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# Tax Controversy

**Costa Rica**

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# COSTA RICA

## Law and Practice

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## 1. TAX CONTROVERSIES

### 1.1 Tax Controversies in this Jurisdiction

In Costa Rica, tax self-assessment is the most common mechanism for taxpayers to comply with the main taxes, which are income tax and value-added tax.

Consequently, the Tax Administration is always carrying out tax control programmes to verify if taxpayers have fully complied with their tax duties and if they have correctly applied the applicable tax provisions when self-assessing the corresponding tax.

Although some of these tax control programmes focus on formal duties (ie, being registered as a taxpayer with the Tax Administration or filing tax returns on a timely manner), tax controversies usually arise following a tax audit or assessment. A tax audit can be focused on a specific point or entail a broad analysis of the taxpayer's substantive tax duties.

In some cases, especially when it identifies inconsistent information, the Tax Administration may request an explanation from the taxpayer. If the taxpayer provides a satisfactory explanation or corrects its errors, the matter will be closed. Otherwise, the Tax Administration will likely open a tax audit.

The Tax Administration may also open a tax audit after a taxpayer files a self-reassessment return that decreases the tax paid or requires a tax refund derived from unreliable transactions.

### 1.2 Causes of Tax Controversies

Most tax controversies in Costa Rica refer to corporate income tax and individual income tax (ie, *impuesto sobre las utilidades*) matters. These tax audits generally focus on verifying if the deductible expenses incurred by the taxpayers

are effectively required and related to its taxable economic activity, as well as on exempt income or income not subject to taxation in Costa Rica due to the application of the territoriality principle.

The number of tax audits regarding the former general sales tax (ie, *impuesto general sobre las ventas*) decreased in the last decade. However, this situation may change in the near future since the Tax Administration may want to assess taxpayers' compliance with the recently implemented value-added tax (ie, *impuesto sobre el valor agregado*), which entered into force on 1 July 2019.

Other tax controversies arise when the Tax Administration verifies certain taxpayers' compliance with their obligation to withhold taxes on passive income and salaries and pensions. A similar situation happens with the non-resident income tax (ie, *impuesto sobre remesas al exterior*), which must be withheld by the taxpayer who pays the agreed amount to the non-resident person or entity.

### 1.3 Avoidance of Tax Controversies

Taxpayers can mitigate the risk of tax controversy by being fully compliant with their formal and substantive tax duties. Taxpayers should also confirm that the operations included in the respective tax return are in line with the Tax Administration's positions and interpretations of the law, which are available for online public consultation.

If the situation has not been addressed before, or if more certainty is required before self-assessing the corresponding tax, taxpayers can request a private letter ruling to obtain the Tax Administration's position regarding a particular transaction. The criteria delivered in such ruling is binding for the Tax Administration, but not for the taxpayer.

In addition, taxpayers should pay close attention to their invoices and confirm that these are consistent with the information in the hands of the Tax Administration through the mandatory use of electronic invoicing, as well as with the information provided by third parties.

## 1.4 Efforts to Combat Tax Avoidance

The Costa Rican Tax Administration mainly relies on the economic reality principle to tackle tax avoidance. The Tax Administration has extensively used this principle – included in Article 8 of the General Tax Code – to support several of its tax audit findings and assessments. In practice, the so-called economic reality principle acts as a general anti-abuse rule (GAAR) that allows the Tax Administration to determine the reality behind a transaction and its tax implications.

In December 2018, Costa Rica significantly reformed its Income Tax Law. For individual and corporate income tax purposes, the new legislation incorporated some specific anti-abuse rules following BEPS recommendations, including provisions to deny or limit deductions in the case of anti-hybrid mismatch arrangements and an interest expense.

These new BEPS-inspired rules were first applicable to FY20, which ended on 31 December 2020. Therefore, their impact on tax controversies is yet to be determined, although an increase is foreseeable while both the Tax Administration and taxpayers come to understand the scope and effect of the new provisions on the corresponding income tax duty.

