

**COVID DIRECT AID LINE TO SELF-EMPLOYED PERSONS AND COMPANIES IN THE AUTONOMOUS
COMMUNITY OF THE CANARY ISLANDS****DECREE-LAW 6/2021 OF 4 JUNE 2021**

On Saturday 5 June 2021, the Government of the Canary Islands published the Decree-Law 6/2021, of 4 June, in the Official Gazette of the Canary Islands, which regulates **the granting of the "Covid line of direct aids to self-employed persons and companies" provided for in Title I of Royal Decree-Law 5/2021, of 12 March, on extraordinary measures to support business solvency in response to the COVID-19 pandemic, financed by the Government of Spain.**

The most relevant aspects are set out below, and each specific case and its particularities must be considered in order to verify whether the requirements are met in each case.

I. RECIPIENTS AND EXCLUSIONS FROM THE SUBSIDY FRAMEWORK

Royal Decree-Law 5/2021 of 12 March on extraordinary measures to support business solvency in response to the COVID-19 pandemic entrusts the Autonomous Communities and the cities of Ceuta and Melilla with the task of issuing the corresponding calls for the granting of direct aids, therefore the present Decree is published and provides for **two subsidy lines** financed by the Spanish Government:

1.- Line 1: self-employed persons (entrepreneurs or professionals) who are taxed under the **objective estimate regime** in the Personal Income Tax.

2.- Line 2: Self-employed persons (entrepreneurs or professionals), companies and groups of companies whose annual volume of transactions declared or verified by the Administration in the Canary Islands General Indirect Tax (IGIC) and, where applicable, in the Value Added Tax (IVA), **in 2020 has fallen by more than 30% compared to 2019.**

The direct aids received must be used to satisfy debt and payments to suppliers and other financial and non-financial creditors, as well as non-covered fixed costs incurred, provided that these have accrued between **1 March 2020 and 31 May 2021** and come from contracts prior to the entry into force of the aforementioned Royal Decree-Law.

The **beneficiaries** may be companies, groups of companies and self-employed persons, professionals or entrepreneurs that meet the following requirements:

1.- To have a tax residence in the Canary Islands:

- In the case of entrepreneurs, professionals or entities whose volume of transactions in 2020 has been less than or equal to 10 million euros and do not apply the group regime in the Corporate Income Tax, they will only be eligible for the call where their tax residence is located.
- Groups and entrepreneurs, professionals or entities whose volume of transactions in 2020 has been higher than 10 million euros, that carry out their economic activity in more than one autonomous territory or city may participate in the calls made in all the territories where they operate.
- In any case, when the beneficiary is a non-resident entity, applicants must operate in the Canary Islands through a permanent establishment.

2.- To be registered in any of the activities of the National Economic Activities Classification CNAE09, except:

financial and insurance activities; activities of households as employers of domestic staff and activities of extraterritorial organisations and bodies. This registration must have been maintained in the financial years 2019, 2020 and 2021, up to the time of submitting the application.

However, the following cases will also be admitted:

- Entrepreneurs or professionals and companies registered or created between 1 January and 31 December 2019.
- Companies that have carried out a structural modification of the trading company between 1 January 2019 and 31 December 2020.
- In the case of entrepreneurs or professionals and companies registered or created between 1 January and 31 March 2020, they will be beneficiaries if they have suffered losses during the financial year 2020 or are taxpayers of the Personal Income Tax that are taxed by objective estimate.
- Entrepreneurs or professionals who, having started their activity prior to 1 January 2019, have been registered for a period of less than one year in the financial year 2019 or in the financial year 2020.

3.- To comply with the following conditions:

a) Entrepreneurs or professionals whose annual volume of transactions declared or verified by the Administration, in the Value Added Tax or equivalent indirect tax in 2020 has fallen by more than 30% compared to 2019.

Entrepreneurs or professionals who apply the objective estimate regime in the Personal Income Tax.

b) In the case of consolidated groups that pay Corporate Income Tax under the consolidated taxation system, the recipient shall be understood to be the aforementioned group as a single taxpayer, and not each of the entities that comprise it.

c) Those entrepreneurs or professionals, entities and consolidated groups that in the Personal Income Tax return corresponding to 2019 have declared a negative net result for the economic activities in which they have applied the direct estimate method for their determination or, where applicable, the tax base of the Corporate Income Tax or Non-Resident Income Tax, before the application of the capitalisation and equalisation reserve for negative tax bases has been negative in such financial year, shall not be considered as recipients.

d) Conditionings:

(i) Not to have been convicted by final sentence to the penalty of loss of the possibility to obtain public subsidies or aids or for crimes of prevarication, bribery, embezzlement of public funds, influence peddling, fraud and illegal exactions or urban planning offences.

