

Taxation and COVID-19: Spanish Report

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ABSTRACT

This country report focuses on the main tax measures adopted to tackle some of the consequences caused by the pandemic in Spain, as well as on the interpretation of different pieces of tax law in this regard. In doing so, this country report is structured according to the main sections proposed in the questionnaire. The introduction provides an overview of the main effects and figures of the pandemic in Spain from a health, economic and social perspective, as well as general measures adopted to ease their consequences (e.g. lockdown). After that, this report deals with specific direct and indirect tax measures, (sections 2 and 3, respectively), and with procedural tax measures (section 4). To a certain extent, the latter measures have probably been the most relevant from a tax perspective in terms of alleviating the economic needs for both individuals and corporations. Lastly, international tax aspects of the pandemic (section 5) and post-COVID-19 tax measures – not necessarily related to COVID-19 issues (section 6), are also under brief consideration.

KEYWORDS

Taxation – Indirect – Taxation – Direct Taxation

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Introduction

COVID-19 has not only brought a worldwide health crisis, unparalleled in recent times, but also economic and social ones. No country has escaped the pandemic's impact and Spain is no exception to this. Although the full consequences of this multilayered crisis remain to be seen –unfortunately, it is relevant to mention first that the number of cases and deaths in Spain were 936.560 and 33.775, respectively, at the time of drafting this country report¹. It is no secret that the severe –and necessary– measures put in place by Governments all around the world for tackling the spread of the virus temporarily reduced its impact on the population from a health perspective, but, as already mentioned, these measures also had (and still have) consequences from a social and an economic perspective.

March 14th, 2020 was the day that the Spanish Government declared the so-called *Estado de Alarma* (i.e. State of Alert)² for the second time in the last democratic period. The State of Alert is a Constitutional remedy for extraordinary – and listed³–circumstances that allows the Government, under the supervision of Parliament, to adopt specific measures that may even restrict fundamental rights such as the freedom of movement or the right of assembly, under certain conditions⁴. In this regard, the first and most relevant measure adopted by the Spanish Government was a lockdown that lasted three months during which only essential services and essential businesses remained operative⁵.

However, this measure implied harsh (and consequently) social and economic drawbacks. It was indeed reported that Spain was one of the countries within the Eurozone that would be hit the hardest regarding the pandemic's economic consequences taking into consid-

¹ See Ministerio de Sanidad, Gobierno de España, Actualización nº 230. Enfermedad por el coronavirus (COVID-19). 16.10.2020.

² See Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19 (hereinafter, RD 463/2020). See also Art. 116 of Spanish Constitution, which governs the *Estado de Alarma* (State of Alert), *Estado de Excepción* (State of Exception) and *Estado de Sitio* (State of Siege). These three states are further developed by Ley Orgánica 4/1981, de 1 de junio, de los estados de alarma, excepción y sitio (Hereinafter, LO 4/1981).

³ The listed circumstances relate to extraordinary situations such as natural disasters (e.g. earthquakes or floods), health crises (e.g. pandemics), halting of essential services or shortages of essential goods, etc.

⁴ Under the State of Alert, the Government may adopt other measures such as temporary requisition of goods, temporary intervention and occupation of e.g. factories, industries, etc. See Art. 11 LO 4/1981.

⁵ The State of Alert was extended six times under the approval of the Parliament and ended on June 21st.

eration the strict lockdown imposed by the Government and the structural characteristics of its economy⁶. Among other several figures, it is worth highlighting that there was a relevant fall in Gross Domestic Product during the lockdown⁷.

Moreover, Spain experienced an increase in the unemployment rate that reached 16.26% in the third quarter of 2020⁸, and projections are not at all optimistic for 2020 and 2021⁹. A large number of measures were adopted during the State of Alert in order to diminish the pandemic's consequences in Spain. However, two of the most relevant economic and social measures were (i) the amendment of the Expediente de Regulación Temporal de Empleo (hereinafter, ERTE)¹⁰, and (ii) the Ingreso Mínimo Vital (hereinafter, IMV)¹¹. Without going into detail, the amendment of the ERTE allows companies to restructure their workforce for a specific period due to a reduction in business activity because of COVID-19 without laying off employees¹². Employees under the ERTE receive payments from the State similar to unemployment benefits, but they are not included in the unemployment figures¹³. With respect to the IMV, it is fair to say that it was already on the Government's political agenda before COVID-19, but the pandemic accelerated the approval

⁶ See Banco de España, 'Proyecciones macroeconómicas de la economía española (2020-2022): contribución del Banco de España al ejercicio conjunto de proyecciones del Eurosistema de junio de 2020' (2020) <https://www.bde.es/bde/es/secciones/informes/boletines/relac/Boletin_Economic/Informes_de_proy/> accessed 12 October 2020

⁷ From best to worst interannual variation scenarios, projections show a fall in 2020 GDP on average up to 10.5% and 12.6% (2019-2020), and a slight recovery on average in 2021 GDP with an increase up to 7.3% and 4.1% (2020-2021). See Banco de España, Informe Trimestral de la Economía Española, Boletín Económico 2/2020, (2020) p. 14 <Recuadro 1 – Escenarios macroeconómicos para la economía española (2020-2022)>. <https://www.bde.es/bde/es/secciones/informes/boletines/Boletin_economic/> accessed 12 October 2020.