## 1.5 Additional Tax Assessments

The Tax Administration's decision regarding an additional tax assessment is communicated through a Notice of Deficiency (ie, *Resolución Determinativa*), which the taxpayer can appeal firstly before the same office and then before the Administrative Tax Court. The taxpayer is not

supposed to pay the additional tax assessment to challenge the Notice of Deficiency.

If the taxpayer decides not to contest the Tax Administration's position or if the Administrative Tax Court confirms the additional tax assessment, they have 30 days to pay voluntarily the tax due with interest.

If there is no voluntary payment, the Tax Administration will send a tax bill granting the taxpayer 15 business days to pay the tax owed, plus interest and a late payment fine. During this term, the taxpayer can pay the full amount or request an authorisation from the tax authorities to pay the amount owed in a maximum of 24 instalments. In Costa Rica, it is now possible for taxpayers to render a guarantee or request an extension.

Once the 15-day term is due, the Tax Administration can execute further collection actions, including account and asset seizure measures. These actions will not be suspended unless the Administrative Court (ie, *Tribunal Contencioso Administrativo*) grants interim measures in favour of the taxpayer.

Payment of the additional tax assessment is not required for the taxpayer to file a lawsuit against the State to continue discussing the matter, but lodging a claim does not suspend the Tax Administration's collection actions.

## 2. TAX AUDITS

### 2.1 Main Rules Determining Tax Audits

The main rules that may determine a tax audit are outlined in a decree (ie, *Reglamento sobre Criterios Objetivos de Selección de Contribuyentes para Fiscalización*) issued by the Tax Administration to establish the objective criteria that must be followed when selecting tax audit cases.

Pursuant to this decree, the following aspects are relevant to determine which taxpayers will be subject to a tax assessment:

- being classified as a large taxpayer;
- existence of inconsistent information;
- having a tax benefit or exemption;
- non-compliance with substantive tax duties;
- filing a self-reassessment return that decreases the tax liability;
- having related-party transactions or being related to an entity or person undergoing a tax audit; and
- belonging to any of the following economic sectors: agriculture, manufacturing, energy, construction, wholesale and retail, transportation, accommodation and food services, financial services, real estate, independent personal services, education, and human health.

## **2.2 Initiation and Duration of a Tax Audit**

In Costa Rica, the Tax Administration can initiate a tax audit within the statute of limitations period. Pursuant to Article 51 of the General Tax Code, the Tax Administration has four years to assess the corresponding tax obligation and determine if the taxpayers' self-assessment is in accordance with the applicable tax provisions.

The Tax Administration's notice concerning the start of a tax audit interrupts the statute of limitations period. Therefore, once the Tax Administration communicates with the taxpayer about the opening of a tax audit, it will have four years to analyse the relevant information, communicate the tax audit findings and issue the Notice of Deficiency.

## **2.3 Location and Procedure of Tax Audits**

Tax audits generally take place in the tax authority's headquarters. During the initial phase of

such procedure, the tax auditor will request information from the taxpayer and from third parties, if considered necessary. The auditor then reviews and analyses this information in the Tax Administration's offices, except for specific matters that require the tax auditor to visit the taxpayer's offices or business premises. If such a visit is required, the tax auditor will inform the taxpayer in advance.

Depending on the case, tax audits can be based both on printed documents and on digital records made available by the taxpayer. However, in the past few years, digital data stored in electronic format has become more relevant for purposes of assessing the taxpayers' compliance with the applicable tax provisions.

Further, since November 2018, electronic invoicing became mandatory in Costa Rica. Consequently, a higher reliance on digital data is expected in future tax audits.

## **2.4 Areas of Special Attention in Tax Audits**

The areas of special attention in tax audits vary depending on the tax that is being audited by the Tax Administration.

