



Sixth package of economic and social measures introduced in response to COVID-19

(Royal Decree-Law 11/2020)

Alert



April 2020

—

kpmgabogados.es

kpmg.es

Sixth package of economic and social measures introduced in response to COVID-19 (Royal Decree-Law 11/2020).

Royal Decree-Law 11/2020 of 31 March 2020, introducing supplementary urgent economic and social measures to address the impact of COVID-19

(hereinafter Royal Decree-Law 11/2020) was published in the Official State Gazette on 1 April 2020 and entered into force the next day, 2 April 2020, with the exception of the measures concerning restrictions on the commercial communications of gaming entities, which entered into force on 3 April 2020.

Broken down by area, the key economic measures of most practical interest to Spanish companies envisaged in Royal Decree-Law 11/2020 are as follows:

- A **prohibition on evictions** for six months as from the entry into force of the state of emergency, with a moratorium on rental payments in respect of main residences in the case of vulnerable groups.
- **Broadening of the scope of the moratorium on mortgage payments to include self-employed workers, traders and professionals** with respect to properties used for their economic activity and natural persons leasing properties for which they do not receive the rent.
- Broadening of the scope of the moratorium to non-mortgage credits and loans of individuals in a vulnerable financial position, including **consumer credit**.
- **Ability to draw down on pension schemes** in the event of unemployment or discontinuation of activity owing to the health emergency triggered by COVID-19.
- Authorisation for social security to grant **moratoria in respect of the contributions** of companies and the self-employed, with a deferral on the payment of debts until 30 June.
- Reinforcement of the right of consumers to suspend and rescind contracts, with the introduction of measures to ensure basic supplies.
- As regards **taxation**, particularly worthy of note are the extension of the deadline for filing appeals for reconsideration or administrative claims, the more flexible approach to the

deferral of debts arising in respect of customs declarations for SMEs and the self-employed and the broadening of the scope of application of measures to toll statutory deadlines for tax procedures (art 33 of RDL 8/2020) to the autonomous regions and local authorities.

Generally speaking, the measures envisaged in Royal Decree-Law 11/2020 will remain in force for one month after the end of the state of emergency. Nonetheless, measures with a fixed term shall be valid for the established term.

We set out below, grouped by area, the main aspects regulated by the above Royal Decree-Law 11/2020.

Tax measures

- **Broadening of the scope of application of measures to toll statutory deadlines for tax procedures to the autonomous regions and local authorities.**

The tolling of deadlines for tax formalities provided for in article 33 of Royal Decree-Law 8/2020 shall apply to the actions, formalities and procedures governed by the GTL and its implementing regulations where these are **conducted and processed by the tax authorities of the autonomous regions and local authorities** and, in the case of local authorities, to actions, formalities and procedures governed by the Revised Local Finances Law.

This shall also apply to procedures already being processed **prior to 18 March 2020** - the date of entry into force of Royal Decree-law 8/2020.

- **Extension of the statutory period for filing appeals for reconsideration and administrative claims.**

From 14 March 2020 through 30 April 2020, the statutory period for filing appeals for reconsideration and administrative claims in relation to taxes - both those governed by the GTL and its implementing regulations and those regulated in the Revised Local Finances Law (RLFL)- **shall start running from 30 April 2020.** This applies both:

- where the statutory one-month period for filing appeals as from the day after service of the contested decision or resolution had started running and not yet ended on 13 March 2020; and
- where the administrative decision or resolution subject to appeal or claim had yet to be served.

As regards the period for filing submissions, this is extended until 30 April where it had not ended by 18 March 2020, or until 20 May at the earliest where notice of the formality was served after 18 March 2020.

- **Application of the extension of statutory periods envisaged in Royal Decree-Law 8/2020 to specific procedures and acts.**

Royal Decree-Law 8/2020 established that the period running from 18 March 2020 through 30 April 2020 would not be factored in for the purposes of calculating the maximum duration of tax enforcement, penalty and review proceedings conducted by the STA, or procedures commenced on an ex officio basis by the Directorate-General of the Cadastral Register.

