

Corporate Law newsletter

Outstanding regulation developments

Urgent measures. Royal Decree-Law 5/2021, of March 12th, on extraordinary measures to support corporate solvency in response to the COVID-19 pandemic. [Full Text.](#)

Corporate Income Tax and Non-Resident Income Tax. Royal Decree-Law 4/2021, of March 9th, amending law 27/2014, of November 27th, of the Corporate Income Tax, and the consolidated text of the Law on Non-Resident Income Tax, approved by Royal Legislative Decree 5/2004, of March 5th, in relation to hybrid asymmetries. [Full Text.](#)

Urgent measures. Law 2/2021, of March 29th, on urgent measures of prevention, containment and coordination to face the health crisis caused by COVID-19. [Full Text.](#)

For further information, please consult [here](#) the section of the BOE dedicated to the COVID19 crisis with the consolidated regulations.

The present newsletter is merely informative and non-exhaustive and does not constitute any type of legal advice. If you wish to receive the present newsletter, please send an e-mail to the sender: mazars.taxlegal@mazars.es

Other outstanding regulation development

- **Judiciary.** Organic Law 4/2021, of March 29th, which amends Organic Law 6/1985, of July 1st, 1985, of the Judiciary, for the establishment of the legal regime applicable to the acting General Council of the Judiciary. [Full Text.](#)
- **Legal Profession.** Royal Decree 135/2021, of March 2nd, which approves the General Statute of the Spanish Legal Profession. [Full Text.](#)
- **Free legal assistance. Regulations.** Royal Decree 141/2021, of March 9th, approving the Regulations on free legal assistance. [Full Text.](#)
- **Electric energy.** Royal Decree 148/2021, of March 9th, establishing the methodology for calculating electricity system charges. [Full Text.](#)
- **Domestic violence.** Law 1/2021, of March 24th, on urgent measures for the protection and assistance to victims of domestic violence. [Full Text.](#)
- **Public sector. Electronic means.** Royal Decree 203/2021, of March 30th, approving the Regulations for action and operation of the public sector by electronic means. [Full Text.](#)
- **Grants.** Order HAC/283/2021, of March 25th, which specifies the necessary aspects for the definitive distribution, among the Autonomous Communities and the Cities of Ceuta and Melilla, of the resources of the COVID Line of direct aids to the self-employed and companies provided for in Title I of Royal Decree-Law 5/2021, of March 12th, on extraordinary measures to support corporate solvency in response to the COVID-19 pandemic. [Full Text.](#)
- **International Treaties.** International Agreement on taxation and protection of financial interests between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland in relation to Gibraltar, done ad referendum in Madrid and London on March 4th, 2019. [Full Text.](#)

Please [click here](#) to access our analysis of key aspects in the labor, tax, corporative or financial field that companies will have to face, prepared by our specialist of Mazars, and also to our Covid Talks.

Please also visit our Global Tax and Law Tracker. Mazars' global tax and legal experts from more than **70 countries** have created this interactive **tool** to help you access and understand the **Covid-19** legislation and tax measures that impact you and your business, wherever in the world you operate.

Please click [HERE](#) to have access to the Global Tax and Law Tracker

Remarkable Case Law

Ruling of the Supreme Court of March 3rd, 2021. [Full Text.](#)

The SC rules on the direct action of the effective carrier against the shipper and the participants in the chain of subcontracting. In this case, the main shipper entrusted some transport services to the intermediate carrier, who subcontracted with a company for its effective execution. The intermediate carrier did not pay the subcontractor, but the principal shipper had paid the intermediate carrier. The subcontractor claimed directly to the main shipper. In this sense, the SC reiterates what was established by Supreme Court decisions 644/2017 and 248/2019, in which the interpretative doubt of the direct action granted to the effective carrier was whether, in line with art. 1597 CC, the main shipper only responds up to the amount owed to the intermediate carrier, or whether it will have to do so, even without owing anything to the intermediate carrier, as a guarantor. The 6th Additional Provision of Law 9/2013 contemplates the direct action against the shipper in cases of intermediation. The SC concludes that no limitation operates, and that the direct action of the effective carrier has a broader scope than the content of art. 1597 CC, and this Law constitutes a specific rule of the contract of carriage by land, to be not only a traditional direct action, but also a form of supplementary payment guarantee. Therefore, it may happen that the actual carrier claims from the shipper the price of the carriage, although the latter has already paid the contractual carrier.

