

Costa Rica

Transfer Pricing Country Profile

July 2021

		SUMMARY	REFERENCE
The Arm's Length Principle			
1	Does your domestic legislation or regulation make reference to the Arm's Length Principle?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Income Tax Law , Article 81 bis.
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	Costa Rica Tax law does not contain any reference to the OECD Transfer Pricing Guidelines. The TPG are considered as a reference and guidance in the application of Costa Rica's transfer pricing rules.	
3	Does your domestic legislation or regulation provide a definition of related parties? If so, please provide the definition contained under your domestic law or regulation.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Article 68.- Definition of related parties.: <i>"...For the purposes of this Regulation, related parties are those established in article 2 of the Income Tax Law and also those residents abroad or in the national territory, who participate directly or indirectly in the management, control or capital of the taxpayer, or when the same people participate directly or indirectly in the management, control or capital of both parties, or that for some other objective cause can exert a systematic influence on their decisions on the price.</i> <i>It is presumed that there is a relationship, in the terms of the Income Tax Law, when a taxpayer carries out transactions with a person or entity that has its residence in a non-cooperating extraterritorial jurisdiction, understanding as a non-cooperative jurisdiction those that are in any of the following conditions:</i> <i>i. In the case of jurisdictions that have an equivalent rate in the Income Tax lower by more than forty percent (40%) of the rate established in paragraph a) of article 15 of the Income Tax Law.</i>	Regulation to Income Tax Law

ii. *In the case of jurisdictions with which Costa Rica does not have an agreement for the exchange of information or to avoid double taxation with a clause for the exchange of information.*

The following will be specifically considered related parties:

Individuals or legal entities that qualify in any of the following situations:

- i. *One of them directs or controls the other or owns, directly or indirectly, at least 25% of its share capital or of its voting rights.*
- ii. *When five or fewer persons direct or control both legal persons, or possess as a whole, directly or indirectly, at least 25% of participation in the capital stock or the voting rights of both persons.*
- iii. *In the case of legal persons that constitute the same decision unit. In particular, it will be presumed that there is a unity of decision when a legal person is a partner or participant of another and is in relation to it in any of the following situations:*
 - a. *Who owns the majority of the voting rights.*
 - b. *That it has the power to appoint or remove the majority of the members of the administrative body.*
 - c. *That it may have, by virtue of agreements entered into with other partners, the majority of voting rights.*
 - d. *That it has appointed the majority of the administrative body exclusively with its votes.*
 - e. *That the majority of the members of the administrative body of the dominated legal entity are members of the administrative body or senior executives of the dominant legal entity or of another dominated by it.*
- iv. *When two or more legal persons each form a decision unit with respect to a third legal person, in which case all of them will form a decision unit.*

For the purposes of this section, it is also considered that a natural person has a share in the capital stock or voting rights, when the ownership of the share, directly or indirectly, corresponds to the spouse or person united by kinship relationship, online direct or collateral, by consanguinity up to the fourth degree or by affinity up to the second degree.

Related parties will also be considered:

- a) *In a business collaboration contract or a joint venture agreement, when any of the contracting parties or associates participates directly or indirectly in more than 25% of the result or profit of the contract or of the activities derived from the association.*
- b) *A person residing in the country and their permanent establishments abroad.*

c) *A permanent establishment located in the country and its parent company residing abroad, another permanent establishment of the same or a person related to it.*”

Transfer Pricing Methods

4	<p>Does your domestic legislation provide for transfer pricing methods to be used in respect of transactions between related parties?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>If affirmative, please check those provided for in your legislation:</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse; text-align: center;"> <thead> <tr> <th style="padding: 5px;">CUP</th> <th style="padding: 5px;">Resale Price</th> <th style="padding: 5px;">Cost Plus</th> <th style="padding: 5px;">TNMM</th> <th style="padding: 5px;">Profit Split</th> <th style="padding: 5px;">Other (If so, please describe)</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"><input checked="" type="checkbox"/></td> </tr> </tbody> </table> <p>Commodities Method, regulated by Article 70, Regulation to Income Tax Law.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)	<input checked="" type="checkbox"/>	<p>Regulation to Income Tax Law, Article 70.</p>					
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (If so, please describe)										
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>										

