SPANISH EXPERIENCES ON FISCAL COUNTERMEASURES AGAINST COVID-19

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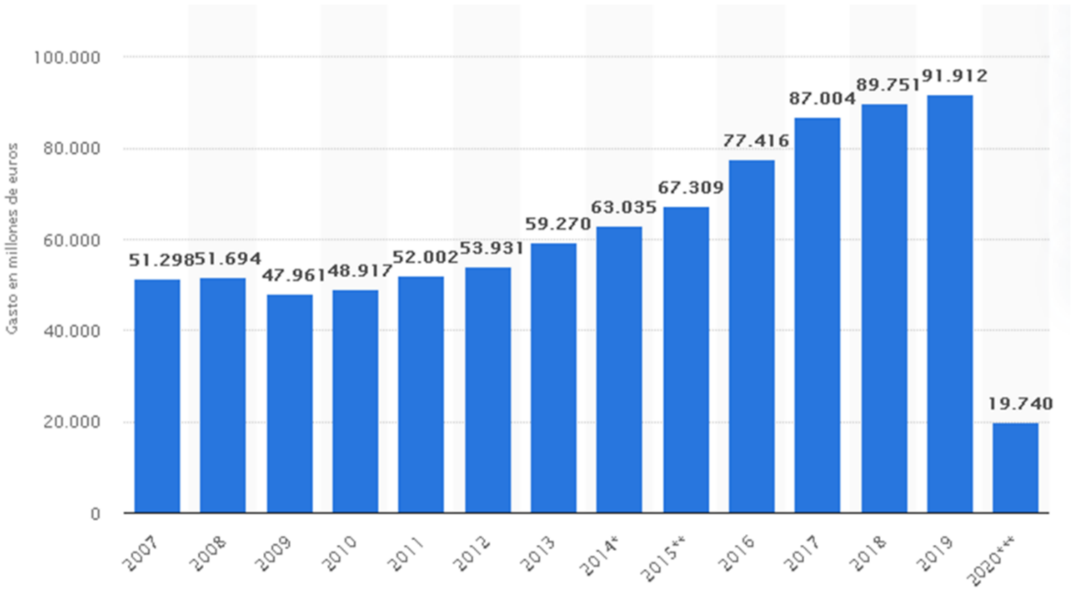
Brief abstract of the paper. The abstract should be of around 7 lines more or less.

SUMMARY: 1. *How the pandemia of COVID-19 is affecting Spanish economy*.- ii. principales medidas tributarias en la normativa española. 1. aplazamientos y ampliaciones de plazos de presentación o pago de obligaciones

1. ***How the pandemia of COVID-19 is affecting Spanish economy***. First of all, in order to asses the countermeasures adopted in Spain, we need to undertstand what has been the impact of COVID-19 in our economy. Due to the high dependence of Spanish economy on tourism (it represented 12.4% of GDP in 2019) and other services related, the pandemia effects have been huge. This situation can be understood with a simple glance at this graphic:

Graphic 1. Expenditure of International Tourists in Spain 2007-2020



Source: Statista.com

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Of course, the pandemic of COVID-19, as in other countries, has impacted Spanish economy in many other ways. However, the first data of 2020 are shocking, Spanish Public debt reached 120% of GDP and public deficit shot up to nearly 11%, the highest of the whole European Union[165]. Numbers that shattered all the hope of a full recovery from the previous economic and financial crisis.

Graphic 2. Spanih Public Debt and Public Deficit 2012-2020

Source: Expansion.com

Our traditionally high unemployment rates (13,7% at the end of 2019) worsened due to the economic paralysis (16,2%) at the end of 2020, however this increase has been softened by the 1 million workers that are still under Record of Temporary Employment Regulation (in the meantime they are not considered unemployed). Fortunately, part of this cost is been funded by the SURE mechanism (Support to mitigate unemployment risks in an emergency).

Once seen the huge economic impact of COVID-19 in Spanish economy (apart from the dramatic health consequences, of course) we might expect powerful countermeasures in order to reactivate the economy, the work market, etc. We are afraid the reader will be strongly dissapointed...Not because the short-term countermeasures were irrational or ineffective (we will see that, although there was a bit of chaos, the short-term goals were achieved) but because once we knew the economy would not recover fast enough in 2021, there were no relevant countersmeausures in response.

According to this structure, we divide the exposition in two main parts. In the following one we analyse the short-term countermeasures adopted during the first months of the COVID-19 pandemic. In the second part, we will instead assess the decisions adopted with the year 2021 in mind, specially through the Budget for 2021 and its linked laws.