⁸ It is worth mentioning that the unemployment rate in the third quarter of 2019 was 13.92%. See Instituto Nacional de Estadística <<https://www.ine.es>> accessed 27 October 2020.

⁹ From best to worst interannual variation scenarios again, projections show an increase in 2020 unemployment rate on average up to 17.1% and 18.6% (2019-2020), and an additional increase in 2021 unemployment rate also on average up to 19.4% and 22.1% (2020-2021). See Banco de España, Informe Trimestral de la Economía Española, Boletín Económico 2/2020, (2020) p. 14. <available at: https://www.bde.es/bde/es/secciones/informes/boletines/Boletin_economic/> accessed 15 October 2020.

¹⁰ See Arts. 22 et seq., of Real Decreto-ley 8/2020, de 17 de marzo, de medidas urgentes extraordinarias para hacer frente al impacto económico y social del COVID-19 (hereinafter, RDL 8/2020).

¹¹ See Real Decreto-ley 20/2020, de 29 de mayo, por el que se establece un ingreso mínimo vital (hereinafter, RDL 20/2020). See also, with respect to allowances for specific self-employed individuals, Art. 17 RDL 8/2020.

¹² This restructuring would mean cutting working hours or suspending the activity of employees or groups of employees. See, again, Arts. 22 et seq RDL 8/2020.

¹³ It is relevant to highlight that companies were not allowed by statute to dismiss employees arguing a decrease in the business activity due to COVID-19 during the period that these COVID-19 measures were (and are) in force. See, in this regard, Art. 28 RDL 8/2020 and Art. 2 Real Decreto-ley 9/2020, de 27 de marzo, por el que se adoptan medidas complementarias, en el ámbito laboral, para paliar los efectos derivados del COVID-19. The unemployment rate has been partially contained in the past months because of the ERTE. The Government extended this measure twice and it might be extended again in the future. See Real Decreto-ley 18/2020, de 12 de mayo, de medidas sociales en defensa del empleo and Real Decreto-ley 30/2020, de 29 de septiembre, de medidas sociales en defensa del empleo.

of a measure that is meant to prevent the individual risk of poverty and social exclusion through a subjective right in the form of a minimum income benefit¹⁴.

Last but not least, another consequence of the pandemic and the lockdown was a significant decline in terms of tax collection, which is still in the process of recovery. It is unquestionable that an economic downswing implies a consequent decrease in terms of tax collection. Nevertheless, strictly speaking, this decline in tax collection from March to October 2020 does not only relate to a loss in tax revenue – at least to a certain extent. In this regard, it is worth mentioning that a relevant number of the tax measures put in place due to the pandemic relate to tax deferral (e.g. postponement of tax return or payment deferrals)¹⁵.

The following sections provide an overview of the taxation in times of COVID-19 in Spain, as well as the most relevant tax measures adopted in 2020 due to the pandemic –as not all of them were related to tax deferral¹⁶.

1. Direct taxation

There have not been many substantial amendments to the law in terms of direct taxation due to COVID-19. Nevertheless, with regards to individual taxation one of the amendments introduced related to the method for determining the taxable base by self-employed individuals as a response to the general downturn in economic activity. The individual income tax law allows self-employed individuals performing specific activities (e.g. cafeterias, pharmacies, grocery stores, etc.) to optionally determine their taxable base based on particular parameters (i.e. método de estimación objetiva - objective assessment regime) instead of taking into account the actual financial statements of their activity (i.e. método de estimación directa – direct assessment method)¹⁷. Self-employed individuals may always switch from the objective to the direct method fulfilling specific timing requisites and such a decision implies the continued application of the direct method to the activity for a

¹⁴ IMV mainly focuses on individuals in a position of vulnerability because of scarce economic resources and RDL 20/2020 rules the requisites and conditions for such a benefit.

¹⁵ Tax revenue decreased to 9.6% (7.6% corrected) during 2020 until September. See AEAT (2020), Informe Annual de Recaudación Tributaria – Septiembre 2020, p. I-1. Nevertheless, the decline in terms of tax collection was significantly high in previous months with respect to the same period in 2019. See, for further detail on the relevant figures, https://www.agenciatributaria.es/AEAT.internet/Inicio/La_Agencia_Tributaria/Memorias_y_estadisticas_tributarias/Estadisticas/Recaudacion_tributaria/Informes_mensuales_de_Recaudacion_Tributaria/2020/2020.shtml

¹⁶ Unfortunately, this country report does not deal with regional and local tax law, nor with the tax measures adopted by regional and local Governments within their legal powers for tackling the consequences of COVID-19.

