

Informative Note

Main measures on tax and customs matters and indirect taxation in relation to COVID-19 included in Royal Decree-Law 15/2020

23rd April 2020

Regarding Royal Decree-Law 15/2020 of 21st April on urgent supplementary measures to support the economy and employment

The 21st April Royal Decree-Law 15/2020, on urgent additional measures to support the economy and employment, has added new regulatory measures of a tax nature that complement those approved to date as a result of the crisis caused by COVID-19.

VAT Measures

Supplies of goods, imports and intra-Community acquisitions of certain health products listed in the Annex to the Royal Decree-Law are subject to **the zero percent rate**. The requirements for this are as follows:

- Beneficiaries of the operations: public law entities, clinics or hospital centres, or private entities of a social nature.
- Duration of the measure: until 31st July 2020.
- Formal requirements: transactions subject to the 0% rate will be documented as if they were exempt transactions; notwithstanding the above, this will not affect the deductibility of the VAT borne by the taxable person carrying out these transactions.

Digital books, newspapers and magazines, which until now have been taxed at 21%, are subject to the **4% rate**, and this is in accordance with the decision of the European Commission adopted in October 2018, commented on our [blog](#). For the application of this super reduced rate it is necessary that the book, newspaper or magazine does not contain only or mainly advertising, being understood, until now, that this is the case when more than 75 percent of the income they provide to their publisher is obtained by this concept. The new rule extends that percentage from 90 percent.

Finally, in the case of taxpayers subject to the **simplified regime**, for the purposes of income on account in fiscal year 2020, the calendar days on which the state of alarm would have been declared in each quarter will not be counted as days of activity.

Corporate tax measures

Companies whose volume of operations in 2019 does not exceed 600,000 euros may opt to make the **instalment payments** in the manner provided for in Article 40.3 of the Corporate Income Tax Act, i.e. on the part of the tax base for the three, nine or eleven month period in the year 2020.



It should be remembered that, in general, this option must be applied in the month of February each year, by means of the corresponding census declaration (form 036); Thus, the standard offers a second opportunity for those entities that did not do so at the time to modify the method of calculating the instalment payments if they consider that, as a result of the current situation, the results for this year will be significantly reduced (under the option applicable by default, the instalment payment must be made on the basis, not of the actual result for the year, but of the amount of the last corporate income tax return filed).

The rule limits the exercise of this option to tax periods commencing on or after January 1st 2020. Therefore, entities with a split fiscal year, which began before January 1st 2020, must maintain the method of instalment payments that they had up to now.

The option will be formalized, not by means of a tax register declaration, but by presenting the form corresponding to the first instalment payment of 2020 (form 202) until 20th May 2020, applying the modality foreseen in the aforementioned article 40.3 of the Corporate Income Tax Law. Given that, under this method, in the event of a negative result there is no obligation to file form 202 (except for entities with a volume of transactions in excess of 6,010,121.04 euros during the twelve months prior to the date on which the tax period commences), we consider it prudent in these cases either to file form 202 with a negative result, or to submit a written statement to the AEAT expressly informing that this second method has been chosen (which may avoid future requirements).

For taxpayers whose net turnover for the twelve months prior to the beginning of the tax period is more than 600,000 euros but less than 6,000,000 euros, who cannot benefit themselves from the extension of the period for filing returns for the first quarter (so they have had to file the payment in instalments for the first period during the first 20 days of the month of April), the following provisions are fulfilled:

- They may opt for this other modality within the deadline for making the second instalment payment (first twenty days of October). Given that, in the event that the taxable base for the period corresponding to the first nine months is negative, there is no obligation to file form 202, we consider it equally prudent either to file form 202 with a negative result, or to submit a written statement to the AEAT expressly informing that this second modality has been chosen.
- The instalment payment corresponding to the first period may be deducted from the remaining payments of the same year.

Finally, the following should be noted:

- Tax groups applying the tax consolidation regime cannot now change the method of payment by instalments.
- Taxpayers are bound by this option exclusively for the instalment payments of the same tax period (so, in case of change of the fiscal year within the current year 2020, starting a new tax period, the instalment payments to be made later will be subject to the modality of Article 40.2 of the Corporate Income Tax Law, unless it is expressly chosen, and through the corresponding census declaration, by the modality of Article 40.3 of the same legal text).

Measures in Income Tax

Income taxpayers who carry out economic activities and determine their net return using the **objective estimation** method may benefit from one of the following two measures:

- a) On the one hand, they may **waive** this method by switching to direct estimation, with effect only for the current year 2020. Thus, this waiver will not extend for a minimum period of three years as generally provided for in the personal income tax regulations. To return to objective estimation, the waiver must be expressly or tacitly revoked in 2021. This decision will have the same effect on the corresponding VAT/IGIC schemes (simplified scheme and special scheme for agriculture, livestock, and fisheries).
- b) On the other hand, and in the event that the objective estimate is not to be waived, the calendar days on which the alarm status would have been declared in each quarter will **not be taken into account** for the calculation of the instalment payment (although the rule refers exclusively to the calculation of the instalment payment, we consider that the same measure should be adopted to determine the annual net yield of the activity in the financial year 2020).