Ruling of the Court of Justice of the European Union of March 18th, 2021. [Full Text.](#)

The ECJ decides whether Article 5(2) of Directive 30/314/EC on package travel, to the extent that it provides a ground for exemption from liability of the organizer of a package travel for the proper performance of the obligations arising from a contract relating to such a travel, concluded between the organizer and a consumer, must be interpreted as meaning that, in the event of non-performance or improper performance of those obligations as a result of acts of an employee, that employee is to be regarded as a service provider and the organizer may be exempted from its liability. The ECJ understands that an employee of a service provider cannot by himself be qualified as such within the meaning of the Directive. The employee merely performs work for a service provider who

has entered into the agreement. Therefore, the acts of the employee are, in most cases, intended for the performance of the obligations of the service provider for whom he works. Moreover, the employee performs his work within the framework of a subordinate relationship with his employer and under his control, but a service provider is not subject to any subordinate relationship. Therefore, the organizer cannot exempt himself from his liability arising from non-performance or poor performance.

Ruling of the Supreme Court of March 9th, 2021. [Full Text.](#)

A company awarded a contract for the provision of services to the Sports Board of a City Council was declared in insolvency, owing an amount to an employee, which was paid by the Board as the jointly and severally liable party, by virtue of art. 42.2 of the Workers' Statute (ET). The Board understands that this payment is a credit against the estate, derived from a legal obligation and subsequent to the date of the declaration of insolvency. However, the SC dismisses the appeal, as it considers that the obligation of the Board towards the employee of the insolvent company has a legal origin, insofar as art. 42.2 ET attributes to it the condition of guarantor responsible for the payment of those salaries, so that the right of the Board to indemnify itself against the insolvent company for the amounts paid does not imply a new credit that arises after the insolvency proceeding, but the substitution of this guarantor in the ownership of the already existing credit, which retains its insolvency nature.

Review – Royal Decree-Law 5/2021, of March 12th, on extraordinary measures to support corporate solvency in response to the COVID-19 pandemic.

On March 13, the present Royal Decree Law was published in the Official State Gazette (BOE), with the following objectives: **(i)** to protect the productive network until a vaccination rate is achieved; **(ii)** to avoid a structural negative impact on the recovery of the Spanish economy; **(iii)** to protect employment in the sectors most affected by the pandemic; **(iv)** to act preventively on public finances and the balance sheets of the financial system.

Among the measures contemplated in the Royal Decree-law to meet the objectives we find the following:

1. Aids.

A COVID Line is created for direct aids to the self-employed and non-financial companies most affected by the pandemic, to support the solvency and reduction of the indebtedness subscribed as from March 2020. The beneficiaries must have obtained an annual volume of operations in 2020 at least 30% lower than in 2019.

2. Fondo de recapitalización de empresas afectadas por COVID.

A fund with a budget of 1,000 Million Euros managed by COFIDES is created in order to support those companies which cannot have access to SEPI's Fund for the recapitalization of larger strategic companies. This fund is for those medium-sized companies which, being viable in the medium and long term, are being affected by the effects of the pandemic in their balance sheets and in their markets.

3. Measures in the insolvency area.

As one of the main pillars of this Royal Decree-Law, it seeks to maintain the economic continuity of companies, professionals and self-employed workers who, prior to the state of alarm, were complying with an agreement, out-of-court payment agreement or

approved refinancing agreement. The moratoriums are extended for the initiation of insolvency proceedings.

This provides an additional margin of time to companies that are experiencing difficulties, so that they can reestablish their equity balance avoiding an unnecessary entry into insolvency proceedings.

