

# Global Tax Alert

News from EY Americas Tax

## Colombian Tax Authority clarifies profits distributed by Colombian branch to its home office in Spain are not dividends

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The Colombian Tax Authority issued Official Tax Opinion No. 370 of 2020, which clarifies that profits distributed from a Colombian branch to its home office in Spain should not be considered "dividends" under the tax treaty between Colombia and Spain. Instead, such distribution should be considered a "business profit," covered by Article 7 of the tax treaty, and generally not subject to taxation in Colombia.

### Background

Colombia and Spain signed a treaty to prevent double taxation, which entered into force in 2008. Under Article 10 of the treaty, "dividends" are deemed as "income from shares (...) or other corporate rights which are subject to the same taxation treatment as income from shares by the laws of the State." Initially, this definition did not include profit distributions made by branches to their home offices abroad. However, since the 2012 Colombian tax reform, profits distributed by branches to their foreign home offices are included within the definition of dividends and subject to dividend tax under Colombian domestic rules. Because of the change made in the tax reform, there was confusion as to how the domestic tax law affected the application of the treaty.

## Tax Opinion No. 370 of 2020

In Tax Opinion No. 370, the tax authority determined that, based on the wording of Article 10 of the treaty, dividends require the existence of a “corporate right,” which does not exist between a branch and its home office, because the former is merely an extension of the latter. Hence, there cannot be a dividend distribution within the same legal entity.

Therefore, profits distributed by a branch in Colombia to its home office in Spain should be categorized as “business profits” (Article 7 of the tax treaty), which are generally not subject to tax in Colombia.

Taxpayers should be aware that the rules regarding branch distributions vary among the tax treaties subscribed by Colombia, so the treatment of those distributions should be determined on a case-by-case basis.

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