



Transfer Pricing **Country Summary**

Costa Rica

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1. Introduction

Since 2017, Costa Rica has formal transfer pricing documentation requirements to submit the master file, country-by-country reporting and local file along with other local TP forms.

2. Laws & Regulations

a) References to OECD/EU/Local Rules

Costa Rica has formally become an OECD member on 25 May 2021. Costa Rican legislation references Arm's Length Principle in Art.81 of the Income Tax Law. However, Costa Rican Tax law does not reference OECD Transfer Pricing Guidelines. The 2017 Guidelines are considered a guide for applying transfer pricing rules of Costa Rica.

Costa Rican transfer pricing rules, enacted firstly on September 2013 (Decree 37898-H) and updated with Decree No. 41818-H of 26 June 2019, mandate Costa Rican taxpayers to conduct their related party transactions at arm's length in accordance with the OECD's Transfer Pricing Guidelines, as well as imposing systematic transfer pricing duties that must be provided on an annual basis. Therefore, transfer pricing studies have been requested from taxpayers since 2013. Besides, Costa Rica adopted the three-tiered documentation suggested in Action 13 of the BEPS report as follows:

- Resolution DGT-R-16-2017 of 21 April 2017 incorporated the Local File and Master File in the Costa Rican Legislation.
- On 13 September 2016, Costa Rica published a Resolution N° DGT-R-44-2016, setting out the definitive version of the transfer pricing return.
- Resolution no. DGT-R-001-2018 of 11 January 2018 sets out the rules on Country-by-Country Reporting.

b) Definition of Related Party

Article 68 of the Income Tax Law¹ (N° 18445-H) prescribes the criteria for determining related parties and related party transactions by listing the causes of systematic influence on the decisions on the transfer price. According to the law, two or more entities can be considered as related parties when one of the following cases applies:

- If the transaction carried out with
 - o jurisdictions that have an equivalent rate in the Income Tax lower by more than 40% of the rate established in paragraph a) of Article 15 of the Income Tax Law,
 - o jurisdictions in 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.
- When a person directs or controls the other, or holds, directly or indirectly, at least 25% of its capital stock or voting rights, whether a domestic or foreign entity;
- When five physical or corporate entities or less direct or control both related parties, or possess directly or indirectly at least 25% of participation in the capital stock or voting rights of both entities;
- There will be a presumption of "unity of decision" when a corporate entity is a member or participant of the other and is related to it with any of the following situations by: (i) holding a majority of voting rights, (ii) by having the authority to appoint or remove the majority of the members of the administrative organ of the enterprise, (iii) having the majority of the voting rights with the help of agreements entered into with other partners, (iii) having the majority of the administrative body

¹

See: http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?nValor1=16&nValor2=7241

appointed himself exclusively, (iv) decisive number of administrative members being also in the same position in another dominant/dominated entity,

- When two or more legal entities establish a decision unit concerning a third legal person, provided that all of them will form the decision unit,
- When one of these situations occurs, (i) when any of the contractual parties or associates engage directly or indirectly in more than 25% of the contract's result or profit, or of the activities produced from the association, under a business cooperation contract or a joint venture agreement, (ii) when the residence of a person lives in the country but has their permanent establishment abroad, (iii) when 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.

For the purposes of this section, a natural person shall be deemed to have a share in the capital stock or voting rights if the ownership of the share directly or indirectly corresponds to the spouse or the person with up to fourth-degree blood relation or second-degree indirect blood relation.

c) Nature of Transfer Pricing Documentation

There are certain requirements for the transfer pricing return introduced under Resolution N° DGT-R-44-20, which must be submitted annually by

- "Large taxpayers" or as "large national companies" engaged in cross border related party transactions, and
- Taxpayers who operate under the free trade zone regime established by Law 7210 of 1990.

A large taxpayer refers to companies that meet a threshold of CRC 40 billion (approximately USD 63.5 million) in gross income or average total assets in the last three years for large national taxpayers and half the mentioned amounts for large territorial taxpayers. A taxpayer can also be declared large taxpayer status based on the tax it has paid or if the tax authority considers that the taxpayer is of fiscal interest.

Every taxpayer who engages in related party transactions (regardless of their amount or domestic only) needs to prepare a Master File. The local file is the exact version recommended in OECD Action 13. There is no obligation to file it on a given date, but the taxpayer must have both available if the Tax Administration requests the documents.

d) Tax Havens & Blacklists

Article 68 of the Income Tax Law prescribes that there is a presumption of related-party transactions:

- In the case of jurisdictions that have an equivalent rate in the Income Tax lower by more than forty per cent (40%) of the rate established in subsection a) of Article 15 of the Income Tax Law,
- 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.

Therefore, although this legislation does not specify certain countries, the definition can be taken to address possible blacklisted countries.

e) Advance Pricing Agreement (APA)

Pursuant to Article 74 of the Income Tax Law, taxpayers can request an APA with the Tax Administration to request the valuation of transactions among related parties. It must be accompanied by a proposal of the taxpayer that is based on the value that independent parties would have agreed on in similar operations. APA can be made for a maximum of three years duration.

When a consensus is not reached between the taxpayer and the tax authorities in the subscription of the agreement, the administration must file a resolution which must be included in the file. The taxpayer cannot issue an appeal on the decision.

f) Audit Practice

The DGT is entitled to perform Transfer Pricing audits to test whether transactions carried out between related parties have been agreed in accordance with the arm's length principle.

The taxpayer is required to substantiate that the transactions with foreign related parties are undertaken on an arm's length basis and in accordance with the transfer pricing rules and regulations.

