Definitive global law guides offering comparative analysis from top-ranked lawyers

Costa Rica: Law & Practice
Jose Rodriguez, Carmen Sanchez and Paulo Doninelli
KPMG

Costa Rica: Trends & Developments
Jose Rodriguez, Carmen Sanchez and Paulo Doninelli
KPMG
COSTA RICA

Law and Practice

Contributed by:
Jose Rodriguez, Carmen Sanchez and Paulo Doninelli
KPMG

Contents

1. Rules Governing Transfer Pricing p.6
   1.1 Statutes and Regulations p.6
   1.2 Current Regime and Recent Changes p.6

2. Definition of Control/Related Parties p.6
   2.1 Application of Transfer Pricing Rules p.6

3. Methods and Method Selection and Application p.6
   3.1 Transfer Pricing Methods p.6
   3.2 Unspecified Methods p.7
   3.3 Hierarchy of Methods p.7
   3.4 Ranges and Statistical Measures p.7
   3.5 Comparability Adjustments p.7

4. Intangibles p.7
   4.1 Notable Rules p.7
   4.2 Hard-to-Value Intangibles p.7
   4.3 Cost Sharing/Cost Contribution Arrangements p.7

5. Affirmative Adjustments p.7
   5.1 Rules on Affirmative Transfer Pricing Adjustments p.7

   6.1 Sharing Taxpayer Information p.7

7. Advance Pricing Agreements (APAs) p.8
   7.1 Programmes Allowing for Rulings Regarding Transfer Pricing p.8
   7.2 Administration of Programmes p.8
   7.3 Co-ordination Between the APA Process and Mutual Agreement Procedures p.8
   7.4 Limits on Taxpayers/Transactions Eligible for an APA p.8
   7.5 APA Application Deadlines p.8
   7.6 APA User Fees p.8
   7.7 Duration of APA Cover p.8
   7.8 Retroactive Effect for APAs p.8
8. Penalties and Documentation p.8
  8.1 Transfer Pricing Penalties and Defences p.8
  8.2 Taxpayer Obligations Under the OECD Transfer Pricing Guidelines p.8

9. Alignment With OECD Transfer Pricing Guidelines p.8
  9.1 Alignment and Differences p.8
  9.2 Arm's Length Principle p.8
  9.3 Impact of the Base Erosion and Profit Shifting (BEPS) Project p.8
  9.4 Impact of BEPS 2.0 p.9
  9.5 Entities Bearing the Risk of Another Entity's Operations p.9

  10.1 Impact of UN Practical Manual on Transfer Pricing p.9

11. Safe Harbours or Other Unique Rules p.9
  11.1 Transfer Pricing Safe Harbours p.9
  11.2 Rules on Savings Arising From Operating in the Jurisdiction p.9
  11.3 Unique Transfer Pricing Rules or Practices p.9

12. Co-ordination With Customs Valuation p.9
  12.1 Co-ordination Requirements Between Transfer Pricing and Customs Valuation p.9

13. Controversy Process p.9
  13.1 Options and Requirements in Transfer Pricing Controversies p.9

14. Judicial Precedent p.10
  14.1 Judicial Precedent on Transfer Pricing p.10
  14.2 Significant Court Rulings p.10

15. Foreign Payment Restrictions p.11
  15.1 Restrictions on Outbound Payments Relating to Uncontrolled Transactions p.11
  15.2 Restrictions on Outbound Payments Relating to Controlled Transactions p.11
  15.3 Effects of Other Countries’ Legal Restrictions p.11

16. Transparency and Confidentiality p.11
  16.1 Publication of Information on APAs or Transfer Pricing Audit Outcomes p.11
  16.2 Use of “Secret Comparables” p.11

