

ECIJA

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FAQs-II on New Spanish Government Measures

Labour and Employment, Tenancy Agreements,
Tax and Financial matters

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1 INTRODUCTION

Royal Decree-Law 11/2020, of March 31st, has added additional urgent measures to those adopted in the previous three weeks. As you may recall, those measures were summarized in our 'FAQs for Business in Spain' (FAQs-I) submitted on March 20th. We are hereby submitting an extended version of the previous document including the most recent updates on the most relevant new provisions affecting business operations.

2 LABOUR AND EMPLOYMENT

Has the Spanish government banned the right to dismissal of employees during the state of alarm?

No, what the Government has done through RD 9/2020 is to clarify that the force majeure causes arising from the current pandemic, as well as any economic, technical, organizational or productive causes arising therefrom, may not justify an objective dismissal.

Any dismissals invoking Covid19 as a cause will be deemed unfair.

The government considers that the adequate legal response to the loss of activity derived from the Covid19 is the temporal suspension or reduction of working time, based on the understanding that the causes related to Covid19 are circumstantial and temporary.

Under Spanish law, a dismissal declared unfair by a court entails the obligation for the employer to opt between readmitting the employee or paying a financial compensation equivalent to 33 days of salary for each year of service (45 days for years of service before February 2012).

What about the recoverable paid leave?

With the aim of limiting as far as possible the movement of people, to stop the pandemic's spread, the Spanish government has approved, on March 29th, another exceptional measure consisting of a mandatory paid leave, for the period between 30th March and 9th April (both included), the measure is applicable to all employees of companies not carrying out "non-essential" activities.

Just as in other paid leave situations, the employment contracts continue in force, the obligation of the company to pay salary for the employees on leave remaining. Nevertheless, the employees affected shall have to recover the working time for the period starting from termination of the State of Alarm until December 31st 2020. The schedule and terms of such recovery to be negotiated by the employees and the company.

Excluded from the mandatory paid leave are those employees currently working remotely or teleworking, as well as those whose employment contract is currently suspended as a consequence of an ERTE, or through any other cause of suspension (including sick leave, maternity leave etc.)



The law includes as an annex a list of activities considered “essential” for the purposes of this measure.

Has the government finally approved a deferral of social security payments?

Yes. Finally, on March 31st the government approved a measure allowing deferrals of payment of Social Security contributions due in-between April and June 2020. Deferment Applications must be filed to the Social Security General Treasury within in the first 10 calendar days of the month. The deferral triggers a late payment interest at a 0.5% rate. One requirement to benefit from such right is not having prior outstanding debts with the Social Security.

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3 TENANCY AGREEMENTS

Do the new measures adopted by the Spanish government on lease agreements apply to commercial leases?

No. The measures adopted by Royal Decree-Law of 31 March, in force as from 2 March 2020, do not apply to commercial leases. Furthermore, the new legislation is intended to protect tenants of dwellings used as a primary residence, which are in vulnerable situations, therefore it does not affect tourist or temporary rentals nor secondary residences.

What are the measures available to the eligible tenants?

Tenants qualified as vulnerable will be entitled to:

- a) Temporary moratorium on rent payment or a rent reduction, during the state of alarm and a certain period thereafter, depending on whether the relevant landlord is a large or small owner.
- b) Suspension of the eviction procedure for a maximum term of six months, that is, until 2 October 2020.
- c) Aids for payment of rent up to a maximum of €900 per month or to 100% of the rental, whichever is higher



- d) Microcredits, guaranteed by the State, without interest or commissions and repayable in six years (extendable for four years more). This Program is open to tenants in a vulnerability situation and also to those unable to pay the rent for their homes as a result of losing their jobs following the COVID-19 crisis. The measure also applies to those self-employed suffering a substantial drop in their incomes.

Who are the landlords affected by the rental payment moratorium?

The rental payment moratorium affects private large owners as well as public owned companies and entities. Private large owners are defined as owning ten or more dwellings or a built surface in excess of 1,500 sqm.

If requested by an eligible tenant, those landlords above must opt amongst the following options:

- (i) Granting a 50% rent reduction during the period of the state of alarm and for the monthly rents thereafter with a maximum of four months; or
- (ii) A moratorium for the payment of the rent during the state of the alarm and for the monthly rents thereafter with a maximum of four months. The rent will then be deferred during at least three years, through instalment payments free of interest.

For rental contracts with landlords other than the above, the eligible tenants may request a temporary rent payment moratorium. The Landlord, within a term of seven business days, will then notify the conditions of the moratorium or deferral accepted. If the landlord does not accept any of those measures, the eligible tenant will be entitled to the rental payment aids aforementioned.

