

March 26th, 2020

Report

Restructuring Department

MEASURES THAT CAN BE TAKEN BY ENTERPRISES AND THE SELF-EMPLOYED TO OVERCOME THE ECONOMIC DIFFICULTIES ARISING FROM COVID-19

As a result of the extraordinary situation that is currently being experienced due to the expansion of COVID-19 and which is undoubtedly having a great impact both in the society as a whole and in the business sector, from the Restructuring Department we have compiled some of the measures that have been approved by the Government and that can be of great help to avoid situations of economic difficulties and avoid insolvency.

MEASURES TO ENSURE THE SOLVENCY OF COMPANIES

1. ECONOMIC MEASURES

Provisions to guarantee the liquidity of companies

The current health crisis situation implies an extraordinary difficulty to be able to face the payment of interest or debt repayments that have been foreseen in financial contracts. Thus, in view of the possibility that many companies may not comply with certain provisions of these contracts and, consequently, these breaches may make it even more difficult for them to obtain loans, the Spanish Government has sought to face this situation with the approval of a series of liquidity-building measures.

- **Guarantee line to ensure the liquidity of the self-employed and companies**
This guarantee line will be granted by credit institutions, financial credit institutions, electronic money institutions and payment institutions to companies and the self-employed who need these instruments to be able to meet their obligations derived from invoice management, the need for currency, the expiration of financial or tax obligations or other liquidity needs.

The Ministry may grant credits for a maximum amount of 100,000 million euros. The applicable conditions and requirements will be established by Agreement of the Council of Ministers without subsequent regulatory development being required for its application.

On March 24th, the Council of Ministers approved the Agreement that includes the characteristics of the first part of the guarantee line for an amount of up to 20,000 million euros, of which 50% is reserved to guarantee loans to self-employed workers and SMEs.

The guarantee will ensure 80% of new loans and renewals of operations requested by the self-employed and SMEs. As per the rest of the companies, the guarantee will cover 70% of the new loans granted and 60% of the renewals. With this agreement, measures are launched to guarantee liquidity and preserve productive activity and employment in the business sector.

- **Which sectors is this Guarantee Line aimed at?**
They must be self-employed workers and companies with registered office in Spain that formalize operations in the ICO Companies and Entrepreneurs Line, and whose activity has a CNAE code of the tourism sector and related¹ activities. These sectors are:

¹ CNAE ICO tourism sector and related activities table – COVID 19
<https://www.ico.es/documents/19/2320094/Tabla+CNAE+ICO+Sector+Turistico+actividades+conexas+covid19+-Thomas+Cook/3b53c87b-18bf-48cc-9aee-60e2745930ae>

- Tourism
- Transportation
- Hostelry
- Education
- Recreational activities of leisure and entertainment

Likewise, applicants must not be in a defaulting situation as of December 31st, 2019 or immersed in bankruptcy proceedings as of March 17th, 2020.

○ **Where should I go to obtain this financing?**

Banking entities such as BBVA, Santander Bank, Sabadell Bank, Bankia or CaixaBank, among others, already offer information on financing on their webpages to help companies and the self-employed. With this, they offer loans linked to the ICO Line aimed at helping alleviate the consequences of COVID-19.

○ **What is the maximum amount that I can request? What will the guarantee cover?**

Companies and the self-employed can request up to 500,000 euros with a maximum annual fixed rate of 1.50% APR, with no opening fee.

○ **For how long is the Guarantee Line issued?**

The guarantee will be valid for the term of the loan granted, with a maximum term of five years. The cost of the guarantee, between 20 and 120 points, will be assumed by the financial entities.

○ **How much time do I have to request it?**

Interested companies and self-employed workers may request the guarantee for their operations until September 30th, 2020. To do this, they must contact the financial entities with which the ICO has signed the relevant collaboration agreements. The guarantee line will be retroactive and may be requested for operations formalized after the entry into force of Royal Decree-Law 8/2020, of March 18th (hereinafter, RDL 8/2020).

● **Increase of the net debt limit of the ICO in order to increase the amounts of the ICO Financing Lines for companies and the self-employed**

The limit of net indebtedness foreseen for the ICO in the State Budget Law is increased by 10,000 million euros. This increase will be carried out through the ICO Lines of financing by means of the intermediation of financial institutions both in the short and medium and long term and in accordance with their direct financing policy for larger companies.