17. COVID-19 p.11
  17.1 Impact of COVID-19 on Transfer Pricing p.11
  17.2 Government Response p.11
  17.3 Progress of Audits p.11
KPMG is a global organisation and a professional services firm providing audit, tax, legal and advisory services. KPMG operates in 143 countries and territories, and in FY22 collectively employed more than 265,000 partners and people, serving the needs of businesses, governments, public-sector agencies and not-for-profit organisations. KPMG Costa Rica has 14 partners and more than 350 professionals, with its main office located in San José. The firm’s transfer pricing team has expertise in planning, compliance and documentation, financial reporting, implementation and dispute resolutions. Its main clients are in the sectors of financial services, manufacturing, distribution of raw materials and final goods, retail, logistics and transportation, real estate, agriculture, entertainment, energy and pharmaceutics. Relevant recent work by the firm includes litigation support in a transfer pricing adjustment proposed by the tax authority for approximately USD2 million to a pharma distribution taxpayer.

Authors

Jose Rodriguez is a financial administration graduate and a corporate tax specialist, and is transfer pricing senior manager at KPMG Costa Rica. He has more than ten years’ experience in transfer pricing in Mexico and Central America, and is an expert on planning, compliance and documentation, and disputes in the following sectors: hospitality, health, financial, energy, and manufacturing, among others. He is a speaker in several institutions and seminars on transfer pricing and base erosion and profit shifting topics, and has been a Professor of Business Consulting and member of the evaluation committee for future graduates of the Business Administration of the Instituto Tecnológico de Estudios Superiores de Monterrey.

Carmen Sanchez is a chartered public accountant, has a master’s degree in Tax Advisory, and is a specialist in tax law. She is currently the tax and legal head partner and transfer pricing tax partner at KPMG Costa Rica. She has 35 years’ experience in tax and ten years’ experience in transfer pricing. Her experience in transfer pricing services covers planning, compliance and documentation, financial reporting, implementation and dispute resolution. Her main clients are in the financial, manufacturing and distribution, retail, real estate, and hospitality sectors. She is a member of the local chartered public accountants, private accountants and economic sciences bodies of the International Fiscal Association.
Paulo Doninelli is a Costa Rican attorney, specialised in taxation, who has actively practised law for over 20 years as a legal and tax consultant, including working in New York, USA and as a local attorney in Costa Rica. Paulo currently leads the legal and tax dispute resolution and controversy services of KPMG. His daily practice includes strategic legal counselling to support clients’ business goals, particularly in corporate reorganisations, as well as leading the tax litigation practice, and preserving clients’ interests before the administrative and judicial authorities. His main clients include companies in international transportation, manufacturing, distribution, retail and real estate.

KPMG Costa Rica
Multiplaza Boulevard KPMG BLDG
San Rafael de Escazú
San José,
10-208-1000
Costa Rica

Tel: +506 2 201 4100
Fax: +506 2 201 4141
Email: carmensanchez1@kpmg.com
Web: https://kpmg.com/cr/es/home.html
1. Rules Governing Transfer Pricing

1.1 Statutes and Regulations
Article 81 bis of Law 7092 and Articles 74 to 83 of the Income Tax Law, Decree 43198-H, incorporate the arm’s-length principle and regulate the application of transfer pricing rules in Costa Rica.

In accordance with such law and regulations, and more specifically Article 82, taxpayers must have the relevant information, documentation and analysis of transfer pricing that support the calculation of the consideration agreed between related parties. The documentation and information related to the calculation of transfer pricing must be kept during the term provided for in Article 109 of the Tax Code.

Additionally, taxpayers that qualify as large taxpayers and/or are under the free trade zone regime, or that exceed the accumulated amount of intercompany transactions of 1,000 base salaries in the corresponding year, must file an annual informative form of the transactions they carry out with related parties, in accordance with Article 81 of the aforementioned regulations.

1.2 Current Regime and Recent Changes
The Costa Rican tax authority issued Guideline No 20-03, published in 2003, years before the matter of transfer pricing was formally included in tax legislation. This guideline enabled the tax authority to assess transactions between related parties. The authority would make tax adjustments when the analyses concluded that the transactions between related parties did not observe the arm’s-length principle.

A controlled transaction takes place between companies belonging to the same economic group when they are related by control, management or capital criteria.