Royal Decree-Law 11/2020 further provides in this regard that:

- The period running from 14 March 2020 through 30 April 2020 shall not be factored in for the purposes of the maximum **term for enforcement of the decisions of economic-administrative bodies.**
- The **statute of limitations and time-barring** of actions and rights provided for in tax legislation is suspended from 14 March 2020 through 30 April 2020.

- The above applies to actions, formalities and procedures governed by the GTL and its implementing regulations where they are **conducted and processed by the tax authorities of the autonomous regions and local authorities** and, in the case of local authorities, to actions, formalities and procedures governed by the Revised Local Finances Law.

- The extensions of deadlines for paying the tax debts provided for in the above article 33 of the RDL 8/2020 applies to other public appeals.

- **Flexible approach to the deferral of debts deriving from customs declarations for SMEs and the self-employed**

Payment of customs and tax debts corresponding to returns filed between 2 April and 30 May 2020, inclusive, may be deferred provided the applications filed up to that date amount to less than Euros 30,000 and the amount of the debt to be deferred exceeds Euros 100.

The above does not apply to VAT charges in respect of imports of goods under article 167.Two.2 of the VAT Law.

The following conditions must be met in order to apply for this deferral:

- It must be requested in the customs declaration itself.
- The guarantee furnished to secure the release of the goods must be valid for the purposes of obtaining the deferral.
- To be eligible for the deferral the recipient of the imported goods must be a natural or legal person with a volume of business not exceeding Euros 6,010,121.04 in 2019.
- The terms of deferral are as follows: (i) the deferral will be granted for a period of six months (ii) late-payment interest shall not accrue for the first 3 months of the deferral.

- **Exemption of deeds formalising the novation of mortgage loans and credits from the progressive stamp duty fee for notarial documents**

Final provision one of Royal Decree-Law 8/2020 declared deeds formalising the novation of mortgage loan and credit agreements executed in line with such Royal Decree-Law exempt from the progressive stamp duty fee for notarial documents.

Royal Decree-Law 11/2020 qualifies this provision so that for such deeds to qualify for the exemption they must be executed in one of the scenarios for the moratorium on mortgages for the acquisition of a main residence regulated in articles 7 through 16 of Royal Decree-Law 8/2020.

Measures aimed at supporting the most vulnerable tenants

- **Suspension of dispossession and eviction procedures in the case of vulnerable households with no alternative accommodation**

Evictions involving vulnerable households with no alternative accommodation are suspended for six months as from the entry into force of this Royal Decree-Law 11/2020 (i.e. until 2 October 2020) where such tenants have been negatively affected by the COVID-19 crisis.

- **Extraordinary extension of leases in respect of main residences**

An extraordinary extension of leases in respect of main residences is provided for where their mandatory or tacit renewal date falls within the two months following the end of the state of emergency. This extension, which is subject to a request by the tenant, shall apply for six months, during which time the terms and conditions of the contract in force shall remain unchanged. This request for an extraordinary extension must be accepted by the lessor, unless alternative terms and conditions are agreed upon between the parties.

- **Moratorium on debts in respect of rent payments**

A limited-scope moratorium is envisaged for rent debts owed in respect of **main residences** by

vulnerable tenants, as defined in Royal Decree-Law 11/2020 itself, and subject to the conditions concerning evidence also set out therein. The following options are available, depending on lessor type:

- Where the **lessor is a public housing company or enterprise or a natural or legal person considered a major property owner** (which is taken to mean owners of more than ten urban properties, including garages and store rooms, or a surface area exceeding 1,500m²), including the Social Housing Fund of financial institutions, the lessee may request a temporary extraordinary deferral of rental payments, provided another deferral or full or partial forgiveness of debt has not already been arranged voluntarily by agreement between the parties.