● **Creation of an insurance coverage line:**

As an extraordinary measure and with a duration of 6 months as from the entry into force of RDL 8/2020, the creation of an insurance coverage line of up to 2,000 million

euros is authorized from the Reserve Fund for the Risks of Internationalization, under the following requirements:

- Eligible credits: the working capital credits necessary for the exporting company will be eligible, provided they respond to new financing needs and not to situations prior to the current crisis.
- Beneficiaries: SMEs and other larger companies, provided they are unlisted entities and in which the following circumstances are present:
 - Internationalized companies or companies in the internationalization process that meet any of these requirements:
 - Companies whose international business represents at least one third of their turnover, or
 - Companies that are regular exporters.
 - Companies facing liquidity problems or lack of access to financing as a result of the impact of the current crisis.
- Exclusions: those companies in bankruptcy or pre-bankruptcy are expressly excluded, as well as those companies with non-payment incidents with Public Sector companies or debts with the Administration, registered before December 31st.
- Risk coverage: the percentage of credit risk coverage in the operations subscribed under this Line will not exceed the limit that may be established at any time in accordance with EU regulations on State aid.

2. ECONOMIC MEASURES FOR THE SELF-EMPLOYED

Extraordinary benefit for the self-employed

The main financial aid that has been approved to curb the impact that the COVID-19 crisis may have on the income of the self-employed or freelancers has been the provision of an extraordinary benefit that can be perceived as long as certain requirements are met.

- **Who can request it?**
Freelancers or self-employed workers who, due to the application of RD 463/2020, have their activities suspended or when their income in the month prior to which the benefit is requested is reduced by at least 75% in relation to the average billing from the previous semester.
- **Is there a minimum contribution period to request it?**
There is no minimum period to request the extraordinary benefit, it is only required to be registered with the Social Security and to be up to date with the payment of Social Security contributions.
- **Is it possible to access such benefit even having debts with the Social Security?**

Yes, provided that the contributions due are paid within a maximum period of 30 days. Once the payment has been made, one can access this benefit.

- **Can the self-employed who hire workers also request it?**

Yes, in this case, they could file a Temporary Employment Adjustment Plan (ERTE) addressed to their workers and at the same time request the extraordinary benefit.

- **What happens to the self-employed who are obliged to continue providing services?**

They may qualify for the benefit if they prove a fall in their billing. The reduction in billing in the calendar month prior to the request must be at least 75 percent, in relation to the average amount in the calendar semester prior to the declaration of the state of alarm.

- **How much can be perceived for this benefit?**

If contributions for cessation of activity have been made for at least 12 months, the amount of the benefit will be 70% of the regulatory base. If they have been contributing for less time, they will be entitled to 70% of the minimum contribution base of the group to which the worker belongs.

- **For how long will it be perceived?**

For a month with the possibility of extending it until the last day of the month in which the state of alarm ends, in the event that it is extended and lasts more than one month.

- **What is the deadline to request the benefit?**

The term to request the benefit is one month from the entry into force of RDL 8/2020; therefore, it ends on April 14th. However, if the extension of the state of alarm was agreed by the Government, the measures adopted may be modified.

- **Where should the benefit be requested?**

An application must be completed and filed with the competent Provincial Directorate of the management entity or mutual collaborative entity with which they usually work.

- **What documentation should I provide?**

The accreditation of the reduction of the invoicing will be made by means of the contribution of the accounting information that justifies it, and it can be done through the copy of the register book of invoices issued and received, the daily book of income and expenses, the sales and income record book or the purchases and expenses book.

Those self-employed workers who are not obliged to keep the books that prove the volume of activity must prove the reduction of at least 75% required by any means of evidence admitted by law. Every request must be accompanied by an affidavit stating that they meet all the requirements to qualify for this benefit.

- **Are the requirements to access the benefit provided by the Government of Catalonia the same as those provided at the State level?**

No, in the case of the benefit for the self-employed in Catalonia, only those who are registered in activities for which the closure has been decreed can access it, the benefit not being applicable to cases of billing reduction as provided at the State level.

In addition to proving that they are registered in an activity for which the closure has been decreed, they must also meet other requirements, such as having suffered a drastic and involuntary reduction in their income as a result of the effects of the coronavirus and being able to demonstrate that they do not have alternative sources of income.

- **How much can be perceived for the benefit of the Generalitat?**

This aid will be a single benefit with a maximum amount of 2,000 euros for the self-employed who meet the requirements established in the Decree Law 7/2020, of March 17th, on urgent measures in the area of public procurement, health and waste management, transparency, public transport and tax and economic matters. The specific amount will be decided based on the supporting documentation of the economic losses.

- **Since when can one request the benefit of the Generalitat?**

As of April 1st, since the economic losses suffered during the month of March 2020 in comparison to the same month of the previous year must be accredited to request it. This aid will be granted respecting the order of the applications until the budget allocated for this purpose is exhausted, which is why it will be very important to request it as soon as possible.

