

## Coronavirus (COVID - 19)

### Update on Spanish Government measures for the post-COVID scenario

After the State of Alarm in Spain was decreed by Royal Decree 463/2020 of 14 March, on 9 June, by Royal Decree Law 21/2020 of 9 June, the Government approved the measures that will govern the so-called "new normality", in the midst of the de-escalation process, after months of restrictions on freedom of movement and social distancing.

A new post-COVID scenario is therefore opened up, following intense regulatory development arising from the fight against the health emergency. In this new phase, certain modifications are expected to be made to the measures that were approved during the State of Alert, which will once again have an impact on business activity. The latter are summarized as follows:



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## Index

<b>1</b>	<b>Royal Decree on <i>New Normality</i></b>	<b>4</b>
<b>2</b>	<b>Tax issues</b>	<b>4</b>
2.1	Resumption of administrative, prescription and expiry periods	4
2.2	Opening of the tax offices	4
2.3	Corporate income tax measures	4
2.4	VAT rate at 0% for the delivery of medical equipment	5
2.5	Reduction of VAT rate applicable to books, newspapers and magazines in electronic format	6
2.6	Tax debt deferral	6
2.7	Measures relating to the enforcement of tax debts	7
<b>3</b>	<b>Financial issues</b>	<b>8</b>
3.1	Lines of collateral to guarantee the liquidity of the self-employed and companies	8
3.2	Financial Assistance for companies	8
<b>4</b>	<b>Corporate Issues</b>	<b>9</b>
4.1	Formulatoin and approval of the annyual accounts	9
4.2	Right of separation from the shareholder, and dissolution of the companies during the state of alarm	10
4.3	Governing body	10
4.4	On the distribution of dividends	10
<b>5</b>	<b>Civil and Litigation Issues</b>	<b>11</b>
5.1	Resumption of procedural deadlines	11
5.2	Insolvency Issues	11
5.3	Telematic means in the field of the administration of justice	12
5.4	Real Estate issues	13

## Index

<b>6</b>	<b>Employment Issues</b>	<b>13</b>
6.1	Measures promoting flexibility and home office	13
6.2	Temporary mass redundancy procedures	13
6.3	Complementary measures in the workplace	14
6.4	Tax collection measures	15
<b>7</b>	<b>Data Protection</b>	<b>15</b>
7.1	Security breach notification	15
7.2	Facial recognition techniques for online examinations	15
7.3	COVID-10 preventive technologies	16
7.4	Temperature taking in shops, workplaces and establishments	16
7.5	Mobility and home office situations	16
7.6	Phishing campaigns during covid-19	16
<b>8</b>	<b>Government tenders</b>	<b>17</b>
<b>9</b>	<b>Intellectual property</b>	<b>17</b>
<b>10</b>	<b>Consumers</b>	<b>18</b>
<b>11</b>	<b>Tourism</b>	<b>18</b>
<b>12</b>	<b>Borders</b>	<b>18</b>
<b>13</b>	<b>Updated Legislation</b>	<b>18</b>

## 1 Royal Decree on *New Normality*

After having published the last extension of the State of Alarm, which will remain in force until 21 June, and in full de-escalation phase, by Royal Decree Law 21/2020 of 9 June, the Government approved the prevention, containment and coordination measures for the last de-escalation phase and the termination of the State of Alarm.

This imposes the mandatory use of masks, maintaining in any case the safety distance between people, in workplaces, educational centers, hotels and cultural centers, among others.

At the same time, the Government has approved a series of coordination measures in order to optimize health and pharmaceutical resources, guaranteeing the capacities of hospitals, while implementing mechanisms for epidemiological monitoring, as well as the detection and control of the spread of the virus.

## 2 Tax issues

### 2.1 RESUMPTION OF ADMINISTRATIVE, PRESCRIPTION AND EXPIRY PERIODS

By Royal Decree 537/2020 of 22 May, the suspension of the administrative deadlines was lifted, effective from 1 June 2020. In addition, the suspension of limitation and lapse of rights and actions will be lifted with effect from 4 June 2020.

### 2.2 OPENING OF THE TAX OFFICES

The AEAT offices have started to open in the territories that are in Phase II only for certain procedures that can be consulted in the following link:

[https://www.agenciatributaria.es/AEAT.internet/Inicio/\\_componentes/\\_Ultima\\_hora/\\_ContenidosRelacionados/\\_Servicios\\_disponibles.shtml](https://www.agenciatributaria.es/AEAT.internet/Inicio/_componentes/_Ultima_hora/_ContenidosRelacionados/_Servicios_disponibles.shtml)

### 2.3 CORPORATE INCOME TAX MEASURES

#### A. FRACTIONATED PAYMENTS

With regard to the payment of corporate income tax (IS) in instalments, RDL 15/2020 allowed the possibility of opting for the application of the method set out in Article 40 in the self-assessment corresponding to the first instalment. 3 (basic system) of Law 27/2014, of 27 November, on Corporate Tax (LIS), provided that the taxpayers concerned (i) whose tax period began on or after 1 January 2020, (ii) with a net turnover in the 12 months prior to the date of commencement of said tax period of less than 6,000,000 euros, and (iii) with a volume of operations of less than 600,000 euros.

