

Global Tax Alert

News from EY Americas Tax

Colombia-UK tax treaty will enter into force in 2020

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EY Americas Tax

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On 13 December 2019, Colombia and the United Kingdom (UK) exchanged notes, informing each other that they have completed the approval processes for the Treaty to Avoid Double Taxation (the Treaty).

The exchange of notes was the only step remaining for the Treaty to enter into effect. With this step completed, the Treaty will apply from 1 January 2020 for Colombia. For the UK, the Treaty generally will apply from 1 April 2020; for taxes withheld at source, however, the Treaty will apply from 1 January 2020.

The Treaty follows several recommendations of the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) project, such as (1) a principal purpose clause prohibiting use of the Treaty's benefits when there is no verified business purpose; (2) robust rules on cooperation between the tax authorities (e.g., the exchange of information and cooperation in tax collection); (3) updated rules on permanent establishments; and (4) a mutual agreement procedure to resolve residence conflicts for companies. The Treaty expressly provides that it should be interpreted under the OECD's commentaries.

The Treaty also includes certain thresholds for withholding tax (WHT) rates as follows:

Type of income	WHT	Beneficial owner
Dividends	0%	Pension funds
	5%	Companies with at least 20% of ownership
	15%	All other cases, including dividends paid out from profits that were not subject to income tax at the level of the Colombian entity
Interest	0%	State-owned entities, Central Banks, pension funds, banks (with a term of three years or more), among others
	10%	All other cases
Royalties	10%	Tax residents

Under the Treaty, technical services, technical assistance and consultancy services are not taxed in the source state, unless there is a permanent establishment in that source state. This provision could cause the most favorable rule, contained in some treaties into which Colombia has entered, to apply. If the rule applies, the services must receive treatment that is similar to the treatment that would apply under the Colombia-UK treaty. As a result, each transaction related to these services should be reviewed on a case-by-case basis to determine whether the most favorable rule applies.

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