2. Definition of Control/Related Parties

2.1 Application of Transfer Pricing Rules
Related parties are considered to be those established in Article 2 of the Income Tax Law, as well as those residing abroad or in the national territory, that directly or indirectly participate in the management, control or capital of the taxpayer, or where the same persons participate directly or indirectly in the management, control or capital of both parties, or for any other objective reasons exercise a systematic influence in their decisions regarding the price.

3. Methods and Method Selection and Application

3.1 Transfer Pricing Methods
Local legislation provides for the following transfer pricing methods:

- comparable uncontrolled pricing method;
- cost-plus method;
- comparable uncontrolled pricing method;
- profit split method; and
- transactional net margin.
3.2 Unspecified Methods
Unspecified methods are not allowed by law.

3.3 Hierarchy of Methods
There is a preference for direct methods over indirect methods, in the following hierarchy (as listed in 3.1 Transfer Pricing Methods):

- comparable uncontrolled pricing method;
- cost-plus method;
- comparable uncontrolled pricing method;
- profit split method; and
- transactional net margin.

3.4 Ranges and Statistical Measures
Article 80 of the Income Tax Law states that in appropriate cases (ie, where there are two or more comparable observations), the interquartile range will be determined using the series of the identified comparable. If the price or margin of the analysed transaction is outside the range contained between the first and third quartile, the value or price is not considered as arm’s length, and the median is established as the arm’s-length price.

3.5 Comparability Adjustments
Reasonable adjustments can be made to eliminate the material effects of differences in comparability.

4. Intangibles

4.1 Notable Rules
The Income Tax Law stipulates that royalty expenses cannot exceed 10% of the taxpayer’s income despite compliance with transfer pricing rules.

4.2 Hard-to-Value Intangibles
There are no special rules for hard-to-value intangibles.

4.3 Cost Sharing/Cost Contribution Arrangements
There are no specific rules on this topic. However, the tax authority assesses the basis of calculation, the distribution drivers, the documentation and especially the value added and its relationship with taxable income, in an analysis of substance over form.

5. Affirmative Adjustments

5.1 Rules on Affirmative Transfer Pricing Adjustments
A taxpayer may amend a tax return after receiving a transfer pricing adjustment in a related entity. This is not automatic and is not initiated by the tax authority.

6. Cross-Border Information Sharing

6.1 Sharing Taxpayer Information
Costa Rica has a small double tax treaty network with Spain, Germany, Mexico and the United Arab Emirates. Additionally, Costa Rica is a recent member of the OECD and has a contractual and moral obligation to comply with the related recommendations issued to it. Costa Rica is a signatory to the Convention on Mutual Administrative Assistance in Tax Matters and a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes.
7. Advance Pricing Agreements (APAs)

7.1 Programmes Allowing for Rulings Regarding Transfer Pricing
Taxpayers may request an advance pricing agreement (APA) from the tax authority in order to determine the valuation of transactions between related persons, prior to their execution. Such request must be accompanied by a proposal from the taxpayer based on the value of the transactions that would have been agreed upon by independent parties.

7.2 Administration of Programmes
Programmes are administered by the tax authority – Dirección General de Tributación, Ministerio de Hacienda.

7.3 Co-ordination Between the APA Process and Mutual Agreement Procedures
Costa Rica has not yet signed any APA with a taxpayer, so there is no information in this regard.

7.4 Limits on Taxpayers/Transactions Eligible for an APA
There are no limits, and any transaction or taxpayer may be eligible. It should be noted that when a consensus between the taxpayer and the tax authority is not reached, the process stops and no appeal is allowed.

7.5 APA Application Deadlines
An APA application can be filed at any time.

7.6 APA User Fees
Currently, no APA user fees are charged.

7.7 Duration of APA Cover
An APA covers five years, which are determined by two alternatives:
- the tax period in which the application is filed and the following four tax periods; or
- that the five fiscal periods begin in the fiscal period following the date of filing the application.

7.8 Retroactive Effect for APAs
An APA cannot have retroactive effect, and could only cover the current and future fiscal years.

8. Penalties and Documentation

8.1 Transfer Pricing Penalties and Defences
All taxpayers must have a local file of transfer pricing, and the penalty for not having such local file is 2% of the income of the local taxpayer.

