

‘State of alarm’: tax measures and situation following Royal Decree-law 11/2020

Adrián Boix Cortes

Lawyer at GA_P

Diego Martín-Abril y Calvo

Of Counsel at GA_P

Royal Decree-law 11/2020 of 31 March resolves some pending tax questions, maintaining the deadlines for filing self-assessments and information returns.

Royal Decree-law 11/2020, of 31 March, adopting urgent supplementary social and economic measures to deal with COVID-19 (hereinafter RDL 11/2020 or RDL) was published in the Official Journal of Spain of 1 April. Among other matters, said RDL addresses tax matters that were controversial in light of legislation passed beforehand.

Bearing in mind the numerous rules and regulations laid down to date, we believe it is a good idea to review the status of the tax measures adopted and attempt to clarify the current state of the most controversial ones or those that have been changed.

1. Deadlines for self-assessment filings and payments, tax returns and payments and information returns.

These deadlines have not changed, with the ordinary filing and payment rules continuing to apply.

If a taxpayer's exceptional situation prevents him or her from fulfilling such tax obligations, the specific case will need to be looked at to analyse the defence mechanisms that the law contains (particularly those related to force majeure).

2. Payment of VAT and Excise Duties (sole deferred payment).

The regulated electricity and natural gas suppliers and the distributors of manufactured gases and liquefied petroleum gases obtained by channelling are exempt from the payment of VAT and, where applicable, from the Electricity Tax and the Hydrocarbons Tax, corresponding to bills whose payment has been suspended (suspension relating to bill payments by freelancers under certain conditions). This is in accordance with Art. 44 RDL 11/20.

The obligation to pay these excise duties resumes when the consumer pays the bills in full, or as a deadline, when six months have passed from the end of the state of alarm.

After the state of alarm has finished, the amounts owed will be regularized in equal parts in the invoices issued by the electricity and natural gas companies as well as the distributors of manufactured gases and liquefied petroleum gases obtained by channelling, corresponding to invoice periods for the following six months.

3. Deferment of tax and customs debt.

Special rules of Art. 14 of Royal Decree-law 7/2020 in the sphere of national tax administration:

- Tax debt resulting from returns and self-assessments whose deadline for filing and payment ends on 13 March 2020 until 30 May 2020 is automatically deferred (not put on an instalment plan) without guarantees.
- Maximum cumulative limit for each debtor of €30,000.
- Applicable to the majority of tax debt and, specifically, given that until now it was not possible to defer, to debt related to (i) withholdings or payments on account; (ii) Value Added Tax (hereinafter VAT); and (iii) Corporate Income Tax instalment payments.
- Persons or entities may request with a turnover below €6,010,121.04 in 2019 may request a deferment.
- The maximum time limit will be six months, without accruing late payment interest during the first three months.

Art. 52 of RDL 11/20 lays down special deferment rules for customs and tax debt from filing a customs declaration, as follows:

- Automatic deferment (not an instalment plan) of tax and customs debt from customs declarations presented from 1 April 2020 until 30 May 2020.
- VAT tax debt is excluded when applying the deferment.
- Cumulative limit for each debtor of €30,000.
- Persons or entities may request with a turnover below €6,010,121.04 in 2019 may request a deferment.
- The maximum time limit will be six months, without accruing late payment interest during the first three months.
- The granting of guarantees is enforceable, while guarantees provided to obtain release of merchandise will be valid. This is without prejudice to the exceptional guarantee

waiver in accordance with Art. 112(3) of Regulation (EU) no. 953/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code.

4. Extended or suspended tax deadlines and procedures.

Art. 33(1) and (2) of Royal Decree-law 8/2020 of 17 March (hereinafter, RDL 8/2020) extended certain tax deadlines. Procedures that began to be calculated before 18 March 2020 and had not expired on that date were extended until 20 April 2020, while those from 18 March 2020 were extended to 20 May 2020. Said rules are the same after RDL 11/20.

In accordance with Art. 53 and the fifth transitional provision of RDL 11/20, this extension applies to tax proceedings with the Autonomous Communities and Local Authorities, effective for proceedings under way as of 18 March 2020.

The following **deadlines**, among others, **have been extended**:

- The deadline for payment in a voluntary period for tax payments and the period of payment for tax debt in an enforcement period;
- The expiration of deadlines and instalment plans;
- Deadlines to respond to petitions, requests for information, or to make representations, issued in tax application proceedings.

With regard to extended or suspended deadlines, parties liable for tax payments may initiate proceedings.

The following deadlines, among others, have not been extended (at least expressly):

- The deadline to make representations in tax complaints;
- The deadline to regard as notified an act made available to the taxpayer at the email address provided;
- The deadline to regard a tax payment from a settlement agreement as made and notified.