¹⁷ See, on the objective assessment method, Art. 31 of Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas físicas y de modificación parcial de las leyes de los Impuestos sobre Sociedades, sobre la Renta de no Residentes y sobre el Patrimonio (hereinafter, Individual Income Tax Law or LIRPF, indistinctly).

period of three years¹⁸. Due to the COVID-19 situation and the consequent lack of activity (and income), the new measure allows a self-employed individual to switch method just for 2020 and not for the three-year period and therefore would only be taxed for the income actually earned and not for the income objectively considered for the determination of the taxable base in 2020¹⁹.

Moreover, there was a measure that applied to particular self-employed individuals who were still determining the taxable base according to the objective assessment method. In line with the previous amendment for adjusting taxation to economic reality, to determine the amount of mandatory advance payments for each quarter of 2020 according to the rules of the objective assessment method the calendar days during the State of Alert would not be considered as days of activity²⁰. Regarding advance payments, but this time in terms of corporate taxation, corporations fulfilling specific requisites were allowed to opt for calculating the mandatory advance payments not on the basis of previous tax returns (i.e. 2019), but considering the actual taxable base up to the third, ninth or eleventh month of the year – depending on the moment²¹.

Another measure relevant to self-employed individuals and companies both with a turnover of less than 6.010.121,04€ in 2019 was the six-month postponement of specific tax debts of less than 30.000€, the tax return of which was due between March 12th and May 30th²². Two remarks on this amendment. This measure even allows for the postponement of tax debts that are not eligible for deferral by statute (and by nature) under normal conditions such as withheld taxes, output VAT and advance payments²³. Moreover, this postponement does not incur deferral interest for the first four months²⁴. At this point, it

¹⁸ See, with respect to the requisites and consequences, Art. 33 of Real Decreto 439/2007, de 30 de marzo, por el que se aprueba el Reglamento del Impuesto sobre la Renta de las Personas Físicas y se modifica el Reglamento de Planes y Fondos de Pensiones, aprobado por Real Decreto 304/2004, de 30 de febrero.

¹⁹ See Art. 10 of Real Decreto-ley 15/2020, de 21 de abril, de medidas urgentes complementarias para apoyar la economía y el empleo (hereinafter, RDL 15/2020). This switching decision in terms of income taxation also has implications on the determination of the tax debts on VAT since those taxpayers under the VAT objective and simplified estimation method will adopt the general method in order to calculate the tax debts on VAT by considering the actual output and input VAT of 2020. See Art. 10, 2º RDL 15/2020. See, for further detail on VAT, *infra* sec. 3.

²⁰ See Art. 11.1 RDL 15/2020. See also *supra* n. 17 and 18. See, with respect to VAT, Art. 11.2 RDL 15/2020.

²¹ See Art. 9 RDL 15/2020. Without getting into too much detail, Article 40 of Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades (hereinafter, Corporate Income Tax Law, CITL or LIS, indistinctly) lays down these two methods for calculating the advance payments. Subject to the COVID-19-related provision already mentioned, the method referred to the actual taxable base is of mandatory application to companies exceeding 6 Million euros in the previous tax year. See Art. 40 (3) CITL.

²² See Art. 14 of Real Decreto 7/2020, de 12 de marzo, por el que se adoptan medidas urgentes para responder al impacto económico COVID-19 (hereinafter, RDL 7/2020). See also, with respect to specific requisites such as the amount of 30.000€, Art. 82.2 a) of Ley 58/2003, de 17 de diciembre, General Tributaria (hereinafter, Ley 58/2003 or General Tax Code). See also *infra* n. 54 and related text.

²³ See Art. 14.2 RDL 7/2020. See also, with respect to the non-deferral of these tax debts under normal circumstances, Art. 65. 2 of the General Tax Code.

²⁴ See Art. 14.3 RDL 7/2020.

is relevant to highlight that there was no postponement of the general tax return for corporate income tax nor individual income tax for 2019, which were due by July 25th and June 30th, 2020, respectively²⁵. Having said that, and notwithstanding the aforementioned postponement for self-employed individuals and certain corporations²⁶, there was a time limit extension for tax returns due between April 15th and May 20th for those taxpayers with a turnover of less than 600.000€ in 2019 until May 20th²⁷.

In the field of tax benefits, it is worth recalling that donations made by individuals and corporations to the public treasury for funding expenses incurred due to COVID-19 are also eligible for specific tax benefits at the corporate and individual tax level in 2020²⁸. Both individuals and corporations may deduct specific amounts with respect to the donation from the gross tax debt²⁹. In this regard, the general deduction –not necessarily related to COVID-19– has been amended –and increased– in terms of individual taxation³⁰. Moreover, there have been amendments and improvements with respect to other tax benefits related to specific relevant sectors such as the audiovisual production industry. In this regard, specific tax benefits in the form of tax deductions for certain activities have been improved by increasing both the percentages of deduction and the quantitative thresholds for deduction³¹. Moreover, there have been also amendments to the tax law with respect to the automotive industry such as the increase of a particular deduction on innovative

²⁵ For the sake of completeness, a particular amendment to corporate law had implications on the tax return of corporations. Such amendment allowed companies to postpone the preparation and approval procedure of their annual accounts (usually from January to July) for specific periods depending on the type of corporation. See Arts. 40 and 41 RDL 8/2020. As the Spanish Corporate Income Tax is based on such accounts, particularly on the Profit and Loss Statement, the taxpayer had to file the tax return with the financial information at its disposal by the tax return time limit (July 25th). Nevertheless, and in short, the taxpayer also had to file an additional tax return by November 30th in order to amend potential mismatches between the tax paid (or reimbursed) by July and the actual tax that should have been paid (or reimbursed) by that time. See, with respect to this amendment and its consequences, Art. 12 of Real Decreto-ley 19/2020, de 26 de mayo, por el que se adoptan medidas complementarias en materia agraria, científica, económica, de empleo y Seguridad Social y tributarias para paliar los efectos del COVID-19.