8.2 Taxpayer Obligations Under the OECD Transfer Pricing Guidelines
Taxpayers are required to prepare all files and reports contemplated by the OECD Transfer Pricing Guidelines.

9. Alignment With OECD Transfer Pricing Guidelines

9.1 Alignment and Differences
Costa Rica’s transfer pricing rules are fully aligned with the OECD Transfer Pricing Guidelines.

9.2 Arm’s Length Principle
Costa Rica’s transfer pricing rules are based on the standard arm’s-length principle.

9.3 Impact of the Base Erosion and Profit Shifting (BEPS) Project
Costa Rica is member of the OECD/G20 Inclusive Framework on BEPS and has also agreed to the
Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. Costa Rica has adopted and included specific rules in the Income Tax Law – ie, BEPS actions 8, 9, 10 and 13, related to transfer pricing.

9.4 Impact of BEPS 2.0
Costa Rica has not yet adopted a position on the OECD’s BEPS 2.0 initiatives involving Pillar One and Pillar Two and there is not yet any public discussion around the topic. The adoption of BEPS 2.0 is seen as especially having an impact on free trade zone companies.

9.5 Entities Bearing the Risk of Another Entity’s Operations
There are no specific rules in this regard; however, the tax authority may require all supporting documentation, including a local file, to validate the relevant transaction from a transfer pricing point of view.

10.1 Impact of UN Practical Manual on Transfer Pricing
Costa Rica does not consider the UN Manual for setting transfer pricing rules.

11. Safe Harbours or Other Unique Rules
11.1 Transfer Pricing Safe Harbours
There are no transfer pricing safe harbours in place.

11.2 Rules on Savings Arising From Operating in the Jurisdiction
Costa Rica does not have specific rules governing savings arising from operating entities in the country.

11.3 Unique Transfer Pricing Rules or Practices
Costa Rica does not have any notable unique transfer pricing rules or practices.

12. Co-ordination With Customs Valuation
12.1 Co-ordination Requirements Between Transfer Pricing and Customs Valuation
There is no obligation to co-ordinate, and in fact there is no co-ordination between transfer pricing and customs valuation.

13. Controversy Process
13.1 Options and Requirements in Transfer Pricing Controversies
The conclusion of a tax audit may lead to a transfer pricing adjustment against the taxpayer. If such were the case, the taxpayer has the right to challenge the tax adjustment following the administrative procedure, and to subsequently take the matter to court, if necessary – ie, they may renounce the administrative procedure and challenge the tax adjustment immediately at the judicial level. It is not mandatory for any taxpayer to pay the disputed amounts before challenging the matter either at the administrative level or before court.

Taxpayers are normally inclined to challenge any tax adjustments first by following the administra-
tive procedure. This is mainly because there are no judicial courtrooms specialised in tax matters or transfer pricing issues. Consequently, the administrative tax procedure carried out before the tax authority and Ministry of Finance provides some technical comfort that is worth exploring.

The administrative procedure grants the taxpayer with the possibility to file a reversal recourse against the tax adjustment. This recourse is studied and resolved within the tax authority. If the reversal recourse is rejected, the taxpayer may file an appeal to ensure further review of its case. The appeal will be studied and resolved by a higher resolution body, within the Ministry of Finance (and which is independent of the tax authority). This higher resolution body within the Ministry of Finance issues the final ruling on the matter, at the administrative level. If the ruling is against the taxpayer, the tax authority may initiate collection efforts against the taxpayer.

The party affected by the resolution issued by the Ministry of Finance (ie, the losing party, either the taxpayer or the tax authority) may decide to file a lawsuit and continue challenging the tax adjustment before court.

Once the matter is addressed at court, the case is assigned to a tribunal. Three judges will review the case and issue a judicial ruling. The ruling issued by the tribunal may be appealed, and the appeal must be filed before the Supreme Court of Justice, which is the highest court tier within the domestic judicial system. Contrary to ordinary courtrooms, the Supreme Court of Justice has magistrates that are either tax experts or knowledgeable on tax matters, granting taxpayers a final opportunity to obtain a technical review of the case. There is no court specialised in transfer pricing issues, which means that transfer pricing disputes will be subject to the same procedure mentioned above.

