

Informative Note

Main local law measures arising from COVID-19

1st April 2020

Royal Decree-Law 11/2020, of 31st March, adopting additional urgent measures in the social and economic field to deal with COVID-19

Royal Decree Law 11/2020 of 31 March adopting urgent supplementary measures in the social and economic field to deal with COVID-19, which comes into force the day after its publication in the Official State Gazette on 1 April 2020, contains a series of measures that complement those already adopted previously by the executive and, specifically, those included in Royal Decree Law 8/2020 of 17th March, some of which it profoundly modifies.

The regulation contains a series of provisions in the field of local law: it individualizes the amount of the net income that Local Entities may allocate to benefits and investments related to social expenditure and it adopts measures for the extraordinary postponement of the reimbursement schedule in loans granted by Autonomous Communities and Local Entities to entrepreneurs and self-employed people affected by the health crisis.

RD-Law 11/2020 also reinforces the obligations of local entities to provide economic and financial information and extends the scope of application of the measures provided for in Article 33 of Royal Decree Law 8/2020 of 17 March to tax actions and procedures of the same nature as those mentioned in the said Royal Decree Law carried out or processed by the Autonomous Communities and Local Entities.

Finally, the RD-law modifies article 46.3 of Law 7/1985, of 2 April, regulating the Bases of the Local Regime so that Local Corporations can hold plenary sessions and vote electronically.

1. Application of the budget surplus to expenditure policy 23, "Social services and social promotion" (Article 20 of RD-Law 11/2020)

Article 20 of RD-Law 11/2020 **specifies the maximum amount that each local authority, individually, may allocate to social expenditure from the 2019 budget surplus.**

1.1. Limit

Article 3 of RD-Law 8/2020 provides that the budget surplus of local authorities for 2019 may be used to finance investment expenditure included in expenditure policy 23, "Social Services and Social Promotion". The last paragraph of this provision states that, for this purpose, local entities, as a whole, may allocate from their surplus an amount equivalent to the credit established in the previous article, which will be monitored by the competent body of the Ministry of Finance.

*Article 20 of RD-Law 11/2020 specifies the amount that each local entity may allocate to this expenditure and establishes that it **shall be a maximum of 20% of the positive balance***



regulated in Organic Law 2/2012 of 27 April on Budgetary Stability and Financial Sustainability (section 2 of Additional Provision Six).

1.2 Procedure for the application of the surplus

As regards the procedure for applying the surplus to this expenditure policy:

- i. The exceptional credit budget modification to enable credit or credit supplement shall be processed by decree or resolution of the President of the local corporation without the rules on claims and publicity of budgets referred to in Article 169 of the revised text of the Law Regulating Local Treasuries being applicable.
- ii. The decree or resolution of the President of the local corporation shall be validated at the first subsequent Plenary Session held. The favourable vote of a simple majority and subsequent publication in the corresponding Official Gazette shall be required.
- iii. **The lack of validation by the Plenary will not have annulment or suspension effects of the approved decree**, without prejudice to the possibility of resorting to the economic-administrative claim.
- iv. In order to be monitored by the Ministry of Finance, Local Bodies must submit the form included in Annex III of RD-law 11/2020. The information will be sent by electronic means.

Non-compliance with the information supply obligations, both in terms of the established terms, the correct content and suitability of the data or the method of sending derived from the provisions of this Royal Decree-Law may lead to the imposition of the measures provided for in Articles 20 and following of Organic Law 2/2012 of April 27, after requesting the Local Corporation to comply within 10 working days. The Ministry of Finance may disseminate or publish the information submitted under this Royal Decree-Law with the scope, content and methodology it determines.

2. The suspension of deadlines for the preparation and submission of annual accounts (Article 48 of RD-Law 11/2020)

RD-Law 11/2020 includes measures aimed at suspending the deadlines for the preparation and submission of annual accounts for the 2019 financial year. This provision is applicable to state public sector entities and local entities and affects the processing deadlines for the General Account in the local entity.

Article 48 provides that public law entities belonging to the state public sector and local public sector shall endeavour to formulate and submit the annual accounts for 2019 in accordance with the deadlines set out in the regulations. However, when this is not possible due to the declaration of the state of alarm and it is so agreed and communicated by the Intervention body, the periods foreseen in the regulations that are applicable will be suspended from the moment of the declaration of said state, and the calculation will be resumed when this circumstance disappears or the period foreseen will be extended by a period equivalent to the effective duration of the state of alert (section 1 of article 48).