²⁶ See supra n. 22 and, particularly, the related text.

²⁷ See Artículo único of Real Decreto-ley 14/2020, de 14 de abril, por el que se extiende el plazo para la presentación e ingreso de determinadas declaraciones y autoliquidaciones tributarias (hereinafter, RDL 14/2020). It is worth mentioning that groups of companies within the Spanish definition – see CITL – are not eligible for such an extension to the time limits. See Artículo único, 1. 3º RDL 14/2020 This has implications on e.g. the advance payment of the first quarter of the year.

²⁸ See Art. 47 of Real Decreto-ley 11/2020, de 31 de marzo, por el que se adoptan medidas urgentes complementarias en el ámbito social y económico para hacer frente al COVID-19 (hereinafter, RDL 11/2020).

²⁹ See, with respect to these tax benefits, Arts. 20-24 of Ley 49/2002, de 23 de diciembre, de regimen fiscal de las entidades sin fines lucrativos y de los incentivos fiscales al mecenazgo (hereinafter, Ley 49/2002). These tax benefits for donations are also applicable to non-residents. See also AEAT, Nota sobre Donativos al Tesoro para la financiación de los gastos ocasionados por la crisis sanitaria provocada por COVID-19, <[³⁰ See Disposición final segunda of Real Decreto-ley 17/2020, de 5 de mayo, por el que se aprueban medidas de apoyo al sector cultural y de carácter tributario para hacer frente al impacto económico y social del COVID-2019 \(hereinafter, RDL 17/2020\), which amends Art. 19 of Ley 49/2002. See supra n. 29.](https://www.agenciatributaria.es/AEAT.internet/Inicio/La_Agencia_Tributaria/Campanas/_Campanas_/Medidas_Tributarias_COVID_19/Informacion_sobre_donativos_COVID_19__efectos_fiscales_y_obligaciones_formales.shtml#(2).></p>
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³¹ See Disposición final primera of RDL 17/2020, amending Art. 36 of CITL.

and technological activities initiated in 2020 and 2021 for improving the value chain of production processes in such industry³².

Further to this selection of tax measures related to COVID-19, there have been questions from taxpayers to the *Dirección General de Tributos* (DGT) –General Directorate of Taxes– on how to interpret specific pieces of legislation due to the exceptional circumstances of the pandemic and, particularly, its consequences³³. With respect to individual taxation, a group of tax rulings related to the taxation of income stemming from immovable property during the State of Alert³⁴. Although it is quite uncontroversial, the DGT considered that the agreement on the reduction or remission of rental fees between tenant and landlord implies a consequent reduction of the assessable income in the taxable base of the latter³⁵. Moreover, the DGT considered that the deferral of rental fees also implies the deferral of taxation of such income by statute³⁶. In the context of taxation on income from immovable property, the DGT is also of the opinion that the lockdown (i.e. restrictions on free movement) does not alter the taxation of deemed income attributed to the owner of immovable property other than the habitual abode (i.e. permanent dwelling) according to Art. 85 LIRPF³⁷. According to this Article, specific types of unused urban immovable property (e.g. apartment) other than the habitual abode will lead to the imputation of 2% – or 1.1%, depending on the cases – of the cadastral value of such properties in the owner's taxable base. In this regard, the DGT recalls that Art. 85 LIRPF is meant to tax the ability-to-pay related to the mere ownership and, particularly, the free disposal of immovable property, excluding the habitual abode, and that there would be no deemed income taxation for such concept in specific cases such as the rental of the property. In short, the lockdown is not reason enough for the DGT to alter the taxation of this deemed income according to Art. 85 LIRPF³⁸.

Another group of tax rulings on individual taxation related to the effects that the State of Alert has had on the application of specific tax benefits. One of the best examples is the

³² See Art. 7 of Real Decreto 23/2020, de 23 de junio, por el que se aprueban medidas en materia de energía y en otros ámbitos para la reactivación económica, amending Art. 35 CITL.

³³ See, with respect to the tax rulings issued by the General Directorate of Taxes in general, Arts. 88 and 89 of the General Tax Code. These tax rulings are of mandatory observation in the application of the law by the tax authorities. See Art. 89 of the General Tax Code.

³⁴ See, on the taxation of income stemming from immovable property, arts. 22-24 LIRPF.

