



## **EMERGENCY MEASURES COVID-19: Royal Decree-Law 15/2020 on complementary measures to support the economy and employment**

**This News Alert XXIII describes the additional urgent measures included in Royal Decree-Law 15/2020 of 21 April, to support the economy and employment. These are divided into:**

- **Measures to reduce costs for SMEs and self-employed workers**
- **Measures concerning the use of the cooperative promotion and education fund**
- **Extraordinary measure relating to worker-owned companies**
- **Measures for the protection of citizens**
- **Employment-related measures**
- **Additional Social Security measures for self-employed workers**
- **Tax-related measures**



## MEASURES TO REDUCE COSTS FOR SMES AND SELF-EMPLOYED WORKERS

- **Application to defer rent in non-residential leases**

Within one month from the entry into force of Royal Decree-Law 15/2020, i.e. 23 April 2020, individuals or legal entities that rent property for use other than as a dwelling, as provided for in Article 3 of Law 29/1994 of 24 November on Urban Leases, or other than under an entire business lease, provided that they meet the requirements detailed below, may request from the lessor, if the lessor is a company, a public housing entity or is considered to be a large-scale owner, a moratorium on the payment of rent provided that they have not previously reached an agreement on a rent moratorium or reduction.

For these purposes, a person that owns more than 10 urban properties or a built-up area of more than 1,500 m<sup>2</sup> is regarded a large-scale owner.

The moratorium on rental payments, which must be accepted by the lessor, will be applied automatically and will affect the period of the state of emergency and the extensions thereto. Depending on the impact caused by the COVID-19 crisis, once the state of emergency has terminated it can be extended on a monthly basis up to a maximum of four months.

The payment of rent will be deferred, as from the following monthly rental payment, by allocating the rental payments over a period of two years calculated from the termination date of the moratorium, and in all cases within the term of the lease agreement or any extensions thereto. The rent deferral will not entail any penalty or interest.

Likewise, within one month of the entry into force of Royal Decree Law 15/2020, individuals or legal entities that rent property for use other than as a dwelling or an entire business lease, when the lessor is not a company, public housing entity or large-scale owner, and provided that they meet the requirements of the Royal Decree, may also request a temporary and extraordinary deferral of the payment of rent from the lessor, provided that no rent deferral or reduction been voluntarily agreed.

- **Authorisation to utilise the guarantee deposit**

Within the deferral agreed by the parties, Royal Decree Law 15/2020 authorises the parties to utilise the guarantee deposit agreed by them in order to apply it to the total or partial payment of the monthly rent. If the guarantee deposit is utilised, the lessee must replace the amount concerned within one year from the execution date of the agreement or within the remaining term of the contract if this is less than one year.



- **Beneficiaries of the exceptional measures**

The exceptional measures referred to above may be applied by self-employed lessees of properties used in their business activities who, on the date of the declaration of the state of emergency under Royal Decree 463/2020 of 14 March, were registered under the Special Social Security Scheme for Self-Employed Workers or the Special Social Security Scheme for Seafarers, or one of the mutual benefit funds replacing the special self-employed scheme.

Similarly, SMEs that lease properties used for their business activities may also apply these measures provided that they do not exceed the following limits: (i) total assets do not exceed four million euros, (ii) annual revenue does not exceed eight million euros, (iii) the average number of employees during the previous financial year does not exceed fifty.

- **Beneficiary requirements**

Self-employed workers and SMEs that may benefit from the exceptional measures must meet the following requirements:

- ^ Their business activity has been suspended as a result of the entry into force of the aforementioned Royal Decree 463/2020 relating to the declaration of the state of emergency or by another order issued by the competent authority under Royal Decree 463/2020.
- ^ In the case of activities that have not been directly suspended under the Royal Decree on the declaration of the state of emergency, they must provide evidence of a reduction of at least 75% in their income in the calendar month prior to that in which the deferral is requested in relation to the average monthly income for the quarter in which said month was included in the preceding year.

