

Costa Rica

Transfer Pricing Country Profile

Updated May 2018

		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	Transfer Pricing Rules N° 37898-H http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=75647&nValor3=93918&strTipM=TC
2	What is the role of the OECD Transfer Pricing Guidelines under your domestic legislation?	The Transfer Pricing guides constitute complementary and supplementary regulations to the norm mentioned in the previous question. Transfer pricing legislation does not contain an explicit reference to the use of the OECD Transfer Pricing Guidelines, however, TPG should be used internally as technical standards, as ruled by the Court.	
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 They are considered related parties to natural or legal persons and other entities resident in Costa Rica, and others resident abroad, who participate directly or indirectly in the direction, control or capital of the taxpayer, or when the same persons participate directly or indirectly in the direction, control or capital of both taxpayers, or why other objective things can exert a systematic influence on their price decisions. In particular, the related parties criteria are: <ul style="list-style-type: none"> • When a physical person or entity controls or owns directly or indirectly 25% of the share capital. • When five or less people direct or control, directly or indirectly, at least 25% of their capital stock. • When two or more people constitute a unit of management. • A distributor or exclusive agent. • Contracts of participation, greater than 25%., among others 	Article 4 of Decree 37898-H See link provided in Question 1 Related Parties criteria are defined in article 4 of Decree 37898-H

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" data-bbox="680 338 1527 497"> <thead> <tr> <th>CUP</th> <th>Resale Price</th> <th>Cost Plus</th> <th>TNMM</th> <th>Profit Split</th> <th>Other (<i>If so, please describe</i>)</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </tbody> </table> <p>It also includes a variant of the CUP method that consists of the valuation by means of international quotation.</p> <p>Article 6 of Decree No. 37898-H establishes the option of applying a variant to the CUP method, using international quotation, however it has not yet been applied because the specific regulations hasn't been issued.</p>	CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>Article 6 of Decree 37898-H</p> <p>See link provided in Question 1</p>
CUP	Resale Price	Cost Plus	TNMM	Profit Split	Other (<i>If so, please describe</i>)										
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input 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 (<i>if so, please explain</i>)</p> <p>Article 6 of the decree establishes the following:</p> <p>The most appropriate method that respects the arm's length principle will be applied.</p> <p>This means that the rule of best method, established in the TPG, must be applied.</p> <p>The best method rule applies as provided by Article 6 of Decree 37898-H.</p>	<p>Article 6 of Decree 37898-H</p> <p>See link provided in Question 1</p>												
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 checked="" 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 (<i>if so, please explain</i>)</p> <p><input checked="" type="checkbox"/> Other (<i>if so, please explain</i>)</p> <p>Article 6 of Decree 37898-H establishes a variant of the Comparable Uncontrolled Price method by means of which the valuation can be carried out with international</p>	<p>Article 6 of Decree 37898-H</p> <p>See link provided in Question 1</p>												

		<p>quotation. This is a valuation method that can be applied especially in commodities transactions.</p> <p>It also includes a variant of the CUP method that consists of the valuation by means of international quotation.</p> <p>Article 6 of Decree No. 37898-H establishes the option of applying a variant to the CUP method, using international quotation, however it has not yet been applied because the specific regulations hasn't been issued.</p>	
Comparability Analysis			
7	<p>Does your jurisdiction follow (or largely follow) the guidance on comparability analysis outlined in Chapter III of the TPG?</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>The fundamentals of this chapter are also included in Article 5 of Decree 37898-H</p> <p>Article 5 of Decree No. 37898-H refers to the analysis of comparability with its five components:</p> <ul style="list-style-type: none"> • The contractual terms of the transaction • Functional analysis • Characteristics of property or services • Economic circumstances • Business strategies 	<p>Article 5 of Decree 37898-H</p> <p>See link provided in Question 1</p>
8	<p>Is there a preference in your jurisdiction for domestic comparables over foreign comparables?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>Comparables that are the most suitable in each situation, evaluating the functions performed, the assets used and the risks assumed.</p> <p>However, there is no reference in the domestic legislation with respect to the comparable ones, it must follow what is indicated in the OECD transfer pricing guidelines.</p>	
9	<p>Does your tax administration use secret comparables for transfer pricing assessment purposes?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p> <p>The Tax Administration of Costa Rica does not use secret comparables because that practice could leave defenseless the taxpayer and it would be considered as a practice contrary to constitutional principles.</p>	