14. Judicial Precedent

14.1 Judicial Precedent on Transfer Pricing

There are few judicial precedents on transfer pricing in Costa Rica. Very few cases have gone all the way to the Supreme Court. Most cases have been ruled in favour of the tax authority, mainly arguing that the taxpayer did not provide enough proof to reject the tax auditor analysis. From a technical perspective, these cases have not been profoundly analysed.

14.2 Significant Court Rulings

Special reference is made to a ruling of the Constitutional Court, validating the use of the OECD Transfer Pricing Guidelines, as soft law, before the relevant rules were included in the Income Tax Law. The following should be noted.

- No 20-03: Tax Treatment of Transfer Pricing, according to the arm’s-length principle by the Dirección General de Tributación (tax authority). It was established that the application of the transfer pricing regulations involved technical regulations and such application was in accordance with the legal system.
- No 1365-2013: Nestlé Costa Rica SA. The company alleged unconstitutionality of the transfer pricing rules; the company lost the case.
- No 475-2013: Colgate Palmolive Costa Rica SA. The company alleged unconstitutionality of the transfer pricing rules; the company lost the case.
- No 383-2022: on the most appropriate transfer pricing method and application according to the OECD Guidelines.
15. Foreign Payment Restrictions

15.1 Restrictions on Outbound Payments Relating to Uncontrolled Transactions
There are no restrictions on outbound payments.

15.2 Restrictions on Outbound Payments Relating to Controlled Transactions
There are no restrictions on outbound payments.

15.3 Effects of Other Countries’ Legal Restrictions
Expenses of a local entity that are incurred with a non-cooperating country or “tax haven” are considered transactions with related parties. Such countries are as follows:

- Bosnia-Herzegovina;
- North Korea;
- Cuba;
- Iraq;
- Norkfolk Island;
- Kyrgyzstan;
- North Macedonia;
- Maldives;
- Montenegro;
- Oman;
- Palestine;
- East Timor; and
- Uzbekistan.

16. Transparency and Confidentiality

16.1 Publication of Information on APAs or Transfer Pricing Audit Outcomes
No APAs have yet been signed with taxpayers. Transfer pricing outcomes may be published maintaining the confidentiality of the process.

16.2 Use of “Secret Comparables”
Use of “secret comparables” is prohibited by the law.

17. COVID-19

17.1 Impact of COVID-19 on Transfer Pricing
The COVID-19 pandemic affected the economy and companies in several ways, as in any part of the world. No specific rules were issued; however, the analysis and preparation of the local files required careful case-by-case investigation.

17.2 Government Response
The government issued special rulings to permit extended payment terms, VAT reliefs in certain transactions and activities depending on specific conditions. These were in place during the first year of the COVID-19 pandemic.

17.3 Progress of Audits
Audits slowed down during 2020 and 2021 and were mainly conducted by email. Tax audits have been reactivated from fiscal year 2022. The fiscal years that the authorities are reviewing are from 2019 onwards.
Trends and Developments

Contributed by:
Jose Rodriguez, Carmen Sanchez and Paulo Doninelli
KPMG

KPMG is a global organisation and a professional services firm providing audit, tax, legal and advisory services. KPMG operates in 143 countries and territories, and in FY22 collectively employed more than 265,000 partners and people, serving the needs of businesses, governments, public-sector agencies and not-for-profit organisations. KPMG Costa Rica has 14 partners and more than 350 professionals, with its main office located in San José. The firm’s transfer pricing team has expertise in planning, compliance and documentation, financial reporting, implementation and dispute resolutions. Its main clients are in the sectors of financial services, manufacturing, distribution of raw materials and final goods, retail, logistics and transportation, real estate, agriculture, entertainment, energy and pharmaceutics. Relevant recent work by the firm includes litigation support in a transfer pricing adjustment proposed by the tax authority for approximately USD2 million to a pharma distribution taxpayer.