5	<p>Which criterion is used in your jurisdiction for the application of transfer pricing methods?</p>	<p>Please check all that apply:</p> <p><input type="checkbox"/> Hierarchy of methods</p> <p><input checked="" type="checkbox"/> Most appropriate method</p> <p><input type="checkbox"/> Other (if so, please explain)</p> <hr/> <p>Article 70, Regulation to Income Tax Law:</p> <p><i>“...The determination of the price or margin that independent parties have agreed to incomparable operations may be carried out by any of the following methods. The most appropriate method that respects the principle of free competition will be applied...”</i></p>	<p>Regulation to Income Tax Law, Article 70.</p>
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6	<p>If your domestic legislation or regulations contain specific guidance on commodity transactions, indicate which of the following approaches is followed.</p>	<p><input type="checkbox"/> For controlled transactions involving commodities, the guidance contained in paragraphs 2.18-2.22 of the TPG is followed.</p> <p><input type="checkbox"/> Domestic legislation mandates the use of a specific method for controlled transactions involving commodities (if so, please explain)</p> <p><input checked="" type="checkbox"/> Other (if so, please explain)</p> <hr/> <p>Costa Rica uses CUP, but alternatively, the commodities method can be used.</p>	<p>Regulation to Income Tax Law, Article 70.</p>
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		Article 70 of the Regulation to Income Tax Law provides that, for goods with the international quoted price, the quoted price may be used as an alternative to the CUP method.	
Comparability Analysis			
7	Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Article 69, Regulation to Income Tax Law contains provisions on the Comparability Analysis. Further, the TPG are used as guidance in the application of Costa Rica’s transfer pricing rules.	Regulation to Income Tax Law, Article 69.
8	Is there a preference in your jurisdiction for domestic comparables over foreign comparables?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9	Does your tax administration use secret comparables for transfer pricing assessment purposes?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10	Does your legislation allow or require the use of an arm’s length range and/or statistical measure for determining arm’s length remuneration?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Article 69, Regulation to Income Tax Law establishes: <i>“It is possible to apply the principle of free competition until a single figure is determined, either a price or a comparable profit margin, which will constitute the reference to establish whether an operation responds to the conditions of free competition. However, in the event that there are two or more comparable prices or profit margins, the interquartile range must be constituted using the series of identified comparable data.</i> <i>If the price or margin of the analyzed transaction is outside the interquartile range, contained between the first and third quartiles, it is considered that the value or price is not of free competition and the median must be established as the free competition price...”</i>	Regulation to Income Tax Law, Article 69.

11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Regulation to Income Tax Law, Article 69.
		Article 69, Regulation to Income Tax Law establishes: <i>“2. That reasonable adjustments can be made to eliminate the material effects of such differences...”</i>	

Intangible Property

12	Does your domestic legislation or regulations contain guidance specific to the pricing of controlled transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		There is not a specific regulation about intangibles, but general transfer pricing provisions in the tax law and regulations would apply. Costa Rica also follows the OECD TPG for these cases.	
13	Does your domestic legislation or regulation provide for transfer pricing rules or special measures regarding hard to value intangibles (HTVI)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		HTVI has not yet been regulated in Costa Rica.	
14	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving intangibles?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Intra-group Services

15	Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		There is not a specific regulation about intra-group services, however, general transfer pricing provisions in the tax law and regulations would apply. Costa Rica also follows the OECD TPG for these cases.	

16	Do you have any simplified approach for low value-adding intra-group services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		There is no regulation about low value-adding intra-group services.	
17	Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Financial transactions			
18	[NEW] Does your domestic legislation or regulations provide guidance specific to financial transactions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		There is not a specific regulation about financial transactions, but general transfer pricing rules in the tax law and regulations would apply. Costa Rica also follows the OECD TPG for these cases.	
19	[NEW] Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of financial transactions?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Income Tax Law , Article 9 bis,
		Costa Rica implemented the measures in BEPS Action 4 to limit interest deductions through Article 9 bis of Income Tax Law. Accordingly, taxpayers may only deduct financial expenses up to a maximum of 20% of their EBITDA. The measure came into effect in 2021. As a transitional measure, up to a maximum of 30% may be deducted in the 2021 fiscal year, 28% in 2022, with annual reductions of 2% up to a maximum of 20% in 2026, and thereafter.	
Cost Contribution Agreements			
20	Does your jurisdiction have legislation or regulations on cost contribution agreements?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Regulation to Income Tax Law, Article 74.
		Article 74, Regulation to Income Tax Law establishes the power to enter into agreements, including cost contribution agreements.	