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 <p>The prices or margins must be within the interquartile range determined for the set of comparables identified. Otherwise, it will be determined that the price must be adjusted to the median of the indicated range.</p>	Article 7 of Decree 37898-H See link provided in Question 1
11	Are comparability adjustments required under your domestic legislation or regulations?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <p>The types of economic adjustments are not specifically defined in the regulations. In practice, adjustments for inventories, accounts payable, accounts receivable, general freight and differences of Incoterms, among others are regularly applied.</p>	
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 <p>There is no specific regulation on transactions involving intangibles in domestic legislation.</p> <p>Although there is no explicit reference to the application of OECD GPTs in Costa Rica, the transfer pricing guidelines must be applied, according to the cases of jurisprudence.</p> <p>Tax Administration is currently analysing issuing a specific regulation on transactions involving intangibles.</p>	
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	
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	<p>Does your domestic legislation or regulations provide guidance specific to intra-group services transactions?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
		<p>There is no specific regulation to intra-group services transactions in domestic legislation.</p> <p>Although there is no explicit reference to the application of OECD GPTs in Costa Rica, the transfer pricing guidelines must be applied, according to the cases of jurisprudence.</p> <p>Tax Administration is currently analysing the issuance of a specific regulation on intra-group service transactions</p>	
16	<p>Do you have any simplified approach for low value-adding intra-group services?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
17	<p>Are there any other rules outside transfer pricing rules that are relevant for the tax treatment of transactions involving services?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	

Cost Contribution Agreements

18	<p>Does your jurisdiction have legislation or regulations on cost contribution agreements?</p>	<p><input type="checkbox"/> Yes</p> <p><input checked="" type="checkbox"/> No</p>	
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Transfer Pricing Documentation

19	<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 checked="" type="checkbox"/> Specific transfer pricing returns (separate or annexed to the tax return) <p><input type="checkbox"/> Other (specify):</p>	<p>DGT-R-44-2016 http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=82445&nValor3=105424&strTipM=TC</p> <p>DGT-R-28-2017 http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&param2=1&nValor1=1&nValor2=84179&nValor3=108504&strTipM=TC&IResultado=1&nValor4=1&strSelect=sel</p> <p>DGT-R-16-2017 http://196.40.56.20/SCIJ_MHDA/docjur/mhda_docjur.aspx?nBaseDato=1&nDocJur=18045</p> <p>DGT-R-01-2018 http://196.40.56.20/SCIJ_MHDA/docjur/mhda_docjur.aspx?nBaseDato=1&nDocJur=18527</p>
20	<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>In the case of the Master File and the Local file, this information must be kept by the taxpayer and be made available to the Tax Administration for the moment when it is requested. Resolution DGT-R-16-2017</p> <p>For this Disclosure Statement it must be filed annually (specific transfer pricing return). Resolution DGT-R-44-2016</p> <p>All information must be presented in Spanish.</p> <p>The computer application for the transfer pricing information return is still being developed, so to date it is not valid. . Resolution DGT-R-28-2017.</p>	<p>Resolution DGT-R-16-2017 http://196.40.56.20/SCIJ_MHDA/docjur/mhda_docjur.aspx?nBaseDato=1&nDocJur=18045</p> <p>Resolution DGT-R-44-2016 http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=82445&nValor3=105424&strTipM=TC</p> <p>Resolution DGT-R-28-2017 http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&param2=1&nValor1=1&nValor2=84179&nValor3=108504&strTipM=TC&IResultado=1&nValor4=1&strSelect=sel</p>