The periods laid down in the regulations governing the transmission of the accounts and other financial information to the Court of Auditors shall be suspended as soon as the alarm is declared,

and shall be resumed when the situation no longer exists or the period laid down is extended by a period equivalent to the actual duration of the alarm (Article 48(2)).

The legislator's intention is that the accounts should be submitted within the legally prescribed period. However, if this is not possible as a result of the declaration of the state of alert, it has provided for the intervention body to adopt one of these two decisions: (i) a stricter one, which implies the resumption of the counting when the declaration of the state of alert is completed; or (ii) a more lax one, which implies the extension of the deadline by a period equivalent to that of the effective duration of the state of alert.

The above provisions affect the processing time of the General Account in the local entity and may be applicable in addition to the regional public sector.

3. Financing measures for businesses and the self-employed (Article 50 of RD-Law 11/2020).

Article 50 of RD-Law 11/2020 provides for the deferment of payment of loans or credits granted to undertakings and self-employed workers by Autonomous Communities or local authorities.

3.1 Application scope

For them to be able to opt for this exceptional postponement, caused by the health crisis or the measures taken must have been felt by these companies:

- i. Periods of inactivity,
- ii. Significant reduction in the volume of sales, or
- iii. Interruptions in supply in the value chain that make it difficult or impossible for them to pay for it. This request must always be made before the end of the voluntary payment period and must be expressly considered by the body that issued the concession resolution under the terms established in this article.

This provision will only affect financial loans granted exclusively by entities included in the Public Administration sector in accordance with the provisions of letters a), b) and c) of Article 2.1 of Organic Law 2/2012 of 27 April on Budgetary Stability and Financial Sustainability, and which are considered as financial liabilities by the borrowers, which will be business entities that are not part of the public sector and self-employed workers.

In the event that the financial loans have been granted under agreements with credit institutions, any deferral or modification will be made in agreement with these entities.

3.2 Exclusions

The exceptional postponement regulated in this precept will not be applicable:

- i. When the lending public administration has already adopted a similar measure; and
- ii. Without prejudice to the measures adopted by the corresponding Administration, it shall also not be applicable to participating loans, risk capital operations, hedging

instruments, derivatives, subsidies, financial guarantees and, in general, any operation of a financial nature that does not conform to financial loans in market terms.

3.3. Procedure

The company or self-employed person who is within the scope of this provision must submit an application in which it must be included:

- i. A supporting memorandum in which the insufficiency of ordinary resources or serious difficulty in meeting the payment deadlines in accordance with the provisions of the previous section is accredited. This justification must include a statement of the accounts just before the situation referred to in paragraph 1 arose, a qualitative and quantitative explanation of how this was affected, its economic and financial assessment, and an action plan to mitigate these effects. Any document in accordance with the law proving the insufficiency or serious difficulty may be included. The Administration concerned may approve a standard form for the application and other attached documentation.
- ii. A responsible declaration that the company is up to date with its tax and social security obligations, that it has no debts for repayments of aid or loans to the Administration, and that it has complied, where applicable, with its obligations to present accounts to the Mercantile Registry.
- iii. Declaration that the limits of aid intensity permitted, and other regulations established by Community legislation on State aid are respected.

If the above documentation includes false or biased data and has served as a basis for granting the deferral, it will determine the early maturity of the entire loan, without prejudice to other applicable liabilities.

The postponement may be granted by the granting body of the lending administration, following a favourable report from the department or council responsible for finance and budget matters. The maximum period for the resolution of the procedure and its notification is one month from the date of submission of the application. If after this period the body responsible for the decision has not notified this decision, the interested parties will be entitled to consider the application rejected. From the request for postponement until 15 days after the express or presumed resolution, early maturity clauses linked to non-payment of loan maturities shall be inapplicable.

The estimation of the application will lead to the modification of the repayment schedule, respecting the maximum term of the loan, and the deferred payments may be subject to fractionation. The deferred instalments will accrue the interest rate fixed for the loan or credit subject to the deferment. In no case shall any financial charges or costs be applied.

4. Reinforcement of the obligations to provide economic and financial information by the Autonomous Communities and local authorities (Article 51)

RD-Law 11/2020 considers that local entities must strengthen the provision of economic and financial information to assess the budgetary impact of the measures adopted and for future decision-making. Local entities must send quarterly the information collected in Annexes II and III of RD-law 11/2020.

Local authorities must provide these data quarterly to the Ministry of Finance by electronic means. The purpose of providing this information is for the Government of the Nation to assess the impact that the measures adopted are having and to adopt decisions in the future.

