

Royal Decree-Law 14/2020, of April 14, which extends the term for the submission and entry of certain tax declarations and self-assessments.

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I

Since the declaration of the COVID-19 pandemic by the World Health Organization, the Government of Spain has been gradually adopting a series of measures of a different nature aimed at alleviating the serious effects that it is having on Spanish society .

These measures, whose main areas have been health, safety, transport and mobility, the economy and defense, have been reflected in a set of royal decree-laws that go from Royal Decree-law 6/2020, of March 10, by which certain urgent measures are adopted in the economic field and for the protection of public health, until Royal Decree-Law 13/2020, of April 7, by which certain urgent measures are adopted in agrarian employment matter.

From a tax perspective, it is necessary to highlight Royal Decree-Law 7/2020, of March 12, by which urgent measures are adopted to respond to the economic impact of COVID-19, whose article 14 establishes the postponement of tax debts; Royal Decree-Law 8/2020, of March 17, on extraordinary urgent measures to face the economic and social impact of COVID-19, which includes, among other measures, the suspension of deadlines in the tax field and the exemption of the gradual payment of the modality of legal acts documented in the Tax on Patrimonial Transmissions and Documented Legal Acts in the deeds of novation of loans and mortgage credits; and Royal Decree-Law 11/2020, of March 31, adopting urgent complementary measures in the social and economic field to face COVID-19, which adds another set of measures, such as electricity and gas marketers may delay the liquidation of the Value Added Tax, the Tax Special on Electricity and Hydrocarbon Tax, corresponding to invoices whose payment by consumers has been delayed; the postponement of debts derived from customs declarations; the suspension of terms in the tax area of the autonomous communities and local entities; the extension of the term to file replacement appeals or economic-administrative claims that are governed by General Tax Law 58/2003, of December 17, or,

In continuity with the urgent measures approved by the Government to alleviate the crisis situation generated by COVID-19, this royal decree-law is adopted.

In the tax field, it is necessary to continue implementing measures that allow taxpayers to voluntarily comply with their tax obligations, taking into account the great limitations that are being carried out in terms of mobility, which makes it difficult or impossible in many cases such compliance.

In this sense, we must remember the important role that tax professionals play in the application of the tax system and the promotion of the aforementioned voluntary compliance, underlined by their participation in the Forum of Professional Tax Associations and Colleges and in the Good Codes. Tax Practices for Professional Associations and Colleges and for advisers and managers promoted by said Forum.

The current situation of health risk and the measures adopted to contain it are causing operational and operational problems, especially in small and medium-sized enterprises (SMEs) and the self-employed, and by extension, advisers and managers who face serious difficulties in collecting the necessary information. and comply with the tax obligations of its clients, for which the voluntary period for filing and paying tax returns and self-assessments is extended.

In addition, measures are adopted for the management of credits for the autonomous communities related to COVID-19.

II

In this way, this royal decree-law is structured in a single article, a single additional provision and three final provisions.

The single article provides, for the indicated taxes, the extension of the term of presentation and entry of the tax declarations and self-assessments whose expiration occurs from the entry into force of this royal decree-law and until May 20 2020.

Said measure will be applied to those taxpayers who have a volume of operations not exceeding 600,000 euros for the purposes of Value Added Tax. The measure will also be applicable to public administrations, although in this case due to the configuration of these taxpayers, the volume of their budget will be taken as a threshold.

The single additional provision provides for the management of credits related to COVID-19, so that credits can be released to the autonomous communities to face the situation derived from COVID-19, for the amounts that have been established, in a single payment instead of the quarterly payments established by article 86 of General Budget Law 47/2003, of November 26.

III

The adoption of economic measures through a royal decree-law has been endorsed by the Constitutional Court whenever there is an explicit and reasoned reason for the need, understanding as such that the economic situation requires a quick response, and urgency, assuming as such that the delay in the time of the adoption of the measure in question through a procedure through the ordinary regulatory channel could generate some damage.

The royal decree-law constitutes a constitutionally lawful instrument, provided that the purpose that justifies emergency legislation is, as has repeatedly been required by our Constitutional Court (judgments 6/1983, of February 4, F. 5; 11/2002, of January 17, F. 4, 137/2003, of July 3, F. 3 and 189/2005, of July 7, F. 3), to contribute to a specific situation, within the governmental objectives, that by Reasons that are difficult to foresee require immediate regulatory action in a shorter period than that required by the normal route or by the urgent procedure for the parliamentary processing of laws, especially when the determination of said procedure does not depend on the Government. No doubt offers that the situation facing our country due to the declaration of public health emergency of international importance,

