted with respect to the taxpayer's CIT.

Moreover, the limits on rectification of the options referred to in article 119.3 of the General Taxation Law 58/2003 of 17 December 2003, which rule out subsequent rectification of the options to be exercised, requested or waived upon filing a return, unless the rectification is filed in the regulatory filing period, **will not apply** with respect to the new self-assessment.

Should the second return give rise to tax refundable to the taxpayer, the six-month period for accrual of late-payment interest in favour of the taxpayer shall begin running as of 30 November 2020. Nonetheless, where the rectification of the initial self-assessment gives rise to an amount refundable as a result of an amount effectively paid under the previous self-assessment, late-payment interest shall accrue on such amount for the period running from the day after the end of the voluntary filing period (25 calendar days as from the end of the six-month period immediately following the end of the tax period) and the date on which payment of the refund is ordered.

- **Amendments of the terms of the non-accrual of late-payment interest for certain tax deferrals.**

The period for which late-payment interest will not accrue in respect of the deferrals regulated in article 14 of [Royal Decree-Law 7/2020 of 12 March 2020](#),

[adopting urgent measures to address the economic impact of COVID-19](#), and article 52 of [Royal Decree-Law 11/2020 of 31 March 2020, adopting supplementary urgent social and economic measures to address the impact of COVID-19](#) (Royal Decree-Law 11/2020) is extended to **four months**.

Article 14 of Royal Decree-Law 7/2020 provided for the possibility of SMEs and self-employed workers with a volume of business not exceeding Euros 6,010,121.04 in 2019 requesting a six-month deferral - **on which no late-payment interest would accrue for the first three months** - of all returns and self-assessments with filing deadlines falling between 13 March 2020 and 30 May 2020, provided the applications filed until that date amounted to less than Euros 30,000.

Final provision seven of Royal Decree-Law 19/2020 amends the terms of the above **deferral to extend the late payment interest-free period to four months**.

Likewise, article 52 of Royal Decree-Law 11/2020 provided for more flexible terms for the deferral of debts arising under **customs declarations** filed between 2 March 2020 and 30 May 2020, inclusive, where the applications filed up to that date were for amounts of less than Euros 30,000 and the amount of the debt to be deferred exceeded Euros 100. These deferrals could be requested by the natural or legal person recipient of the imported goods, provided their volume of business did not exceed Euros 6,010,121.04 in 2019, and where such deferrals were granted for a period of 6 months and **accrued no late-payment interest in the first 3 months of the deferral**.

Section 3 of additional provision nine **extends the late-payment interest-free deferral period to four months**.

Lastly, a transitional regime is envisaged (transitional provision two of Royal Decree-Law 19/2020) whereby the above amendments will apply, respectively, to deferral applications filed, in the first case, as of 13 March 2020 (date of entry into force of Royal Decree-Law 7/2020) and, in the second case, as of 2 April 2020 (date of the entry into force of Royal Decree-Law 11/2020)

- **Exceptional delay in the publication in 2020 of the list of tax debtors**

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The list of tax debtors meeting the requirements to be included on this list at 31 December 2019 will be published by 1 October 2020 at the latest (as opposed to in the first six months as previously).

- **Exemption from stamp duty on deeds formalising various moratoriums**

An exemption from stamp duty is envisaged for deeds formalising the moratoriums envisaged in:

- Article 13.3 of Royal Decree-Law 8/2020 on extraordinary urgent measures to address the economic and social impact of COVID-19.
- Article 24.2 of Royal Decree-Law 11/2020 of 31 March 2020 adopting supplementary urgent social and economic measures to address COVID-19, and
- The agreement-based moratoriums granted under sector-specific framework agreements adopted as a result of the health crisis triggered by COVID-19, provided for in Royal Decree-Law 19/2020.

Employment and social security measures

Among other aspects, Royal Decree Law 19/2020 provides for certain technical adjustments to the urgent measures previously adopted in this area to mitigate the impact of COVID-19, in light of the problems of interpretation that have come to light during its enforcement.

- **Lifting of the suspension of proceedings in employment and social security inspections**

With effect from 1 June 2020, additional provision two of [Royal Decree-Law 15/2020 of 21 April 2020, on supplementary urgent measures to support the economy and employment](#) (Royal Decree-Law 15/2020), which provided that the state of emergency, and any extensions thereto **will not be factored in for the purposes of calculating the duration of employment and social security inspection proceedings**, the statutory periods for compliance with demands or the statutes-of-limitations on actions to claim liability as regards compliance with labour and social security legislation.

- **Unemployment benefits in the cultural sector**

Royal Decree-Law 19/2020 amends Royal Decree-Law 17/2020 to clarify that artistes requesting unemployment benefits need not evidence that their specific situation of inactivity is the result of COVID and does away with the requirement that they be in the voluntary inactivity period.

- **Agricultural measures**

Royal Decree-Law 19/2020 provides that the validity of the measures to increase the flexibility of agricultural employment provided for in Royal Decree-Law 13/2020 of 7 April 2020, adopting certain urgent measures in relation to agricultural employment (Royal Decree-Law 13/2020), be extended until 30 September 2020 (they were previously valid until 30 June).

- **Contributions during procedures to suspend contracts and reduce working hours on grounds of force majeure**

Article 24.2 of Royal Decree-Law 8/2020 is amended to clarify that the exemptions from social security contributions cannot be applied if the requirements concerning the online submission of data relating to company registration, registration for social security purposes, notice of new hires, terminations and variations of employee data, and data relating to contributions and collections are not met.