Regarding income tax audits, regardless of whether the taxpayer is a corporate entity or an individual, tax auditors tend to focus on deductible expenses, as well as on income that is exempt or not subject to taxation in Costa Rica. In some other cases, the Tax Administration concentrates on intercompany transactions, which may lead to transfer pricing or similar adjustments.

Regarding the former general sales tax (GST), the tax authorities used to focus on verifying if the input tax reclaimed by the taxpayer in its tax returns was effectively related to those transactions subject to GST. The Tax Administration also

paid attention to discounts and similar operations that could decrease the tax base of the GST.

Taxpayers should pay special attention to:

- invoices and any similar documents required for proving the veracity of deductible expenses, which must be issued in accordance with the applicable regulations;
- information in the hands of the Tax Administration, which should be consistent with tax self-assessments and with data periodically provided by third parties; and
- contracts and transfer pricing studies performed when there are related-party transactions.

## 2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits

While Costa Rica has reformed and included multiple provisions in its General Tax Code to ensure its compliance with the international tax transparency standards, the adoption of rules concerning cross-border exchange of information and mutual assistance between tax authorities have not yet had a significant impact on tax audits.

In some very particular cases, the Tax Administration has considered that foreseeably relevant information from other jurisdictions is required for tax audit purposes. In these cases, the Tax Administration is allowed to request information from another jurisdiction with which it has a Tax Information Exchange Agreement or that is a signatory of the Convention on Mutual Administrative Assistance in Tax Matters.

## 2.6 Strategic Points for Consideration During Tax Audits

From a strategic point of view, the most important aspect during a tax audit is to provide the tax auditor clear and concise answers that are consistent with the information that is being requested and provided throughout the procedure.

Another key point is that taxpayers should ensure that the information in their records and the data provided to the tax authorities is consistent with their accounting and fiscal records, as well as with the information provided to other public entities, as would be the case, for instance, of the Social Security Administration.

## 3. ADMINISTRATIVE LITIGATION

### 3.1 Administrative Claim Phase

When the Tax Administration gives notice of the additional tax assessment (ie, Notice of Deficiency), the taxpayer can directly file a lawsuit before the Administrative Court (ie, *Tribunal Contencioso Administrativo*) or follow the administrative claim phase. The optional administrative claim phase comprises two appeals:

- an administrative appeal before the same office that issued the Notice of Deficiency; and
- an appeal before the Administrative Tax Court (ie, *Tribunal Fiscal Administrativo*).

Taxpayers can also skip the administrative appeal to go directly before the Administrative Tax Court.

If the taxpayer chooses to follow the full administrative claim phase, it will have 30 business days to file the administrative appeal against the Notice of Deficiency. The Tax Administration will

take between six and 24 months to issue a decision regarding such appeal.

If the Tax Administration's decision is to maintain the additional tax assessment, the taxpayer has 30 business days to file the appeal before the Administrative Tax Court. Once the Tax Administration admits this appeal, it will grant another 30 business days for the taxpayer to restate its arguments and present further evidence. The Administrative Tax Court will take between six and 36 months to issue a final decision regarding this appeal.

There is no further administrative claim that can be filed by the taxpayer against this decision, but the dispute may still be taken to a judicial court.

### **3.2 Deadline for Administrative Claims**

In Costa Rica, there are no explicit deadlines for the tax authorities to decide an administrative claim lodged by the taxpayer. Hence, the period for obtaining a decision from the Tax Administration may vary significantly from one case to another.

Although the General Tax Code establishes some terms for the tax authorities to decide administrative claims, these have been understood as referred to the calculation of interest. Therefore, during the first 30 business days after the administrative appeal is filed, interest will be computed, while no interest will be added afterwards, regardless of how much time the Tax Administration takes to communicate its decision. Similarly, when the taxpayer files an appeal before the Administrative Tax Court, interest will be computed during the first six months after the claim was lodged, but not afterwards.