In this regard:

- (a) The **duty to request the opening of the liquidation phase** is postponed until December 31st, 2021 when, during the term of an agreement, the debtor becomes aware of the impossibility of complying with the payments and obligations assumed thereafter, provided that it submits a proposal to amend the agreement, and this is admitted for processing.
- (b) The **modification of the agreement** is facilitated: those who were in the compliance phase and find it difficult to carry it out will be able to file an amendment until December 31, 2021.
- (c) Until December 31, 2021, debtors who are in a state of insolvency, whether or not they have filed for pre-insolvency proceedings, will not be obliged to **file for insolvency proceedings**.

4. Deferral of tax debts.

The period in which late payment interest will not be accrued for tax deferrals is extended to four months.

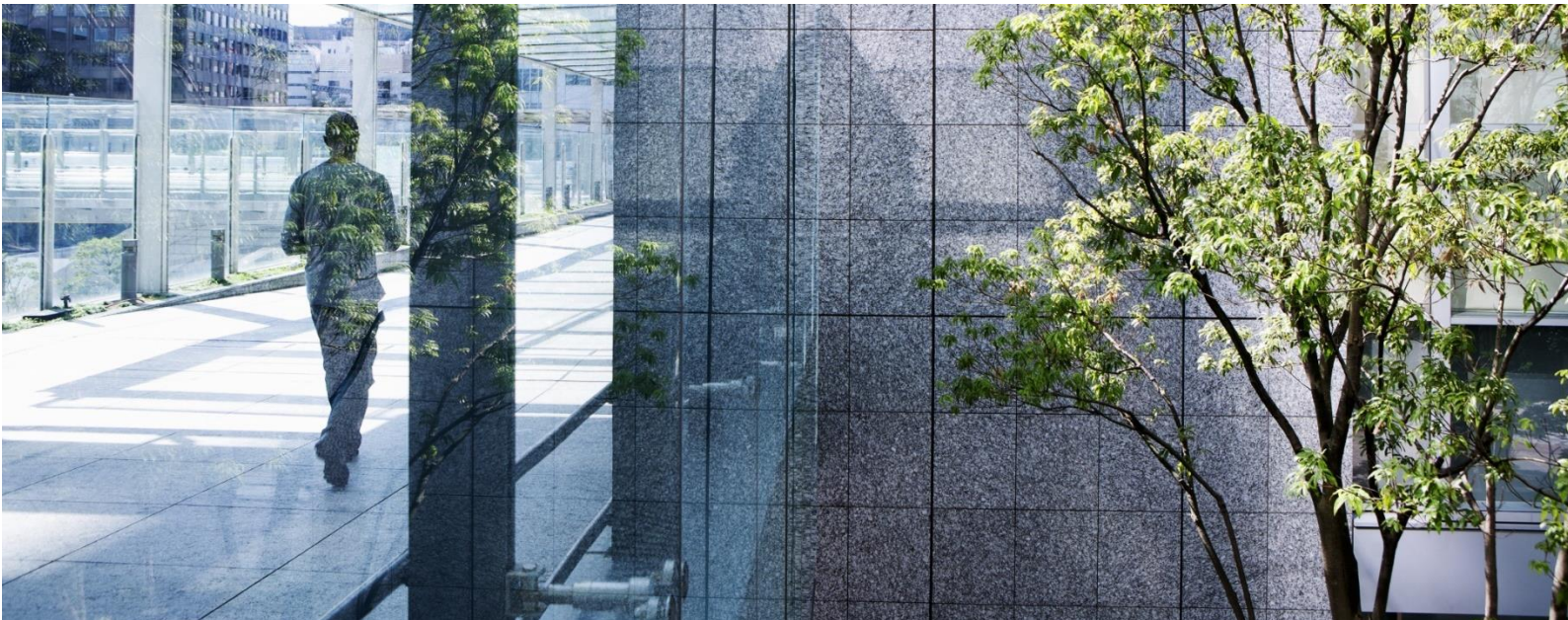
5. Telematic Shareholders Meetings

Companies that have not been able to modify their bylaws to allow the holding of Shareholders meetings by telematic means are allowed to continue using them during 2021.

The full text may be consulted in the [following link](#).

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