

Legal 500

Country Comparative Guides 2024

Costa Rica

Tax Disputes

Contributor

Deloitte Legal



Fabio Salas

Partner | fsalas@deloitte.com

José Fabio Chinchilla

Manager | jchinchilla@deloitte.com

Karl Schlager

Junior | kschlager@deloitte.com

This country-specific Q&A provides an overview of tax disputes laws and regulations applicable in Costa Rica.

For a full list of jurisdictional Q&As visit legal500.com/guides

Costa Rica: Tax Disputes

1. Is it necessary for a taxpayer to register with the tax authority? Are separate registrations required for corporate income tax and value added tax/sales tax?

Yes, any natural or legal person who engages in profitable activities (either the sale of goods or the provision of services) must register with the Tax Authorities. In Costa Rica, there is a single tax registry where all persons conducting economic activities subject to taxes under the surveillance of the Tax Authorities are required to register. When registering, the taxpayer selects which taxes their activities will be subject to.

According to Article 22 of the Tax Procedure Regulations, the registration must be completed within ten business days after the commencement of operations.

Section 128 of the General Tax Code outlines the general obligations of taxpayers operating in Costa Rica, including the requirement to register appropriately and keep their information updated with the tax authorities.

Different value-added tax rates may apply to different products/services and special taxpayers, underscoring the importance of proper registration with the tax authorities.

2. In general terms, when a taxpayer files a tax return, does the tax authority check it and issue a tax assessment – or is there a system of self-assessment where the taxpayer makes their own assessment which stands unless checked?

Costa Rica's taxation model is based on a self-assessment system where the tax return filed by the taxpayer stands unless checked.

Self-assessment in Costa Rican tax regulation can be found in sections 120, 122, and 130 of the General Tax Code, Article 20 of the Income Tax Law, and Article 27 of the Value Added Tax Law, among others.

The tax return is presumed lawful but may be subject to verification by the Tax Authorities. For such purposes, the Tax Administration may require financial, accounting, and other records to verify the information related to the liquidation or payment of the tax..

3. Can a taxpayer amend the taxpayer's return after it has been filed? Are there any time limits to do this?

Taxpayers can amend their returns after filed. The returns can be amended at any time before the communication of the beginning of a tax audit that intends to issue the Tax Audit Decision.

Section 130 of General Tax Code establishes the faculty of taxpayers to amend their returns, always considering specific limitations on these amendments (e.g., taxpayers should only file amendments on authorized locations, amendments can affect any elements of the tax base, amendments should include payment of interests for incomplete payments and irregular reports).

Regarding the time limit to amend the return, the recently mentioned Section, establishes that amendments are not allowed, after the communication of the beginning of a tax audit. Even when this time limit is clearly demarked in regulation, amendments can be submitted after the initial notice of the tax audit; however, this amendment would require an evaluation and acceptance by the tax authorities conducting the audit.

4. Please summarise the main methods for a tax authority to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment.

The main method for the tax authority to challenge the amount paid by the taxpayer is the establishment of a tax audit procedure.

There are two different types of audits that can be pursued by the Tax Authority, an ordinary determinative procedure and a prior-liquidation procedure, both with different terms, and the initiation of one or other will depend on the evidence held by the Tax Authority before starting the audit.

The ordinary procedure with a communication of the initial notice to the audited taxpayer. Next, the tax authority requires information from the taxpayer or third parties, to verify the validity of the return filed by the taxpayer. The procedure finalizes with the issue of the assessment of the tax authority, which can confirm the

compliance of the audited party or determine that the return is irregular. This assessment is communicated to the taxpayer for him to consider the allegations and take a decision of whether to accept it or refute it.

While the prior-liquidation procedure is characterized by the fact that it is based on data and evidence available to the Administration, without being able to extend the examination to the taxpayer's accounting books. Therefore, its major distinguishing feature is the absence of a research phase.