Non commencement of the enforcement period in the case of financing for the payment of tax debts

The presentation of settlement-returns or self-assessments with a result to be paid, but without the corresponding payment being made, will not determine the opening of the **executive period** (and, therefore, the surcharges foreseen for said period will not be accrued), if the following requirements are met:

- a) The settlement-returns or self-assessments must be submitted within the period provided for in the regulations of each tax. In this regard, the measure only affects returns and self-assessments whose deadline for submission is between 20th April and 30th May 2020.
- b) Financing must have been requested, before the end of the filing period provided for in the regulations of each tax, to settle such tax debts. The financing requested must be guaranteed by the Ministry of Economic Affairs and Digital Transformation, in accordance with the provisions of Article 29 of Royal Decree Law 8/2020.
- c) Within five days from the end of the period to present the corresponding declaration-settlement or self-assessment, the taxpayer must present to the Administration a certificate issued by the financial entity accrediting the existence of the request, the amount and the tax debts that are the object of the request.
- d) This request for funding must be granted for at least the amount of tax debts.
- e) Debts must be paid in full at the time of receiving the requested funding. This requirement will be considered not fulfilled if one month has passed since the end of the period provided for in the regulations of each tax, without the debts having been paid.

If the corresponding settlement-returns or self-assessment was presented before the entry into force of Royal Decree Law 15/2020, without paying the debt and, therefore, the executive period begins, it can be returned to the voluntary payment period by complying with the following requirements

- a)** Firstly, that a certificate issued by a financial institution accrediting that the application has been made, including the amount and the tax debts involved, is provided until 30th April at the latest (5 working days from the entry into force of the Royal Decree Law).
- b)** Secondly, that the finance is granted for at least the amount of tax debts, and that these are paid in full and immediately when the finance is granted.

Measures related to port charges

a) Deferral of tax debts in the field of ports

Royal Decree-Law 15/2020 provides that the Public Administrations may grant a postponement of the tax debt arising from the settlements of port charges accrued retroactively, i.e. from the date of effective date of the 12th March Royal Decree-Law 7/2020, adopting urgent measures to respond to the economic impact of the Covid-19 and up to 30th June 2020, inclusive.

The deferment conditions shall be as follows:

- (i)** The maximum period of deferment shall be six months;
- (ii)** Such deferral shall not include the accrual of interest on arrears and shall not be subject to the provision of any guarantee by the taxable entity;
- (iii)** The deferral is not automatic and must be initiated at the request of one of the parties

b) Measures affecting the occupancy rate

In accordance with the provisions of Article 17 of Royal Decree Law 15/2020, the possibility is considered of reducing the occupation rate of concessions or authorisations notified after the entry into force of Royal Decree Law 15/2020 (i.e. 23 April 2020), provided that it can be demonstrated that the COVID-19 has had a negative impact on the activity as a result of the COVID-19.

Public Administrations will analyse applications on a case-by-case basis, taking as a reference the activity base of the last four years, in accordance with objective criteria on a traffic indicator, or failing that, on income attributable to port activity.

This is a procedure initiated at the request of a party in which the magnitude of the reduction must be approved by Public Administrations, and the reduction may not exceed 60% of the total quota in the case of passenger terminals and up to 20% in the case of other concessions or authorisations. In order to calculate the reduction, the criteria for updating and reviewing the total quota established in article 178 of the revised text of the Law on State Ports and the Merchant Navy shall be applied.

c) Measures affecting the activity rate

At the request of the interested party, and provided that it can prove the negative impact of the COVID-19 crisis on its activity, Public Administrations may waive the lower limit of the total annual quota of the activity rate established in Article 188.b) for the year 2020. 2.1 of the Revised Text of the Law on State Ports and the Merchant Navy.

Likewise, it is foreseen that Public Administrations may, by 2020, modify the enforceability of the activity fee established in the enabling title, eliminating the advance payment and deferring its settlement at the end of the year according to the activity carried out and without requiring any other guarantee than that of the enabling title or authorization granted. All this is subject to the condition that the taxpayer proves the negative impact on its activity of the COVID- 19 crisis.

Both measures will be initiated at the request of one of the parties.

d) Measures affecting the vessel's rate

In accordance with the provisions of Article 19, from the effective date of the RDL (i.e. 23rd March 2020), an exemption to the vessel tax is established for the year 2020, when the vessel must be moored or anchored in port waters, for the duration of the extraordinary situation caused by COVID-19.

For the duration of the state of alert, and its extensions, maritime service vessels that cease to operate will be charged the ship's fee (T-1), the long-stay factor for inactive vessels, from the first day of stay in port waters.

In addition, for the duration of the declaration of the state of alert and its extensions, the coefficient for vessels intended to provide port services (towing, mooring, pilotage and other port services) for access to and stay in Zone I or inside port waters shall be reduced to 1.16.

Finally, for all calls registered since the publication of Royal Decree-Law 15/2020 and while the state of alert lasts, a value of 1.08 euros is established for basic amount S of the vessel's fee, with the exception of vessels that are assigned to a regular maritime passenger or ro-ro service in which case this value will be 0.60 euros.

Other tax measures

The references contained in other measures adopted during the present health crisis to 30th April and 20th May are understood to be extended to 30th May. Basically, this affects the deadlines for appeals, claims, summonses, and payments during the voluntary or executive period, or those that have been postponed.

Finally, with regard to the auctions carried out by the AEAT, the possibility is contemplated, both for the bidders and for the successful bidders, to request the cancellation of the bids and the release and return of the deposits made, as well as to obtain the return of the price of the auction paid, provided

that no certificate of the certificate of adjudication of the goods or the granting of a public deed of sale has been issued before the effective date of the new Royal Decree-Law.

We hope the information is useful and of your interest. At Andersen Tax & Legal we have created a multidisciplinary team to attend to all the questions that may arise on this aspect or in relation to the COVID-19.

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