21	<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>General penalties for differences in taxes and late filing of the information return transfer pricing apply.</p> <p>An adjustment in transfer prices could be sanctioned with a fine that could be 50%, 100% or 150% of the amount of the adjustment. (50% if the conduct is negligent or 100% if the behavior is fraudulent or 150% if false documents were used) Article 81 Law 4755.</p> <p>Most cases identify a negligent situation that is sanctioned with 50%. (art. 81, law 4755)</p> <p>The failure to submit the informative declaration is sanctioned with 2% of the gross income of the offender, with a minimum of three base salaries and a maximum of 10 base salaries. (the base salary is equivalent to U.S.\$770 in 2018.) (art. 83, law 4755)</p> <p>If the taxpayer accepts and pays the penalty, it is possible that 55% or 30% will be applied as a reduction. (art. 88 law 4755)</p>	<p>Law 4755</p> <p>http://www.pgrweb.go.cr/SCIJ/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=6530&nValor3=112710&strTipM=TC</p>
22	<p>If your legislation provides for exemption from transfer pricing documentation obligations, please explain.</p>	<p>There is no exemption from taxpayers' obligations to prepare their transfer pricing study. For example, in the documentation of the local file and master file there is no exemption or threshold for compliance with these obligations. Resolucion DGT-R-16-2017.</p> <p>Regarding the transfer prices returns, only the taxpayers classified as Large Taxpayers, large Territorial companies or Free Zone must present it.</p> <p>Large Taxpayers and Large Territorial Companies are those that have been designated by the Tax Administration and meet the requirements established in Resolution No. DGT-R-018-2018, for example:</p> <p><u>Large Taxpayer, (must meet at least one option)</u></p> <p>a) That the average of the liquidated taxes of the last three fiscal periods is equal to or greater than four hundred and fifty million colones (¢ 450,000,000.00).</p> <p>b) That the average gross income declared in the Tax on the profits of the last three fiscal periods is equal to or greater than forty billion colones (¢ 40,000,000,000.00).</p> <p>c) That the average of its total assets declared in the Tax on profits, of the last three fiscal periods is equal to or greater than fifty billion colones (¢ 50,000,000,000.00).</p> <p><u>Large Territorial Companies (must meet at least one option)</u></p> <p>a) That the average of the liquidated taxes of the last three fiscal periods is equal to or greater than one hundred and twenty million colones (¢ 120,000,000.00).</p>	<p>Resolution DGT-R-16-2017 http://196.40.56.20/SCIJ_MHDA/docjur/mhda_docjur.aspx?nBaseDato=1&nDocJur=18045</p> <p>Resolution DGT-R-44-2016 http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=82445&nValor3=105424&strTipM=TC</p> <p>Resolution DGT-R-28-2017 http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&param2=1&nValor1=1&nValor2=84179&nValor3=108504&strTipM=TC&lResultado=1&nValor4=1&strSelect=sel</p> <p>Resolution DGT-R-018-2018 http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=86288&nValor3=111856&strTipM=TC</p>

		<p>b) That the average gross income declared in the Tax on the profits of the last three fiscal periods is equal to or greater than twenty thousand million colones (¢ 20,000,000,000.00).</p> <p>c) That the average of its total assets declared in the Income Tax for the last three fiscal periods is equal to or greater than twenty-five billion colones (¢ 25,000,000,000.00).</p>	
Administrative Approaches to Avoiding and Resolving Disputes			
23	Which mechanisms are available in your jurisdiction to prevent and/or resolve transfer pricing disputes?	<p>Please check those that apply:</p> <p><input type="checkbox"/> Rulings</p> <p><input type="checkbox"/> Enhanced engagement programs</p> <p><input 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 type="checkbox"/> Bilateral APAs</p> <p style="padding-left: 20px;"><input type="checkbox"/> Multilateral APAs</p> <p><input type="checkbox"/> Mutual Agreement Procedures</p> <p><input type="checkbox"/> Other (<i>please specify</i>):</p>	<p>Article 10 of decree 37898-H</p> <p>See link provided in Question 1</p>
		In process of drafting the Unilateral APAs regulation, which will contain, filing date, requirements, provisions on non-compliance, periods, among others.	
Safe Harbours and Other Simplification Measures			
24	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>	
25	Does your jurisdiction have any other simplification measures not listed in this questionnaire? If so, please provide a brief explanation.	By the time we do not have simplification measures concerning transfer pricing.	
Other Legislative Aspects or Administrative Procedures			
26	Does your jurisdiction allow/require taxpayers to make year-end adjustments?	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p>	
		The legislation does not allow for downward adjustments	

27	Does your jurisdiction make secondary adjustments?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No In the domestic legislation there is no specific regulation on the application of secondary adjustment. Secondary adjustment have not yet been applied. However, the Administration is analyzing the cases in which the secondary adjustment can be made, based on the principle of economic reality.	
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Other Relevant Information

28	Other legislative aspects or administrative procedures regarding transfer pricing	N/A	
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29	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>)	Paired guidelines on Transfer Pricing provisions				
		Administrative Guideline number	Topic	Entry into force		
		To be issued during 2018	Resolution for the subscription of advance pricing arrangements.	Upon the date of publication.		
		To be issued during 2018	Institutional criterion for the application of the arm's length principle.	Upon the date of publication.		
		To be issued during 2018	Guidelines on the valuation of commodity transactions.	Upon the date of publication.		
		To be issued during 2018	Guidelines on the valuation of intangibles transactions.	Upon the date of publication.		
		To be issued during 2018	Guidelines on the valuation of service transactions.	Upon the date of publication.		
		To be issued during 2018	Guidelines on the valuation of financial transactions.	Upon the date of publication.		