

COSTA RICA

Costa Rica Using Transfer Pricing to Shed Image as Tax Haven

By Luis Coronado, Margaret Kent, Robert Feinschreiber, and Giancarlo Piva*

**Luis Coronado was Deloitte's deputy transfer pricing leader for Latin America and has recently moved to Shanghai to lead the firm's China-Hong Kong transfer pricing practice. Margaret Kent and Robert Feinschreiber are with Feinschreiber and Associates in Key Biscayne, Fla. Their Web site is transferpricingconsortium.com. Giancarlo Piva is a tax manager with Deloitte in San José, Costa Rica.*

Costa Rica is in the midst of a campaign to shed its image as a tax haven. A major element in its efforts is comprehensive transfer pricing reform that would establish specific requirements and embrace the arm's-length principle.

The government has stepped up its transfer pricing enforcement efforts in recent months, basing its policies and practices on two different sources:

- a 2003 ruling that gives tax officials the authority to ensure that prices from related-party transactions reflect "market values"; and
- proposed transfer pricing legislation that would establish pricing methods and more.

2003 Ruling

Costa Rica's Tax Administration, *Dirección General de Tributación* (DGT), in 2003 issued Ruling 20-03, *Tax Treatment of Transfer Pricing According to the Normal Market Value*, which is based on the arm's-length principle.¹ The directive has provided the basis for more than 20 audits that have commenced to date. This far outnumbers audits by any other country in Latin America, including those that have had transfer pricing legislation since the late 1990s, such as Argentina, Mexico, and Venezuela. The transfer pricing issues are part of general tax audits and have been identified mostly in the examination of export activities carried out by Costa Rican manufacturers.

The DGT also employs Ruling 20-03 to defend transfer pricing adjustments for related-party dealings. This measure follows the Organization for Economic Cooperation and Development approach, this measure provides the basis for auditors to give more weight to the economic nature of transactions *vis à vis* the legal nature of the event.

A frequent transfer pricing issue is the definition of related parties. In this regard, under the Ruling 20-03 Costa Rica adopted an OECD-style definition of "related parties."²