Authors

Jose Rodriguez is a financial administration graduate and a corporate tax specialist, and is transfer pricing senior manager at KPMG Costa Rica. He has more than ten years’ experience in transfer pricing in Mexico and Central America, and is an expert on planning, compliance and documentation, and disputes in the following sectors: hospitality, health, financial, energy, and manufacturing, among others. He is a speaker in several institutions and seminars on transfer pricing and base erosion and profit shifting topics, and has been a Professor of Business Consulting and member of the evaluation committee for future graduates of the Business Administration of the Instituto Tecnológico de Estudios Superiores de Monterrey.

Carmen Sanchez is a chartered public accountant, has a master’s degree in Tax Advisory, and is a specialist in tax law. She is currently the tax and legal head partner and transfer pricing tax partner at KPMG Costa Rica. She has 35 years’ experience in tax and ten years’ experience in transfer pricing. Her experience in transfer pricing services covers planning, compliance and documentation, financial reporting, implementation and dispute resolution. Her main clients are in the financial, manufacturing and distribution, retail, real estate, and hospitality sectors. She is a member of the local chartered public accountants, private accountants and economic sciences bodies of the International Fiscal Association.
Paulo Doninelli is a Costa Rican attorney, specialised in taxation, who has actively practised law for over 20 years as a legal and tax consultant, including working in New York, USA and as a local attorney in Costa Rica. Paulo currently leads the legal and tax dispute resolution and controversy services of KPMG. His daily practice includes strategic legal counselling to support clients’ business goals, particularly in corporate reorganisations, as well as leading the tax litigation practice, and preserving clients’ interests before the administrative and judicial authorities. His main clients include companies in international transportation, manufacturing, distribution, retail and real estate.

KPMG Costa Rica
Multiplaza Boulevard KPMG BLDG
San Rafael de Escazú
San José, 10-208-1000
Costa Rica
Tel: +506 2 201 4100
Fax: +506 2 201 4141
Web: https://kpmg.com/cr/es/home.html
Introduction
The subject of transfer pricing has attracted the attention of the Costa Rican tax authority. Despite the fact that tax law has incorporated transfer pricing regulations since mid-2019, the tax authority has established market value rules and audits based on transfer pricing since 2004. Transfer pricing regulations, from the outset, have followed the recommendations of the Organisation for Economic Co-operation and Development (OECD), and their implementation prior to legislation has been endorsed by the Constitutional Chamber of the Supreme Court of Justice when based on those recommendations.

In this context, some important trends and developments will be discussed with the objective of conveying that knowledge on this topic is still in its early stages, and as such, taxpayers should be more prudent than in advanced jurisdictions.

In recent years, the authors have observed a greater level of professionalism in transfer pricing audits, in terms of depth of analysis and approach to transactions with higher levels of sophistication. This especially refers to issues of method selection, selection of comparable variables and comparability adjustments.

Method Selection
The tax authority has insisted on rejecting the use of indirect methods since its first audits. It has been common for the authority to seek the application of the incomparable price, unfortunately without further foundation. In one of the first litigation cases in Costa Rica, the taxpayer was even faced with the use of comparable variables with non-public information, without a solid analysis of functions, assets and risks. Those times are being left behind, and today more sophisticated analyses in terms of method selection are seen. This is also the case where, having required the transfer pricing study, the authority accepts the method selected by the taxpayer; though this depends on the robustness of the study provided by the taxpayer, as well as the data that the authority has verified prior to the audit.

Selection of Comparable Variables
The most recent trend is the rejection of comparable variables used by the taxpayer. These have been rejected due to criteria of geography and functions, to the best of the authors’ knowledge of the published information. Audits have substituted rejected comparables, obviously resulting in a transfer pricing adjustment for the taxpayer. By now, it has become apparent that the comparables selected by the tax authority are not always comparable in terms of functions, assets and risks, and the respective comparability adjustments are not carried out.

