

## Costa Rica

Costa Rica has met all aspects of the terms of reference (OECD, 2017<sup>[3]</sup>) (ToR) for the calendar year 2019 (year in review), and no recommendations are made.

In the prior year report, as well as in the 2017 peer review, Costa Rica had received three recommendations. Costa Rica has resolved these issues and therefore none of the prior year recommendations remain.

Costa Rica can legally issue two types of rulings within the scope of the transparency framework.

In practice, Costa Rica issued rulings within the scope of the transparency framework as follows:

- Six past rulings;
- For the period 1 April 2017 - 31 December 2017: three future rulings;
- For the calendar year 2018: four future rulings, and
- For the year in review: no future rulings.

No peer input was received in respect of the exchanges of information on rulings received from Costa Rica.

## A. The information gathering process

253. Costa Rica can legally issue the following two types of rulings within the scope of the transparency framework: (i) cross-border unilateral APAs and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles and (ii) permanent establishment (PE) rulings. To date, Costa Rica has issued only PE rulings given the resolution that establishes the requirements related to the issuance of APAs rulings has not been published yet and no APAs can be issued until then. As such, this report assesses the implementation with respect to PE rulings.

### **Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)**

254. For Costa Rica, past rulings are any tax rulings within scope that are issued either: (i) on or after 1 January 2015 but before 1 April 2017; or (ii) on or after 1 January 2012 but before 1 January 2015, provided they were still in effect as at 1 January 2015.

255. In the prior year peer review report, it was determined that Costa Rica's undertakings to identify past rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard. Costa Rica's implementation in this regard remains unchanged, and therefore continues to meet the minimum standard.

### **Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)**

256. For Costa Rica, future rulings are any tax rulings within scope that are issued on or after 1 April 2017.

257. In the prior year peer review report, it was determined that Costa Rica's implementation of a new system to identify future rulings and all potential exchange jurisdictions was sufficient to meet the minimum standard.

258. In the previous years, information on potential exchange jurisdictions was obtained through publicly available sources (given that usually taxpayers requiring PE rulings are PEs of companies listed on the stock exchange and subject to a regulatory framework which includes disclosing their head office details), information in possession of the local tax administrations and follow-up requests to the taxpayer. In November 2019, Costa Rica made legislative amendments to the general resolution for PE rulings (Resolution DGT-R-64-2019) to require taxpayers to provide information on all relevant exchange jurisdictions at the time of ruling application. In particular, when a new PE ruling request is submitted to the tax administration, the taxpayer is required to provide information on the jurisdiction of residence of the immediate parent company and ultimate parent company as well as a copy of the tax return of the parent company. The information gathering process has now been formalised as part of the application process for future rulings and if the taxpayer does not provide all the requested information, the ruling will not be issued. Whilst Costa Rica's actions already meet the minimum standard under the transparency framework, it is noted that Costa Rica is continuing to develop a shareholder register that will further enhance Costa Rica's information gathering abilities for the standard.

259. In addition, in November 2019, the General Director of Tax Administration issued new internal guidance for future rulings, Directive DGT-D-10-2019 called "*Procedure for handling requests related to the special calculation of taxable liquid income to companies dedicated to international transport*" (which in practice is the industry for which PE rulings are granted). This guidance aims at operationalising the internal information gathering process and establishes, among other things, a detailed procedure that tax officials must follow when issuing PE rulings, specifies the responsible tax officials for each procedure and the requisite actions to be undertaken throughout the entire PE ruling issuance process.

260. In addition, the International Taxation Directorate developed an electronic database (Share Point) to automate the information gathering process. This allows for the registration and monitoring of PE ruling requests, from the submission of the taxpayer's request until the exchange with relevant jurisdictions.

261. Costa Rica's implementation has therefore been further formalised and strengthened, and continues to meet the minimum standard.

### ***Review and supervision (ToR I.4.3)***

262. In the prior year peer review report, additional rulings were found that had not previously been identified and it was determined that Costa Rica's had met the ToR for the information gathering process, except for having in place a review and supervision mechanism to ensure that all relevant information is captured adequately. Therefore, Costa Rica was recommended to strengthen its review and supervision mechanism to ensure that the information gathering process is working effectively.

263. During the year in review, Costa Rica identified all (a total of six) past rulings not previously reported, as well three future rulings issued in 2017 and four future rulings issued in 2018 not previously identified. Furthermore, Costa Rica identified all potential exchange jurisdictions for these rulings, and completed the additional exchanges in June 2019. Costa Rica reviewed manually all past and future rulings issued by the Transfer Pricing Unit, the unit in charge of processing permanent establishment tax ruling requests, to ensure that all rulings in scope have been identified and information promptly exchanged. The Transfer Pricing Unit carried out an initial manual check of all rulings issued and two additional cross-check verifications were performed at different stages to ensure completeness of the identification of all past and future rulings in scope of the transparency framework.

264. Costa Rica issued internal guidance (Directive DGT-D-10-2019) which also establishes the responsible tax officials in charge of the review and supervision mechanism. Before issuing a PE ruling, three levels of reviews and approvals are requested from the Deputy Director of the Transfer Pricing Unit, the Director of International Taxation Directorate, and the chief of the local tax administration or the Director of the Large Business Directorate. All PE ruling requests are registered and monitored through the Share Point database. These new review and supervision mechanism procedures ensure that all relevant information is captured adequately, and therefore the recommendation is now removed.