- **Proof of requirements**

The lessee must provide the lessor with proof that the above requirements have been met as follows:

- ^ In the case of suspended activities, the suspension must be supported by a certificate issued by the Tax Administration State Agency or the competent body of the relevant Autonomous Region, on the basis of the declaration of cessation of activity reported by the interested party.
- ^ For its part, the reduction in business activity will be initially evidenced by presenting a signed statement recording the reduction of at least a 75% in income with respect to the monthly average income in the quarter to which that month belongs in the preceding year.



- **Liability**

Lessees who have benefited from the above rent deferral without meeting the required conditions, notwithstanding any other liability they may incur, will be liable for the damage caused and for all the expenses arising from the application of the aforementioned exceptional measures

## **TEMPORARY RELAXATION OF THE USE OF THE COOPERATIVE EDUCATION AND PROMOTION FUND**

- During the state of emergency, the Cooperative Education and Promotion Fund (Article 56 of the Law on Cooperatives) may be fully or partially used for the following purposes:

- △ To provide the cooperative with the necessary liquidity for its operation; in this case, the Fund must be fully replenished through the contribution, by the Cooperative, of 30% of the freely available earnings generated each year until the fund is fully restored, within a maximum period of 10 years.

- △ Any activity aimed at curbing the health crisis or alleviating its effects.

- While the state of emergency is in effect, the Governing Body will be authorised to utilise the Cooperative Education and Promotion Fund for the actions referred to above, whenever a meeting of the General Assembly cannot be convened by virtual means.

The authority to utilise the Fund may be extended until 31 December 2020 when the General Assembly is still to be held by virtual means and this is not possible due to a lack of resources.

- For these purposes only, the Fund that has been applied as a measure for obtaining liquidity will not be considered as income for the Cooperative.

## **EXTRAORDINARY MEASURE TO EXTEND THE PERIOD PROVIDED FOR IN ARTICLE 1.2.b OF LAW 44/2015 OF 14 OCTOBER, ON WORKER-OWNED COMPANIES**

In order for a public limited company (S.A.) or private limited company (S.L.) to be classified as a worker-owned company, the 36 month period in which employee-shareholders must comply with the limits required by a worker-owned company is extended by 12 months.



This extraordinary extension will only be applicable to companies incorporated during 2017

## **CONSUMER PROTECTION MEASURES**

### **1. Pension plans (Article 23)**

Vested rights can be enforced exceptionally for pension plans referred to in Additional Provision 20 of Royal Decree-Law 11/2020 of 31 March by plan participants:

- (i) In the individual and associated system;
- (ii) In the defined contribution or mixed employment system for contingencies defined in the defined contribution scheme; and
- (iii) In the defined benefit or mixed employment system for contingencies defined in the defined benefit scheme or linked to it, in the event that they are affected by temporary lay-off proceedings, the suspension of public opening of establishments or the cessation of activity due to COVID-19, when permitted by the pension commitment and provided for in the plan specifications.

Article 23.2 of the RDL analysed herein details the documentation to be presented in order to attest to the application for this measure, in accordance with the criteria of Article 1 of Additional Provision 20 of RDL 11/2020, the applicant being responsible for its veracity and the accuracy of the quantification of the relevant amount.

The duly supported amount notified to the fund manager will be subject to the maximum limit of the lower of the two amounts referred to in Article 23.3 of the RDL under consideration.

The reimbursement term lasts from a maximum of 7 business days for the individual and associated plans up to 30 business days for the employment plan, as from the submission of the complete supporting documentation.

The above will also apply to the insured parties of (i) insured pension plans, (ii) company social welfare plans and (iii) mutual benefit funds (unless they act as an alternative system to registration in the Special Social Security Scheme for Self-Employed Workers), as referred to in Article 51 of Law 35/2006 of 28 November on Personal Income Tax.

All of the above is subject to future amendment by Royal Decree.

### **2. Legal unemployment status due to the termination of employment in a trial period during the state of emergency (Article 22)**



In those cases where the termination is at the company's initiative and took place after 9 March 2020, it will be considered as a legal unemployment situation irrespective of the grounds for the termination of the existing employment relationship. The above will also apply to workers who voluntarily terminated their last employment relationship after 1 March 2020 because they had a firm commitment to conclude an employment contract from another company, if the latter has withdrawn from the contract due to the crisis resulting from COVID-19.