However, those taxpayers who, due to their volume of transactions exceeding 600,000 euros, could not opt for the method provided for in article 40.3 in the self-assessment corresponding to the first instalment, may do so in the one corresponding to the second instalment. With regard to this option, it should be taken into account that

- The procedure laid down in Article 40(3) LIS may also be applied to the second instalment.
- The deadline for exercising the option shall be 1-20 October 2020.

- This measure will not be applicable to tax groups taxed under the tax consolidation regime.
- The option to apply Article 40.3 LIS will be binding for the remaining instalment payments corresponding to the same tax period (which started on or after 1 January 2020).

## B. SUBMISSION DEADLINES

Royal Decree Law 19/2020 of 26 May (RDL 19/2020) included a series of measures relating to corporate income tax (IS) in order to adapt it to the extraordinary extension of the deadlines for preparing and approving the annual accounts.

RDL 19/2020 maintains the obligation to file the IS "within 25 calendar days following the 6 months after the end of the tax period"; however, the novelty it introduces is that, if at the end of the filing period the annual accounts have not been approved, they must be filed in accordance with what is known as the "available annual accounts".

If, after approval of the final accounts, the result of the income tax is different from that presented in accordance with the aforementioned "available annual accounts", a deadline of 30 November 2020 is set for the presentation of a new self-assessment, the nature and effects of which will depend on the result of the self-assessment:

1. If the amount to be paid is greater or the amount to be returned is less: the new self-settlement will be considered complementary and, for the greater amount to be paid, interest will accrue for late payment, which will be calculated from the end of the period for presentation of the first self-settlement. In addition, RDL 19/2020 expressly excludes the possibility of applying the so-called late filing surcharges (article 27 of Law 58/2003, of 17 December, on General Taxation).
2. If the result is a lower or higher amount payable: the new self-settlement will take effect as soon as it is submitted (it will not be understood that the correction of the first self-settlement has been requested and the corresponding correction procedure will be initiated). With regard to the accrual of interest for late payment, two situations are distinguished:
  - a. When the presentation of the first self-settlement results in an amount to be paid and the second results in an amount to be returned (return of undue income): interest on arrears will be calculated from the date on which the period for presentation of the first self-settlement ends until the date on which the return is ordered.
  - b. When the second declaration results in a lower amount to be paid than the first one or when the refund is higher (refund derived from the tax regulations): the period of 6 months available to the Administration to make the refund will be calculated from 30 November 2020, with interest for late payment accruing from the end of this period of 6 months.

Finally, RDL 19/2020 refers to the fact that the self-assessments (both the first and the second) that are submitted may be subject to verification and, with regard to those that result in a lower amount to be paid or a higher amount to be returned, it states that these will not have preclusive effects.

## 2.4 VAT RATE AT 0% FOR THE DELIVERY OF MEDICAL EQUIPMENT

Royal Decree Law 15/2020 of 21 April (RDL15/2020) established that, until 31 July 2020, the VAT applicable on (i) domestic deliveries, (ii) imports and (iii) intra-Community acquisitions of healthcare material will be 0%. The conditions that must be met in order to apply this 0% rate are as follows:

1. They must be goods referred to in the annex to RDL 15/2020 (respirators, masks, gloves, etc.)
2. The recipients of the goods must be (i) public law entities, (ii) clinics or hospital centers. Also included are (iii) private entities of a social nature that have such consideration in accordance with Article 20.Tres of Law 37/1992, of 28 December, on Value Added Tax.
3. Invoices relating to this type of goods must mention that they are exempt transactions. However, for taxable persons carrying out such transactions, this shall not restrict the right to deduct input VAT.

As regards the customs area, at European level, in addition to exemption from VAT, a duty exemption has been established. Both measures will be in force until 31 July 2020, although, if necessary, the European Commission may extend this period.

In relation to the products to which these customs measures can be applied, the World Customs Organization has published a reference list that can be consulted online:

[https://www.agenciatributaria.es/static\\_files/AEAT/Aduanas/Contenidos\\_Privados/Aduanas\\_Nuevo/COVID/Clasif\\_SA\\_Sum\\_MedOMA.pdf](https://www.agenciatributaria.es/static_files/AEAT/Aduanas/Contenidos_Privados/Aduanas_Nuevo/COVID/Clasif_SA_Sum_MedOMA.pdf)

The subjects that may benefit from such measures shall be, on the one hand, (i) public entities, and on the other, private bodies of private charitable or philanthropic organizations, provided that they have the relevant authorization from the competent territorial Delegation of the AEAT.

In addition to this type of entity, those companies that import healthcare material may benefit from these measures (i) for its subsequent delivery or (ii) donation to a public entity or an authorized private body. In these cases, it will not be necessary to have the authorization issued by the AEAT in order to carry out the import, although it will be necessary to justify that it has been carried out on behalf of a public entity or an authorized private body or, where appropriate, that the material has been imported for subsequent donation to one of these types of entities.