- **Treatment of illnesses suffered by healthcare personnel as a result of the spread of the SARS-CoV2 virus during the state of emergency as an occupational contingency deriving from an occupational accident.**

Benefits awarded to this group of workers where they contract COVID-19 will be recognised as benefits deriving from occupational accidents and, in the event of death, this shall also be deemed the result of an occupational accident, provided it occurs in the five years following contagion.

Until now, these kinds of contingencies were considered non-occupational contingencies treated as occupational accidents for the purposes of temporary disability.

Regulation of a new moratorium with financial institutions

Both the regime governing the **statutory moratorium** for mortgage loans provided for in Royal Decree-Law 8/2020, and the moratorium for any type of non-mortgage-backed financing provided for in Royal Decree-Law 11/2020 (including, as has now been clarified, financial lease arrangements) were envisaged for individuals in an economically vulnerable situation in line with certain pre-established parameters.

With this in mind, with a view to facilitating the application of measures and agreements to defer credit facility and loan payments with a scope even broader than that initially envisaged for statutory moratoriums and as a supplement to such arrangements, Royal Decree-Law 19/2020 includes a new **special regime governing moratorium arrangement agreed on between lending entities and their customers**. This special regime not only expands the group of persons potentially eligible for debt deferral beyond the economically vulnerable, it also enables the latter to extend deferral on termination of the statutory moratorium.

In this regard, as noted in the Preamble to Royal Decree-Law 19/2020, potential moratoriums can be broken down into three categories:

- **Statutory moratorium:** the mortgage and non-mortgage moratoriums provided for in Royal Decree-Laws 8/2020 and 11/2020, respectively;
- **Agreement-based moratorium:** moratoriums agreed on between the parties in line with the provisions of the industry agreements executed between the lending entities via their representative associations.
- **Freedom of contract-based moratorium:** moratoriums arranged by the relevant parties in line with the freedom of contract principle under article 1,255 of the Commercial Code.

Royal Decree-Law 19/2020 specifically provides for the **moratoriums** arranged under a framework industry agreement. This type of arrangement is subject to the following specific regime:

The relevant financial institutions must **declare that they have signed up to a framework agreement notified to the Bank of Spain**, which will publish such agreements on its website.

- Provision is made for the **regime to be observed in any moratoriums arranged under a framework industry agreement**, which may concern all manner of loans, credit facilities and financial lease arrangements, as well as for the **limits to which such moratoriums are subject**. These include the manner in which any post-deferral adjustments to the loan agreement must be formalised, which may take the form of a redistribution of instalments, without modifying the maturity date, or an extension to the relevant term. Another restriction includes a prohibition on using the moratorium agreement to modify the agreed interest rate, charge expenses or commission (save in the case of interest-free loans) or set in place new terms and conditions not envisaged in the loan agreement subject to the moratorium, such as the sale of new products or a requirement that further guarantees be arranged.

The debtor and the financial institution may agree to extend (with the same terms and conditions and premiums as those initially envisaged) any **payment protection or loan repayment insurance** they may have arranged, together with the loan being novated, for the same period of time as the extension to the term of the loan, with the resulting premium charge.

- Where a single loan is subject to a statutory moratorium and a moratorium arranged in line with a framework industry agreement, the **statutory moratorium must be expressly recognised in the industry agreement-based moratorium arranged with the debtor**, and the effects of the latter shall be suspended until such time as the former has finalised.

- Prior to formalising this type of moratorium, the financial institution must provide the relevant debtor, together with the proposed agreement arranging the moratorium, with **simplified information** on the terms and conditions of the loan.
- Provision is made for an **exceptional regime governing the execution of the notarial instruments** formalising (where necessary) the moratoriums arranged in line with any of the industry agreements set in place by associations of financial institutions.

Thus, where a moratorium provides exclusively for a deferral of the principal or the principal plus interest under a loan or credit facility secured by an in rem guarantee or a financial lease subject to formalisation in a public document, and, as the case may be, the renewal of payment protection or loan repayment insurance, **the financial institution will unilaterally notarise the moratorium agreement** executed by the debtor and, where applicable, the guarantors, provided the moratorium takes the form of an extension to the relevant term and the debtor does not expressly state its wish to appear before the notary for a bilateral execution.

- Transitional Provision One notes that the provisions of this Royal Decree-Law apply to moratoriums arranged under a framework industry agreement before 28 May 2020.

Communications sector-related measures

As far as telecommunications are concerned, Royal Decree-Law 19/2020 **eliminates the exceptional and temporary suspension of portability** provided for in article 20 of Royal Decree-Law 8/2020 in order to avoid personal interaction between an operator's agents and customers with a view to protecting their health, save where there are outstanding debts with the operator, scenarios that are afforded specific treatment. Thus, **operators are now subject only to the extraordinary obligation not to interrupt electronic communications**, deemed to constitute essential services, until the state of emergency has come to an end, even in the case of non-paying customers.

The above measure is accompanied by others designed to help customers pay invoices they have been unable to settle for the receipt of electronic communication services during the state of emergency, in the form of flexible arrangements such as instalment payments and deferral.

Specifically, Royal Decree-Law 19/2020 provides that electronic communications operators must, where so requested, grant their customers **the right to split and, by extension, defer any debt under invoices submitted for collection between 14 March 2020** (the date on which the state of emergency entered into force) **and 30 June 2020**, both inclusive.

Other measures

- **Suspension of the obligation on banking foundations to contribute to the reserve fund.**

Royal Decree-Law 19/2020 amends Royal Decree 877/2015 of 2 October 2015, regulating the reserve fund certain banking foundations are obliged to set aside. Specifically, in light of the current circumstances and the restrictions on dividend distributions, **banking foundations need not make any contributions to the reserve fund in 2020**. The deadline for setting aside the reserve fund has been suspended throughout 2020. The contribution made next year will not make up for the amount not contributed in 2020.

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