5. Calculation of the maximum duration of proceedings.

- Tax application (management, inspection and collection), sanctioning and review proceedings conducted by the national tax administration:

For the purposes of maximum duration, the period spanning 18 March 2020 until 30 April 2020 is not counted (RDL 8/2020)¹.

- Deadline to enforce the decisions of tax courts: the period spanning from 14 March 2020 to 30 April 2020 is not counted (para. 1 of Additional Provision Nine RDL 11/2020)².

¹ Extended to the same proceedings initiated by the Autonomous Communities and Local Authorities, effective for proceedings under way on 18 March 2020 (Art. 53 and transitional provision five of RDL 11/20), though the provisions of said regional or local administrations, where applicable, must be analysed.

² Also applying to tax proceedings with Autonomous Communities and Local Authorities (para.3 of Additional Provision Nine of RDL 11/20).

6. Tax limitation periods

The limitation periods of any actions and rights provided in tax legislation are suspended from 14 March 2020 until 30 April 2020, in accordance with para. 2 of additional provision nine of RDL 11/20³.

7. Deadlines for complaints and claims and validity of notification attempts.

For the purposes of the limitation period under Art. 66 of the Tax Act (abbrev. LGT), administrative reconsiderations and tax court proceedings, decisions rendered will be considered to have been notified with the intent of notification effected between 18 March and 30 April 2020^{4 5}.

After RD 11/20, tax complaints or claims are as follows:

- **Administrative considerations and tax claims.**

The time limit will begin to be counted from 30 April 2020, when the one-month time limit to file for an administrative reconsideration or file a tax claim that would have been initiated but not finished on 13 March 2020.

All this applies to complaints and claims governed by the LGT and its implementing regulations, as well as by the TRLHL.

There is no clarification as to the possibility to continue filing for considerations or filing claims within the one-month time limit under the LGT.

On the other hand, considering the latest decisions on timeliness of complaints and claims, it is advisable to consider 29 May 2020 the expiration date of the aforementioned one-month time limit.

- **Administrative complaints against decisions rendered in tax procedures (RDL 8/20).**

Art. 33(7) of RDL 8/20 contains a provision, which is not changed by RDL 11/20, nor does RDL 11/20 take precedence over it, with regard to the extension of the deadline "*to complain in the administrative track against decisions rendered in tax procedures*".

Thus, with regard to contesting decisions rendered in tax procedures, the provision is maintained that the one-month time limit to complain in the period spanning from 18 March to 20 April 2020 will begin on 1 May 2020.

Said provision from Art. 33(7) of RDL 8/20, regarding the time limit to make administrative complaints against decisions rendered in tax procedures affects the following methods of contest: ordinary administrative review, petition to quash, extraordinary administrative review for reconciliation of contradictory criteria, extraordinary appeals for reconciliation of contradictory decisions, second administrative review or any of the remaining extraordinary appeals under Arts. 216 *et*

³ This provision also applies to tax proceedings with Autonomous Communities and Local Authorities in accordance with para. 3 of Additional Provision Nine of RDL 11/20. In this regard, we understand that this provision takes precedence over and nullifies Art. 33(6) of RDL 8/20, which providing that the period spanning from 18 March 2020 to 30 April 2020, which was not counted for determining the maximum duration of the aforementioned proceedings, did not count for limitation periods. Additionally, said provision did not apply Autonomous Communities or Local Authorities, which also takes precedence as we have described.

⁴ It must be, in any case, a notification attempt validly effected, in accordance with the requirements from the general rules on general and tax notifications and not any other type of notification.

⁵ This applies to tax proceedings carried on by Autonomous Communities and Local Authorities, effective for proceedings under way as of 18 March 2020 (Art. 53 and transitional provision five of RDL 11/20).

seq that could arise against tax decisions rendered⁶.

8. Exemption of the Stamp Duty.

Effective as of 18 March 2020, formalization deeds of contractual novations of loans and mortgages under the aegis of RDL 8/20 are exempted from Stamp Duty under the category of public instruments, *"provided that they are based on circumstances governed in articles 7 to 16 of the aforementioned royal decree-law, referring to the moratorium on mortgage debt to acquire a primary residence"*.

This exemption is included via the new number 28 of Article 45.I.B) of the Recast Version of the Stamp Duty Tax, approved by Royal Legislative Decree 1/1993 of 24 September, according to the wording of RDL 8/20 and subsequently RDL 11/20.

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⁶ This situation also affects administrative complaints against tax claims within the scope of the Autonomous Communities, in accordance with Art. 53 of RDL 11/20.