

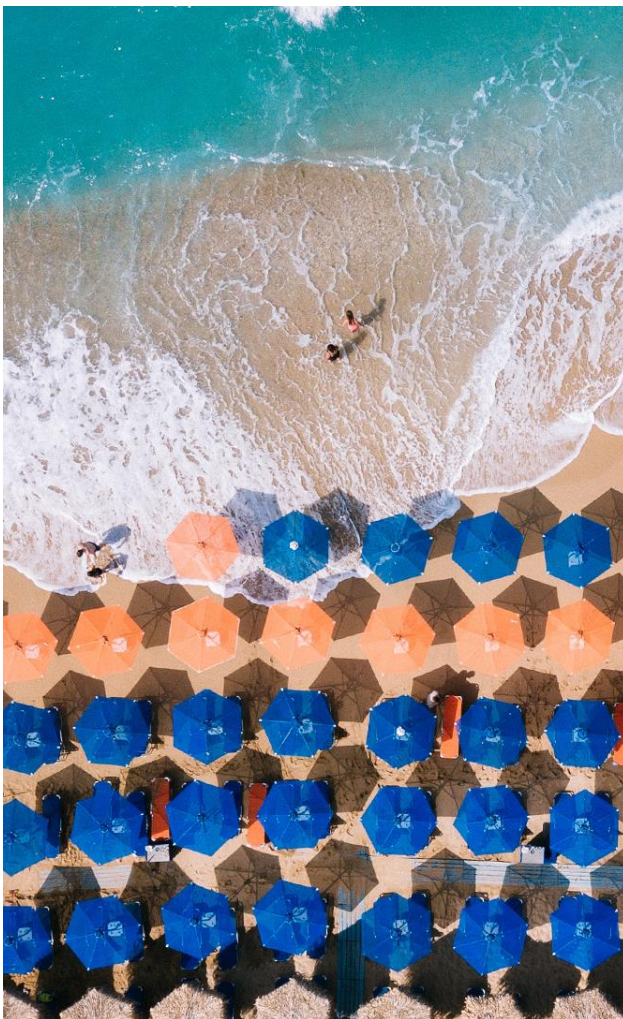
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# Royal Decree-Law 35/2020: impact on businesses

## Legal flash

December 28, 2020

On December 23, the Official Gazette of the Spanish State has published Royal Decree-Law 35/2020, of December 22, on urgent measures to support the tourism sector, the hospitality industry and trade, and on tax-related measures (*"RDL 35/2020"*), including new measures aimed at companies and self-employed workers in these sectors, which came into force on December 24, 2020.



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**This document analyzes the main consequences for businesses arising from the set of measures approved under RDL 35/2020.**

- > Measures on the reduction of rent or the moratorium on the payment of certain leases of business premises.
- > Tax measures aimed at deferring the tax debts of certain taxpayers and improving the tax treatment of certain lessors.
- > The variety of businesses that can benefit from exemptions on social security contributions for employees subject to a temporary redundancy plan ("ERTE") has been broadened to include certain activities in the leisure, hospitality and commercial sectors, which were not covered by RDL 30/2020.
- > Allowances to social security contributions are established for companies in the tourism, commerce and hospitality sectors linked to the tourism business that operate from April to October 2021 and that hire or maintain the number of permanent seasonal workers during those months.



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## Lease of business premises