In the current scenario of containment and prevention of COVID-19, it is urgent and necessary to stop the epidemic and prevent its spread to protect public health while adopting measures of economic content to face its consequences. Likewise, the extraordinary and urgent need to approve this royal decree-law is part of the impeachment or political judgment that corresponds to the Government (SSTC 61/2018, of June 7, FJ 4; 142/2014, of September 11, FJ 3) and this decision, without a doubt, supposes an ordering of political priorities for action (STC, of January 30, 2019, Constitutional Appeal No. 2208-2019), focused on compliance with legal security and public health. The reasons for opportunity that have just been stated demonstrate that, in no case, this royal decree-law constitutes an event of abusive or arbitrary use of this constitutional instrument (SSTC 61/2018, of June 7, FJ 4; 100/2012, of May 8, FJ 8; 237/2012, of 13 December, FJ 4; 39/2013, of February 14, FJ 5). On the contrary, all the reasons stated justify the adoption of this standard widely and reasonably (SSTC 29/1982, of May 31, FJ 3; 111/1983, of December 2, FJ 5; 182/1997, of 20 of October, FJ 3).

It should also be noted that this royal decree-law does not affect the order of the basic institutions of the State, the rights, duties and freedoms of citizens regulated in title I of the Constitution, the regime of the autonomous communities or the general electoral law .

And it does not do so because, as stated in STC 100/2012, of May 8, in its FJ9, "of the fact that the tax matter is subject to the principle of law reserve (arts. 31.3 and 133.1 and 3 of the Constitution Española) and that said reservation is relative and not absolute "does not necessarily follow that it is excluded from the scope of regulation of the decree-law, which may enter into tax matters provided that the constitutional requirements of the enabling budget are met and not "affects", in the constitutional sense of the term, the excluded subjects »(SSTC 182/1997, of October 28, FJ 8; 137/2003, of July 3, FJ 6; and 108/2004, of 30 of June, FJ 7; 245/2004, of December 16, FJ 4; and 189/2005, of July 7, FJ 7). That is, "the fact that a subject is reserved to ordinary law, with absolute or relative character, it does not exclude eo ipso the extraordinary and provisional regulation of the same by Decree-law »(SSTC 60/1986, of May 20, FJ 2; and 182/1997, of October 20, FJ 8) . To which this Court must attend when interpreting the material limit of art. 86.1 CE "is not, therefore, in the way in which the principle of reservation of Law in a certain matter is manifested, the tax in this case (if it is absolute or relative and what aspects of said matter are covered or not by said reservation), but rather to the examination of whether there has been "affectation" by Decree-law of a right, duty or freedom regulated in title I of the Constitution », which will require "taking into account the constitutional configuration of the right or duty affected in each case and the nature and scope of the specific regulation in question" (SSTC 182/1997, of October 28, FJ 8; 137/2003, of July 3, FJ 6; 108/2004, of June 30, FJ 7; and 245/2004, of December 16, FJ 4, 189/2005, of July 7, FJ 7; and 329/2005, December 15 FJ 8). And, on this matter, in section 2 of the second chapter of title I of the Constitution, under the heading "On the rights and duties of citizens", art. 31.1 CE, a precept that establishes "an authentic legal mandate, source of rights and obligations", from which "a constitutional duty for citizens to contribute, through taxes, to the maintenance or financing of public expenses" (SSTC) 182/1997, of October 28, FJ 6; 245/2004, of December 16, FJ 5; and 189/2005, of July 7, FJ 7), being, consequently, one of "the duties whose affectation is forbidden to the decree-law the duty to contribute to the maintenance of the public expenses that the art. 31.1 CE »(SSTC 137/2003, of July 3, FJ 6; 245/2004, of December 16, FJ 5; and 189/2005, of July 7, FJ 7). (...)

Well, art. 31.1 of the Spanish Constitution "connects the aforementioned duty to contribute with the criterion of economic capacity" and relates it, in turn, "not with any particular tax figure, but with the tax system as a whole", for what remains of course, "that the decree-law may not alter the general regime or those essential elements of the taxes that affect the determination of the tax burden, thus affecting the general duty of citizens to contribute to the maintenance of public expenses in accordance with their wealth through a fair tax system "(SSTC 182/1997, of October 18, FJ 7; 137/2003, of July 3, FJ 6; 108/2004, of June 30, FJ 7; and 189 / 2005, of July 7, FJ 7). So it will violate art. 86 CE «any intervention or regulatory innovation that, for its qualitative or quantitative entity, noticeably alter the position of the person obligated to contribute according to his economic capacity in the tax system as a whole "(SSTC 182/1997, of October 28, FJ 7; 137/2003, of July 3, FJ 6; 108/2004, of June 30, FJ 7; and 189/2005, of July 7, FJ 7). Therefore, it will be necessary to take into account "in each case in which specific tax the Decree-law affects - verifying its nature, structure and the function that it fulfills within the tax system as a whole, as well as the degree or

measure in which the principle intervenes of economic capacity - what elements of it - essential or not altered by this exceptional mode of normative production - and, finally, what is the nature and scope of the specific regulation in question "(SSTC 182/1997, October 28, FJ 7; 137/2003, of July 3, FJ 6; 108/2004, of June 30, FJ 7; and 189/2005, of July 7, FJ 7).

