

National Tax Authority: Total Tax Burden on Dividends under Colombia-United Kingdom Tax Treaty To Be Limited to 15%

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Report from our correspondent Maria Bocachica

The National Tax Authority has ruled that, according to article 10(3) of the [Colombia - United Kingdom Income Tax Treaty \(2016\)](#), dividends paid out of profits that were not taxed at the level of a Colombian company may be taxed in Colombia up to 15% of the gross amount of dividends paid.

The taxpayer required the National Tax Authority to provide clarifications on the application of article 10(3) of the treaty in a case where a Colombian company paid dividends out of profits that were not taxed at the level of the company, and the beneficial owner of the dividends was a resident of the United Kingdom.

In the case at hand, the National Tax Authority explained that a grammatical interpretation of the wording "may be taxed" in Colombia included in article 10 of the treaty leads to the conclusion that it refers to the total tax burden in Colombia, which is limited to 15% of the gross amount of dividends paid. Thus, the global tax burden corresponding to the profits that generated the dividends, as well as to the dividends as such, is limited to 15%.

To arrive at this conclusion, the National Tax Authority considered that, according to article 10(2) of the treaty, the tax rates applied in Colombia under the treaty (i.e. 0%, 5% and 15%) do not "affect the taxation of the company in respect of the profits out of which the dividends are paid". Nonetheless, paragraph 3 of the same article provides that the rules of paragraph 2 do not apply to "dividends paid by a company resident of Colombia out of profits that have not been subject to tax on income at the level of the company according to the laws in Colombia". Accordingly, the National Tax Authority explained that the intention of the contracting states was to agree that the taxation of dividends and profits attributable to a permanent establishment correspond to the global taxation in the country, which is limited to 15%.

Finally, the National Tax Authority emphasized that the application of the treaty provisions is subject to the principal purpose test provided under article 22, whereby a benefit under the treaty will not be granted in respect of an item of income or a capital gain if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction.

These considerations were provided in Ruling 132 of 30 January 2023, which was recently made available to the public.

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