This will be accredited by means of written communication from the company to the worker withdrawing from the previously agreed employment contract as a result of the crisis derived from COVID 19.

## **EMPLOYMENT-RELATED MEASURES**

1. **Distance working and the right to adapt timetables and reduce working hours (now the “MECUIDA Plan”).**

The period established in Articles 5 and 6 of RDL 8/2020 is extended until two months after the time limit envisaged in Final Provision 10.1 of RDL 8/2020, amended by Final Provision 1.17 of RDL 11/2020 (which, to date, was one month after the end of the state of emergency).

2. **Change in the exceptional measures relating to the procedures for the suspension of contracts and reduction of working hours due to force majeure under RDL 8/2020 relating to activities that must be maintained.**

In relation to the activities that must be maintained in accordance with the declaration of the state of emergency, other legal regulations or the instructions issued by delegated authorities under Article 4 of RD 463/2020 of 14 March, a second paragraph is added that amends Article 22.1 of RDL 8/2020, according to which the force majeure described in the first paragraph shall be understood to occur with respect to the suspension of contracts and reductions in working hours applicable to the part of the activity not affected by the aforementioned conditions for the maintenance of the business activity.

3. **Amendment of the extraordinary measures concerning unemployment protection under the procedures referred to in Articles 22 and 23 of RDL 8/2020 on unemployment benefits received by permanent but discontinuous workers and by workers performing fixed periodic work that is repeated at certain times of the year.**

Article 25.6 of RDL 8/2020 has been amended such that four different cases are now distinguished according to the circumstances of each case:



- (i) When a company suspends an employment contract or reduces the working day as a result of the procedures regulated in Articles 22 and 23 of RDL 8/2020, the workers affected may benefit from the measures provided for in paragraph 1 of the above-mentioned Article 25.

The same measure applies to workers who are currently inactive because they are waiting for the date on which they would be contacted and would return to work, were it not for the health crisis.

- (ii) Those whose provision of services is interrupted and who therefore become beneficiaries of unemployment benefit continue to qualify for the measure envisaged before said amendment and may therefore receive it again, subject to a limit of 90 days, when they become legally unemployed again.

- (iii) Workers who provide evidence that, as a result of the COVID-19 crisis, they were unable to return to their employment on the date scheduled and were receiving benefits at that time will not have their entitlement to the benefit or subsidy they were receiving suspended.

If at that time they were not receiving unemployment benefit as their entitlement was completely used up, but can prove that they have paid contributions for the period required to obtain a new contributory benefit, the company's certificate of the impossibility of their reinstatement will constitute a legal situation of unemployment for the recognition of their right to said benefit under the conditions of paragraph (ii).

- (iv) Workers whose activity has been interrupted and those who have not been able to return to their jobs as a result of COVID-19 and who have not paid contributions for long enough to be able to obtain unemployment benefit will be entitled to a new contributory benefit subject to a maximum limit of 90 days.

The same entitlement will be available to workers who exhaust their unemployment benefit before the date on which they take up their employment and have not paid sufficient contributions to qualify for a new entitlement, in which case the employer's certificate of the impossibility of their reinstatement will constitute a new legal situation of unemployment, although paragraph (ii) will not apply to them.

#### **4. Suspension of deadlines in Labour and Social Security Inspections.**

In accordance with Additional Provision 2, the duration of the state of emergency and the extensions thereto will not be taken into account for the purposes of calculating the duration of inspection proceedings by the Labour and Social Security Inspectorate or the deadlines set by the officials of the Labour and Social Security Inspection System for the fulfilment of any requirements, except those derived from situations closely linked to the state of emergency, or by reason of their seriousness or urgency.



The limitation period for actions to claim liability under Social Security and employment regulations is also suspended.

The time limits relating to the procedures for imposing penalties due to the nonfulfilment of employment legislation and for Social Security contribution settlement proceedings are covered by the suspension of administrative time limits provided for in Additional Provision 3 of the Royal Decree on the state of emergency.