Can an agreement be reached under different conditions than those set out in the Royal Decree 11/2020?

Yes. The provisions contained in Royal Decree-Law 11/2020 are dispositive, tenant and landlord are free to reach any other terms.

What about the lease agreements that come to expiry during the state of alarm or soon thereafter?

All lease agreements in force that are about to expiry may, at the request of the tenant, be automatically extended for a maximum of sixth additional months, during which the existing terms and conditions of the rental contract will continue to apply unless the parties agree otherwise.



Can eviction be enforced if the tenant is not paying the rent during the state of alarm?

No. The new measures adopted by Royal Decree-Law 11/2020 forbid the enforcement of eviction against eligible tenants unless the eviction suspension affects a vulnerable landlord, in which case the matter will be transfer to the social services for decision.

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4 TAX

Which are the main emergency tax measures included in the Royal Decree-Law 11/2020, of March 31st?

RD 11/2020 introduces a tax relief for small and medium-sized businesses and self-employed individuals. It mainly consists of a customs debt payment deferral from duties arising from customs tax returns.

1. Is it an automatic regime?

No, it is optional.

2. Who are the beneficiaries?

Small businesses, whose turnover for the year 2019 has been 6.010.121,04 euros as well as self-employed individuals. Importers who settle VAT on a monthly basis are excluded from the measure. This means all those businesses which are currently applying the REDEME.

3. Which debts are covered by this measure?

Debts amounting between 100 and 30.000 euros arising from tax returns whose filing deadline expires between March 2nd and May 30th 2020.

4. Can debts be deferred without a guarantee?

The guarantee provided for the customs clearance will be enough to grant of the deferral.



5. Which is the maximum deferral term?

Six months.

6. Does the deferral measure imply the accrual of late payment interest?

There is a partial relief. Interest will only accrue as from the third month of deferment. The first three months will be exempt from interest.

What other complementary measures have been granted?

1. As detailed in our previous FAQ, article 33 of the RDL 8/2020 approved measures extending terms in tax proceedings and in the settlement of debts from tax returns issued by the Tax Authorities. Now, RDL 11/2020 has extended those measures to tax proceedings regulated by General Tax Law 58/2003, its development regulation and Law Regulating Local Taxing 2/2004, handled by Autonomous Communities and Local entities.

2. In line with the above, RDL 11/2020 has extended the suspension of the statute of limitation and the statute of response to all actions and rights included in the tax regulation. This is also applicable to tax proceedings regulated by General Tax Law 58/2003, its development regulation and Law Regulating Local Taxing 2/2004, handled by any Tax Authority, including Autonomous Communities and Local entities.

3. Finally, the Government has extended the deadline to file tax and economic-administrative appeals. In this regard, from March 14th to April 30th 2020. The deadline to file tax and economic-administrative appeals will re-start on April 30th. This applies to:
 - Tax proceedings for which the deadline to respond started before the declaration of the State of Alarm.

 - Tax proceedings in all those cases in which the deadline to file the appeal has not been yet communicated.

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5 FINANCIAL MEASURES

Which are the financial measures adopted by the Spanish Government?

- A guarantee line of 100 billion euros under which the Ministry of Economy agrees to provide bank guarantees to companies and individuals to obtain credit facilities to meet their needs for liquidity.
- A 2 billion euros credit line to provide working capital for exporting companies covered by the Internationalization Risk Reserve Fund. This line is intended for certain small and medium-sized companies that have liquidity problems (but are not in a bankruptcy or pre-bankruptcy situation) due to the impact of the crisis generated by COVID-19. This coverage will be provided by CESCE.
- Increase of ICO financing lines for companies and self-employed workers.
- It is foreseen that the endowment of the Red Cervera Technical Provisions Fund and R+D+I projects will be used to cover the risks in which the Centre for Technological and Industrial Development may be involved by financing, through loans, R+D+I projects and small and medium-sized companies, as well as mid-cap companies.
- The scope of the Thomas Cook's line of financing is broadened to include certain economic sectors, mainly linked to the leisure, hotel and tourism industries.

How much is covered by the government guarantees?

This backing can be up to 80% of the loans and renewals made to SMEs and self-employed workers; for the rest of the companies, 70% of the loans and 60% on renewals. For the hotel sector and for touristic related facilities the backing would be of 50% of any credit facility.

What steps must be taken to apply for these governmental guaranteed credits?

Application is done through Banks who will require the customary information needed for ordinary financing. However, documents that vouch the financial damages caused by Covid-19 may be requested.

ICO, Instituto de Crédito Oficial, details on its [website](#), the main characteristics of its financing lines.

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