Where no such agreement has been reached, the lessor shall expressly notify the lessee of its decision within a maximum of 7 business days, opting for either a **50% reduction in the rent**; or a **moratorium on payment** of the rent, to be applied automatically.

Both alternatives shall remain in force for the duration of the state of emergency and for subsequent monthly payments where such period is insufficient in view of the vulnerability caused by COVID-19, subject to a maximum period of **four months** in all cases. Once the above situation has come to an end, where a moratorium was opted for, the tenant shall repay the rent payment or payments not made over a period of no more than three years and always during the term of the lease, and no penalties or interest may be applied in this respect.

Where the **lessor of the main residence is not a public housing company or enterprise or a major property owner** and the lessee can evidence that it qualifies as vulnerable, the tenant may request a deferral or the full or partial forgiveness of its rent payments. The lessor shall have 7 days to accept, propose an alternative to or reject such requests.

- For cases where no agreement is reached, Royal Decree-Law 11/2020 envisages a **line of state-funded guarantees to cover tenants** left in a situation of social and

financial vulnerability by the expansion of COVID-19, whereby tenants are to have access to a programme of transitional zero-cost financing backed by the State. Tenants may request a specific-purpose credit for up to 6 months' rent, repayable over a maximum of ten years. No interest will accrue on this credit, to be granted by credit institutions and backed by the State through the Official Credit Institute (ICO), which will sign the relevant agreement with the Ministry of Transport, Mobility and the Urban Agenda.

- **Direct subsidies**

A new **subsidies programme** is introduced, designed to help minimise the economic and social impact of COVID-19 on leases of **main residences**.

It should be noted that persons owning additional residences in Spain will not be considered to meet the requirements to be deemed in a situation of financial vulnerability due to COVID-19.

Developments concerning the moratorium on mortgage payments

It should be recalled that Royal Decree-Law 8/2020 introduced detailed urgent measures aimed at **protecting vulnerable mortgage holders** and **preventing the enforcement of mortgage debts** and loss of homes in the case of mortgage holders covered by the moratorium. Royal Decree Law 11/2020 takes these measures one step further, introducing, inter alia, the following changes:

- The **stay on enforcement is set at 3 months**.
- The definition of financial vulnerability required to access these benefits is further developed, and this state of affairs may be demonstrated by means of submission of a **solemn declaration**.
- The moratorium on mortgage debts initially envisaged for the main residence of natural persons is now extended to cover **two new groups of mortgage holders**: (i) certain self-employed workers, traders and professionals, in respect of the properties used for their economic activity, and (ii) natural persons who have leased properties for which they do not receive rent due to the implementation of measures introduced to help lessees affected by the state of emergency.

- Moreover, this Royal Decree-Law 11/2020 **broadens the scope of the moratorium to the non-mortgage credits and loans** held by persons in a situation of financial vulnerability, including **consumer credits**.
- It also specifies that, where such a **moratorium is granted**, no interest whatsoever will accrue during the suspension period. Elsewhere, effectiveness of the suspension is not subject to an agreement between the parties, or any novation of contract, but it must be formalised in a public deed, which must be registered in the Property Register.
- Where the lender and borrower benefitting from the moratorium agree to a novation as a result of the amendment of the clauses of the contract, on contractual terms or conditions that go beyond a simple suspension, they must include, in addition to any other aspects agreed upon between the parties, the suspension of contractual obligations imposed by Royal Decree-Law 8/2020 and requested by the debtor, and the non-accrual of interest for the duration of the suspension.
- A specific oversight and penalty regime is provided for.

Ability to draw down on pension schemes in the event of unemployment or discontinuation of activity

For the six-month period following the declaration of the state of emergency to address the health emergency triggered by COVID-19, **pension scheme participants may exceptionally exercise their vested rights**:

- Where they are **legally unemployed** due to furloughing as a result of the health emergency triggered by COVID-19. The amount of the vested rights available may not exceed the salary not earned for the duration of the above-mentioned furlough.
- Where the participant is the owner of an establishment temporarily prevented from opening to the public. The amount of the vested rights available may not exceed the estimated net income not received while temporarily prevented from opening to the public.