(ii) Not to have given rise, for a reason why they have been found guilty, to the final termination of any contract entered into with the Administration.

(iii) To be up to date with the payment of obligations for the reimbursement of subsidies or public aids.

(iv) To be up to date with tax and Social Security obligations.

(v) Not to have requested the declaration of voluntary bankruptcy, not to have been declared insolvent in any proceedings, not to be declared bankrupt, unless an agreement has become effective, not to be subject to judicial intervention or have been disqualified in accordance with Law 22/2003, of 9 July, on Bankruptcy, without the period of disqualification established in the bankruptcy qualification ruling having ended.

(vi) Not to be a tax resident in a country or territory legally classified as a tax haven.

(vii) Applicants must meet the conditions set out in section one of Order HAC/348/2021, of 12 April.

General partnerships, community of goods or any other type of economic unit or entity which, although not having legal personality, carries out an economic activity and is profit-making, will also be considered as beneficiaries of these subsidies.

Self-employed persons and companies will not be eligible to be beneficiaries in any of the following circumstances:

- a) Being a public trading company or other company in which the majority of its capital or governing bodies are held by the Public Administrations or entities dependent on them.
- b) Having declared a negative net result for the economic activities in which the direct estimate method has been applied for their determination in the Personal Income Tax return corresponding to 2019 or, where applicable, the taxable base for Corporate Income Tax or Non-Resident Income Tax has been negative in such financial year, prior to the application of the capitalisation and equalisation reserve for negative tax bases, unless the recipient is in any of the following circumstances and can prove this in a reliable manner:
 - b.1) That, in the financial year 2018, they have declared a positive net result for economic activities, provided that the tax base or the negative net result in 2019 is due to impediments or limitations of the normal activity due to extraordinary causes.
 - b.2) That they have been registered or created between 1 January and 31 December 2019.
- c) That they were in difficulty on 31 December 2019, except for micro or small enterprises that were already in difficulty on 31 December 2019, provided that they are not involved in bankruptcy proceedings and have not received rescue or restructuring aid.

II. REQUIREMENTS TO OBTAIN THE SUBSIDY

The State aid scheme applicable to the subsidies is the one provided for in the temporary National Framework and therefore the following can be distinguished:

A. MODALITY OF DIRECT AIDS, REFUNDABLE ADVANCE PAYMENTS, TAX OR PAYMENT ADVANTAGES, GUARANTEES, LOANS AND CAPITAL.

A maximum gross amount, before tax and other deductions, of **EUR 1,800,000** per company or self-employed person, of the total aid received by a company or self-employed person is set. Certain requirements must be met, among which are the following:

- **Purpose of the subsidy:** satisfaction of debts and payments to suppliers and other creditors, as well as non-covered fixed costs incurred.
- **Diversity of sectors:** when operating in different sectors to which different maximum amounts apply, it must be ensured that each of the activities is subject to the corresponding maximum limit, not exceeding, in total, the highest possible amount.

B. AID IN THE FORM OF SUPPORT FOR NON-COVERED FIXED COSTS

A maximum gross amount, before tax and other deductions, of **EUR 1,800,000** per company or self-employed person. Several requirements must be met, including, among others:

- **Purpose:** the aid will cover fixed costs not covered by the profit contribution incurred during the eligible period and **not covered by other sources.**
- **Aid intensity limitation:** this will be a maximum of 70% of the non-covered fixed costs, with the exception of micro and small enterprises whose limitations will not exceed 90% of such costs.
- **Non-covered fixed costs:** losses incurred by enterprises in their profit and loss accounts during the eligible period.
- **Maximum gross amount:** before tax and other deductions, **10,000,000 euros** per company, of the total aid received.

Likewise, an equivalence is also established between the subsidy lines and the aid modalities foreseen in the Temporary National Framework:

- **On a general basis for all sectors:**

The aid corresponding to subsidies for self-employed persons who are taxed under the objective estimate regime in the Personal Income Tax, self-employed persons, companies and groups of companies with less than 50 workers; they will have to comply with the requirements foreseen for the modality described above in section A.

In relation to self-employed persons, companies and groups of companies with 50 or more employees, they will be subject to a limitation of €1,800,000 for aids allocated to the payment of suppliers, debts and non-covered fixed costs, **without this limit being exceeded.**

As regards the aids provided for in section B above, and above €1,800,001, only for fixed costs not included in the €1,800,000, **the intensity rate of 70% will apply.**

- **There are exceptions for fisheries and aquaculture sectors.**

CUMULATION RULES:

As a general rule, aids may be cumulated with each other, respecting the maximum amounts and maximum intensity thresholds established, however, aids granted under the modality of aid for non-covered fixed costs may not be cumulated with other aids for these same costs.