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[165] In the short-term it should not be a problem at the European level since ECOFIN approved the 23th of March 2020 the activation of the general scape clause of the Stability and Growth Pact after the proposal of the European Commission three days before [Communication from the Commission to t]he Council on the activation of the general escape clause of the Stability and Growth Pact, 20th of March 2020, COM(2020) 123 final].

2. Short-tem countermeasures adopted in Spain in response to COVID-19 (2020)

In the short-term the fiscal countermeasures adopted during 2020 in Spain to respond to the exceptionality caused by the Covid-19 pandemic were focused mainly on facilitating liquidity for companies and individuals by ensuring deferrals and extension of deadlines in tax matters. The legal instrument has been the Royal Decree-Law (Real Decreto-Ley)[166], a regulation with force of Law that can be approved by the Government itself in special situations (it has to be validated by the Spanish Parlament later). Of course, due to the changing situation and the circumstances, it is understandable that there were many of them in a very short space of time. However, the final feeling is that there was an absolute lack of sistematical in the measures, an absolute amalgamation of successive rules, some of them on similar issues and that, in specific cases, were even published when the deadlines that they intended to modify had not only already been initiated, but were about to end. The usual chaos of the tax system surpassed itself.

As we said, the main objectives pursued by these inital provisions (2020) were to avoid the liquidity problems of companies and individuals, to solve difficulties in fulfilling formal and material obligations, to adapt self-liquidations and payments to economic reality and, to a lesser extent, to approve tax benefits that help the health system or some specific sectors, like cinema.

This is the list of Royal Decree-Law (RDL) approved during 2020 in the tax field:

RD 7/2020 - 12th March
RDL 8/2020 - 17th March
RDL 11/2020 - 31st March
RDL 14/2020 – 14 th April
RDL 15/2020 - 21th April
RDL 17/2020 - 5th May
RDL 19/2020 - 26th May
RDL 34/2020 - 17th November
RDL 35/2020 - 22nd December

The first fiscal countermeasure approved (RD 7/2020 - 12th March) was an automatic deferment (under request) of the payments of all tax settlements whose filing period will end between that date and the 30th of May (six months, with no interest during the first four months). Since the goal of this regulation was to protect SME, only professional and businesses whose turnover in 2019 had not exceeded EUR 6 million[167] could ask for this deferral. Moreover, the maximum amount of the deferral was EUR 30,000.

One month later, the RDL 14/2020 – 14th April – established the suspension of deadlines and the deferral of tax debts due between its publication date and 20th of May 2020. In essence, it was an automatic moratorium applied on all tax debts, without request. It was strongly claimed by companies and tax advisors, since the quarterly payment period of VAT, as well as the

[166] Art. 86 of Spanish Constitution:
1. "In cases of extraordinary and urgent need, the Government may issue temporary legislative provisions which shall take the form of decree-laws (…).
2. The decree-laws must be submitted forthwith to the Congress of Deputies (…) They must be debated and voted upon in their entirety within thirty days after their promulgation.(…)
(…)

[167] Exactly 6,010,121,04 euros. The Spanish conversion of pesetas into Euro was too literal and almost 20 years later most amounts are still this chaotic…

fractional payments of CIT, was opened until 20th of April. Its direct effect was to defer both, the formal obligation to file declarations and the material payment until 20th of May. Again, it is application was only intented for SME, so only subjects whose volume of operations was less than EUR 600,000 could benefit from this automatic deferral[168]. As we noted above, one of the critics to this measure (whose need is not in dispute) is that its publication occurred 14 days after the start of the period of payment of several of the debts that it was supposed to defer (1st of April most of them).

Regarding procedural deadlines the original RD 463/2020 of 14 March on the declaration of the alarm status determined the general suspension and interruption of deadlines for the processing of procedures of public sector entities. However, it expressly excluded the tax matters. It was the RDL 8/2020 – 17th March- (art. 33) the one that first dealt with the extension of procedural deadlines in the tax field.

First, extending the payment period up to 30th May 2020 for all the tax liquidations that were sent by the Administration (art. 62.2 of Spanish General Tax Law) and those under final notice (art. 62.5) when they were not due before the publication of RDL 8/2020. Also all the tax deferrals already approved that had to be paid in this period (until 30th May) would be also extended. Finally, it excluded this two months and a half from the time limits of all tax procedures including the appeal at the economic-administrative courts.

Two weeks later, the RDL 11/2020 - 31st March completed this regulation approving that this suspension of time limits also covers the maximum revision period (*prescripción*) of tax obligations at all levels (national, regional and local administrations), as well as all public obligations, except those of Social Security.