When prices or value agreed in transactions with related parties do not meet the arm's length standards, the DGT is entitled to make appropriate adjustments, as the valuation agreed between the related parties would result in lower taxation in Costa Rica.

3. Transfer Pricing Documentation

a) Level of Documentation

Article 1 of Executive Decree No. 41818-H came into effect on 26 June 2019 (Replaced the Decree No. 37898-H of 13 September 2013) establishes that the content of the TP Study should contain the following information:

- Activities and functions developed by the taxpayer.
- List of fixed assets used in related operations.
- Risks inherent to the activity.
- General information about the companies of the Group
- Financial Statements of the taxpayer's fiscal year, based on IFRS.
- Transfer pricing methods used.
- Identification of each intercompany transaction.
- Relevant documentation that supports intercompany transactions.

Accordingly, Article 8 of the same regulation lists the taxpayers who are required to submit TP Return as:

- Taxpayers who carry out national or cross-border operations with related companies, and,
- Taxpayers who are classified as large taxpayers or large territorial companies, or persons or entities under the free zone regime.

Moreover, these requirements are in place regarding the implementation of BEPS-related documentation:

- Master File and Local File: Articles 2 and 3 of Resolution DGT-R-49-2019 (issued on 13 November 2019 and replacing Resolution DGT-R-16-2017) set out the information to be reported in the Master File,
- Country by Country Reporting: Article 4 of Resolution no. DGT-R-001-2018 incorporates the content of the CbCR.

b) Industry Analysis

By identifying value drivers for the relevant industry, a first indication of the level of profitability common in the industry is being given.

c) Company Analysis

A description of the management structure of the local entity, a local organisation chart, and a description of the individuals to whom local management reports and the country(ies) in which such individuals maintain their principal offices.

A detailed description of the business and business strategy pursued by the local entity, including an indication of whether the local entity has been involved in or affected by business restructurings or intangibles transfers

in the present or immediately past year and an explanation of those aspects of such transactions affecting the local entity.

d) Functional Analysis

In conducting a functional analysis, an assessment is made of the significant activities and responsibilities performed by the related parties relevant to the Intercompany Transactions under review, the tangible and intangible assets that are employed, and the risks borne in undertaking the business activities. Such an assessment is consistent with the recommendations that have been made in the OECD Guidelines in paragraph 1.51.

e) Choice of Transfer Pricing Method

Methods for performing transfer pricing and comparability analysis are in line with the OECD Transfer Pricing Guidelines.

- comparable uncontrolled price method (CUP),
- resale price method (RPM),
- cost-plus method (CPM),
- profit split method (PSM), and
- transactional net margin method (TNMM).

Decree No. 41818-H on Transfer Pricing allows using a special method for the commodities. It is based on international prices in commodities markets.

f) Economic Analysis – Benchmark Study

The legislation in Costa Rica allows the use of internal and external comparable companies to determine the arm's length range to evaluate the transactions carried out by the company.

g) Inter-company (IC) Legal Agreement

Although an Inter-company legal agreement formalises the business and financial relationship between group entities, the legal agreements have a lower ranking since the OECD 2017 Guidelines made the "conduct of parties" the prevailing concept.

h) Production Process for TP Relevant Returns, Documents, Forms and Financials

In the chart below, the existence of the filing requirements with the details of which format is used, the latest filing date, notification requirement and its deadline, thresholds to be applied in case it exists, and the required languages are demonstrated. This information can be seen respectively for CIT, master file, local file, CbCR, local forms, annual accounts and segmented P&L documentations.

	Prepare or File?	Format	Deadline	Notification Deadline*	Threshold * (Yes/No)	Local Language (Yes/No)*(If "No", it can be filed in English)
Corporate Income Tax	File	N/A	15 March of the following FY	N/A	N/A	Yes
Master File	Prepare	N/A	Upon request, ready upon CIT deadline	N/A	No	Yes
Local File	Prepare	N/A	Upon request, ready upon CIT deadline	N/A	No	Yes
CbCR	File	XML	31 December of the following FY	31 March of the following FY	≥ EUR750 million	Yes
Annual Accounts	Prepare	IFRS	120 days after the end of the financial year	No	Yes	Yes
Segmented P&L	Prepare	Excel/Other	Ready upon filing CIT/TP documents.	No	No	Yes
* Costa Rica has signed the MCAA agreement on 27 January 2016 for the filing of CBCR.						
* Costa Rica does not have special considerations for SMEs.						

The TP Study must be presented to Tax Authorities upon request and must be available at the time of the preparation of the TP Return.

The TP documentation must be submitted electronically by the last working day of June following the close of the fiscal year concerned.

The statute of limitation is four years starting 1 January of the following year, after filing the tax return. There are special considerations if the tax return was not present or was presented with incorrect information, and then the term rises to 10 years.

i) Mandatory Language

Transfer pricing documentation should be in Spanish.

j) Notification Requirement

Under Resolution DGT-R-001-2018, UPE's of MNE groups in Costa Rica are required to file a notification, which must be submitted at the latest by the last working day of March each year, via a digital document addressed to the tax administration's head. The notification should be submitted to tributacioninter@hacienda.go.cr in the form of a letter signed by the entity's legal representative.

k) Record Keeping

Records must be kept for four years in accordance with the provisions of the Tax Code.

l) Penalties and Interest Charges

The decree is silent in specifying the penalties applicable to the taxpayer to conduct transactions with related parties. It does not present sufficient documents and analysis to determine its relationship with such parties subject to the general tax regulation on the provision of tax information. However, Income Tax Law (Law N° 4755) specifies in Article 83 that the failure to provide information is punishable by a fine of one 2% on the offender's gross income.