5. Application of Article 33 of RD-Law 8/2020 in the area of taxation of the Autonomous Communities and Local Authorities (Article 53 of RD-Law 11/2020)

Article 53 of RD-Law 11/2020 provides for the application of Article 33 of RD-Law 8/2020 to the actions, procedures and formalities governed by the General Tax Law and processed by the Autonomous Communities and Local Entities. By virtue of this measure:

- i. The deadlines already announced for the submission of applications are **extended until 30 April 2020**, if they have not expired when this Royal Decree-Law comes into force:
 - Debts resulting from settlements made by the Administration.
 - The expiry of the deadlines and fractions of the deferral and instalment agreements granted
 - The deadlines related to the development of the auctions and the awarding of goods referred to in articles 104.2 and 104 bis of the General Regulations on collection, approved by Royal Decree 939/2005, of 29 July. Royal Decree 939/2005, of 29 July.
 - The deadlines for (i) attending to requirements, seizure proceedings and requests for information with tax implications, (ii) formulating arguments before acts of opening of said proceedings or hearings, dictated in procedures of application of taxes, sanctions or declaration of nullity, return of undue income, rectification of material errors and revocation.
 - Furthermore, within the administrative procedure of constraint, no guarantees shall be executed that fall on real estate from the entry into force of this royal decree law until 30 April 2020.
- ii. The deadlines for the above procedures **are extended until 20 May 2020** when they are communicated from the entry into force of this measure: 18 March inclusive and until 30 April (unless the deadline granted by the general rule is longer).
- iii. The period from the entry into force of this Royal Decree-Law until 30 April 2020 **shall not count for the purposes of the maximum duration of the procedures for the application of taxes**, penalties and reviews, although during said period the Administration may promote, order and carry out the essential procedures.

Neither shall it count for the purposes of the periods established in article 66 of Law 58/2003, of 17 December, General Taxation, nor for the purposes of the expiry periods. Article 66 of the General Tax Law provides that:

"The following rights shall expire after four years:

- (a) *The right of the Administration to determine the tax debt by means of the appropriate settlement*
- (b) *The right of the administration to demand payment of settled and self-assessed tax debts.*

c) *The right to request the refunds derived from the regulations of each tax, the refunds of undue income and the reimbursement of the cost of guarantees.*

d) *The right to obtain the refunds derived from the regulations of each tax, the refunds of undue income and the refund of the cost of the guarantees".*

- iv. For the sole purpose of calculating the time limits provided for in Article 66 of Law 58/2003, of 17 December, on General Taxation, in the appeal for reversal and in the economic-administrative procedures, the resolutions that terminate them shall be deemed to have been notified when there is evidence of an attempt to notify the resolution between the entry into force of this Royal Decree-Law and 30 April 2020.

The period for lodging economic-administrative appeals or claims against tax acts, as well as for appealing through administrative channels against the resolutions issued in economic-administrative proceedings, shall not commence until the end of said period or until notification has been made, if the latter has taken place after that time.

- v. The time limits for responding to requests and applications for information made by the General Directorate of Cadastre that are within the time limit for responding to the entry into force of this Royal Decree Law are extended until 30 April 2020.

As of the entry into force of the RDL, it is possible to make requests. Summonses notified after the entry into force of the new Royal Decree Law will be answered by 20 May 2020, unless the taxpayer voluntarily decides to answer, in accordance with article 33.3 of the Royal Decree Law. In general, the Tax Administration will avoid making new requirements. Exceptionally, it will assess in which cases it must make this type of request, taking into account the current situation and the essential nature of the request.

6. Possibility of holding plenary sessions and voting by telematic means (second final provision of RD-Law 11/2020)

The Second Final Provision modifies article 46.3 of Law 7/1985, of 2 April, regulating the Bases of the Local Regime so that Town Halls can hold Plenary Sessions and vote by electronic means.

This Provision allows local entities to hold Plenary Sessions and committees and adopt resolutions remotely, provided that their members are in Spanish territory and their identity is accredited.

This form can be adopted when *"exceptional situations of force majeure, serious collective risk, or public catastrophes occur that prevent or disproportionately hinder the normal functioning of the face-to-face regime of the sessions of the collegiate bodies of the Local Entities"*.

However, these exceptional circumstances must be expressly assessed and justified by the convenor (the Mayor, the President or their replacements) and are logically subject to the possible judicial control of such assessment.

Likewise, communication between participants must be ensured in real time during the session, as well as having the necessary means to guarantee the public or secret nature of the session as legally required in each case.

We hope that these comments will be useful and, in any case, the tax team at **Andersen Tax & Legal**, is at your disposal to clarify any doubts you may have in this regard.

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