As regards the need to provide guarantees for the customs debt, this remains the case for (i) imports carried out by approved private bodies, as well as for those carried out by companies (ii) on behalf of public bodies and approved public organizations, or (iii) for the purpose of being donated.

The guarantee provided shall be released as soon as the relevant supporting documents have been produced to enable these measures to be implemented.

## 2.5 REDUCTION OF VAT RATE APPLICABLE TO BOOKS, NEWSPAPERS AND MAGAZINES IN ELECTRONIC FORMAT

RDL 15/2020 also amended Article 91.Dos.1.2 LIVA, extending the application of the reduced rate of 4% to books, newspapers and magazines, even in cases where they are considered to be services supplied by electronic means.

## 2.6 TAX DEBT DEFERRAL

Royal Decree Law 7/2020, of 12 March, which approved urgent measures to respond to the economic impact of COVID-19, recognized the possibility of deferring the tax debts arising from those returns and self-assessments that had to be filed or paid between 13 April and 30 March 2020, extending that possibility also to VAT, withholdings and fractioned payments,

provided that the total amount of these was not more than 30,000 euros. For the calculation of this limit of 30,000 euros, the following will be taken into account: (i) all tax debts together, both those in the voluntary payment period and those in the executive period, (ii) those for which a request for deferment or payment by instalments has been presented but not yet resolved, as well as (iii) the pending payments corresponding to debts whose deferment or payment by instalments has been accepted, but for which no guarantees have been provided.

Such deferment was only allowed for those entities that in 2019 had not exceeded a volume of operations of 6,010,121.04 euros.

The maximum duration of such deferrals shall be six months, and during the first four months no interest on arrears shall accrue (the period of accrual of interest on arrears was initially three months and has been extended to four). The extension of the period of accrual of interest for late payment to four months has also been recognized in respect of customs debts which have been deferred in accordance with Article 52 of Royal Decree Law 11/2020 of 31 March adopting additional urgent social and economic measures to deal with COVID-19.

The requests for postponement had to be presented through the electronic headquarters of the Tax Agency, indicating as the reason for the same "RDL postponement".

## 2.7 MEASURES RELATING TO THE ENFORCEMENT OF TAX DEBTS

This measure applies to tax debts resulting from self-assessments that are submitted within the regulatory period, but without making the relevant payment. As a general rule, this circumstance (presentation of the self-assessment without income of the tax debt derived from it) leads to the start of the enforcement period. However, RDL 15/2020 provides for the possibility of not commencing the enforcement period when the following requirements are met:

1. That the taxpayer has requested financing through the ICO guarantee line (i) within the regulatory deadline for filing the corresponding self-assessments or prior to their commencement, (ii) and at least for the amount of the tax debts arising therefrom.
2. That the taxpayer provides the Tax Administration, within a maximum of five days from the end of the regulatory filing period, with a certificate issued by the financing entity that includes the amount of financing that has been requested and the tax debts that it affects.
3. That the request for financing is granted, at least, in the amount of the affected tax debts.
4. That the taxpayer pays all the tax debts affected within one month from the end of the regulatory period for filing the corresponding self-assessments.

## 3 Financial issues

### 3.1 LINES OF COLLATERAL TO GUARANTEE THE LIQUIDITY OF THE SELF-EMPLOYED AND COMPANIES

The Council of Ministers, through Agreement<sup>1</sup> dated 24/03/2020, approved the first line of collateral in order to provide liquidity to the self-employed and companies in the face of the current health alert situation.

This first line of collateral is made up of two tranches of 100,000 million euros, the first of which is for the self-employed and SMEs, and the second to those companies that are not considered SMEs.

Loans qualifying for this measure must have been subscribed or renewed starting from 17/03/2020, and as long as the applicants prove that they are not in default or bankruptcy. In any case, financial institutions will have the last word.

These credit lines will guarantee 80% of loans or renewals signed by the self-employed or SMEs, while in the case of other companies, 70% of new loans and 60% of renewals will be guaranteed. In any case, the guarantees will have a term equal to that of the loan, up to a maximum of 5 years.

This new line of guarantees will begin to operate within 10 days from the issue of the agreements, and interested parties may apply until 30/09/2020. The management of these guarantees is entrusted to the Official Credit Institute (ICO).

### 3.2 FINANCIAL ASSISTANCE FOR COMPANIES

By means of Royal Decree-Law 8/2020, certain assistance was established for companies as listed below:

- Insurance guarantees for exports, amounting to 2,000 million euros.
- Specific line of funding amounting to 400 million euros by the Official Credit Institute destined for the self-employed and companies in the tourism sector.
- Promoting technology and remote work.
- Specific assistance for individuals and the self-employed.