Finally, the RDL 19/2020 – 26 th May – introduced changes in the declaration of CIT with a solution to those companies that could not approved the final annual accounts since there were no shareholder meetings (in fact RDL 8/2020, allowed this extension to their approval). Since it was common that companies would not have them by the 1st of July (start date for the submission of CIT), this RDL admit the presentation with the provisional accounting, if the final version difers, the company would submit a supplementary self-assessment until 30 November (surprinsingly, in this case the default interest would apply)

Another short-term measures were related to the fractioned payments of CIT and PIT (regarding economic activities). Article 40 of Spanish Law of CIT[169] contains two different possibilities for calculating fractioned payments. The one in paragraph 2 is calculated on the basis of the full quota of the last tax period whose declaration period was due. Paragraph 3, on the other hand, does allow the fractioned payment to be calculated on the basis of the actual profit of the first 3, 9 or 11 months of the year. Since this second method is fairer in this pandemic time RDL 15/2020 – 21st April- allowed companies to choose it although the time to exercise the option had already finished (only companies under EUR 6 million of net turnover). Moreover, this option is not binding for the following years, as it used to be.

A similar provision was introduced for the fractioned payments of economic activities in PIT. Many business were applying the special "objective estimation method", which calculate the tax base using different parameters (nº of employers, surface of the premises, etc.) but not the actual profit of the activity. Again, it admited a non-binding change to the simplified estimation method, which is based on the actual income and expenses of the activity during the year.

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[168] An objective exception was also made since this deferral would not apply to taxes under the EU Customs Code, i.e. tariffs and customs duties.

[169] Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades.

In VAT, RDL 15/2020 introduced two very specific measures. The first one was directly related to COVID-19 crisis: a special 0% rate for deliveries, intra-UE acquisitions and imports of certain health goods (masks, hand sanitizer, etc.) provided that the recipients are public law entities, clinics or hospitals or private entities of a social nature. The second, however tried to solver a long-term discussion: the reduction of the VAT rate of electronic books, newspapers and magazines to 4%, the same as the phisical ones[170].

The last relevant short-term measure (RDL 17/2020, 5th May) was the increasing of the percentage of deduction for donations to non-profit entities in PIT by 5% (up to 80% for the first 150 euros, 35% for the rest, and 40% total when in the previous financial year it had already donated more than 150 euros). Most of the tax incentives to specific cultural and sport activities were also extended one year (e.g. tax incentives linked to the postponed Tokyo Olimpic Games). This RDL also establishes the only tax measure related to a specific economic sector by improving the deduction of CIT on audiovisual and film productions.

These were the main fiscal countermeasures of Spain during 2020, the first and hardest year of the pandemic crisis. Of course, the Government announced billions of direct aid, exactly EUR 60 billion. However, if we go further this political statements, we realise 80% of them were nothing but "official credit lines with reduced interests" and 18% was the expenditure on the Record of Temporary Employment Regulation.... The real economy, the sectors badly hit by the pandemic (restauration, tourism, etc.) did receive less than a tiny lifeline for surviving this "perfect storm" in the short-term.

3. Mid-term countermeasures – The Budget for 2021

Up to the end of 2020 we might have thought that Spain did not act more decisively in the short-term because it was expecting a fast recovery from the crisis. However, the unavoidable delay in the vaccines postponed any hope and, at the time of this paper, we still do not know if Spain will receive a significant number of international tourists (the water for its thirsty economy). Appart from the arrival of the EU aid package, we might expect then several ambitious measures in the Budget for 2021 (A Budget for a country with a 11% public deficit and more than 15% of unemployment rate).

First of all we must recall that Spanish Government at the moment is a left-wing coalition of two parties that is supported in the Parliament by other left-wing and regional parties. This is relevant to understand the tax measures included in the Budget for 2021, which are more related to the compliance of a political agreement than to the situation of Spanish economy.

One of the main worries of this coalition was the situation of the housing rentals (with increasing prices, specially in big cities). Among the possible measures it was discussed the instauration of rental price limits in this big cities. However, the only measure included in the Budget for 2021 was the deduction as expense for the landlord of any agreed reduction in rentals and a forced reduction of 50% in business rentals (during 6 months), that will be applied when they are owned by public entities or when the landlord owns more than 10 premises.

In PIT, according to the left-wing coalition pact, the only measure was the increase of marginal rates applied over EUR 300,000 of general income (salaries, rentals, business income, etc.) to 47% (+2%) and to savings income (interest, dividends, etc.) over EUR 200,000 to 26% (+3%).