- **How can it be requested?**

Online through the website of the Department of Labor of the Generalitat of Catalonia.

- **Is the benefit of the Generalitat incompatible with the State's?**

Yes, it is incompatible with any other aid, benefit or subsidy, public or private, intended for the same purpose.

3. ECONOMIC-SOCIAL MEASURES

Moratorium on mortgage debt for the acquisition of a habitual residence

- **What type of mortgages does it apply to?**

The moratorium only applies to loans or credit contracts with mortgage guarantee for acquisition of habitual residence.

- **Who can request it?**

Mortgage debtors who are in a situation of economic vulnerability.

Guarantors, sureties and non-debtor mortgagors who are in a situation of economic vulnerability may request the entity to deplete the assets of the main debtor, without

prejudice to the application to the former ones, as the case may be, of the measures provided for in the Code of Good Practices, before claiming them the guaranteed debt, even if they had expressly renounced in the contract to the benefit of excussio.

- **What is understood by “economic vulnerability”?**

- a. Unemployment situation or, in the case of an entrepreneur or professional who suffers a substantial loss of income or a substantial fall in sales (of at least 40%).
- b. The total income of the family unit must not exceed the following thresholds:
 - **3 times the IPREM:** in general.
 - **4 times the IPREM:** disability greater than 33% or permanent dependency/illness to carry out work activity.
 - **5 times the IPREM:** mortgage debtor with cerebral palsy, intellectual or mental disability greater than 33%, physical or sensory disability greater than 65% serious illness that incapacitates the person or his caregiver, accredited, to carry out a work activity.

The limit is extended:

- + 0.1 times the IPREM for each dependent child per family.
- + 0.15 in case of being a single parent.
- + 0.1 times the IPREM for each person over 65 years of age who is a member of the family.

- c. Mortgage payment + Basic expenses and supplies → Greater than or equal to 35% of the net income received by the family unit.
- d. Significant alteration of economic circumstances, understood as that effort that represents the mortgage burden on the family income has been multiplied by at least 1.3.

- **What will be the duration of the mortgage moratorium?**

In principle, the suspension of the mortgage debt will be in force for the duration of the extraordinary situation caused by the health crisis, although it must still be specified by the Government.

- **Since when can a moratorium be requested?**

The moratorium can be requested from the day following the entry into force of RD 8/2020 and up to 15 days after the end of its validity.

- **What procedure should I follow?**

The documentation provided for in article 11 of RD 8/2020 must be submitted to the creditor entity of the mortgage debt.

4. TAX MEASURES

Deferral of tax debts

This measure affects the tax debts corresponding to the settlements or self-assessments whose filing period ends between March 13th and May 30th, 2020, both included. In addition, withholdings and payments on account, debts derived from taxes that must be passed on (such as VAT) and fractional payments of Corporation Tax may also be deferred.

In these cases, the income of the debts may be deferred without the need to provide a guarantee, provided that the total amount of the deferred debts is less than 30,000 euros.

- **Who can take advantage of said postponement?**
Debtors whose trading volume in 2019 would not have exceeded 6,010,121.04 euros.
- **What will be the duration of the postponement?**
The debts will be deferred for six months, with the particularity that, for the first three months, default interest will not be accrued.

The payment terms for deferrals and settlements received whose submission deadline is March 18th or later will be suspended. In these cases, the period is extended until April 30th, 2020.

Tax measures of some autonomous communities and municipalities:

Catalonia: suspension, until the state of alarm ceases, of the deadlines for self-assessment and payment of own and assigned taxes.

Madrid: the days from March 13th to March 28th are declared non-working days for all those periods that are computed by months. This declaration can be extended.

Navarra: suspension of tax periods from March 19th to April 30th, 2020. Among other measures, the payment periods that had not ended on March 19th are extended until April 30th. Also the self-assessments and declarations of February, March and the first quarter of 2020 are extended until April 30th, 2020.

Alava: the filing of self-assessments and payment terms are extended until June 1st, as well as those terms to meet requirements, and non-interest accrual is expected for the period from March 14th to June 1st, 2020. Likewise, it is expected to delay one month (without interest) the deferred payments, and a special fractionation for SMEs is introduced. In addition, the obligation to make fractional income tax payments (1st and 2nd quarter of 2020) to those who carry out economic activities is cancelled.

Gipuzkoa: suspension of terms from March 14th until determined by the competent authorities.

Vizcaya: the Provincial Legislative Decree 1/2020 (BOB of 18-3-2020) extends the deadline for submission of non-electronic self-assessments until June 1st, 2020. The online applications have an extension of 15 calendar days. The deadlines for filing appeals are also extended until June 1st, 2020. A special postponement is established for SMEs. Finally, the obligation to make fractional income tax payments is canceled (1st and 2nd quarter of 2020).