By means of Royal Decree-Law 11/2020, new support measures were established for the business fabric:

#### Support measures for the industrial sector:

- Refinancing of loans granted by the General Secretariat for Industry and SMEs.
- Flexibility of the evaluation criteria of the degree of execution of projects which are underway.
- 60 million euro increase in the CERSA Technical Provisions Fund.
- Refund of expenses paid by companies for the organization of events organized by the ICEX that have been cancelled due to force majeure. In the case of non-recoverable expenses, additional aid will be granted to those companies.

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<sup>1</sup> See here the Bulletin of the Council of Ministers dated 24/03/2020:  
<https://www.lamoncloa.gob.es/consejodeministros/referencias/documents/2020/refc20200324.pdf>

## Support measures for the tourism sector:

Suspension for one year and without penalty of the payment of loans granted by the Secretary of State for Tourism under the following programs: Emprendetur I+D+i, Emprendetur Jóvenes Emprendedores and Emprendetur Internacionalización.

## Support measures for the energy sector:

Permits for access and connection to the electrical networks will last an additional two months from the end of the state of alarm to ensure that those affected have sufficient time to obtain the authorization to operate the corresponding electricity generation facility without the expiry thereof.

## Measures for the protection of Spanish companies:

Prohibition of takeover bids on strategic companies and extension of the scope of the suspension of the liberalization regime of certain foreign direct investments in Spain for reasons of public security, public order and public health in the main strategic sectors in Spain, also extending to those carried out by investors resident in countries of the European Union and the European Free Trade Association, when said investors are controlled by resident entities outside that territorial area.

## 4 Corporate Issues

### 4.1 FORMULATOIN AND APPROVAL OF THE ANNYUAL ACCOUNTS

The Royal Decree Law 8/2020, modifies the terms of formulation and approval of the annual accounts and the management report

- Formulation: The obligation to formulate the annual accounts, ordinary or abridged, individual or consolidated, within three months of the closing of the financial year and, when the management report is legally required, was suspended until 1 June 2020, resuming it again for other months from that date. Notwithstanding the foregoing, the annual accounts shall be validly prepared during the state of alarm, and they may also be verified for accounting purposes within the legally established period or by making use of the extension provided for in the following section.

Approval: The ordinary general meeting to approve the accounts of the previous year will necessarily meet within two months of the end of the period for formulation.

As for the extension of the deadline for the audit of accounts to two months after the end of the alarm state, the same applies to cases of accounts formulated before the start of the alarm state.

When the accounts have been drawn up and are pending approval by the General Meeting, the proposal for the application of the result contained in the report may be modified by the directors, in which case a letter from the auditor must be attached, stating that his opinion would not have changed had he been aware of the new proposal earlier. If the meeting has already been called for approval, it may be withdrawn from the agenda by submitting only the annual accounts for approval and calling a new meeting to approve the new proposal for the application of profits.

In the case of listed companies, when they modify the proposal for the application of profits, the new proposal, together with its justification by the administrative body and the auditor's report, will be published, once approved, as supplementary information to the annual

accounts, on the company's website and on the website of the CNMV as other relevant information or, if necessary, as other privileged information.

#### 4.2 RIGHT OF SEPARATION FROM THE SHAREHOLDER, AND DISSOLUTION OF THE COMPANIES DURING THE STATE OF ALARM

During the validity of the state of alert, the partners may not exercise their right of separation foreseen by law or by the statutes, nor will the dissolution of those capital companies occur when the term for which they were constituted has expired, with such dissolution occurring when two months have passed since the end of the state alert.

For those companies that are in a legal or statutory cause of dissolution, the period of 2 months for the call of the General Meeting is suspended until the end of the state of alarm, both for those companies that were in such cause of dissolution before the state of alarm and for those that incur in such a case during the validity of the state of alarm.

Likewise, the administrators of the companies that incur in cause of dissolution during the validity of the state of alarm will not respond for the social debts contracted during the same one.

#### 4.3 GOVERNING BODY

Given the current restrictive measures, meetings of the administrative body may be held by video conference. Likewise, the resolutions of the administrative body may be adopted by means of a written vote and without the holding of a meeting, if the Chairman considers it necessary or fit two of the members of the administrative body so requested.

By means of RD 11/2020, it has been agreed that the meeting of the administrative bodies and the meetings of the partners of the commercial companies or other entities can also be held by telephone provided that the secretaries of the body recognize the identity of the attendees, that they have the appropriate means and that the minutes are sent by certified mail.

Agreements in writing and without a meeting can be adopted whenever the President decides or at least two members of the body in question request it.

#### 4.4 ON THE DISTRIBUTION OF DIVIDENDS

The companies applying for ERTes regulated in article 1 of Royal Decree Law 18/2020 of 12 May and that use the public resources allocated to them, may not distribute dividends corresponding to the fiscal year in which these temporary employment regulation files are applied, unless they previously pay the amount corresponding to the exemption applied to the social security contributions.

The financial year in which the company does not distribute dividends in application of the previous paragraph will not be taken into account for the purposes of exercising the right to separation of shareholders, in the event that dividends are not distributed, as provided for in section 1 of article 348 bis of the Law on Corporations.

This limitation on the distribution of dividends shall not apply to those entities which, on 29 February 2020, had fewer than fifty employees or similar persons registered with the Social Security.