## **4. JUDICIAL LITIGATION: FIRST INSTANCE**

### **4.1 Initiation of Judicial Tax Litigation**

In Costa Rica, judicial tax litigation is initiated by filing a lawsuit against the State before the Administrative Court (ie, *Tribunal Contencioso Administrativo*), which is the one in charge of deciding cases involving tax matters since there are no judicial tax courts in Costa Rica.

The lawsuit is the formal document in which the plaintiff sets out its case theory. This claim must contain all the facts and circumstances of the tax audit followed by the Tax Administration, as well as the plaintiff's reasoning and analysis of the applicable legislation and regulations. Furthermore, this is the main opportunity for the plaintiff to provide all the evidence that supports its position. The lawsuit must contain a clear petition, which unmistakably outlines the plaintiff's expectations.

In general, the plaintiff will be the taxpayer who was audited by the Tax Administration. However, in cases where the Administrative Tax Court agrees with the taxpayer, the tax authorities may consider that this decision is against public interest and request the State to file a lawsuit against the taxpayer.

### **4.2 Procedure of Judicial Tax Litigation Initial Phase**

Once the lawsuit has been filed, the court will admit it and provide the State 30 business days to file a response and a certified copy of the administrative file regarding the tax controversy held with the Tax Administration.

After the State files its response and the certified copy of the administrative file, the judge in charge of the case will provide the plaintiff three business days to present a brief replying to the



State's response and provide any additional evidence.

At the same time, the court will schedule a preliminary hearing.

### Oral Phase

After all of these documents are filed and the initial written phase has concluded, the court will hold the preliminary hearing, in which both the plaintiff and the defendant will have the opportunity to:

- amend any errors incurred in the previous phase;
- restate or adjust their petition; and
- identify the relevant documentary evidence and justify the need for witnesses or experts.

During the preliminary hearing, the judge will admit the evidence deemed necessary for the Tribunal to decide the case.

In cases where all the evidence is documentary, both parties will deliver their oral concluding arguments during the preliminary hearing. The case will then be sent to the tribunal that will be in charge of issuing a written decision.

Meanwhile, if the judge admits the testimony of witnesses or experts, the court will schedule a public trial in which cross-examining will take place.

### Final Phase

Once the trial has ended, the tribunal in charge of the case has 15 business days to issue its decision.

Upon communication of the decision, both parties have 15 business days to analyse this first instance decision and decide whether or not to file an extraordinary appeal before the First Chamber of the Supreme Court.

## 4.3 Relevance of Evidence in Judicial Tax Litigation

In a civil tax litigation process, the most important documentary evidence is the administrative file related to the tax audit performed by the Tax Administration. The documents must be in chronological order and the file must be duly certified by the tax authorities to be presented in court.

Although both documentary and witness evidence are relevant in a tax litigation process, the latter is important when the tax aspects under dispute are highly technical or require previous knowledge in a particular field, as would be the case, for instance, of a transfer pricing adjustment. See **4.2 Procedure of Judicial Tax Litigation**.

## 4.4 Burden of Proof in Judicial Tax Litigation

As a rule, in civil tax litigation proceedings, the burden of the proof rests on the plaintiff, which depending on the case may be the taxpayer or the State. Consequently, the plaintiff is responsible for demonstrating that his case theory is correct and consistent with the applicable law.

Similarly, in criminal tax litigation cases, the burden of proof lies on the Prosecutor's Office, which would be the one in charge of proving that the taxpayer committed tax fraud in a Criminal Court.

## 4.5 Strategic Options in Judicial Tax Litigation

Since there are no specialised tax courts in Costa Rica, the main strategic option when litigating a tax case before the Administrative Court is to point out the administrative errors incurred by the Tax Administration during the tax audit, which eventually could represent the annulment of the whole administrative procedure, thus voiding the additional tax assessment under dispute.

Another highly suggested strategy in the judicial case is to identify and select the evidence that directly demonstrates the reliability of the taxpayer's position throughout the tax audit. Such evidence should also be associated with each fact and with the concluding arguments.