- In the case of self-employed workers previously registered as such for social security purposes who have discontinued their activity as a result of the health emergency triggered by COVID-19. The amount of the vested rights available may not exceed the estimated net income not received for the duration of the health emergency triggered by COVID-19.

Vested rights will be reimbursed upon request by the participant, subject to the **tax regime** envisaged for pension scheme benefits, i.e. **taxation of the full amount thereof as earned income**, whether such benefits are received in the form of income or capital, although in the latter case, a reduction of 40% may be applied for benefits deriving from contributions made until 31-12-2006, provided more than two years have elapsed between the date of the first contribution and the relevant contingency.

Restrictions on foreign investment in Spain

Two aspects of the regime set in place under Royal Decree-Law 8/2020, restricting foreign investment in strategic sectors, have been modified:

- First of all, with a view to preventing the acquisition of Spanish companies by foreign investors capitalising on the fall in value due to the impact of the global crisis unleashed by COVID-19, article 7 bis.1 of Law 19/2003 of 4 July 2003 has been amended, providing that **the suspension of the regime for the liberalisation of certain foreign direct investments in Spain now includes investments made by investors resident in European Union (EU) and European Free Trade Association (EFTA) countries, where such investors are controlled by entities resident elsewhere.**
- Meanwhile, a **streamlined procedure** has been set in place for the processing and resolution of certain applications for the prior authorisation of foreign investments in which: (i) evidence is provided, by any means permitted by law, of an agreement between the parties or a binding offer in which the (established or ascertainable) price had been set prior to the entry into force of the new article 7 bis of Law 19/2003; (ii) the relevant amount ranges between €1 million and €5 million.

Moreover, the need to secure prior authorisation for transactions falling below €1 million has temporarily been waived.

Lastly, the right of the Cabinet to lift the measure has been eliminated.

Corporate-commercial law-related developments

Royal Decree-Law 11/2020 sets out a series of provisions amending articles 40 and 41 of Royal Decree-Law 8/2020, on the functioning of the managing bodies and shareholders' meetings of legal entities, essentially with a view to clarifying the wording of such articles and resolving certain issues open to interpretation.

Developments concerning Social Security

- Moratoria on social security payments

The Social Security General Treasury is now entitled to grant six-month, interest-free moratoriums to any companies and self-employed workers registered for any social security regime that so request and that meet the requirements and conditions to be provided for by Ministerial Order.

- Deferral of social security debts

Provided no other deferrals are currently in force, companies and self-employed workers registered for any social security regime **may request the deferral of their social security debts where the relevant regulatory deadline falls between the months of April and June 2020**, subject to **0.5% interest** in lieu of the late-payment interest provided for in the Revised Social Security Law.

Developments concerning the self-employed (and sometimes the companies)

- Flexibilization of utilities contracts

During the state of emergency, self-employed workers and companies may **temporarily suspend their electricity or natural gas contracts or modify the relevant contract types without penalisation**, in order to bring them into line with current consumption. Access charges may also be changed, and the power contracted may be adjusted upwards or downwards, at no extra cost whatsoever. Once the state of emergency has been lifted, they will be entitled to further modification without cost or penalisation.

Electricity and natural gas traders and distributors of manufactured and channelled liquid petroleum gases **are exempt from payment of VAT, the Special Electricity Tax, where applicable, and the Special Tax on Hydrocarbons** in respect of any invoices for which payment has been suspended, until such time as the consumer has made full payment or six months have elapsed from the date on which the state of emergency is lifted.

- **Right to the discount rate**

Eligibility for the discount electricity rate has been broadened to include certain self-employed workers entitled to the extraordinary benefit for cessation of activity, where their activities have come to a halt or their income has fallen by more than 75%.