**5. Amendment of the consolidated text of the Law on Labour-related Infractions and Penalties approved by Legislative Royal Decree 5/2000 of 4 August.**

Article 23.1.(c) is amended such that it will be a very serious offence to make statements or to provide, communicate or record information that is false or inaccurate and that result in workers unduly obtaining or enjoying benefits.

Paragraph 2 of said Article is also amended in the sense that it will be the “enterprise” that commits an offence (instead of the “employer”) for each of the workers who have fraudulently applied for, obtained or enjoyed Social Security benefits, and it will be the enterprise (not the “employer”) that will be jointly and severally liable for the offences indicated in paragraphs a), c) and e) of said Article.

Finally, a new paragraph 3 is added to Article 44, whereby, in the event of the infringement provided for in Article 23.1.(c), the enterprise will be directly liable for the reimbursement of the amounts unduly received by the worker, provided that there is no wilful intent or negligence on their part.

**6. Amendment of Additional Provision 2 of Royal Decree Law 9/2020 of 24 March adopting complementary measures in the employment area to alleviate the effects of COVID-19.**

The System of penalties and reimbursement of incorrectly paid benefits has been amended in accordance with the changes described in paragraph 5) above regarding Article 23.1.c) of the Law on Labour-related Infractions and Penalties.

Paragraph 2 establishes that the incorrect recognition of benefits for an employee for reasons not attributable thereto as a result of any of the infractions provided for in the previous paragraph will result in the reimbursement of the incorrectly generated benefits to the administrative entity.



In addition, the worker will retain the right to his/her salary for the initially authorised temporary lay-off period, discounting the amounts that would have been received as unemployment benefit.

**7. Amendment to Article 35 of Royal Decree-Law 11/2020 of 31 March adopting complementary urgent measures in the employment and economic areas to combat COVID -19.**

Two further specific conditions are provided for with respect to the deferral of Social Security liabilities:

- (i) They will be authorised means of a single resolution irrespective of the months involved and will be amortised in monthly instalments over a period of 4 months for each monthly payment applied for, starting from the month following that in which the resolution was issued, not exceeding a total of 12 monthly payments.
- (ii) The application for the deferral will trigger the suspension of any collection proceedings in respect of the liabilities concerned and the debtor will be considered to be up to date with its Social Security obligations until the relevant decision is taken.

Furthermore, the deferral will be incompatible with the moratorium regulated in Article 34 RDL 11/2020.

## **ADDITIONAL SOCIAL SECURITY MEASURES FOR SELF-EMPLOYED WORKERS**

Under Royal Decree-Law 15/2020 of 21 April, published in the Official State Gazette on 22 April 2020, the Central Government has laid down various measures to transfer management of the extraordinary benefit for the self-employed due to the cessation of their activities to the mutual benefit funds that collaborate with the Social Security.

The new measures to support the self-employed are as follows:

- **Possibility of opting for a collaborating mutual benefit fund for the extraordinary benefit due to the cessation of activity.**

Self-employed workers who did not exercise the option to arrange their coverage for professional contingencies, temporary incapacity and cessation of activity with a mutual benefit fund collaborating with the Social Security in accordance with Article 83.1b) of the revised General Social Security Act (TRLGSS), or the option for a mutual benefit fund in



accordance with Article 17.7 RDL 8/2020 of 17 March, must exercise the option and sign the relevant adhesion document in order to be entitled to the benefit in the following terms:

- Λ **Term:** Three months after the end of the state of emergency.
- Λ **Effects of the option:** From the first day of the second month following the end of the above-mentioned 3-month period.

If the period for exercising the option elapses without the self-employed worker having formalised the adhesion document, it will be understood that he/she has chosen the mutual benefit fund with the largest number of self-employed members in their province of residence. The collaborating mutual benefit fund will notify the self-employed worker of membership, indicating the effective date and coverage for the protected contingencies.