## 5 Civil and Litigation Issues

### 5.1 RESUMPTION OF PROCEDURAL DEADLINES

By Royal Decree 537/2020 of 22 May, he lifted the suspension of the procedural deadlines, which had been in force since the Declaration of the State of Alarm, whose calculation restarted on 4 June.

In this regard, it should be noted that, in accordance with Royal Decree Law 16/2020, of April 28, it is established that the calculation of the procedural periods will be carried out again from the beginning, starting on the working day following that on which the suspension was lifted.

The same Royal Decree-Law indicates that, due to the paralysis of the organs of the Administration of Justice during the State of Alarm, the days 11 to 31 August will be declared urgent, and therefore working days, except for Saturdays, Sundays and holidays, except for those that were already considered working days.

### 5.2 INSOLVENCY ISSUES

Two are the main novelties in terms of competition for the new post-COVID-19 scenario. On the one hand, Royal Decree Law 16/2020 introduced a series of measures that we will describe below. Secondly, on 5 May last the Legislative Royal Decree was published approving the Revised Text of the new Bankruptcy Law, which will come into force on 1 September next.

#### A. MEASURES ON INSOLVENCY IN RDL 16/2020

As we mentioned earlier, Royal Decree Law 16/2020 introduced a series of measures in the field of insolvency proceedings, with the aim of minimizing the impact of the COVID-19 crisis on companies:

- Modification of the Composition Agreement

Until March 14, 2021, the bankruptcy debtors will be allowed to submit requests for modification of the agreement in compliance, including the outstanding credits as well as those contracted during the agreement, as well as a viability plan and a payment plan.

With regard to creditors, until 30 September the judge will notify the bankrupt party of the applications for a declaration of noncompliance with the agreement, but these will not be admitted until 15 December. During this three-month period, the bankrupt party may present modifications to the agreement, which will be processed in preference to the declaration of noncompliance.

- Deferral of the duty to apply for liquidation

Likewise, until 14 March 2021 the debtor who cannot comply with the agreed agreement will not be obliged to request liquidation and must present the corresponding modification of the composition agreement.

- Refinancing Agreement

Royal Decree Law 16/2020 also provides that until 14 March 2021 the bankruptcy debtor who has an approved refinancing agreement may notify the bankruptcy judge that it intends to initiate negotiations with creditors to modify the agreement, even if one year has not passed since the previous request for approval.

- Special regime for the application of the competition

From the declaration of the State of Alarm, and until next December 31st, the insolvent debtor is exempted from requesting the declaration of the bankruptcy. Likewise, until 31 December, applications for the necessary bankruptcy proceedings will not be admitted, with preference given to applications for voluntary bankruptcy proceedings.

- Financing and payments by persons especially related to the debtor

In those insolvency proceedings that are declared within two years of the declaration of the State of Alarm, that is, until 14 March 2022, the credits derived from income or financing to the debtor by a person especially related to the debtor will be considered as ordinary credits.

- Challenging the inventory and the list of creditors

For those insolvency proceedings in which no provisional inventory and list of creditors have been submitted, as well as those that are declared within two years of the declaration of the State of Alarm, those incidents of contestation of the inventory and list of creditors, it will not be necessary to hold a hearing.

- Preferential processing of bankruptcy proceedings

Preference will be given, during the year following the declaration of the State of Alarm, to bankruptcy incidents in labor matters; actions aimed at the disposal of productive units or the sale of elements of the asset, proposals and modifications of agreements; bankruptcy incidents in matters of reintegration of the active mass; admission for processing of the application for approval of an extrajudicial payment agreement or its modification; the adoption of precautionary measures.

- Expediting the processing of the out-of-court settlement

Until 14 March 2021, an out-of-court settlement shall be deemed to have been attempted unsuccessfully if the insolvency practitioner has twice refused to be appointed as such.

- Suspension of the cause of dissolution for losses

For the purpose of determining whether or not a company is in a loss making situation, the losses generated in 2020 would not be taken into account.

## B. NEW INSOLVENCY ACT

Likewise, from September 1st, the new Bankruptcy Law will come into force, in order to regularize and harmonize all the rules that have been decreed since the publication, in 2003, of the previous Bankruptcy Law.

In this way, as developed in the Explanation of Reasons for the New Bankruptcy Law, it seeks to solve a series of legal problems derived from the plurality of regulations without altering the legislation in force.

## 5.3 TELEMATIC MEANS IN THE FIELD OF THE ADMINISTRATION OF JUSTICE

Through the Royal Decree - Law 16/2020, the Government has introduced a series of measures aimed at the use of telematics in the field of the Administration of Justice.

Thus, from the end of the State of Alarm, and up to three months later, the various procedural actions will be processed preferably by telematics, for the time being, until September 21.

Similarly, the public will be served at the various Spanish courts and tribunals by telephone, with prior appointment required for those cases in which it is essential to attend in person.