³⁵ See, among others, Contestación a consulta vinculante de la Dirección General de Tributos V0985/2020, de 21 de abril (hereinafter with respect to tax rulings, Contestación CV DGT). See also, in similar terms with respect to commercial property leases, Contestación CV DGT V1553/2020, de 22 de mayo. In this case, the DGT emphasized that it is necessary that there is an agreement between tenant and landlord on the reduction or remission of rental payments. Otherwise, the unpaid rental fees must be considered in the landlord's taxable base.

³⁶ See, in this regard, Art. 14.1. a) LIRPF.

³⁷ See Contestación CV DGT V1474/2020, de 19 de mayo and Contestación CV DGT V2497/2020, de 22 de julio.

³⁸ In the same line of reasoning, neither has the pandemic altered the taxation derived from the use of a vehicle by an employee as income in kind whenever the car is still at the disposal of the employee, regardless of its actual utilization. See Contestación CV DGT 1387/2020, de 13 de mayo.

non-taxation on the capital gains stemming from the sale of the habitual abode whenever the price of sale is reinvested in immovable property (i.e. habitual abode) within a period of two years³⁹. Notwithstanding the further analysis carried out *infra sec. 4*, it is worth mentioning here that one of the measures attached to the State of Alert was the suspension of time limits concerning the prescription or limitation applicable to actions or rights in every field of law⁴⁰. The DGT interpreted that this suspension also applies to the aforementioned tax benefit and thus, to the time limit of two years for reinvesting the proceeds of sale from the relevant immovable property⁴¹. In short, the two-year period for reinvestment was extended by the number of days between March 14th and May 30th for the application of the tax benefit⁴².

Another interesting tax ruling issued by the DGT related to the residence of individuals. The question posed to the DGT was whether the number of days spent in Spain by individuals (a married couple in this case) during the State of Alert period counted for the purposes of applying the 183-day rule laid down in the individual income tax law⁴³. It is relevant to recall in this regard that an individual's residence in Spain might be determined considering the 183-day rule or the center of vital interest, indistinctly⁴⁴. The DGT considered in the ruling that the State of Alert period does not alter the 183-day rule laid down in domestic law for the purposes of an individual's residence. Therefore, if an individual stays more than 183 days in Spain – for whatever reason, such individual becomes a Spanish resident for tax purposes, at least in the absence of a tax treaty⁴⁵.

2. Indirect taxation

One of the few measures –if not the only one– adopted in the field of indirect taxation to tackle the consequences of COVID-19 was the reduction of the VAT rate applicable to specific purchases⁴⁶. Notwithstanding potential issues with respect to the VAT Directive⁴⁷,

³⁹ See, in this regard, Art. 38 of LIRPE.

⁴⁰ See Disposición adicional cuarta of RD 463/2020.

⁴¹ See Contestación CV DGT 1115/2020, de 28 de abril.

⁴² See, in similar terms, Constestaciones CV DGT V2925/2020, de 29 de septiembre; V2594, de 30 de julio; and V2429/2020, de 15 de julio. This interpretation was also considered for the suspension of time limits with respect to other tax benefits. See, with respect to the exemption related to reinvestments in life annuities, Contestación CV DGT 1324/2020, de 5 de mayo.

⁴³ See Contestación CV DGT 1983/2020, de 17 de junio.

⁴⁴ See Art. 9 LIRPE. This Article also considers a rebuttable presumption of residence in Spain if the taxpayer's spouse and children habitually reside in Spain.

⁴⁵ See, with respect to further international tax aspects of this tax ruling, *infra sec. 5*.

⁴⁶ See Art. 8 of RDL 15/2020.

⁴⁷ This is unfortunately far beyond the purpose of this country report and the questionnaire it serves. See, with respect to import duties and VAT exemptions on imports, Commission Decision (EU) 2020/491, of 3rd April 2020, on relief from

this measure laid down a 0% tax for internal acquisitions, intra-Community supplies and import of listed healthcare material by (or to) public institutions, health centers (hospitals and clinics), and some private institutions until April 30th, 2021⁴⁸. It is not possible to go into further detail here, but this measure might relate to a technical exemption without affecting the deductibility of output VAT. Moreover, it is pertinent to highlight that the measure states that invoices derived from relevant transactions must consider the latter as exempted in order to not modify the billing systems of taxpayers⁴⁹. With respect to the subjective scope of the rule, and taking into consideration that this measure focuses on COVID-related issues, the DGT recalls that only those centers, no matter whether public or private, that admit people for treatment, and usually perform research and teaching activities, are eligible for 0% tax for their acquisitions⁵⁰.

Most recently, the Spanish Government has also reduced the applicable VAT rate to 4% for a specific type of facemask (i.e. mascarillas quirúrgicas – surgical masks). In this regard, it should be recalled that the maximum price for surgical masks was already fixed back in April 2020 whenever sold for public consumption⁵¹.