### ***Conclusion on section A***

265. Costa Rica has met all of the ToR for the information gathering process and no recommendations are made.

## **B. The exchange of information**

### ***Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)***

266. Costa Rica has the necessary domestic legal basis to exchange information spontaneously. Costa Rica notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

267. Costa Rica has international agreements permitting spontaneous exchange of information, including being a party to the (i) *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011<sup>[4]</sup>) ("the Convention"), (ii) bilateral agreements in force with three jurisdictions, and iii) tax information exchange agreements in force with two jurisdictions.<sup>1</sup>

### **Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)**

268. In the prior years' peer review reports, it was determined that Costa Rica's process for the completion and exchange of templates met all the ToR, except for ensuring that information on rulings is transmitted to the Competent Authority responsible for international exchange of information without undue delay (ToR II.5.5). Therefore, Costa Rica was recommended to continue its efforts to ensure that information on rulings is transmitted to the Competent Authority without undue delay.

269. During the year in review, Costa Rica exchanged all previously identified past and future rulings, and no new future rulings were issued in 2019. The summary section of the template was completed in line with the internal FHTP suggested guidance. It included information regarding the nature of the ruling, a summary of the activity covered by the ruling, key conclusions in respect of the system for calculating the taxable income in Costa Rica and the legal basis for the issuance of such rulings. In addition, Costa Rica issued new internal guidance on PE future rulings establishing the process and the timelines for exchanges in compliance with ToR II.5.5. This guidance establishes, among others, the timelines for rulings to be provided to the Competent Authority and exchanged by the Competent Authority with the relevant exchange jurisdictions and specifies the responsible tax officials for each procedure. According to the new procedure, once a tax ruling is issued, the Transfer Pricing Unit will, within two months from its issuance, fill in the template for the exchanges and send it to the Exchange of Information (EOI) Unit. The EOI Unit will send an official note to the Competent Authority for its approval. Once the Competent Authority signed off the official note, the EOI Unit will send the template and the official note to the relevant jurisdictions within the three months' timeline. In practice, for all past and future rulings identified, the EOI Unit exchanged information on average within few days of their receipt. As such, the recommendation is now removed.

270. For the year in review, the timeliness of exchanges is as follows:

Past rulings in the scope of the transparency framework	Number of exchanges transmitted by 31 December 2019	Delayed exchanges		
		Number of exchanges not transmitted by 31 December 2019	Reasons for the delays	Any other comments
	6	0	N/A	N/A
Future rulings in the scope of the transparency framework	Number of exchanges transmitted within three months of the information becoming available to the competent authority or immediately after legal impediments have been lifted	Delayed exchanges		
		Number of exchanges transmitted later than three months of the information on rulings becoming available to the competent authority	N/A	N/A
	7	0	N/A	N/A
<b>Total</b>	13	0		

Follow up requests received for exchange of the ruling	Number	Average time to provide response	Number of requests not answered
	0	N/A	N/A

### **Conclusion on section B**

271. Costa Rica has the necessary legal basis for spontaneous exchange of information, a process for completing the templates in a timely way and has completed all exchanges. Costa Rica has met all of the ToR for the exchange of information process and no recommendations are made.

## C. Statistics (ToR IV)

272. The statistics for the year in review are as follows:

Category of ruling	Number of exchanges	Jurisdictions exchanged with
Cross-border unilateral advance pricing agreements (APAs) and any other cross-border unilateral tax rulings (such as an advance tax ruling) covering transfer pricing or the application of transfer pricing principles	N/A	N/A
Permanent establishment rulings	13	China (People's Republic of), Colombia, France, Germany, Panama, Peru, Singapore, United States
<b>Total</b>	<b>13</b>	

## D. Matters related to intellectual property regimes (ToR I.4.1.3)

273. Costa Rica does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015<sup>[1]</sup>) were imposed.

## Summary of recommendations on implementation of the transparency framework

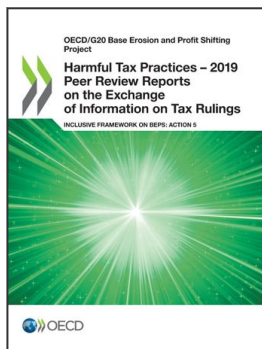
Aspect of implementation of the transparency framework that should be improved	Recommendation for improvement
	No recommendations are made.

## References

- OECD (2017), *BEPS Action 5 on Harmful Tax Practices - Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD Publishing, Paris, <http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>. [3]
- OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241190-en>. [1]
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264115606-en>. [4]

## Notes

<sup>1</sup> Parties to the Convention are available here: [www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm](http://www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm). Costa Rica also has double tax agreements with Germany, Mexico, and Spain and tax information exchange agreements with Argentina and the United States.



From:

## Harmful Tax Practices – 2019 Peer Review Reports on the Exchange of Information on Tax Rulings Inclusive Framework on BEPS: Action 5

Access the complete publication at:

<https://doi.org/10.1787/afd1bf8c-en>

### Please cite this chapter as:

OECD (2020), "Costa Rica", in *Harmful Tax Practices – 2019 Peer Review Reports on the Exchange of Information on Tax Rulings: Inclusive Framework on BEPS: Action 5*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/c6e906be-en>

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area. Extracts from publications may be subject to additional disclaimers, which are set out in the complete version of the publication, available at the link provided.

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at <http://www.oecd.org/termsandconditions>.