## 5.4 REAL ESTATE ISSUES

### A. LONG TERM HOUSING RENTAL

Protective measures and moratoriums are established for tenants of usual dwellings, especially for people with special vulnerability, especially against public housing entities or large holders.

### B. LEASES OF PROPERTIES OTHER THAN THE USUAL RESIDENCE

In the case of rental contracts for commercial premises, restaurants, bars, offices, academies, workshops, industrial buildings or warehouses and, in general, any urban property in which an industrial, commercial, craft, professional, recreational, welfare, cultural or educational activity is carried out, as well as industrial leases and seasonal housing rentals, there are moratoriums on the payment of rent for leases in particularly vulnerable situations, especially if the lessor is a company or public entity, large holders or owners of a built area of more than 1,500 m<sup>2</sup>.

### C. MORTGAGE MORATORIUM

A moratorium is established on the mortgage debt incurred on those loans constituted for the acquisition of the following properties:

- Habitual residence.
- Real estate for economic activities carried out by entrepreneurs and professionals, provided that certain requirements are met.
- Properties other than the usual one in a rental situation and for which the mortgage debtor, natural person, owner and lessor of said dwellings has stopped receiving the rental income since the entry into force of the State of Alarm decreed by Royal Decree 463/2020 of 14 March, or stops receiving it until one month after the end of the same

### D. GRANTING OF PLANNING PERMISSIONS

Some Autonomous Communities and City Councils, such as the Community of Madrid and the Madrid City Council, are announcing measures to make the granting of urban planning licenses for new projects more flexible and to shorten the deadlines, in order to speed up the reactivation of the sector in the post-COVID de-escalation period..

## 6 Employment Issues

### 6.1 MEASURES PROMOTING FLEXIBILITY AND HOME OFFICE

Pursuant to the provisions of Royal Decree Law 8/2020, companies must implement measures and mechanisms to adapt or reduce the working day, and implement teleworking or other alternatives, with priority being given to the temporary cessation of reduced activity.

### 6.2 TEMPORARY MASS REDUNDANCY PROCEDURES

If the company, as a result of the exceptional health emergency situation, were to suspend its activity partially or temporarily, in application of Article 47 of the Workers' Statute, Royal

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Decree 1483/2012 and Royal Decree Law 8/2020 and following approved during the state of alarm, it may request a Temporary Employment Regulation (ERTE) File when any of the following conditions are met :

- Economic, technical, organizational, or production causes,(ETOP)
- Causes arising from force majeure,

Only in the first case, a period of consultation with the workers' representation or, where appropriate, the commission set up for this purpose will be required.

On the other hand, if the interruption of the activity is derived from a cause of force majeure, the authorization of the Labor Authority will be required.

If the activity is interrupted without the communication of ERTE, the workers would keep their right to salary, according to article 30 ET.

The right to unemployment benefit is recognized for the workers concerned even if they do not have the minimum period of employment in which they have paid contributions, and the time in which the benefit is received is not taken into account for the purpose of consuming the maximum periods of receipt established up to 30 June

For TRE's due to force majeure, the company is also exempted from payment of the levies for the duration of the suspension period, in companies with less than 50 workers. In companies with more than 50 workers, the exemption from contributions will reach 75% of the company's contribution.

The Royal Decree-Law 18/2020 has introduced changes in the exonerations and bonuses according to the affectation to the ERTE by force majeure that, since the approvals of this normative text, can be total or partial.

Additionally, such extraordinary measures will be subject to the company's commitment to maintain employment for a period of six months from the date of resumption of the activity of the persons affected by an ERTE due to force majeure.

## 6.3 COMPLEMENTARY MEASURES IN THE WORKPLACE

On 28/03/2020, the Government approved Royal Decree no. 9/2020, enacting a series of measures in the field of employment, partially modified by Royal Decree 18/2020. In this way, the "essential nature" of health services and elderly care centers is stressed, and it is decreed that they must remain active for the duration of the state of alert and any extensions.

Likewise, employment protection is implemented before the current circumstances. Thus, the extinction of contracts or dismissals based on the technical, organizational and production causes covered by the Temporary Employment Regulation Files is limited until June 30th; reasons that will be understood as unjustified.

At the same time, a series of mechanisms have been established in order to speed up the procedures for applying for unemployment benefits derived from the Files for Temporary Regulation of Employment. At the same time, it has enabled those corporate companies that, for technical reasons, cannot meet in a General Assembly, to suspend all or part of the employment benefits to their partners by means of a certificate issued by the Governing Council, which will initiate the corresponding procedure.

At the same time, the calculation of the maximum duration of temporary contracts is suspended until 30 June.

Finally, it is indicated that the corresponding sanctions will be imposed ex officio in respect of those applications from companies that contain inaccuracies or falsehoods, with the refund

of undue benefits, and enabling the collaboration for such purposes of the managing body with the Labor and Social Security Inspectorate.

## 6.4 TAX COLLECTION MEASURES

By means of Royal Decree-Law 11/2020, The General Treasury of Social Security may grant moratoriums of six months, without interest, to companies and self-employed workers who so request and comply with the requirements and conditions that will be established by Ministerial Order. This moratorium will not affect those companies that have obtained exemptions from payment as consequences of Temporary Redundancy Procedures (ERTES) under the State of Alarm, in accordance with article 24 of Royal Decree-Law 8/2020.