- > Below is an overview of main measures adopted, which are similar to those approved some months ago under [Royal Decree-Law 15/2020](#), the period of validity of which has expired:
- > **Lease of business premises by large property holders.** Self-employed workers and SMEs that are lessees under non-residential or non-industrial lease agreements, the lessors of which are a company or public entity, or a large property holder (an individual or legal entity owning over 10 urban properties, excluding parking lots and storage spaces, or a built surface area of over 1,500 m<sup>2</sup>) have until January 31, 2021, to request (i) a 50% reduction on the rental fee for the duration of the state of emergency and its extensions, and for up to the following four months; or (ii) a moratorium on paying rent during the same period, allowing payments in installments over two years. The lessor must notify the lessee of its decision within seven days following the request.
- > **These measures will not apply in cases where there is already an agreement involving a temporary reduction on rental fees or a moratorium on the payment of these fees.** If the agreement only covers part of the term specified above, the measure will apply to the period not provided under it. Likewise, the measures will not apply if the lessor is undergoing insolvency proceedings or if, by applying the rule, it would be likely to become insolvent or face a current or imminent insolvency situation.
- > **These measures are available to self-employed workers** registered with the Special Social Security Scheme for Self-employed and Freelance Workers (RETA) **and SMEs** that do not exceed the limits established under article 257.1 of the Spanish Companies Act (i.e., their assets do not total over €4 million; their net yearly turnover does not exceed €8 million; their average headcount during the year is not over 50, although RDL 35/2020 does not clarify how the limits apply in this case); and
  - whose activity has been suspended as a result of the state of emergency; or
  - whose activity has not been directly suspended due to the state of emergency, but whose turnover in the month before the one corresponding to the requested reduction or deferral has dropped by at least 75% with respect to the average monthly turnover in the same quarter that month belongs to in the previous year.
- > **If the lessor is not a company or public entity, or a large property holder,** self-employed workers and SMEs that fulfill the requirements specified in the above section, provided they have not already reached an agreement with the lessor to reduce or defer the rent, have until January 31, 2021, to request a moratorium on the rent. The lessor is under no obligation to grant the moratorium, although the law provides that the parties could agree to use the deposit to fully or partially cover some monthly payments, which the lessee must pay back within one year. RDL 35/2020 also provides for tax incentives to encourage lessors that are



individuals to reduce the rent (see the section on the tax deductions available to lessors that are individuals who reduce rent fees).

- > **Lessees must prove** to the lessors that they **fulfill the requirements set out under RDL 35/2020**, using the channels established under the law (if owing to the suspension of an activity, submitting a certificate issued by the Spanish tax authorities or competent authority; if owing to a reduction of activity, submitting a statement of compliance, without prejudice of the lessor's right to request the lessee to present its accounting books).
- > Any lessees **that have unduly benefited from the reduction or moratorium on rent payment**, without meeting the requirements set out under RDL 35/2020, **will be liable for any damages caused**, as well as all expenses arising due to these exceptional measures being applied (without prejudice to any other liabilities they may incur).

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### Deferred payment of tax debts for certain taxpayers

The new measures approved include the possibility of requesting a deferral on tax debts corresponding to tax declarations-assessments and self-assessments that are required to be submitted and paid by a deadline between April 1 and April 30, 2021, both dates included. This measure enables, among others, a deferral on tax debts corresponding to withholding taxes and payments on account, VAT and those paid in installments.

This measure will not apply to all taxpayers, as it is restricted to debtors with a turnover not exceeding €6,010,121.04 in 2020.

Also, requests for deferral, as a whole, cannot exceed €30,000, which is the limit set to release the taxpayer of the obligation to provide guarantees. Under Order HAP/2178/2015, of October 9, "to determine the specified amount of debt, this will encompass, at the time of the request, the debts included in the application and any others the debtor owes and for which that debtor has requested and not been granted a moratorium or payment in installments, as well as the amount of unpaid maturities of debts that have been deferred or broken down into installments, unless they are properly secured."

Under RDL 35/2020, taxpayers that apply this regime will be granted a six-month deferral and it specifies that no default interest will accrue during the first three months.

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### Substantive tax measures: rental income and depreciation losses

#### Tax incentives available to lessors that are individuals who reduce rent fees

From January 1, 2021, a **tax incentive for PIT purposes**, which involves **counting as a deductible**



**expense, on determining the lessor's incomes obtained from property, the reduction of rental fees agreed with the lessor after March 14, 2020, and which correspond to the monthly payments accruing in January, February and March 2021.**

This measure will only apply if the following requirements are met:

- > The lessor must be an individual earning income from real estate and who is **not considered a large property holder**.
- > The activity the lessee carries out in the leased property must be classified in the business activity tax groups as an activity relating to commerce, restaurants, accommodation and repairs (division 6), or be a travel agency (group 755), provide other recreational services not included in other sections (group 969, which includes dance halls and discotheques), hairdressing and beauty salons and photographic services (group 972) or photographic services, automatic photo machines and photocopying services (group 973).

The incentive will not be applied when:

- > The reduced rental fee is compensated later with an increase in those fees or other services.
- > The lessee is an individual or legal entity linked to lessor in the terms provided under the corporate income tax regulations.
- > The lessor and lessee are joined by ties of kinship, including spouses, or are joined by links of relationship in a direct or collateral line, by consanguinity or by marriage, up to the second degree inclusive.

