



CECA MAGÁN
ABOGADOS

CORONAVIRUS

TAX ISSUES ARISING FROM COVID-19

30 April 2020

After the declaration, last March 14th, of the state of alarm for the management of the health crisis caused by Covid-19, it is worth making a recap of the tax provisions adopted by the Government, in the four Royal Decrees and seven Royal Decrees-Law approved up to now, the measures adopted by the Autonomous Regions and City Councils, and the eight banners with announcements or FAQs of the State Tax Agency ("STA").

The aim of this brochure is to provide an overview of these provisions scattered through the legislation and condense them all in a single document to be used as guidance to the taxpayer. Notwithstanding, it is important to point out that the wording of these rules generates more than a reasonable doubt.



RAISED ISSUES

1. Which are the tax measures affecting taxpayers with a trading volume below EUR 6,010,121.04 in 2019?

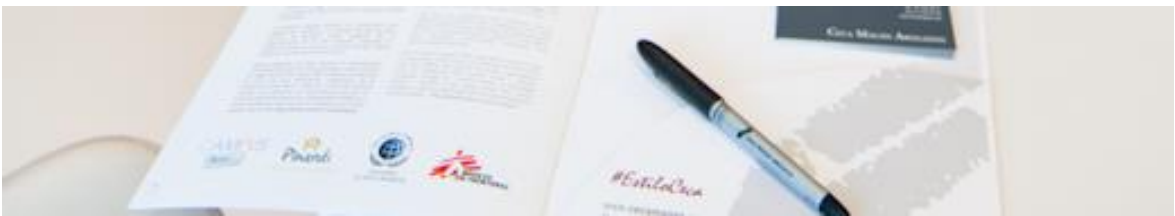
- **Extension of the time to pay any tax due relating to tax returns to be filed with the STA, corresponding to (i) the first quarter of the tax year, for quarterly filers, or (ii) to the March and April filing periods, for monthly filers.** This is a 6-month extension, granted for a maximum of EUR 30,000 and not subject to guarantee. No interest will accrue for the first three months of the extension.

In accordance with the STA's FAQs, for the purposes of determining the EUR 30,000 threshold, the following outstanding balances will be added up: (i) the tax due referred to in the application itself; (ii) any other tax due by the same taxpayer for which a deferment or instalment agreement has been requested and is pending resolution, if total or partial waiver of guarantees has been requested, and, (iii) any unpaid deferred tax or instalment, unless guarantee has been provided.

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- **Estimated payments (“pagos fraccionados”) due in October and December can be calculated according to the tax base of the filing period. This is an option granted to those entrepreneurs whose 2020 estimated payments were being calculated according to the last-year’s- tax-liability method, as far as their trading volume does not exceed EUR 6,000,000 and their accounting period has begun on or after January 1st, 2020. This option is not available to taxpayers being part of tax groups for Corporate Income Tax (“CIT”).**

Election is made by directly applying this method in calculating the estimated payment liability in the return due before November 20th.



2. Which are the tax measures affecting taxpayers with trading volume below EUR 600,000 in 2019?

- **Extension to May 20th, 2020 of the time to file and pay any tax due relating to the first quarter tax obligations with the STA.** This option is not available to taxpayers being part of tax groups for CIT or VAT purposes. According to the FAQs published by the STA, this limitation is only applicable to members of a tax group in complying with tax obligations within the scope of these two special regimes (e.g. Forms 322, 353 or 222). However, it is available for them in relation to any other tax obligation not related to the group.

If the payment is to be made by direct debit, the deadline is May 15th, 2020.

- **Estimated payments due in April, October and December can be calculated according to the tax base of the filing period. This option is available to taxpayers whose accounting period began on or after January 1st, 2020 and are not part of a CIT tax group.**

Election is made by directly applying this method in calculating the estimated payment liability in the return due before May 20th.

For taxpayers who filed their April estimated payment before April 23rd, willing to change to this tax base method, they may do so by filing a new return applying this method, attaching a simple form identifying the return that is being substituted.

3. Which are the tax measures affecting taxpayers who determine their net income using the objective assessment method for personal income tax and the simplified VAT or IGIC regime?

- ✦ Taxpayers may waive their election to apply the objective assessment method for Personal Income Tax (“PIT”) purposes before May 20th -by filing the first estimated payment return according to the direct assessment method.

These taxpayers may opt back in to apply the objective assessment method in tax year 2021, by either (i) express revocation of the waiver during December 2020, or (ii) by filing the first estimated payment of 2021 under the objective assessment method.

The above waiver and revocation will have the same effects on the special VAT or IGIC regimes.

- ✦ For those taxpayers not waiving the objective assessment method, calendar days during which the state of alarm was in place will be considered “non-activity days”, and thus excluded from the calculation. Therefore, for the purposes of the 2020 first estimated payment calculations, the days between March 14th and March 31st should not be taken into account. This is extensive to the simplified VAT or IGIC regimes.

For taxpayers who filed their April estimated payment before April 23rd, willing like to change to this tax base method, they may do so by filing a new return applying this method, attaching a simple form identifying the return that is being substituted.