#### **4.6 Relevance of Jurisprudence and Guidelines to Judicial Tax Litigation**

In Costa Rica, the only binding jurisprudence is the one issued by the Constitutional Chamber of the Supreme Court. Jurisprudence from lower courts and from the First Chamber of the Supreme Court is not binding for the parties or the Administrative Court. Nevertheless, precedents are relevant for argumentative purposes and to underline the outcome obtained in cases with similar issues or facts.

Although less common, in some cases doctrine is also used as a source to explain to the judges how a particular concept should be understood and applied in practice.

International guidelines are a form of soft law that is also taken into consideration by Costa Rican courts. In this regard, the Constitutional Chamber of the Supreme Court expressly authorised the Tax Administration to apply the OECD Transfer Pricing Guidelines in cases dealing with related-party transactions.

While no tax cases regarding the application of double tax treaties have been taken to court so far, a similar reasoning is expected in these cases, for which the OECD Commentary on the Model Tax Convention and the OECD BEPS reports may be relevant to decide the case.

## **5. JUDICIAL LITIGATION: APPEALS**

### **5.1 System for Appealing Judicial Tax Litigation**

In a judicial tax litigation, once the Administrative Court has issued its decision, the only resource to challenge this first instance decision is to file an extraordinary appeal before the First Chamber of the Supreme Court.

This extraordinary appeal (ie, *recurso de casación*) can only be submitted once and the term to do so is within 15 business days after the first instance decision was communicated.

This type of appeal is meant to be lodged when the losing party considers that there are significant errors in the Administrative Court's decision, which may derive from an incorrect analysis of the evidence or from a lack of reasoning, as well as from an improper interpretation of the applicable law.

### **5.2 Stages in the Tax Appeal Procedure Admission phase**

Once the Tribunal has issued the first instance decision, the losing party has 15 business days to file an extraordinary appeal requesting the First Chamber of the Supreme Court to evaluate if the Tribunal's decision is in accordance with the applicable legislation.

Given its extraordinary character, the First Chamber will first verify if the appeal correctly identifies the alleged errors in the lower court's decision.

If so, the First Chamber will admit the extraordinary appeal and inform the other party, granting it 15 business days to present its arguments.

## Decision phase

Once the extraordinary appeal has been admitted and the other party has presented its arguments against it, the First Chamber will assign the matter to one of its justices to decide the case.

The First Chamber's final decision closes any further discussion of the case and cannot be appealed.

## 5.3 Judges and Decisions in Tax Appeals

As mentioned in **5.2 Stages in the Tax Procedure**, if admitted, the extraordinary appeal will be decided by the First Chamber of the Supreme Court, based on the detailed analysis performed by the justice in charge of the case. Each extraordinary appeal is randomly assigned to one of the justices.

The First Chamber of the Supreme Court is integrated by five justices who are appointed by the Costa Rican Congress for a renewable eight-year term.

## 6. ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISMS

### 6.1 Mechanisms for Tax-Related ADR in this Jurisdiction

This is not applicable in Costa Rica.

### 6.2 Settlement of Tax Disputes by Means of ADR

This is not applicable in Costa Rica.

### 6.3 Agreements to Reduce Tax Assessments, Interest or Penalties

This is not applicable in Costa Rica.

### 6.4 Avoiding Disputes by Means of Binding Advance Information and Ruling Requests

This is not applicable in Costa Rica.

### 6.5 Further Particulars Concerning Tax ADR Mechanisms

This is not applicable in Costa Rica.

### 6.6 Use of ADR in Transfer Pricing and Cases of Indirect Determination of Tax

This is not applicable in Costa Rica.