### **Reduced terms to deduct losses owing to impairment due to insolvency**

For corporate income tax, PIT, NRIT payers, the term is reduced from six to three months to deduct losses owing to the impairment of credits arising from debtors' potential insolvency.

This rule is applicable to the 2020 and 2021 tax periods, as long as the taxpayer meets the conditions to be considered a small-sized enterprise for corporate income tax purposes.

With the same term of enforcement and in parallel, in the case of taxpayers earning income from real estate, the term to deduct doubtful loans has been reduced from six to three months for PIT purposes.



## Measures concerning employment and social security

### Exemptions on contributions

- > More companies can benefit from exemptions on social security contributions provided under First Additional Provision of [RDL 30/2020](#). Specifically, this now applies to companies carrying out an ERTE on grounds of force majeure provided for under article 22 of RDL 8/2020 (automatically extended under article 1 of RDL 30/2020 until January 31, 2021), belonging to codes 634 (Wholesale of drinks), 5610 (Restaurants and food stalls), 5630 (Premises for the sale and consumption of drinks), 9104 (Activities carried out by botanical gardens, zoos and natural reserves) and 9200 (Gambling and betting activities) of the National Classification of Economic Activities.
- > These companies, which were unable to apply these exemptions in October and November, **will be able to do so for the contributions corresponding to December 2020 and January 2021**, for the same amounts and for the employees subject to the ERTE listed below:
  - o Employees resuming activity **from December 1, 2020**
  - o Employees resuming activity **after May 13, 2020**, the date on which RDL 18/2020 came into force
  - o Employees whose employment agreement has been suspended or who have reduced working hours owing to ERTE carried out in December 2020 or January 2021, or both

% OF EXEMPTED EMPLOYER CONTRIBUTIONS		
Employees registered on February 29, 2020	Which employees	December 2020 - January 2021
Fewer than 50	Employees whose employment agreement has been suspended or who have reduced working hours in December 2020 or January 2021; or who resumed activity after May 13, 2020, or in December 2020 or January 2021	85%
More than 50		75%

- > These exemptions on contributions are not compatible with those provided for ERTE owing to constraints or restrictions to activity regulated under article 2 of RDL 30/2020.
- > Companies that benefit from these exemptions will be subject, as provided under RDL 30/2020, to a **new six-month commitment to maintain jobs** (6th Additional Provision RDL 8/2020), and to **restrict dividend distribution**.
- > Also, the **suspension of the length of temporary contracts** of workers affected by an ERTE will still apply, as well as the **prohibition on overtime and outsourcing** while an ERTE is applied.

### Permanent seasonal workers

- > Companies in the tourism, commerce and hospitality sectors linked to the tourism business that hire or maintain the number of permanent seasonal workers from April to October 2021



can apply a **50% allowance for those months on employer social security contributions, for the joint collection concepts of unemployment, salary guarantee fund and professional training of those workers**. These allowances are compatible with existing exemptions, up to 100% of employer contributions.

- > The **Bill for the 2021 Budget** will include support measures to extend the employment period of permanent seasonal workers in the tourism, commerce and hospitality sectors linked to the tourism business. Specifically, **from January 1, 2021, and for an indefinite period**, companies operating in **February, March and November each year** that hire or maintain the number of permanent seasonal workers during those months, **will benefit from a 50% allowance on employer social security contributions** for common contingencies, as well as for the joint collection concepts of unemployment, salary guarantee fund and professional training of those workers.

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## ICO guarantee facilities

Also, in its meeting of December 22, 2020, the Council of Ministers approved the release of two new guarantee facilities managed by ICO to carry out investment and liquidity projects, approved under [RDL 25/2020](#), and that can be applied for until June 1, 2021:

- > A first tranche amounting to €500 million, destined to secure the transactions of self-employed workers and SMEs in the tourism and hospitality sector and involved in related activities that are affected by the economic impact of COVID-19, as long as applicants were not in arrears on December 31, 2019, or undergoing insolvency proceedings on March 17, 2020. Exceptionally, maximum coverage of these guarantees is increased to 90%. The term to repay the loans and of coverage of the guarantee will be up to eight years when the aggregate state aid the debtor has received does not exceed €800,000, or six years if that amount is higher.
- > A first tranche amounting to €500 million, destined to reinforce the second guarantees granted by the Spanish Refinancing Company (CERSA).

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