5. What are the time limits that apply to such challenges (disregarding any override of these limits to comply with obligations to relief from double taxation under a tax treaty)?

There is a statute of limitations of a 4-year term on which the Tax Administration has the faculty to initiate the tax audit. This term is extended to 10 years when the taxpayer is not registered before the tax authorities, when the returns are considered fraudulent, or the taxpayer did not file the legally required sworn statements.

The initial notice of the tax audit interrupts the count of the statute of limitations term. Therefore, once the Tax Administration communicates the taxpayer the opening of a tax audit, it will have four years to analyse relevant information, communicate the tax audit findings, and issue the Tax Audit Decision.

As a relevant aspect, if a two-month term of suspension on the audit occurs, where there are no acts attempting the conclusion of the procedure and the issuance of the final assessment, the interruption of the statute of limitations caused by the communication of the initial notice of the tax audit loses its effects.

6. How is tax fraud defined in your law?

It is defined as any action or omission tending to obtain, for itself or a third party, a patrimonial benefit, by evading the payment of taxes, fees, or other charges.

Tax fraud can be committed by evading the payment of taxes, evading payment of amounts withheld from third parties or that should have been retained, or by enjoying unjustified tax refunds or exemptions.

7. How is tax fraud treated? Does the tax authority conduct a criminal investigation with a

view to seeking a prosecution and custodial sentence?

The Tax Administration does not carry out the criminal investigation to eventually seek prosecution. If this authority finds indications of the commission of a fraud, they can submit an accusation to the prosecutor's office. The amount of USD \$440,000 will serve as an objective condition to verify the punishable action for the criminal sanctions.

The prosecutor's office is the only institution capable of conducting criminal investigation. After receiving an accusation of a possible tax fraud, the prosecutor's office leads an investigation and analyses the evidence compiled by the Tax Authority to determine if a tax fraud was committed. In the scenario that the investigation concludes the taxpayer has committed tax fraud, this entity will begin a judicial process intending criminal sanctions.

8. In practice, how often is a taxpayer audited after a return is filed? Does a tax authority need to have any justification to commence an audit?

Entities classified as "large taxpayers" are often audited on their income tax and value added tax returns, in the other hand, middle and small taxpayers are not that frequently audited on these matters.

Because of the economic importance of the large taxpayers' tax returns, and the limited resources of the tax authorities, efforts to control correct return filings are mainly focused on the large taxpayers.

The tax authority does require an objective justification to initiate an audit, however there is not a restrictive list of motives to impel the authority to begin the audit. Examples of common situations that may alert and motivate the tax authority into auditing taxpayers are a) reporting unusual profits, b) journalistic reports questioning the financial status of a company, c) inconsistent returns between companies and their suppliers, d) commercial reorganization of companies.

9. Does the tax authority have to abide by any standards or a code of conduct when carrying out audits? Does the tax authority publish any details of how it in practice conducts audits?

The tax authority is legally required to abide specific rules when conducting a tax audit. According to the article 176 of the General Tax Code, the rules of the administrative

procedure shall be of mandatory observance for the Tax Administration.

Administrative actions contrary to law, as well as information and other evidence obtained illegally, shall have no effect against the taxpayer, and will lead to the annulment of the procedure.

10. Does the tax authority have the power to compulsorily request information? Does this extend to emails? Is there a right of appeal against the use of such a power?

The tax authority has the power to compulsorily request information, both from the audited taxpayer and third parties.

Article 104 of the General Tax Code establishes the faculty of the Tax Authority to request information from the taxpayer to verify his compliance with the tax regulation. This article has a wide spectrum of the documents that may be required by the Tax Authority, so it is possible that emails regarding the audited return may be requested, however in practice, this request is not common.

There is no right to appeal against the request of information, moreover failure to hand over the requested information may imply sanctions for the noncompliant party.

However, it is important to note that taxpayers have a legal duty to keep their accounting books and documents for a period of five years.

11. Can the tax authority have the power to compulsorily request information from third parties? Is there a right of appeal against the use of such a power?