Likewise, the aid provided for in the new Decree-Law may be cumulated with the minimis regulations, as well as with exempted aids under the General Block Exemption Regulation.

III. OBLIGATIONS OF BENEFICIARY PERSONS AND COMPANIES

The obligations of the beneficiary persons and companies are:

- **To notify changes in the subjective and objective circumstances and requirements** taken into account for the grant of the subsidy.
 - To justify **compliance with the requirements and conditions** for obtaining the subsidy.
 - Agree **to submit to checks by the control** bodies.
 - **To notify the receipt of other subsidies, aids (temporary aids), income or resources** that finance the subsidised activities from public or private entities.
 - To be **up to date with their tax and Social Security** (or Mutual insurance) obligations.
 - **To have the accounting books, filled in records and other documents duly audited** in order to facilitate verification and control.
 - **To keep the documentation** for possible control. Term **10 years**.
 - **The financial performance** generated by the funds released to the beneficiary **will increase the amount of the subsidy granted** and will also be applied to the subsidised activity.
 - **To use the subsidy to satisfy the debt and make payments to suppliers** and other non-financial creditors.
 - **Repayment of grants:**
 - Invalidity of the grant decision
 - Distortion of the conditions
 - Total or partial non-fulfilment of the objective
 - Non-compliance with the obligation to provide justification
 - Failure to comply with the obligation to take dissemination measures
 - Resistance or obstruction to verification measures
 - Failure to comply with the obligations imposed by the Administration
 - The adoption of a decision from which a need for reimbursement arises.
- In addition to the above, the recipients of these measures **must also assume the following commitments:**

- To maintain the activity corresponding to the aid until 30th June 2022.
- They may not distribute dividends during 2021 and 2022.
- They may not approve increases in the remuneration of senior management for a period of two years from the implementation of any of the measures.

IV. ELIGIBLE COSTS AND AMOUNTS

The grants are final in nature, being used to satisfy the debt or make payments to suppliers and other creditors, financial and non-financial, as well as the fixed costs incurred.

Pending payments to suppliers and creditors, as well as debts, are those amounts that have not yet been paid, regardless of whether they are within the payment term agreed between the parties or are considered unpaid due to having exceeded said term.

The same payment to be justified cannot be attributed to the subsidy in the different eligible categories: suppliers, debts and fixed costs incurred not covered. This being the case, the eligible costs will be the sum of all of them.

The reference period of the eligible costs will correspond to the contractual commitments contracted before March 13, 2021, accrued between March 1 and May 31, 2021.

In the case of pending payments to suppliers and financial debts, these must be pending payment at the time of the start of the period for submitting the grant application.

In no case will indirect taxes be considered eligible when they are recoverable.

The amount of the subsidy will correspond to the amount of eligible costs, unless one of the following maximum or minimum amounts applies:

- Line 1. Self-employed persons (businessmen or professionals) who are taxed by the objective estimation regime in personal income tax: maximum 3,000 euros.
- Limit 2. Self-employed persons (entrepreneurs or professionals), companies and group of companies whose annual volume of operations declared or verified in IGIC / VAT in 2020 has fallen by more than 30% compared to 2019. We find in turn:
 - o Line 2.1. Self-employed persons, companies, and groups of companies with a maximum of 10 people employed: 100% of the decrease in the volume of their operations with respect to 2019 eligible.

The maximum aid may not exceed 500,000 euros.

o Line 2.2. Self-employed persons, companies, and groups of companies with more than 10 and less than 50 people employed: 90% of the decrease in the volume of their operations with respect to 2019 eligible.

The maximum aid may not exceed 1,800,000 euros.

o Line 2.3. Self-employed persons, companies, and groups of companies with 50 or more employees: 80% of the decrease in the volume of their operations with respect to 2019 is eligible.

The maximum aid may not exceed 5,000,000 euros.

In any case, the maximum intensities of State Aid must be respected.

V. PROCEDURE AND DEADLINES

The procedure for granting these aids will be carried out under a direct grant scheme, which will begin with the presentation of an application accompanied by the required documentation.