In addition to these measures, taxpayers could also have benefited from the postponement and extension of time limits for certain VAT-related tax debts and tax returns under specific circumstances. In this regard, the option to postpone tax debts under certain circumstances for six months due to the RDL 7/2020 may have also applied e.g. to the mandatory VAT tax return for the first quarter of 2020 and to the mandatory VAT tax return due by February, March and April, 2020, depending on the case⁵². As already considered⁵³, there

import duties and VAT exemption on importation granted for goods needed to combat the effects of the COVID-19 outbreak during 2020.

⁴⁸ Indeed, this measure has been extended once again until April 30th, 2021. See Art. 6 Real Decreto-ley 34/2020, de 17 de noviembre, de medidas urgentes de apoyo a la solvencia empresarial y al sector energético, y en materia tributaria. See, with respect to the listed goods, Annex to RDL 15/2020. See also, with respect to the first extension of the relevant period until October 31st, Disposición adicional cuarta of Real Decreto-ley 27/2020, de 4 de agosto, de medidas financieras, de carácter extraordinario y urgente, aplicables a las entidades locales (not validated by the Parliament); and Disposición adicional séptima of Real Decreto-ley 28/2020, de 22 de septiembre, de trabajo a distancia. See also, for further detail on the private institutions considered in the measure, Art. 20 (3) of Ley 37/1992.

⁴⁹ See Art. 8 and Preamble RDL 15/2020.

⁵⁰ For instance, private dental clinics are not considered within the subjective scope of the rule since the services provided in these clinics do not relate to COVID. See *Contestación CV DGT V2049/2020*, de 23 de junio. See, for the same conclusion with respect to private podiatrists, *CV DGT V2049/2020*, and to speech therapies, *CV DGT 2076/2020*, de 23 de junio.

⁵¹ Resolución de 22 de abril de 2020, de la Dirección General de Cartera Común de Servicios del Sistema Nacional de Salud y Farmacia, por la que se publica el Acuerdo de la Comisión Interministerial de Precios de los Medicamentos de 21 de abril de 2020, por el que se establecen importes máximos de venta al público en aplicación de lo previsto en la Orden SND/354/2020, de 19 de abril, por la que se establecen medidas excepcionales para garantizar el acceso de la población a los productos de uso recomendados como medidas higiénicas para la prevención de contagios por el COVID-19.

⁵² See, once again, Art. 14 RDL 7/2020. See, in terms of direct taxation and the general conditions, *supra* sec. 2 and, particularly, nn. 23 and 24.

⁵³ See Artículo único RDL 14/2020. See also, for further detail on the extension of time limits, *supra* n. 27.

was also a time limit extension until May 20th for tax returns due between April 15th and May 20th by those taxpayers whose turnover was less than 600.000 in 2019 that may also applied to specific VAT tax returns⁵⁴.

Although there have been many tax rulings on VAT, particularly regarding the 0% VAT rate⁵⁵, it is interesting to recall the one related to the reduction of rental fees. The DGT interpreted that a reduction in the rental fees with respect to commercial property leases implies the reduction of the relevant taxable base only if such a reduction of fees stems from an actual formal agreement before, or by the moment, the fee is chargeable⁵⁶. If the agreement is dated after the fee is chargeable, the taxable event is fulfilled and there will be taxation⁵⁷. In this latter case, it would however be possible to reduce the taxable base according to the regular procedure afterwards, if the situation meets the correct conditions.

3. Procedural tax aspects

Some of the most relevant measures in the taxation field dealt with tax procedures and this section is dedicated to recalling those already mentioned *supra*⁵⁸, as well as other measures adopted throughout the pandemic in this regard. It is first worth highlighting that the Tax administration and all related procedures are highly digitalized, and it is actually mandatory for specific taxpayers to fulfill their tax duties exclusively by digital means. Notwithstanding such a reality, the vast complexities that have arisen as a result of the pandemic have led to specific measures being adopted to facilitate the fulfilment of the tax obligations by both the taxpayers and the Tax administration.

One of the measures the State of Alert (RD 463/2020) brought was the halting of the prescription and limitation time limits from March 14th with respect to actions and rights in every field of law⁵⁹, as well as to judicial and administrative proceedings⁶⁰. Nevertheless, it is important to highlight that the RD 463/2020 specifically excluded administrative procedures in the area of tax law from such suspension, as well as the time limits for tax returns⁶¹.

⁵⁴ See, for instance, Form 303 – VAT Self-assessment and Form 349 – Information Return, Recapitulatory return of Intra-community transactions.

⁵⁵ See, among many others, *supra* n. 50.

⁵⁶ See, for instance, CV DGT 1497/2020, de 19 de mayo. See also CV DGT 2598/2020, de 30 de mayo.

⁵⁷ *Id.*

⁵⁸ See, for instance, *supra* nn. 22-27, 40-63 and related texts.

⁵⁹ See *supra* n. 40.

⁶⁰ See Disposiciones adicionales segunda y tercera of RD 463/2020, respectively.

⁶¹ See Art. 33.6 RD 463/2020.