- **Adjustments to the extraordinary benefit for the discontinuation of activity**

The following adjustments have been made to the extraordinary benefit for discontinuation of activity:

- Special rules are now envisaged for self-employed workers pursuing any activities under 2009 National Economic Activity (CNAE) codes 9001 through 9004 and for seasonal agricultural producers.
- Any surcharges in the event of the late payment of contributions in March in the event of the suspension of activities are waived.
- The deadline for applications has been extended up until the last day of the month following the date on which the state of emergency is lifted.
- The method for evidencing the drop in billings required to be eligible for the benefit is now regulated.

- **New welfare benefits: domestic workers**

A temporary extraordinary benefit has been created for domestic workers registered for social security purposes whose working hours have been reduced or whose contracts have been terminated as a result of COVID-19, after 13 March 2020.

Employment measures

Royal Decree-Law 11/2020 also introduces new employment relations-related developments:

- A raft of extraordinary measures (furloughing being one noteworthy example) were introduced under Royal Decree-Law 8/2020, conditional on an undertaking on the part of employers to maintain jobs for a six-month period as from the date on which activity is resumed. Royal Decree-Law 11/2020 has now specified that the **undertaking to maintain jobs** will not be deemed to have been breached in the case of temporary contracts terminated on expiry of the agreed term, or completion of the work or services constituting the subject matter, or where the contracted activity cannot be pursued immediately (as may be the case, e.g., in the field of the **performing, musical, cinematographic and audio-visual arts**).
 - In any event, Royal Decree-Law 11/2020 also provides that all of the measures to make the mechanisms for temporarily adjusting activity more flexible in order to prevent dismissals (articles 22 to 28 of Royal Decree-Law 8/2020 of 17 March 2020), will apply to all workers, regardless of whether their contracts are fixed-term or permanent.
 - Moreover, a key change has been made to these extraordinary measures in the furloughing and working hours reduction processes due to force majeure in relation to COVID-19 provided for in Royal Decree-Law 8/2020 (ERTE), whereby such protection is extended to **procedures authorised or instituted prior to 18 March 2020**. Such measures are also deemed compatible with the receipt of the subsidy for the care of minors affected by cancer or other serious illnesses.
- A new **exceptional unemployment subsidy** has been set in place for workers on **fixed-term contracts** of at least 2 months that have been terminated after 13 March 2020, subsequent to the declaration of a state of emergency, and who have not reached the minimum contribution thresholds for receiving unemployment benefit.
- Exceptionally, where an entire municipality has been confined, workers who have to travel outside the municipality to provide essential services are entitled to temporary incapacity benefit, subject to the relevant certificate.

Consumer protection measures

- In this key area, Royal Decree-Law 11/2020 provides for the **right of consumers and users to rescind (without penalisation) any contracts for the sale and purchase of goods or the provision of services**, of an ongoing nature or otherwise, which cannot be performed as a result of the measures adopted in the declaration of a state of emergency, within 14 days. In this regard, the possibility of arranging alternative review proposals based on vouchers or coupons in lieu of repayment is also envisaged.
- Measures have been set in place to ensure the continuity of domestic energy and water supplies (main residence), and such supplies may not be suspended on any grounds other than safety-related grounds.

Measures to support industrialisation and the financing of businesses

- For a period of two and a half years, certain loans granted by the General Secretariat of Trade and SMEs (SGIPYME) may be refinanced. In the case of projects currently under way, a more flexible approach will be taken to assessing performance, at all times ensuring that the project goals are met.
- In this regard, guarantees for any new SGIPYME loans on which a decision is currently pending may be submitted once the state of emergency has been lifted and the grant decision has been made. Modifications to the repayment schedules for loans already granted for industrial projects may also be requested.
- Meanwhile, ICEX España Exportación e Inversiones is now entitled to reimburse any businesses that have incurred unrecoverable costs (in this or future editions) for any fees paid for participating in international trade fairs or other promotional initiatives staged by the entity, where such fairs or initiatives have been cancelled, seriously affected or postponed by the organiser as a result of COVID-19.