Transfer Pricing Documentation

21	<p>Does your legislation or regulations require the taxpayer to prepare transfer pricing documentation?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p><i>If affirmative, please check all that apply:</i></p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Master file consistent with Annex I to Chapter V of the TPG <input checked="" type="checkbox"/> Local file consistent with Annex II to Chapter V of the TPG <input checked="" type="checkbox"/> Country-by-country report consistent with Annex III to Chapter V of the TPG <input type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <input type="checkbox"/> Other (specify): 	<p>Regulation to Income Tax Law</p> <p>Master and Local File Regulation</p> <p>CbC Report Regulation</p>
22	<p>Please briefly explain the relevant requirements related to filing of transfer pricing documentation (i.e. timing for preparation or submission, languages, etc.)</p>	<p>Article 73, Regulation to Income Tax Law establishes the obligation to present Master and Local File, CbC Report.</p> <p>Master and Local File:</p> <p>The taxpayer has 10 business days to submit the Master and Local File, once it is required by the tax administration in a control action. All information must be delivered in Spanish.</p> <p>CbC Report:</p> <p>The taxpayer has 12 months to file the CbC Report, from the end of the corresponding fiscal period. There is no restriction on the filling language.</p> <p>There is no difference from what is established in Action 13</p>	<p>Art 264 General Law of Public Administration</p>
23	<p>Does your legislation provide for specific transfer pricing penalties and/or compliance incentives regarding transfer pricing documentation?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>There are no specific penalties, instead, general penalties apply.</p>	<p>Art 83 Tax Code</p>
24	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>Costa Rica does not provide any exemption or materiality threshold.</p>	

Administrative Approaches to Avoiding and Resolving Disputes

25	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	<p>Please check those that apply:</p> <p><input checked="" type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input checked="" type="checkbox"/> Advance Pricing Agreements (APA)</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Unilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Multilateral APAs</p> <p><input checked="" type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p> <hr/> <p>Costa Rican legislation allows us unilateral, bilateral and multilateral APA, but currently, Costa Rica has not signed any.</p> <p>The rollback is not allowed at the moment, but Costa Rica is working on an amendment to allow the legislation to be able to apply it.</p> <p>Costa Rican legislation allows MAP, but currently, Costa Rica has not signed any.</p> <p>For further information, please refer to Costa Rica`s Dispute Resolution Profile (MAP Profile).</p>	<p>Article 74, Regulation to Income Tax Law establishes the power to enter into agreements</p> <p>Costa Rica's MAP Profile</p>
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Safe Harbours and Other Simplification Measures

26	Does your jurisdiction have rules on safe harbours in respect of certain industries, types of taxpayers, or types of transactions?	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
27	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	

Other Legislative Aspects or Administrative Procedures

28	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Income Tax Law , Article 81 bis.
		<p>Year-end adjustments are applicable under certain circumstances. Costa Rica does not allow such adjustments if they result in lower taxation.</p> <p>Art. 81 bis Income Tax Law: <i>“...This assessment will only proceed when the one agreed between the parties results in less taxation in the country, or a deferral in the payment of the tax...”</i></p>	
29	Does your jurisdiction make secondary adjustments?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Income Tax Law , Article 81 bis.
		<p>Costa Rican law allows such adjustments, but so far none have been made.</p>	
<h3 style="background-color: #4F81BD; color: white; padding: 5px;">Attribution of Profits to Permanent Establishments</h3>			
30	[NEW] Does your jurisdiction follow the Authorised OECD Approaches for the attribution of profits to PEs (AOA)?	<input type="checkbox"/> Yes <i>In how many tax treaties?</i>	
		<input checked="" type="checkbox"/> No <i>In how many tax treaties?</i> All Costa Rica has not yet made any case of attribution of benefits to a PE. It is being studied how the attribution of these benefits could be applied in the tax treaties not containing the post-2010 version of Article 7 of the OECD Model Tax Convention.	
31	[NEW] Does your jurisdiction follow also another approach?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Other Relevant Information

32	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
33	Other relevant information (e.g. <i>whether your jurisdiction is preparing new transfer pricing regulations, or other relevant aspects not addressed in this questionnaire</i>)	N/A	

For more information, please visit: <https://oe.cd/transfer-pricing-country-profiles>