Adjustments to Comparable Variables
There has been one particularly interesting case in which a company decided to wind up its operations in the country. Based on the decision to close its operations, the company applied a comparable adjustment estimating its idle capacities. The tax authority rejected the adjustment by directly comparing the sales price of goods between related and unrelated parties and making a tax adjustment by considering the sales price to third parties as the market price.

As always, it is important to consider the maturity and expertise of the professionals involved in a specific matter (in this case, transfer pricing).

A direct (and even an indirect) analysis should always contemplate the elements of the comparable variables. An entity that is no longer compliant with the principle of having an ongoing business cannot be compared with a company that has an ongoing business activity. It
is important to analyse the assets, functions, risks and all elements involving the comparable variables before reaching any conclusions. Additionally, if the business model of an entity is being transformed, it is important to document all the changes and modifications leading to the transformation. Benchmarking and creating a defence file are of the essence.

The Costa Rican tax authority is making important efforts to acquire technical knowledge and expertise in transfer pricing matters, but there is still significant ground to cover. Local tax authorities are still far from attaining the relevant knowledge of tax authorities in those jurisdictions where foreign investments originate.

Specific Transactions
In financing, there are trends in several directions. Demonstrating the need to generate taxable income is relevant. The clause limiting the deductibility of net non-bank interest equivalent to 20% of EBITDA was introduced in the 2019 tax reform, with a transitory starting at 30% and reducing two percentage points until reaching the indicated floor. Such financing must also behave according to the market, and agree on an interest rate according to the geography and the risks and guarantees.

Advanced Pricing Agreements (APAs)
In Costa Rica, the negotiation and signing of advance transfer pricing agreements is absent. The legal norm is new, and dates from 2019. The authors are not aware of instances where taxpayers have agreed with the tax authority on an APA. It is necessary for a country with an important goal of attracting foreign direct investment to provide legal certainty in tax matters, as conflicts in terms of transfer prices are well known. Having secure mechanisms for pre-evaluation by the tax authority improves the investment climate and mitigates the costs of lengthy tax litigation.

Economic Activities with Greater Risk Control
The authors have seen particular focus by the tax authority on the agricultural, manufacturing, pharmaceutical and commercial sectors. In the agricultural sector, the tendency has been to ignore intermediate trading figures, which consolidate goods from different parts of the region. In the other industries, as previously mentioned, there have been adjustments for method selection and selection of comparables.

Conclusions and Recommendations
It is important to understand that, in Costa Rica, the burden of proof falls on the taxpayer. The tax authority can determine a tax adjustment with or without foundation or a correct technical analysis, but it is up to the taxpayer to provide the evidence to disprove the presumptions of the authority.

Where all the evidence has been provided in the inspection stage and the audit continues with its argumentation, the taxpayer is left defenceless, since they must generate evidence against presumptions of the authority with which they disagree. The taxpayer then needs to generate proof to show that the tax authority is wrong –
ie, even where the taxpayer is correct, they are solely responsible for generating proof that their tax position is correct.

The authors have also experienced a tendency in the following instances of the litigation process to allow for the presumption of the tax authority based on its analysis, rejecting the taxpayer’s argument because it does not undermine the position of the authority, often with incorrect grounds or detached from the legal, regulatory and transfer pricing guides of the OECD (soft law in Costa Rica). Again, the taxpayer is assigned the responsibility of demonstrating the error of the authority, and not that of demonstrating that the taxpayer’s tax position is adjusted to the law.

The authors’ recommendation in this initial stage of the learning curve on transfer pricing in Costa Rica is that taxpayers (especially large taxpayers and those under the free zone regime) should have a local file and master file updated each year. For each new transaction, benchmarking and the establishment of a transfer pricing policy are recommended. Costa Rica remains a highly formalistic tax jurisdiction, although substance is essential when demonstrating the legitimacy and legality of a transaction.

One cannot forget that Costa Rica is a recent member of the OECD and has a contractual and moral obligation to comply with the recommendations issued to it – ie, the country must align itself with the best practices in tax matters, among others. It is hoped that the regulations, control and litigation of transfer pricing evolve so that all parties to a process can interact on level ground.
Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com