The tax authority has the power to compulsorily request information from third parties.

Article 105 of the General Tax Code establishes the faculty of the Tax Authority to request relevant information from third parties for tax purposes, when this information regards their economic, financial, and professional relationship with other persons.

There is a specific procedure when the Tax Authority request third party information from financial entities. In this scenario, the Tax Authority must submit an approval request to a judge, motivating the relevance of the

information held by the financial institution. If the judge approves the request, then the Tax Authority can demand the information from the financial entity.

There is no right to appeal against the request of information, moreover failure to hand over the requested information may imply sanctions for the noncompliant party. If the request of information is not appropriately legally sustained, and the requested party decides not to hand over the information, this argument could be alleged in any procedure intending to apply sanctions.

12. Is it possible to settle an audit by way of a binding agreement, i.e. without litigation?

Yes, it is possible to settle an audit without litigation by a binding agreement. After the audit is completed, the Tax Authority will communicate the tax audit findings, which can be accepted by the taxpayer.

If the proposition issued by the Tax Authority is accepted, the taxpayer would be required to compensate the Tax Authority with the amount of taxes determined, the interests for the incomplete payment and the attributable penalty.

On this scenario, there is no room for negotiation on the amount of additional tax, interest and penalties the Tax Authority is charging.

13. If a taxpayer is concerned about how they are being treated, or the speed at which an audit is being conducted, do they have any remedies?

There are no specific formal claims stipulated in the tax regulation to complaint about the conduct of the Tax Authority during an audit procedure. However, article 358 of the Public Administration General Law (regulation applicable to all procedures promoted by an entity of the Public Administration) establishes the Formal Complaint as a mean to protest any irregularities and violations being committed in any procedure.

Additionally, in the event that the procedure is paralyzed for more than two months during the audit phase, the taxpayer may allege the statute of limitation of the procedure, requesting the archive of the file.

14. If a taxpayer disagrees with a tax assessment, does the taxpayer have a right of appeal?

Yes, taxpayers have the right to appeal the additional tax assessment issued by the Tax Authority.

Within the procedure, the taxpayer can oppose to the Tax Audit Findings, and when the Tax Audit Decision is issued, there are two administrative claims that can be filed: a) an administrative revoke plea before the same office that issued the Tax Audit Decision; and an appeal before the Administrative Tax Court (i.e., Tribunal Fiscal Administrativo).

When the Tax Administration communicates the Tax Audit Decision, the taxpayer can directly file a lawsuit before the Administrative Court (i.e., Tribunal Contencioso Administrativo) or follow the administrative claim phase.

15. Is the right of appeal to an administrative body (independent or otherwise) or judicial in nature (i.e. to a tribunal or court)?

As explained in the previous question, the appeal can be submitted both as an administrative claim and/or as a judicial lawsuit.

If the taxpayer chooses the judicial process, he will need to file a lawsuit before the Administrative Court requesting the annulment of the assessment and the reimbursement of the amount paid under protest (in case the taxpayer paid under protest) within the next 4 years after the communication of the last act of the administrative procedure.

16. Is the hearing in public? Is the decision published? What other information about the appeal can be accessed by a third party/the public?

The administrative tax procedure, and its files are confidential to third parties, including the hearing, as it is established within article 117 of the General Tax Code.

Meanwhile, the judicial process, is of public access to any accredited lawyer, and the hearings held in this process can be attended by any interested party. The judicial rulings are published in an electronic platform of public access, to be consulted by interested parties as precedent.

17. Is the procedure mainly written or a combination of written and oral?

Both procedures, administrative and judicial, have a

combination of written and oral phases, but in practice, due to the nature of the tax analysis and evidence submitted in these procedures, the written phases predominate within the administrative procedure.

18. Is there a document discovery process?

No, there is not a document discovery process as commonly known in common law.