PROVISIONS APPLICABLE TO ALL TAXPAYERS



Value Added Tax: Tax rate is reduced for the following goods:

- **Goods required to combat the effects of COVID-19:** From April 23rd to June 31st, domestic delivery, import and intracommunity acquisitions of goods listed in the Annex to Royal Decree-Law 15/2020 will be zero-rated, if the recipients is a public entity, hospital or private social entity.

These transactions will be documented in the invoice as example, and will not hamper the right to deduct the input VAT of the entrepreneur delivering the goods.

- **Books, magazines, and electronic newspapers:** Applicable tax rate is reduced to 4% as of April 23rd.



Suspension of collection procedures: Failure to pay any balance due on a tax return filed in due date with the STA will not trigger collection procedures if the following conditions are met:

- **At the time of the filing, the taxpayer must have applied for the financial aid referred to in article 29 of Royal Decree-Law 8/2020, covering, at least, the amount of the balance due.** That is, access to the line of guarantees granted by the Ministry of Economic Matters and Digital Transformation.
- **The taxpayer must provide the STA with a certificate, issued by the financial institution, stating the application of the financial aid, amount requested, and taxes covered.** This certificate must be submitted to the STA within the five days following the due date for filing the tax return concerned.

For balances due arising from returns filed between April 20th and 22nd, the five-day term begins on April 23rd, 2020.

- **The financial aid should be granted for, at least, the amount of the above-mentioned balances.**
- **Tax balances due must be effectively, completely and immediately paid upon reception of the funds from the financial aid or, at the latest, within one month of the due date for filing the return triggering the payment.**

Failure to fulfil any of the conditions above triggers collection procedures with retroactive effect as from the due date for filing and paying the returns concerned.

PROVISIONS APPLICABLE TO ALL TAXPAYERS



Suspension or deferment of other tax proceedings: The following deadlines have been automatically suspended from March 14th to June 1st, 2020 (first working day after May 30th - date referred to by Royal Decree-Law 15/2020):

- **Statute of limitation for any actions and rights provided for in the tax legislation.**
- Tax proceedings, actions and formalities carried out and handled **by the STA, the Ministry of Finance, or by the tax administrations of the Autonomous Regions and Local Entities,**
- **Due dates for filing appeals for reversal and economic-administrative claims,** provided that (i) the term for either filing began before March 14th, or (ii) the administrative act against which the appeal or claim is filed has not yet been notified by then.
- **Due date for the enforcement of the resolutions of the economic-administrative authorities.**

In addition, the following terms have been extended **until June 1st** unless they expire in later date:

- The term to voluntarily pay any taxes **assessed by the tax authorities, and the term to pay taxes in collection processes.**
- The term to pay **according to deferment or instalment agreements granted to the taxpayer.**
- The deadline to **reply to all kind of requests and seizure proceedings.**
- The deadline for filing **arguments in tax proceedings, including those from the General Directorate of the Cadastre.**
- The term to perform **auctions and property awards.**
- The term to execute **guarantees over immovable property in collection proceedings.**



PROVISIONS APPLICABLE TO ALL TAXPAYERS



Tax residence: The involuntary presence in a country as a consequence of the Covid-19 may have an impact on the criteria for establishing an individual's tax residence. Thus, the OECD suggested that governments adopt measures in order to clarify the situations of uncertainty that may arise in this regard.

Spain has not adopted any measures yet. However, it seems reasonable that the time that an individual is forced to remain in a country due to the Covid-19's pandemia should not have an impact on determining tax residency.



Leases: Tenants' **impossibility to pay the rent** may lead to tax inefficiencies for the lessor, both in CIT and PIT, since bad debts' deductibility is subject to certain requirements. On the other hand, amendment of the tax base and out-put VAT for a transaction that has already been invoiced is also subject to specific requirements.

Renegotiation of the rent solves these inefficiencies, since the new amount and terms agreed upon will be taken into account, both in determining the taxable income for CIT and PIT purposes, and the transaction price to charge VAT. Drawback is obvious: renegotiation will imply the definitive waiver to receive the initial rent in the amount agreed to be reduced.

PROVISIONS APPLICABLE TO ALL TAXPAYERS



Donations: Donations made to the State, Autonomous Regions and Local Entities as support against Covid-19 will give the donor the right to apply the same deductions in the Company Income Tax or Personal Income Tax as if they had been made to non-profit entities.

In addition, according to the STA's FAQs, a certification will be issued by the State Administration to accredit these donations, which will include the following points:

- **The tax identification number and personal identification data** of the donor and the donor entity.
- **Express mention of the fact that the State Administration is included** amongst the entities benefiting from sponsorship.
- **The amount of the monetary donations or the public document or other certified document** proving the delivery of the non-monetary donations.
- **Destination of the donated object in fulfilment of its specific purpose** (i.e. for the fight against the COVID-19 health crisis).
- **Express mention of the irrevocable nature of the donation.**

Although it is not clarified by the FAQs, we understand that the Autonomous Regions and Local Entities will be issuing these certifications in the same terms.

Can we help you?

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We remind you that all the issues in this document are informative.

To expand information and contract our services, please contact our professionals.



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