- **Deadline:** the submission of applications must be made **from June 15 to July 28, 2021**, both inclusive.
- **Form:** the presentation will be made electronically in accordance with the standardized application forms published, accompanied by the documentation required for this purpose and will imply the acceptance of the provisions of the Decree-Law, without prejudice to the right to withdraw from the request before the concession resolution, or to renounce the one already granted; as well as the authorization for the Autonomous Community of the Canary Islands to obtain from the tax administrations the information provided for in the Decree-Law.
- **Responsible declaration:** At the time of application, applicants must declare under their responsibility: the amount of each of the three types of eligible costs for which they request the aid, which meets the eligibility conditions by assuming a series of commitments, the subsidies or aid that they have obtained or requested for the same purpose, be up to date with the state and regional tax obligations and against Social Security or, where appropriate, with the Professional Mutual Fund, among other requirements.

- Opposition to the consultation of the documentation by the Administration: The express opposition to said consultation will imply the obligation to provide the certificates of being up to date in the fulfilment of said obligations.
- Processing:
 - Each interested person or company may submit only one application. In the event that two or more applications are submitted, only the first one will be considered.
 - In the processing of applications, the strict order of presentation will be kept at the electronic headquarters, without prejudice to the order of resolution of the same.
 - The payment of the subsidy will be made in the form of advance payment of 100% of the amount, without requiring guarantees and will require subsequent justification.
 - The payment of the subsidy cannot be made until the beneficiary person or company is up to date in complying with its tax obligations (state and regional) and with Social Security or, where appropriate, with the Professional Mutual Fund; that is, debt by final resolution of origin of reimbursement.
- The records of expenses corresponding to the subsidies whose concession was made under the direct concession regime are exempted from the prior authorization of the Government that, in view of their amount, is established in the annual budget laws. The aforementioned files will be reported to the Government on a quarterly basis.
- Documentation to accompany the application: interested persons and companies must attach certain documentation to the application. The documentation that must be provided to the application will vary depending on the type of applicant. Among said documentation, it is worth highlighting: accreditation of the representation, the certificate of the annual income tax return, IS, IRNR issued by the AEAT, income tax returns, declarations accrediting the volume of operations in the IGIC, and where appropriate, VAT in the exercises 2019 and 2020 etc.
- Instruction and resolution of the procedure: The competent body for the instruction of the grant award procedure will be:
 - Line 2 of Subsidies: General Directorate of Economic Promotion.
 - Line 1 of Subsidies: Sub directorate for the Promotion of the Social Economy of the Canary Islands Employment Service.Said bodies will formulate the resolution proposal and submit it to the granting body, who will decide whether to grant or deny the subsidy.

Concession resolutions must be issued and notified before December 31, 2021, after the period has elapsed without express resolution, the grant application will be understood to have been rejected.

- Modification of the resolution: The concession resolution may be modified in the event that there is alteration of the conditions that have been taken into account for the granting of the subsidy, as well as the obtaining of subsidies or aid granted by other Administrations that contradict the subsidy compatibility regime.

VI. SANCTIONS REGIME

Regarding the sanctioning regime, Decree Law 6/2021 of June 4 makes a complete reference to the General Subsidies Law.

Thus, the General Subsidies Law distinguishes three types of infractions in this area and depending on the seriousness of the fact that constitutes the infraction: minor, serious and very serious infractions, depending on the type of non-compliance. The penalties to be imposed are of a pecuniary nature, and / or non-pecuniary in the case of serious or very serious offenses, specifically:

- a) Loss for a period of up to five years of the possibility of obtaining subsidies, public aid and guarantees from Public Administrations or other public entities.
- b) Loss for a period of up to five years of the possibility of acting as a collaborating entity in relation to the subsidies regulated in this law.
- c) Prohibition for a period of up to five years to contract with Public Administrations.

PRESCRIPTION

In accordance with the general rules regarding Administrative Law, the Administration's right to verify the subsidy will prescribe after four years.

This limitation period may be interrupted for any of the legal causes, which implies that the computation of the new limitation period is restarted from the date on which it is considered interrupted.

COMPATIBILITY

The subsidies of this Decree Law are compatible with other subsidies, aid, income or resources for the same or different purpose, coming from any other administrations or public or private entities, state, the European Union or other international organizations.

The amount of the subsidies may not be higher than the cost of the subsidized activity, either in isolation, or in conjunction with other or aid from other public administrations, or from other public or private entities.

Also, in general, all the aid contemplated in the Temporary National Framework may be accumulated among themselves, as long as the maximum amounts and maximum intensity thresholds established for each type of aid are respected, provided that the accumulation rules provided for in these Minimum Regulations are respected.

Likewise, it is established as a limit for accumulation, that the aid does not finance the same costs, so the identification and control of the costs covered by the aid must be guaranteed.

In this sense, the Administration will check, prior to the granting, that the expected accumulation rules are met and that the total amount of aid received does not exceed the expected amounts.

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