Companies and self-employed workers may request the deferral in the payment of Social Security debts, the regulatory term of which takes place between the months of April and June 2020 at an interest rate of 0.5%, as long as they have no other deferral in force, under the terms and conditions established in Social Security regulations.

## 7 Data Protection

The Spanish Data Protection Agency ("AEPD") has been publishing reports, communiqués, technical notes and guidelines during the pandemic, some of which are of an interim nature and others which will have to be regulated in the appropriate instruments. All of this is aimed at establishing a basis that will serve as a guide for those responsible for handling health data as a result of the pandemic, in addition to providing opinions on other matters related to the coronavirus, which we will discuss later.

In the current scenario of de-escalation, in which we are facing the new normality and without prejudice, as we have mentioned, to the adoption of the necessary measures with the rank of Law regarding the treatment of data in this new scenario, the AEPD has made the following recommendations:

### 7.1 SECURITY BREACH NOTIFICATION

Security breach notifications are maintained, both in the new normality scenario and in the state of alarm, within the regulatory 72-hour period. In this regard, the AEPD makes a recommendation of five fundamental security measures to prevent security breaches:

- Use of secure passwords and second authentication factor;
- Carrying out backups;
- Keeping systems up to date;
- Avoiding "one-day solutions"; and
- Encrypting devices.

### 7.2 FACIAL RECOGNITION TECHNIQUES FOR ONLINE EXAMINATIONS

The processing of facial recognition data when performing university tests is not the method recommended by the AEPD to perform these exams. Considering the technique of constant facial recognition as not proportionate to the aim pursued, especially when a rule with the status of a law must establish the legal obligation - since consent is not free and would not be valid - by protecting the "essential" public interest and dealing with special categories of data, such as biometrics in this case.

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<sup>2</sup> <https://www.boe.es/boe/dias/2020/04/01/pdfs/BOE-A-2020-4208.pdf>

## 7.3 COVID-10 PREVENTIVE TECHNOLOGIES

The AEPD has carried out a study in which it analyses different technologies that aim to prevent Covid-19 and its implications in terms of data protection. The report analyses seven types of systems, including geolocation collected by telecommunication operators, in social networks, applications, websites and chatbots, immunity passports or Bluetooth contact tracking. It seems that in Spain, following the line of the European authorities, it has opted for the Bluetooth system that issues and observes anonymous identifiers that change periodically. When two mobiles have been in proximity for a certain period of time, both save the anonymous identifier issued by the other and, if a user tests positive in the COVID-19 test, it is possible to alert the mobiles that have been in contact, preserving the privacy of the individuals.

The AEPD has also expressed its opinion on applications and websites for self-assessment of the disease, urging them to limit their purposes to strict prevention of the disease, always in accordance with the health authorities in strict compliance with data protection regulations.

## 7.4 TEMPERATURE TAKING IN SHOPS, WORKPLACES AND ESTABLISHMENTS

The AEPD has expressed its concern about the use of temperature measurement devices and the need to have the prior opinion of the health authorities before installing them. Temperature measurement may not be effective, as there are asymptomatic people who do not have a fever, or some people may have a fever for other reasons, which may lead to unjustified discrimination. Therefore, a common criterion is needed for the temperature level at which a person is considered potentially ill with Covid-19. The AEPD recommends introducing measures that are proportionate, useful and non-intrusive and, as we have said, always in accordance with the criteria of the health authorities. In particular, the AEPD states that health data cannot be processed spontaneously by any administrator of a place open to the public, simply because he or she believes it is in the best interest of his or her clients or users. In such cases, there may be a risk of discrimination, stigmatization and perhaps public dissemination of health data. All this may be aggravated by the risk of leaks of sensitive information and conflict with people who understand the measure as an attack on their rights.

## 7.5 MOBILITY AND HOME OFFICE SITUATIONS

Home office The AEPD has drawn up guidelines on the need to regulate this situation. These should determine, among other things, what forms of access to teleworking and what type of devices are allowed, as well as the responsibilities and obligations assumed by employees. There is a need to provide guidelines adapted to the training of employees, they should be informed of the main threats they may face and the possible consequences of these threats. If employees do not comply with the protocols, they must be aware of the consequences, both for the data subjects and for themselves. These guidelines should identify the contact person for reporting personal data incidents and should address internal procedures for the provision and audit of remote access devices, procedures for management and monitoring, services provided by managers, and how the policy is reviewed and updated to reflect the risks involved.

## 7.6 PISHING CAMPAIGNS DURING COVID-19

While the coronavirus alert is in effect, cybercriminals are using the situation to supplant legitimate organizations such as the Ministry of Health in order to profit from it. This is why those concerned must be careful to trust the sources of e-mails, SMS, or other communications. Therefore, they should check these sources by going to the official website

of the said sources, verify the e-mail address of the sender, do not click on links or avoid messages that ask for data urgently.