- **Effects on the temporary incapacity on the collaborating mutual fund option**

The collaborating mutual benefit fund chosen by the self-employed worker in accordance with the above will assume the following benefits:

- Λ Protection and responsibility for payment of the extraordinary benefit due to cessation of activity.
- Λ Benefits derived from the contingencies for which the coverage has been arranged, including temporary disability benefit when the relevant medical leave is granted after the date of formalisation of the protection by said mutual benefit fund and derives from a relapse of a previous temporary disability process covered with the administrative entity.

The administrative entity will be responsible for the payment of the benefits derived from the processes that are in progress at the time of the formalisation of the protection.

- **Amendment of Royal Decree-Law 8/2020 of 17 March**

As a result of the adoption of Royal Decree Law 15/2020, Article 17.7 of Royal Decree Law 8/2020 of 17 March, among others, has been amended.

The main changes are:

- a) Management of this accessory benefit will be the responsibility of the mutual benefit funds that collaborate with the Social Security or the Navy Social Institute.
- b) Self-employed workers who have not exercised the option provided for in Article 83.1b) of the TRLGSS must, in order to be entitled to this benefit, submit their application to a mutual benefit fund collaborating with the Social Security together with the formalisation of their membership of said fund.



- c) The Social Security Treasury Department will take note of these options based on the notifications it receives from the collaborating mutual benefit funds concerning the recognition of extraordinary benefits.

## **TAX-RELATED MEASURES**

### **1. VAT rates**

A 0% rate is laid down for intra-Community supplies, imports and acquisitions of medical equipment listed in the Appendix to the Decree.

They will be documented in invoices as if exempt transactions were involved, with the following characteristics:

- Transactions carried out between 23 April and 31 July of that year.
- The recipients must be public law entities, clinics or hospital centres, or private welfare entities.

The tax rate applicable to the supply of electronic books, magazines and newspapers which, like those in paper form, do not mainly contain advertising, is reduced from 21% to 4%, while the percentage of revenue that the advertising must provide to the publisher in order for the general rate to be applicable is increased from 75% to 90%.

**2. In relation to payments of advance corporate income tax, the option is offered of changing the calculation method from a percentage of tax payable to a percentage of the taxable base. This option will only relate to CIT instalment payments for periods commencing in 2020.**

- **Micro-SME instalment payments:** taxpayers with a volume of operations not exceeding €600,000 euros and which do not pay CIT or VAT under the tax consolidation schemes may opt to make the first instalment payment for FY 2020 under the percentage of the taxable base system for the months that have elapsed in the financial year - from January to March if the financial year coincides with the calendar year - if they submit form 202 by 20 May under this system.
- **SME instalment payments:** for taxpayers with a volume of operations not exceeding €6,000,000 that have not been able to opt for the change in system like micro-SMEs and which do not pay tax under the special group scheme in this tax may change to the percentage of the taxable base option but in the second instalment payment for the financial year; naturally, the instalment payment made in P1 is deductible in this payment.



They will thus be able to recover, at least partially, the excess tax paid in advance that may have occurred in P1.

- Instalment payments for companies with a volume of operations exceeding €6,000,000 – no change.

### 3. Objective estimate of personal income tax and special VAT and IGIC schemes

The flat-rate scheme may be tacitly waived, by presenting the first quarter instalment payment within the deadline extended to 20 May calculated using the direct evaluation method (in principle simplified). As no further indications are given, businesses that opt for this change must be able to evidence the income and expenses taken into account for calculating the payment on account and must keep the corresponding records.

By way of exception, it is stipulated that the waiver of the module system will only be effective for 2020 and not for three years. Taxpayers who so wish may again calculate net income by module in 2021, revoking the waiver for the present year in December 2020 or by making the first instalment payment of 2021 using this system.

The same applies to VAT and IGIC in respect of the waiver and revocation of the relevant special schemes.

Likewise, taxpayers liable to personal income tax who carry out the activities listed in Appendix II of Order HAC/1164/2019 and calculate net income using the flat-rate scheme and persons liable to VAT under the simplified system, who do not wish to waive modules, when calculating the instalment payment and the payment on account based on the base data for FY 2020, respectively, they will not have to calculate the calendar days of the quarter in which the state of emergency was applicable as days on which their business activity was being exercised.