- Company and self-employed workers benefiting from credit facilities or loans granted by the autonomous regions and local entities in the public sector may apply for deferral of payment of the principal and/or interest payable for the remainder of 2020, provided the health crisis brought about by COVID-19 renders it difficult or impossible to make payment, subject to certain requirements and conditions.

Amendment of Collective Investment Undertakings Law 35/2003 of 4 November 2003

This law has been amended to expressly provide that the Spanish National Securities Market Commission (CNMV) may require that collective investment undertaking management companies take measures to shore up liquidity, and authorise repayment advance notice deadlines to enable the orderly and equitable management, in extreme cases, of potential scenarios entailing the accumulation of requests that may affect the stability of and trust in the financial system.

Amendment to Savings Banks and Banking Foundations Law 26/2013 of 27 December 2013

The divestment period envisaged for banking foundations with a majority stake in credit institutions has been extended by 2 years, subject to the creation of a special reserve fund.

Moreover, savings banks and banking foundations must now set aside a **reserve fund in addition** to those of their investee banks in order to cover any potential equity needs at the investee credit institution that cannot be covered by other funds, and which, in the opinion of the Bank of Spain, may pose a threat to compliance with their solvency-related obligations.

Contacts:

Francisco Uría
Partner
KPMG Abogados S.L.
Tel. +34 91 451 30 67
furia@kpmg.es

Alberto Estrelles
Partner
KPMG Abogados S.L.
Tel. +34 91 456 80 94
aestrelles@kpmg.es

KPMG Offices in Spain

A Coruña

Calle de la Fama, 1
15001 A Coruña
T: 981 21 82 41
Fax: 981 20 02 03

Alicante

Edificio Oficentro
Avda. Maisonnave, 19
03003 Alicante
T: 965 92 07 22
Fax: 965 22 75 00

Barcelona

Torre Realía
Plaça d'Europa, 41
08908 L'Hospitalet de Llobregat
Barcelona
T: 932 53 29 00
Fax: 932 80 49 16

Bilbao

Torre Iberdrola
Plaza Euskadi, 5
48009 Bilbao
T: 944 79 73 00
Fax: 944 15 29 67

Girona

Edifici Sèquia
Sèquia, 11
17001 Girona
T: 972 22 01 20
Fax: 972 22 22 45

Las Palmas de Gran Canaria

Edificio San Marcos
Dr. Verneau, 1
35001 Las Palmas de Gran Canaria
T: 928 33 23 04
Fax: 928 31 91 92

Madrid

Torre Cristal
Paseo de la Castellana, 259 C
28046 Madrid
T: 91 456 34 00
Fax: 91 456 59 39

Malaga

Larios, 3
29005 Málaga
T: 952 61 14 60
Fax: 952 30 53 42

Oviedo

Ventura Rodríguez, 2
33004 Oviedo
T: 985 27 69 28
Fax: 985 27 49 54

Palma de Mallorca.

Edifici Ca'n de Segura
Avda. del Comte de Sallent, 2
07003 Palma de Mallorca
T: 971 72 16 01
Fax: 971 72 58 09

Pamplona

Edificio Iruña Park
Arcadio M. Larraona, 1
31008 Pamplona
T: 948 17 14 08
Fax: 948 17 35 31

San Sebastián

Avenida de la Libertad, 17-19
20004 San Sebastián
T: 943 42 22 50
Fax: 943 42 42 62

Sevilla

Avda. de la Palmera, 28
41012 Sevilla
T: 954 93 46 46
Fax: 954 64 70 78

Valencia

Edificio Condes de Buñol
Isabel la Católica, 8
46004 Valencia
T: 963 53 40 92
Fax: 963 51 27 29

Vigo

Arenal, 18
36201 Vigo
T: 986 22 85 05
Fax: 986 43 85 65

Zaragoza

Centro Empresarial de Aragón
Avda. Gómez Laguna, 25
50009 Zaragoza
T: 976 45 81 33
Fax: 976 75 48 96