## 8 Government tenders

In the area of contracting by Public Administrations, the contractor of any works contracts in force at the entry into force of Royal Decree Law 8/2020, or those works contracts scheduled for completion between the 14/03/2020 and the termination of the state of alarm, the compliance of which is not possible given the situation generated by the expansion of COVID-19 or the measures agreed upon for prevention, may request the suspension of the contract or the extension of the terms thereof.

In cases of suspension, it is possible for the contracting entity to indemnify the contractor for the most essential expenses or costs.

## 9 Intellectual property

The Spanish Patent and Trademark Office (OEPM) issued a first resolution by which, pursuant to Royal Decree 463/2020 regarding the suspension of the calculation of Administrative terms, the calculation of terms for all those administrative processes managed by the entity during the validity of the state of alarm are suspended and interrupted. Likewise, the calculation of limits and expiry terms for all actions and rights that individuals have in relation to the OEPM procedures is suspended.

However, according to the resolution of the Director of the OEPM on the 25/03/2020<sup>3</sup>, admission will continue with the processing of all types of applications. Likewise, all those procedures that do not require prior action by the interested parties or those in which the interested parties express their agreement in the continuing of the procedure will be fulfilled. All this will be applied in bilateral procedures, between the OEPM and the interested party, and as long as the rights of third parties are not affected.

Similarly, the EUIPO<sup>4</sup> (European Union Intellectual Property Office) issued a resolution on the 16<sup>th</sup> of March by which all deadlines of procedures processed by this entity the expiry of which was set between the 9<sup>th</sup> of March and the 30<sup>th</sup> of April 2020 are extended until the 04<sup>th</sup> of May 2020.

This extension operates automatically and it is not necessary for interested parties to request it, although it is mentioned that for those in a position to comply with the corresponding procedure during the term of the extension, the procedure will continue its ordinary course.

It is also noted that the extension decreed only affects those procedures followed before the EUIPO, and is not applicable to other types of procedures. In particular, reference is made to the deadline to file cases before the General Court against resolutions of the EUIPO Court of Appeal, which is not affected by the extension.

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<sup>3</sup>[https://www.oepm.es/export/sites/oepm/comun/documentos\\_relacionados/Noticias/2020/2020\\_03\\_25\\_Resolucion\\_Disposicion\\_Adicional\\_tercera.pdf](https://www.oepm.es/export/sites/oepm/comun/documentos_relacionados/Noticias/2020/2020_03_25_Resolucion_Disposicion_Adicional_tercera.pdf)

<sup>4</sup> Find all the information regarding the EUIPO measures in the face of the health alert generated by COVID-19 at the following link: <https://euiipo.europa.eu/ohimportal/en/news/-/action/view/5657728>

## 10 Consumers

Royal Decree-Law 11/2020 establishes a series of measure to protect consumers:

- Special period for the termination of contracts: Consumers will have a period of 14 days to terminate contracts for the sale of goods and the provision of services which cannot be performed as a result of the measures taken by the alarm state.
- To this regard, it should be noted that Royal Decree-Law 21/2020 extends the validity of this measure to the different phases of de-escalation, as well as to the stage of new normality, in accordance with its fifth final provision. Payment of fees in successive continual contracts: the collection of fees will be paralysed until the services can be rendered again as usual.
- Package tours: the consumer may choose to request a refund or make use of the voucher that the organizer or the travel agency will provide. The voucher will last one year and if it is not used, a refund may be requested later.
- Limitation of online gambling advertising (casinos, bingo and poker).
- Changing Telephone Company (transferring operations): transferring operations that do not involve physical displacement are not suspended. In addition, consumers must not see increased rates in the period of time when, as a consequence of the suspension, they cannot request a change in the company that provides electronic communications services.

## 11 Tourism

Given the different phases of de-escalation in Spanish territory, the situation of the tourism industry varies depending on each province.

Thus, in those provinces that are in Phase 3 of the de-escalation process, in accordance with Ministerial Order SND/458/2020, hotels may reopen their common areas to the public, as long as they do not exceed 50% of their capacity, and in any case respecting hygiene measures and interpersonal safety distances.

In the case of those provinces still in Phase 2, in accordance with Ministerial Order SND 414/2020 of 16 May, they may reopen their common areas provided they do not exceed one third of their capacity.

## 12 Borders

In accordance with Ministerial Order SND /439/2020, border control has been extended until the end of the State of Alarm or until the circumstances justifying a new order arise.

Therefore, since the State of Alarm will conclude on June 21st, borders with Schengen area States will be reopened from this date on, excepting Portugal, border that will remain under control until July 1.

## 13 Updated Legislation

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Given the changing scenario in which we find ourselves, the Official State Gazette offers an update of all these regulatory provisions and other measures published in relation to the current state of alarm, available at the following link:

[https://www.boe.es/biblioteca\\_juridica/codigos/codigo.php?id=355](https://www.boe.es/biblioteca_juridica/codigos/codigo.php?id=355)

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