Specifically, 18 days will not be included in the first quarter.

### 4.- Non-commencement of the enforcement period for liabilities under the jurisdiction of the State Tax Administration

If a tax self-assessment is submitted during the relevant filing period which ends between 20 April and 30 May without the tax payment being made, the enforcement period - which would entail the imposing of a penalty charge - will not commence if the following requirements are met (failure to comply with any of them would entail the commencement of the enforcement period on the day following the end of the voluntary filing period):

- The self-assessment is submitted on time.
- The taxpayer has applied, during the voluntary self-assessment filing period, for a loan guaranteed by the Ministry of Economic Affairs and Digital Transformation - Art. 29 RD-Law 8/2020 - at least for the amount of the payments to be made under said self-assessments.



- Submission of a certificate issued by the financial institution supporting said application within a maximum of 5 days from the end of the filing period. In the case of self-assessments filed before 23 April, even if the enforcement period has already started, they will still be regarded as being within the voluntary period if the certificate is submitted by 30 April, and the financing is obtained and the liabilities are paid within one month at most following the deadline for filing the self-assessment.
- The financing is granted at least for the amount of the tax liabilities.
- These tax liabilities are paid within one month at most of the deadline for filing the self-assessment.

## 5. Deferral of liabilities in port-related matters

Following an application to the port authorities, deferrals of port charges accrued from 13 March to 30 June may be granted without any security for a maximum of six months, without the requirement for any security and without any interest.

## 6. Exceptional availability of social welfare systems

The possibility, established in RD-Law 11/2020, of extending the options for receiving benefits under different social welfare systems by increasing the contingencies for which the vested rights under these systems can be exercised, has been further developed. For example, the means of evidencing the circumstances under which plans can be utilised, the time and circumstances under which they can be exercised, and the maximum amount available, are regulated.

## 7. Extension of deadlines under tax regulations

The extension of certain deadlines until 30 April or 20 May 2020, as provided in Article 33 of RD-Law 8/2020 and in additional provisions 8 and 9 of RD-law 11/2020, is shifted to 30 May.

In summary, in the areas of Central government taxation, the Autonomous Regions and local authorities, this implies the following:

- Deadline for payment of liabilities assessed by the Administration, whether in the voluntary period or under enforcement proceedings, notified before or after 14 March: the deadline is moved to 30 May, unless the notification expires after that date.
- Deadlines for deferral agreements notified before or after 14 March: the deadline will be 30 May unless the notification expires after that date.
- Deadlines for presenting allegations, responding to demands, etc., notified before or after March 14: the deadline will be May 30, unless the notification expires after that date.
- The administration may not enforce guarantees on real estate between 14 March and 30 May



- With respect to the maximum duration of the procedures for the application of tax-related penalties and revisions, the period between 14 March and 30 May will not be taken into account.
- Prescription and expiration periods are suspended between 14 March and 30 May.
- The maximum period for executing economic-administrative rulings will not include the period 14 March - 30 May.
- The term for filing administrative appeals or claims will commence as from 30 May.
- 30 May will be the deadline for dealing with requests for information issued by the directorate general for the land register, as well as for presenting allegations, for notifications received before or after 14 March, unless the notified deadline falls after that date.
- The deadlines related to property auctions are also extended to 30 May and the exercising of rights by bidders and awardees in alienation procedures carried out by Tax Administration has been adapted to the extension of the deadlines; therefore bidders may request the cancellation of their bids and the release of their bonds, and, where appropriate, the price of the award paid, provided that, with respect to awardees, the awarding of the property has not been certified and the relevant deed of sale has not been notarised.

The full text of Royal Decree-Law 15/2020 may be consulted at the following link:

<https://www.boe.es/buscar/pdf/2020/BOE-A-2020-4554-consolidado.pdf>

**We will continue to inform you of any new socio-economic measures and/or changes in legislation that may arise as a result of the COVID-19 pandemic.**

Yours sincerely,  
**AUDICONSULTORES**

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