In the administrative procedure, the Tax Authority already counts with all the information it requires to sustain its conclusions, obtained from the requests of information previously communicated to the taxpayer, and the taxpayer can access the administrative file at any point during the procedure, making it possible for him to use any information contained in the file to formulate his claims and demerit the conclusions stated in the Tax Audit Decision.

In the judicial process, the main evidence is the administrative file, that as previously explained, can be accessed by the taxpayer at any point. In this process, the plaintiff is responsible for demonstrating that his case theory is correct and consistent with the applicable law; in this matter he needs to provide the judge with all the elements and evidence necessary to sustain that case theory.

19. Are witnesses called to give evidence?

Yes, witnesses may be called to testify if either party has offered such testimony. Witnesses result important in tax litigation when the tax aspects under dispute are highly technical or require specific knowledge in a particular field.

20. Is the burden on the taxpayer to disprove the assessment the subject of the appeal?

Yes, during the appeal procedure it is the burden of the taxpayer to disprove the assessment issued by the Tax Authority.

In tax litigation procedures, it is responsibility of the appealing party to prove that its case theory is the most plausible and that the assessment made by the Tax Authority is inconsistent with the applicable regulation (article 140 of the General Tax Code).

In criminal tax litigation cases, the burden of proof lies with the Prosecutor's Office, that would oversee proving that the taxpayer committed tax fraud in a Criminal Court.

21. How long does an appeal usually take to conclude?

If the taxpayer chooses to follow the administrative claim phase, he will have a 30-business day term to file the administrative revoke plea against the Tax Audit Decision. The Tax Administration will take between 6 to 24 months to issue a ruling regarding such appeal.

If the Tax Administration's decision is to maintain the additional tax assessment, the taxpayer will have another 30 business-day term to file an appeal before the Administrative Tax Court. Once the Tax Administration admits this appeal, an additional 30-business day term will be granted to the taxpayer to restate its arguments and present further evidence. The Administrative Tax Court will take between 6 to 36 months to issue a final decision regarding this appeal.

At the judicial level, the term of this process may differ a lot between cases. Because every case regards very different matters, and the Administrative Court has limited time to attend every case, the judicial process can last several years. From the moment the lawsuit is filed in the Administrative Court to the issuance of the final ruling, the process can last approximately 4 years (with no delays involved). After the judgement is issued by the Administrative Court, an appeal can be filed before the First Chamber of the Supreme Court (ie "Sala Primera de la Corte Suprema de Justicia"), which may last up to 4 years to issue a ruling on the appeal.

22. Does the taxpayer have to pay the assessment pending the outcome of the appeal?

No, if the taxpayer follows the administrative claim phase, he does not have to pay the assessment when pending the outcome of the appeal.

The taxpayer has the faculty to pay under protest the amount assessed by the Tax Authority in the Tax Audit Decision, and in case the administrative office or the Administrative Tax Court accept partially or totally the arguments of the appeal, the tax authorities would be under the obligation to return the sums that were granted in favor of the taxpayer plus the respective interest.

23. Are there any restrictions on who can conduct or appear in the appeal on behalf of the taxpayer?

The appearance in administrative procedures is regulated by the article 133 of the General Tax Code. This article

stipulates that in all procedures interested parties can act personally or through their duly appointed representatives. The Administrative Court confirmed in recent case-law that in any phase of the administrative procedure, including the appeal procedure, the taxpayer can appear through their duly appointed representatives.

However, the appearance in judicial procedures is regulated by the articles 17 of the Administrative Process Code, 1256 of the Civil Code, and 20.1 of the Civil Process Code, all which establish the obligation of all parties to be accompanied by a lawyer in all phases of the process.

24. Is there a system where the "loser pays" the winner's legal/professional costs of an appeal?

Yes, but this only occurs at the judicial level, and this system is determined by the economic value of the process. It is justified by Section 193 of the Administrative Process Code.

In the administrative procedure (before the Tax Authorities and the Administrative Tax Court) this system is not applicable, neither party should pay at any point the costs that the other part incurred during the procedure.