A different piece of legislation provided for the suspension of time limits in the tax field⁶², which eventually lasted until May 30th⁶³. As already considered, this suspension affected the prescription and limitation time limits of the actions and rights of both taxpayers and the Tax administration (e.g. deadlines for appealing, initiation of an auditing proceeding, collection of taxes)⁶⁴. Moreover, the suspension of administrative tax procedures mainly meant the possibility of extending the time limit for completing general procedures on management and auditing of taxes and sanctioning procedures carried out by the Tax administration⁶⁵, as well as time limits for resolving claims brought before the Tax administration and Administrative Courts⁶⁶.

In addition to those time limit postponements and extensions for tax debts and tax returns already considered⁶⁷, it is important to highlight another measure that extended the time limits until May 30th for paying tax debts assessed by the Tax administration that should have been paid between March 18th and May 30th⁶⁸.

As considered *supra* in sec. 1, these measures, and particularly the ones related to tax deferral, had a relevant –and apparently temporary– impact on tax collection. Nevertheless, they have been proved necessary in most of the cases to ease the economic situation and the multilayered (tax) uncertainty stemming from COVID-19 to some extent.

4. International tax aspects

With regard to the field of international taxation, the tax issues related to COVID-19 and the measures adopted to tackle it primarily relate to the tax residence of corporations and individuals, as well as potential Permanent Establishment situations that would likely never have occurred in the absence of the pandemic.

⁶² See Art. 33 RDL 8/2020. See also Disposición adicional novena of Real Decreto-ley 11/2020, de 31 de marzo, por el que se adoptan medidas urgentes complementarias en el ámbito social y económico para hacer frente al COVID-19 (hereinafter, RDL 11/2020).

⁶³ See Disposición adicional primera RDL 15/2020, which extends a first period of suspension of time limits in the tax field from April 30th to May 30th.

⁶⁴ See Art. 33.6 RDL 8/2020. Article 66 of the General Tax Code lays down a prescription time limit of 4 years with respect to rights of both the taxpayers and the Tax administration. With respect to deadlines for administrative appeals, the appeal submission period restarted on May 30th according to Art. 33.7.2º RDL 8/2020.

⁶⁵ See Art. 33.5 RDL 8/2020.

⁶⁶ *Id.* See also Art. 33.7 RDL 8/2020 and Disposición adicional tercera RD 463/2020. See also Disposición adicional novena RDL 11/2020. RDL 11/2020 extends the suspension of time limits for resolving claims brought before Administrative Courts until May 30th, and of the prescription and limitation time limits with respect to actions, rights and procedures in the tax field within the powers of Regions (Comunidades Autónomas) and Local entities.

⁶⁷ See *supra* nn. 22-27, 40-63 and related texts

⁶⁸ See Art. 33.1 RDL 8/2020. Among other situations, this extension also applied to postponements and payments in instalments already granted by the Tax administration and to callings of specific securities. *Id.*

No tax measure has dealt with these potential issues during this period in Spain and there is no hint on the Tax Administration's position with respect to them so far. Nonetheless, the DGT issued a tax ruling on a domestic matter with international implications and interpreted that the pandemic and lockdown measures are not reason enough for changing the interpretation and application of the 183-day rule laid down in domestic legislation for considering an individual resident in Spain as already mentioned⁶⁹. At first sight, this tax ruling would be contrary to the non-binding opinion of the OECD Secretariat on the matter since the OECD Secretariat recommends not to consider the lockdown periods for the purpose of determining the residence of individuals and corporations⁷⁰. Although that contradiction would not be a problem whatsoever, in this case, the DGT interpreted the residence of the individuals from a domestic perspective without even referring to its interpretation from a treaty perspective mainly because there is no relevant tax treaty between Spain and the country from where the individuals were supposed to be resident (i.e. Lebanon)⁷¹. In this regard, the DGT's interpretation on an individual's residence from a treaty perspective may be different in the near future with respect to the one considered from a domestic perspective and meet the non-binding interpretation of the OECD Secretariat on the matter⁷².

5. What now? Post-CoVID tax measures

The health crisis due to COVID-19 has shown the need for greater involvement of the Public sector to meet the basic healthcare, social, labour and economic needs of the population during the pandemic, at least⁷³. This means a consequential increase of public expenditure at different levels of the Public Administration in order to alleviate the harsh consequences of an economic downturn, an increase in unemployment rates, an increase

⁶⁹ See supra sec. 2 in fine and, particularly, nn. 43-44 and related texts.

⁷⁰ See OECD, 'OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis, 3 April 2020' (2020). See also, for an analysis of the document and among others, J.M. Calderón Carrero, 'COVID-19 y fiscalidad internacional. Las primeras recomendaciones de la OCDE' (2020) 446 CEF. *Revista de Contabilidad y Tributación*, 97-112; J.M. Macarro Osuna, 'Fiscalidad internacional en tiempos de pandemia', in: Rodríguez Ayuso and Atienza Macías (dirs.), *Retos Jurídicos ante la crisis del Covid (La Ley – Wolters Kluwer 2020)*, 208-214. See also A. Báez Moreno and H. López López, 'Reflexiones sobre la pandemia y sus efectos en la fiscalidad internacional a partir de la Nota de la OCDE de 3 de abril de 2020' (2020) <<https://ssrn.com/abstract=3624152>>.