## 7. ADMINISTRATIVE AND CRIMINAL TAX OFFENCES

### 7.1 Interaction of Tax Assessments with Tax Infringements

Pursuant to Article 81 of the General Tax Code, when a tax audit concludes with an additional tax assessment, the Tax Administration can impose a pecuniary penalty. This tax infringement is an administrative tax offence, punished with a pecuniary penalty of 50%, 100% or 150% of the additional tax assessment.

For purposes of imposing this sanction, the tax authorities should evaluate if the taxpayer's actions that lead to an inexact payment of the corresponding tax are sanctionable. However, in practice, when the Tax Administration considers that the exact taxes were not paid, it will communicate such conclusion to the taxpayer through a tax audit findings report. Given this result, the Tax Administration considers that the taxpayer is automatically subject to the administrative tax offence established under Article 81 of the General Tax Code.

Therefore, the process to impose the sanction is initiated at the same time the tax audit findings report is communicated to the taxpayer. The first act corresponds to a notice informing the

taxpayer under audit of the proposed sanction. The taxpayer will have ten business days to file its arguments against this proposal and then the procedure will be suspended until the additional tax assessment is final.

### **7.2 Relationship Between Administrative and Criminal Processes**

The administrative tax infringement file is closely related to the tax audit file, which means that the events and development of the latter have a direct impact on the sanctioning procedure.

As mentioned before, the Tax Administration opens the administrative tax infringement procedure by the time it communicates the tax audit findings to the taxpayer, but said procedure will then be suspended until the decision regarding the additional tax assessment is final and can no longer be challenged by the taxpayer before the administrative authorities. Afterwards, the administrative infringement file will be resumed regardless of whether the taxpayer decided to continue discussing the tax assessment through judicial litigation.

### **7.3 Initiation of Administrative Processes and Criminal Cases**

The Tax Administration generally initiates the administrative infringement procedure by the time it reaches a conclusion in the tax audit procedure. The tax authorities' intention of imposing a pecuniary penalty is usually communicated to the taxpayer together with the tax audit findings report.

In Costa Rica, an administrative infringement procedure cannot evolve into a criminal tax case. The Tax Administration is the only authority entitled to impose the pecuniary penalty contained in Article 81 of the General Tax Code when the exact taxes were not paid.

### **7.4 Stages of Administrative Processes and Criminal Cases**

The tax administrative infringement process starts with a notice through which the Tax Administration informs the taxpayer about the proposed sanction for its non-compliance with the applicable law. The tax authorities expressly indicate that the administrative infringement derives from the additional tax assessment and grant the taxpayer ten business days to challenge the proposed penalty.

Upon receiving the taxpayer's arguments against the proposed sanction notice, the administrative infringement process is suspended until the Tax Administration's decision regarding the additional tax assessment is final.

When the procedure is reopened, the Tax Administration will issue a Sanctioning Decision to impose the corresponding pecuniary penalty, which will be 50%, 100%, or 150% of the additional tax assessment, depending on the severity of the taxpayer's non-compliance with the applicable rules when self-assessing the tax.

The taxpayer can challenge the Sanctioning Decision through an administrative appeal before the same office, which has to be filed within 30 business days after the decision was communicated.

The taxpayer will also have 30 business days to file an appeal before the Administrative Tax Court against the Sanctioning Decision and the Tax Administration's decision regarding the administrative appeal. Alternatively, the taxpayer can present the appeal before the Administrative Tax Court without filing the administrative appeal before the Tax Administration.

### **7.5 Possibility of Fine Reductions**

The taxpayer can benefit from reductions of potential fines if an upfront payment of both the

additional tax assessment and the proposed penalty is made.

If the additional tax assessment is paid before the Tax Administration issues the Notice of Deficiency, the penalty will be reduced by 50%. If the taxpayer opts to pay the fine at the same time, it will be reduced by 55%.

If the additional tax assessment is paid after the Tax Administration issues the Notice of Deficiency but before the term to file an appeal is due, the penalty will be reduced by 25%. If the taxpayer opts to pay the fine at the same time, it will be reduced by 30%.