[170]Regarding this conflict see: MACARRO OSUNA, J. M., «Non-reduced rates for e-books: Has the ECJ allowed an infraction of fiscal neutrality?», International VAT Monitor, Vol. 27, nº 4, 2016, pp. 249-253.

Table 1. Spanish PIT marginal rates (2021)

General Base		
From	**to**	**Rate**
0	12,450	19%
12,450	20,200	24%
20,200	35,200	30%
35,200	60,000	37%
60,000	300,000	45%
300,000	onwards	47%

Savings Base		
From	**to**	**Rate**
0	6,000	19%
6,000	50,000	21%
50,000	200,000	23%
200,000	onwards	26%

In this same line, the highest marginal rate of Wealth Tax (for wealth over EUR 10,6 million) was increased 1%, up to 3,5%. The last tax measure was the application of the normal VAT rate (21%) instead of the reduced rate (10%) to sweetened soft drinks.

That is all. A bit of make-up to accomplish with political agreements but very little relevant fiscal countermeasures in response to a tough year, one year in which Spain is still suffering the effects of the pandemics way more than other European economies. This situation required ambitious measures for a faster economic recovery in the short-term, and ambitiuos tax reforms to solve the huge problem of fiscal revenues and public deficit and debt in the mid-long term. None of them seem to be in the political agenda at Spain[171].

4. Finally, a Package of direct aid for business. Is it too late?

Maybe it was part of the mentality of the left-wing government in Spain but too much time has passed until the first direct aid package for business was approved. There have been other measures, that is true, but they were focus on helping individuals under difficult circumstances, but not businesses.

To be specific, the 12th of March of 2021, almost one year after the declaration of the first State of Alarm due to COVID-19 (14th of March 2020) the Government announced and aid package that will be managed by the regions.

This direct aid package consists on EUR 7 Billion euros that will be assigned to business and professionals under request, although EUR 2,5 billion will be specifically dedicated to the two Spanish islands regions (Canary Islands and Baleares) that suffered the tourism crisis with greater intensity.

The aid will be assigned under this conditions:

- At least 30% of sales reduction
- Only to specific sectors: hospitality, tourism, commerce
- For the payment of fixed expenses and debts to suppliers and other creditors
- Compensation up to 40% of the sales drop for micro-business and 20% for others.
- Maximum aid of EUR 200,000
- Companies cannot pay dividends or increase the salary of managers in two years.

[171] We have already proposed a few relevant tax reforms in order to curb the worrisome numbers of Spanish deficit and public debt in the mid and long-term, specially regarding VAT. See: Martín Rodríguez, J.M., «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», Retos jurídicos ante la crisis del COVID-19 (editors: Juan Francisco Rodríguez Ayuso & Elena Atienza Macías), Wolters Kluwer, 2020, pp. 148-157.

Maybe it is too late, since the Spanish Statistic Institute (INE) had already alerted that during the first 6 months of the COVID-19 crisis in Spain (april.-october 2020) more than 200,000 companies (17,4% of all Spanish companies) and more than 300,000 self-employed workers (10% of them) terminate their activities[172].

5. Concluding Remarks

It is obvious that the Spanish life style, our culture and openness has caused critical death numbers due to COVID-19. The economic consequences of the pandemic has also been huge since Spain is heavy dependent on tourism. Numbers do not lie, Spain suffered one of the sharpest contractions in the world, with the highest public deficit in the European Union (11%) and critical debt numbers (120% of GDP). However, as we have seen, short-term COVID-19 fiscal countermeasures in Spain had strictly complied with the minimum requirements of the situation: tax deferrals, official credit lines, support for employers and companies with a big expense on Record of Temporary Employment Regulation, etc.

Maybe the constraints of the actual Spanish political situation (a left-wing coalition, with many parties to agree in order to reach the parliamentary majority) have influenced the lack of ambitious business incentives (except on media productions...). Moreover, the Budget for 2021 appeared to forget the economic context and, rearding fiscal measures, only reflects a few minor political agreements.

This "perfect storm" for sectors such as tourism, amusement or restauration, has received the first actual answer almost one year after the start of this crisis. However, nor the amount of the direct aid, neither the strict conditions or burocracy will help its success.

The truth is that the main Spanish countermeasure against COVID-19 economic crisis has been *waiting*. Waiting for European Union Aid Package to arrive, waiting for vaccines to work, waiting for International travellers to return and waiting to business to survive until then….

[172] See. https://www.ine.es/covid/covid_economia.htm (accessed 20 April 2021)