5. LABOR MEASURES

Modification of some labor obligations regarding ERTes

- **Does the performance of an ERTE by force majeure implies the exoneration of the obligation of the company to pay the contributions to the Social Security?**

Yes, while the period of suspension of contracts or reduction of working hours lasts, the General Treasury of Social Security (TGSS) has foreseen the exemption to companies of the payment of their contributions, foreseeing a 100% exemption for those companies with less than 50 workers and another of 75% for those companies that have a volume of workers greater than 50. This measure must be requested from the TGSS.

- **Does such exemption also exist in the case of ERTes for economic, technical, organizational or production reasons?**

ERTes for objective causes that can be applied when the company suffers a reduction in demand that results in a workforce greater than that actually necessary does not provide for exemption from the payment of Social Security contributions.

6. RESTRUCTURING MEASURES

In order to prevent a possible insolvency situation that forces companies to declare bankruptcy, it is important to take preventive debt restructuring measures. Thus, companies that are experiencing liquidity difficulties derived from the health crisis have several options, such as: deferment of payments to creditors, credit compensation agreements or deferred payment of wages agreements. All this, with the aim of preventing business inactivity from leading to a difficulty to overcome insolvency situation.

The European Directive 2019/1023, on preventive restructuring frameworks, debt exoneration and disqualifications, and on measures to increase the efficiency of the restructuring, insolvency and debt exoneration procedures, is scheduled to be transposed in Spain in July 2021. However, if the economic forecasts that will be implicit in the health crisis we are facing are fulfilled, an acceleration of its transposition would be necessary with the aim of encouraging the approval of agreements for companies and not their liquidation.

This Directive aims at promoting restructuring and refinancing as an alternative to bankruptcy, following the example implemented in different EU Member States and which has resulted in greater stability and survival of companies.

When this exceptional situation ends and we begin to observe the deterioration of the economy, it will be totally necessary to stimulate the refinancing agreements and to avoid, as much as possible, the liquidation of companies, since it would only lead to a further weakening of the Spanish economy.

It should be noted that the Council of Ministers held on March 24th, 2020 agrees to request the Permanent Commission of the State Council to issue an opinion urgently —no later than Thursday, April 2nd, 2020— in relation to the project of the Royal Legislative Decree approving the Consolidated Text of the Bankruptcy Law. However, the development of the measures established in the Directive 2019/1023 will be studied as soon as its transposition is made.

MEASURES IN CASE OF INSOLVENCY OF COMPANIES

The events of the last few days will generate a series of economic damages, both at a business and personal level, which may lead to insolvency for many companies. With this, we must take advantage of the possibilities that, today, allow us to continue with our business activity and achieve, at the same time, the minimum possible impact.

If the current situation is our business insolvency, the Bankruptcy Law foresees different ways to solve said situation, always pursuing the objective that the business activity may persist.

In this context, the bankruptcy is defined as that judicial procedure whose main purpose is the continuity of the business activity and the greater satisfaction of the credits. To achieve its end, two possible solutions are anticipated: the agreement or the liquidation.

- **When is a company considered to be insolvent?**
When the debtor cannot regularly fulfill its enforceable obligations.
- **What measures should I take if my company becomes insolvent due to the COVID-19 health crisis?**
With the aim of avoiding the consequences that would imply for directors to file a late bankruptcy application, article 43.1 of the RD 8/2020 establishes that, while the state of alarm is in force, the debtor who is insolvent does not have the duty to request the declaration of bankruptcy.
- **What should I do if one of my debtors becomes insolvent during the state of alarm?**
The courts will not admit the necessary bankruptcy applications for processing until two months have elapsed from the end of the state of alarm. Likewise, requests for voluntary bankruptcy proceedings will be accepted with preference, even if they are dated after the necessary bankruptcy proceedings that have been filed.

- **If I have informed the court of the start of negotiations with creditors (art. 5 bis of the Bankruptcy Law), do I have the obligation to request bankruptcy if the period established for it elapses?**

Those debtors that were immersed in the negotiations provided for in article 5 bis of the Bankruptcy Law will not have the obligation to request the bankruptcy proceedings while the state of alarm is in force, even if the term established in the same article has elapsed.

- **Does the suspension of deadlines and legal proceedings also affect bankruptcy proceedings?**

The second additional provision of RD 463/2020, which declares the state of alarm for the management of the health crisis situation, declares the suspension of procedural deadlines. In the exceptions provided, no bankruptcy provision is foreseen, so all procedural terms in bankruptcy matters are suspended.