In such cases, the taxpayer is required to inform the Tax Administration and provide evidence of the payments made.

## 7.6 Possibility of Agreements to Prevent Trial

In Costa Rica, a criminal tax trial will only take place if the taxpayer is accused of committing tax fraud. If the Tax Administration considers that a taxpayer committed such crime, it will suspend the tax audit and the administrative infringement procedures and file a criminal complaint before the Prosecutor's Office.

Depending on the case, it may be possible for the taxpayer to enter an agreement with the Attorney General's Office, which will likely represent full payment of the tax assessed, plus interest and penalties. Such agreement has to be approved by the Prosecutor's Office.

The Costa Rican experience with criminal tax cases is limited and there are no guidelines regarding the type of cases that could be resolved through this kind of agreement.

## 7.7 Appeals against Criminal Tax Decisions

After a criminal tax trial, the Court of First Instance will issue and communicate its decision, which can be appealed before the Appeals Court when either party considers there is an incorrect understanding of the facts or evidence, as well as when there are errors in the interpretation of the applicable law or in the taxpayer's punishment.

In some cases, the decision issued by the Court of Second Instance can be challenged through an extraordinary appeal before the Third Chamber of the Supreme Court. To be admitted, such appeal has to be based on:

- the existence of a contradiction between the decision issued by the Appeals Court and other precedents from the same court or from the Third Chamber; or
- the incorrect application of substantive legal provisions.

## 7.8 Rules Challenging Transactions and Operations in this Jurisdiction

As a rule, transactions and operations that have been challenged under the GAAR or transfer pricing rules generally give rise to administrative tax cases which will likely become civil tax litigation cases.

In the administrative tax controversy procedure, the tax authorities have extensively supported their position on the economic reality principle. The Tax Court and the First Chamber of the Supreme Court have also allowed the Tax Administration to apply this GAAR where considered appropriate.

In transfer pricing cases, the Tax Administration has decided to apply the OECD Transfer Pricing Guidelines, which has been supported by the

Administrative Tax Court and confirmed by the Constitutional Chamber of the Supreme Court.

In judicial tax litigation cases, the opportunity for the Administrative Court to address substantive transfer pricing matters has been fairly limited, since most of the cases have had significant errors that represent the annulment of the whole administrative procedure.

## **8. CROSS-BORDER TAX DISPUTES**

### **8.1 Mechanisms to Deal with Double Taxation**

Although Costa Rica has three double tax treaties in force, there is no experience regarding additional tax assessments derived from a double taxation situation.

### **8.2 Application of GAAR/SAAR to Cross-Border Situations**

There is no jurisprudence concerning the application of the domestic GAAR or SAARs to cross-border situations covered by bilateral double tax treaties.

### **8.3 Challenges to International Transfer Pricing Adjustments**

There is no experience with international transfer pricing arrangements in Costa Rica.

### **8.4 Unilateral/Bilateral Advance Pricing Agreements**

While it is possible to sign an advance pricing arrangement with the Tax Administration, no agreement of this type has been finalised yet.

### **8.5 Litigation Relating to Cross-Border Situations**

Cross-border situations have not been subject to litigation in Costa Rica.

## **9. INTERNATIONAL TAX ARBITRATION OPTIONS AND PROCEDURES**

### **9.1 Application of Part VI of the MLI to Covered Tax Agreements (CTAs)**

Costa Rica did not opt for mandatory arbitration to CTAs under Part VI of the MLI and none of its double tax treaties include an arbitration clause. The probable reasons for this decision refer to constitutional and legal constraints. In particular, Article 50 of the General Tax Code provides that a substantive tax duty can only be modified or forgiven by law. Therefore, no agreement regarding the amount of the tax obligation could be reached in an arbitration procedure.

### **9.2 Types of Matters That Can Be Submitted to Arbitration**

This is not applicable in Costa Rica.