In light of these considerations, it can be stated that the tax measure contained in this royal decree-law does not violate the aforementioned article 31 of the Constitution since, as stated in the aforementioned STC 100/2012 (FJ9), it does not alter " in a relevant way the tax pressure that taxpayers must bear and, consequently, has not caused a substantial change in the position of citizens in the entire tax system, so that it has not affected the essence of the constitutional duty to contribute to the support of public expenses stated in art. 31.1 CE »(SSTC 137/2003, of July 3, FJ 7; and 108/2004, of June 30, FJ 8).

IV

This royal decree-law responds to the principles of good regulation of necessity, effectiveness, proportionality, legal certainty, transparency, and efficiency, in accordance with article 129 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations.

For these purposes, compliance with the principles of necessity and effectiveness is evident given the general interest on which the measure established is based, the royal decree-law being the most immediate instrument to guarantee its achievement. The standard is in accordance with the principle of proportionality, as it contains the essential regulation for achieving the aforementioned objectives. Likewise, it complies with the principle of legal certainty, being consistent with the rest of the legal system. Regarding the principle of transparency, the standard is exempt from the procedures of public consultation, hearing and public information that are not applicable to the processing and approval of decree-laws. Finally, regarding the principle of efficiency,

Therefore, to the extent that it is adopted, due to their nature and purpose, the circumstances of extraordinary and urgent need that Article 86 of the Spanish Constitution requires as enabling budgets for the approval of a royal decree-law.

This royal decree-law is issued under the provisions of article 149.1.10.^a and 14.^a of the Spanish Constitution, which attributes to the State exclusive jurisdiction over the customs and tariff regime; and the Treasury.

By virtue of this, making use of the authorization contained in article 86 of the Spanish Constitution, at the proposal of the Minister of Finance, and after deliberation by the Council of Ministers at its meeting on April 14, 2020,

I HAVE:

[Block 2: #au]

Single article. Extension of the term for the presentation and entry of the declarations and self-assessments.

1. Within the scope of the powers of the State Tax Administration, the deadlines for submission and entry of tax returns and self-assessments of those liable with a volume of operations not exceeding 600,000 euros in 2019 whose maturity occurs from The entry into force of this royal decree-law and until May 20, 2020 will extend until this date. In this case, if the chosen form of payment is direct debit, the deadline for submitting self-assessments will be extended until May 15, 2020.

Notwithstanding the foregoing, in the case of obligors who are considered public administrations, including Social Security, it will be a necessary requirement that their last approved annual budget does not exceed the amount of 600,000 euros.

The provisions of this article will not apply to tax groups that apply the special tax consolidation regime regulated in Chapter VI of Title VII of Law 27/2014, of November 27, on Corporation Tax, regardless of their net amount of the turnover, nor to the groups of entities that are taxed in the special regime of groups of entities of the Value Added Tax regulated in chapter IX of title IX of Law 37/1992, of December 28, of Value Added Tax, regardless of its volume of operations.

2. The provisions of this article will not be applicable in relation to the presentation of declarations regulated by Regulation (EU) No. 952/2013 of the European Parliament and of the Council of October 9, 2013, which approves the Union customs code and / or by its implementing regulations.

[Block 3: #da]

Single additional provision. Management of credits related to COVID-19.

Notwithstanding the provisions of article 86.2.Fifth of General Budget Law 47/2003, of November 26, extraordinary or supplementary credits that are exclusively intended to deal with extraordinary situations derived from COVID-19, which refer to The financing of sectors, services, activities or matters with respect to which the autonomous communities have assumed execution powers, may be released in full once the final distribution between them has been approved.

[Block 4: #df]

First final provision. Competency titles.

This royal decree-law is issued under the provisions of article 149.1.10.^a and 14.^a of the Spanish Constitution, which attributes to the State, exclusive jurisdiction over customs and tariff regime; and Treasury, respectively.

[Block 5: # df-2]

Second final provision. Normative authorization.

The Government and the person in charge of the Ministry of Finance, within the scope of their powers, are empowered to dictate the provisions and adopt the necessary measures for the development and execution of the provisions of this royal decree-law.

Third final provision. Entry into force.

This royal decree-law will enter into force on the same day of its publication in the «Official State Gazette».

[Block 7: #fi]

Given in Madrid, on April 14, 2020.

FELIPE R.

The president of the Government,
PEDRO SÁNCHEZ PÉREZ-CASTEJÓN

This document is informative and has no legal value.