⁷¹ Nevertheless, it is fair to point out that Báez Moreno and López López rightly consider that the OECD Secretariat surprisingly and inappropriately also refers to the tax residence of individuals from a domestic perspective. See Báez Moreno and López López (2020), 37-38.

⁷² Although an interpretation in line with the OECD Secretariat opinion would deserve a critical analysis, this is far beyond the purposes of this country report. See, for a very critical analysis of the document of the OECD Secretariat, Báez Moreno and López López (2020). Macarro Osuna however considers that the exceptional circumstances of the pandemic should not have consequences in terms of residence. See Macarro Osuna (2020), 214.

⁷³ See, with respect to two measures adopted in this sense, supra sec. 1.

in inequality rates⁷⁴, etc. Apart from battling tax fraud and tax avoidance, there have been different proposals on adapting and amending the tax systems to fund public expenditure in the near future such as different forms of wealth taxes⁷⁵, taxation on digital economy, and an increase of excise duties on alcohol, tobacco and mineral oils⁷⁶, among many others.

Like many other countries – if not all, taxes are always cause for public debate in Spain and the pandemic period is no exception to that reality. In this regard, there have been strong proposals for the amendment of the wealth tax. Moreover, some amendments to the tax law and some taxes have been approved over the past months, however not necessarily related to the pandemic. It is worth highlighting that Spain finally adopted a tax on specific digital services (i.e. digital service tax)⁷⁷, and a tax on specific financial transactions⁷⁸. Most recently, the 2021 Government financial bill, which is still in process⁷⁹, laid down amendments to different pieces of tax legislation such as (1) an actual increase of the highest bracket of the wealth tax from 2.5% to 3.5%; (2) a limitation on specific tax benefits related to private pension plans in individual taxation; (3) a limitation on the exemption method on dividends (up to 95%) in corporate taxation; (4) an increase on the VAT rate applicable to sugar-sweetened beverages; and (5) an increase on the taxation of diesel (mineral oils)⁸⁰. Nevertheless, it is necessary to wait for the final text and the tax measures that are eventually adopted.

Concluding remarks

In Spain the pandemic has led to a barrage of rules being adopted to alleviate the health, economic and social consequences of it. Only a few of these measures were tax related

⁷⁴ For instance, some authors have already pointed out an increasing trend in terms of inequality. See D. Furceri, P. Loun-gani, J.D. Ostry y P. Pizzuto, 'COVID-19 will raise inequality if past pandemics are a guide' (2020) <<https://voxeu.org/article/covid-19-will-raise-inequality-if-past-pandemics-are-guide>>. See also, in this regard, FAO, 'Addressing inequality in times of COVID-19' (2020) <<http://www.fao.org/documents/card/en/c/ca8843en/>> accessed 23 October 2020

⁷⁵ See, for instance, C. Landais, E. Saez, y G. Zucman, 'A progressive European wealth tax to fund the European COVID response' (2020) <<https://voxeu.org/article/progressive-european-wealth-tax-fund-european-covid-response>> accessed 24 October 2020; and, N. O'Donovan, 'How a one-off tax on wealth could cover the economic cost of the coronavirus crisis' (2020) <<https://theconversation.com/how-a-one-off-tax-on-wealth-could-cover-the-economic-cost-of-the-coronavirus-crisis-137677>> accessed 24 October 2020.

⁷⁶ See J.M. Martín Rodríguez, 'Medidas fiscales en España frente a la crisis del COVID-19. Respuesta inmediata a los problemas de liquidez y propuestas para garantizar la sostenibilidad en el medio y largo plazo', in: Rodríguez Ayuso and Atienza Macías (dirs.), *Retos Jurídicos ante la crisis del Covid* (La Ley – Wolters Kluwer 2020), 151.

⁷⁷ See Ley 4/2020, de 15 de octubre, del Impuesto sobre Determinados Servicios Digitales.

⁷⁸ See Ley 5/2020, de 16 de octubre, del Impuesto sobre las Transacciones Financieras.

⁷⁹ See Proyecto de Ley de Presupuestos Generales del Estado para el año 2021 (hereinafter, LPGE).

⁸⁰ The measure related to the increase on the taxation of diesel has apparently not succeeded in the negotiation process of the LPGE.

as a result of the consequences from the lockdown and the inherent economic standstill. Nevertheless, most of the tax measures adopted during the pandemic (and the interpretations of the tax law) may not be considered relevant from a structural point of view of the tax system and may likely have no relevance whatsoever due to their own nature once the pandemic is over. Although they may fulfill their purpose, particularly in terms of tax deferral, all these measures have been adopted because of the pandemic's exceptional circumstances and they must be read in this context and to that extent. How to deal with the economic and social consequences of the pandemic is truly a different kettle of fish that is unfortunately beyond the scope of this report.

In a nutshell, this country report has served the main purpose of systematizing the tax measures adopted in Spain in the field of tax law during the first part of the pandemic and of providing insight on the interpretation of the tax law by the Tax authority over this complex legal period.