25. Is it possible to use alternative forms of dispute resolution – such as voluntary mediation or binding arbitration? Are there any restrictions on when this alternative form of dispute resolution can be pursued?

Alternative forms of dispute resolution for tax matters are not applicable in Costa Rica. Since this is a matter of public funds, it is not possible to establish some type of voluntary mediation or binding arbitration.

26. Is there a right of onward appeal? If so, what are all the levels of onward appeal before the case reaches the highest appellate court.

Yes, both procedures, administrative and judicial, have levels of onward appeal.

In the administrative procedure there are two levels before reaching the highest administrative court. The first appeal (revoke plea) is filed before the same office who issued the additional tax assessment. If this office rejects the appeal, the taxpayer can appeal against the Administrative Tax Court.

The judicial process has only one ordinary appeal, that

can be submitted against the unfavourable judicial ruling. After conducting the judicial process, the Administrative Court will dictate a judicial ruling, which in case of an unfavourable result can be appealed before the First Chamber of the Supreme Court.

27. What are the main penalties that can be applied when additional tax is charged? What are the minimum and maximum penalties?

The main penalties that can be applied when additional tax is charged consist of monetary penalties which will depend on the severity of the infraction. The penalties for irregular tax returns that imply additional tax charges can be found in Section 81 of the General Tax Code.

Penalties are calculated over a monetary sanction base. The sanction base in cases of inaccurate returns consist in the difference between the amount paid by the taxpayer and the amount requested by the Tax Authority in the Tax Audit Decision.

The minimum penalty applicable consist in a 50% of the monetary sanction base. The maximum penalty applicable consist in a 150% of the monetary sanction base (These penalties are a separate amount to be paid by the taxpayer from the initial tax and the interests generated by the incomplete payment).

28. If penalties can be mitigated, what factors are taken into account?

Sanctions can be mitigated if specific assumptions and conditions are complied. The mitigation of penalties can be found regulated in Section 88 of the General Tax Code.

The conditions necessary to mitigate the penalties are:

- a. When the taxpayer spontaneously remedies his non-compliance without any action conducted by the Tax Authority, the sanction would be reduced by 75%.
- b. When the taxpayer remedies his non-compliance after the action of the Tax Administration, but before the communication of the Tax Audit Decision, the sanction would be reduced by 50%.
- c. When, the taxpayer has already received communication of the Tax Audit Decision and within the term established to appeal it, he accepts the

assessment and remedies his non-compliance, the penalty would be reduced by 25%.

29. Within your jurisdiction, are you finding that tax authorities are more inclined to bring challenges in particular areas? If so, what are these?

The Tax Authority does focus their main efforts in a specific group, "large taxpayers". Because of the economic importance of their contributions, they are more frequently targeted for audits.

The most recent audits have reviewed deeply the proper payment of withholding tax and transfer pricing agreements between related companies.

30. In your opinion, are there any areas which taxpayers are currently finding particularly difficult to deal with when faced with a challenge by the tax authorities?

In the case of intercompany transactions, it often happens that companies do not have the necessary support to adequately justify the root cause of certain expenses. For this purpose, it is important that companies have clearly defined their internal policies, as well as the agreements with their related parties.

The above, should also be combined with a good support in a transfer pricing study that ensures free competition of the amounts agreed. Very few judicial rulings regarding the proper application of this regulation have been issued, so there is an uncharted territory both for the tax authorities and taxpayers when handling cases regarding these topics.

31. Which areas do you think will be most likely to be the subject of challenges and disputes in the next twelve months?

We consider that a) intercompany transactions, b) withholding tax in payments to offshore companies, and c) the deductible expenses from the financial sector, continue to be some of the areas that are subject to dispute nowadays.

Contributors

Fabio Salas
Partner

fsalas@deloitte.com



José Fabio Chinchilla
Manager

jchinchilla@deloitte.com



Karl Schlager
Junior

kschlager@deloitte.com