### **9.3 Application of the Baseball Arbitration or the Independent Opinion Procedure**

This is not applicable in Costa Rica.

### **9.4 Implementation of the EU Directive on Arbitration**

This is not applicable in Costa Rica.

### **9.5 Existing Use of Recent International and EU Legal Instruments**

This is not applicable in Costa Rica.

### **9.6 Publication of Decisions**

This is not applicable in Costa Rica.

### **9.7 Most Common Legal Instruments to Settle Tax Disputes**

This is not applicable in Costa Rica.

## 9.8 Involvements of Lawyers, Barristers and Practitioners in International Tax Arbitration to Settle Tax Disputes

This is not applicable in Costa Rica.

## 10. COSTS/FEEES

### 10.1 Costs/Fees Relating to Administrative Litigation

In an administrative litigation, taxpayers are not required to hire a lawyer or tax adviser to participate in the different stages of the procedure. Furthermore, the tax authorities do not charge a fee regarding this kind of administrative procedure, neither at the tax audit phase nor at the administrative claim phases.

However, in cases where the taxpayer hires a professional tax adviser or lawyer, the costs to litigate at the administrative level may be represented by the fees they charge for their services.

### 10.2 Judicial Court Fees

The fees to litigate before the Administrative Court are based on the Attorney Fees Decree (ie, *Arancel honorarios por servicios profesionales de abogacía y notariado*) in force at the time the lawsuit is filed. As stated in Article 16 of Decree No 41457-JP, the professional fees are calculated as follows:

- up to CRC16 million, 20%;
- on the excess over CRC16 million and up to CRC82.5 million, 15%; and
- over CRC82.5 million, 10%.

Upon issuing its final decision, the court decides which party is responsible for paying the fees. This aspect may also be modified or confirmed by the First Chamber of the Supreme Court.

After the case's decision is final and if the losing party is responsible for covering all of the

tax litigation fees, the winning party will request the Administrative Court to set the amount to be paid by the losing party. In some cases, the judge in charge of this matter may consider that the above-mentioned decree is not applicable and set a different amount based on its criteria.

### 10.3 Indemnities

Although the taxpayer can request an indemnity if the court decides that the additional tax assessment is absolutely null and void, this is not a common practice in Costa Rica.

### 10.4 Costs of Alternative Dispute Resolution

There are no alternative dispute resolution mechanisms available for the taxpayer to settle the case.

## 11. STATISTICS

### 11.1 Pending Tax Court Cases

The Administrative Court does not publish statistics regarding pending tax cases and their value.

### 11.2 Cases Relating to Different Taxes

Neither the Tax Administration nor the Administrative Court publish the number of cases initiated and terminated every year relating to the different taxes being audited and their value.

### 11.3 Parties Succeeding in Litigation

There are no statistics regarding the party that succeeds the most in tax litigation cases.

## 12. STRATEGIES

### 12.1 Strategic Guidelines in Tax Controversies

The most important guideline to consider in a tax controversy is to develop a case theory that is consistent with the facts and circumstances,

as well as with the evidence to be provided to the authorities.

In addition, it is important to present clear and concise arguments that can be understood both by the taxpayer and the authorities, regardless of whether the case is being discussed in the administrative or judicial phase.



**Deloitte Tax & Legal Costa Rica** is a multidisciplinary firm of the global organisation Deloitte Touche Tohmatsu Limited, which provides consulting, tax and legal advice to local and multinational entities to help foster their operations in the country. Among its business lines, Deloitte Tax & Legal has a solid experience providing tax controversy and litigation advisory services, ranging from assistance throughout the tax audit procedure and preparation of administrative

appeals, to lodging a lawsuit and guiding the client through the phases that must be followed to obtain a final decision from the judicial authorities. Five professionals form Deloitte's tax controversy team. Having devoted their careers to the tax litigation field, all of the team members have significant expertise in this practice area, not only in the private sector, but also in the public sector.

## AUTHORS



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