

Tax Authority Clarifies That Transfer of Branch Profits is Not Treated as Distribution of Dividends for Treaty Purposes

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In a tax ruling recently made available to the public, the national tax authority has clarified that in the case of profits transferred from a Colombian branch to its Spanish head office, the definition of "dividends" provided by the Colombian tax law does not apply for purposes of article 10 (Dividends) of the [Colombia - Spain Income and Capital Tax Treaty \(2005\)](#) (the Treaty).

The tax authority explained that, on the one hand, under article 10 of the Treaty, the concept of "dividends" is directly related to the existence of a corporate right in a company. In addition, the commentaries to the OECD Model Convention, as an auxiliary means of interpretation, relate the concept of "dividends" to the distribution of benefits to shareholders or partners in different types of companies. On the other hand, domestic tax law provides that the transfer of Colombian source profits obtained through permanent establishments or branches located in Colombia, is considered as distribution of dividends. The tax authority provided that there is no antinomy between domestic law and the tax treaty, as the latter prevails over the former considering the rules for interpreting tax treaties.

In summary, according to the tax authority, under the Treaty, the concept of "dividends" does not include the transfer of profits from a branch located in Colombia to the head office located in Spain. Thus, even though the transfer of profits from a branch qualifies as a dividend under Colombian tax law, the definition of "dividends" in the Treaty prevails according to the principle. Therefore, the transfer of branch profits to the head office is covered by article 7 of the Treaty and, as such, must be treated as a business profit.

The clarifications were made by Tax Ruling 1380 of 2023, issued on 13 September 2023, and recently made available to the public.