

Costa Rica

International Estate Planning Guide

IBA Private Client Tax Committee

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I. Wills and disability planning documents

Wills in Costa Rica are governed by the Civil Code, which establishes formal requirements for testamentary dispositions and succession rules.

The primary advantage of executing a will is that the testator unequivocally sets his or her intentions regarding the disposition of assets; designates the heirs; appoints the executor; and establishes the manner in which the estate shall be administered and distributed.

A properly executed will ensures that the estate is administered and distributed more expeditiously and with minimal judicial contention, thereby reducing procedural costs and lessening friction among the testator's heirs.

There are two main types of wills:

1. Open will: executed before a notary and witnesses, ensuring authenticity and legal certainty.
2. Closed will: sealed and delivered to a notary for safekeeping, balancing privacy with formal safeguards. Unlike the open will, whose contents are publicly known at the moment of execution, the closed will preserves the secrecy of the testator's declarations until after death. Costa Rican legislation recognises this form as valid, but subjects it to an exacting set of formal and procedural requirements, particularly because the will is physically sealed and its integrity must be safeguarded until judicial opening.

It is worth mentioning that a will may be revoked or altered by the testator at any time, in which case the new will automatically nullifies any prior one.

II. Trusts, foundations and other planning structures

In Costa Rica, testamentary trusts (*fideicomisos testamentarios*) operate as a valid testamentary mechanism through which the testator transfers ownership of specified assets to a fiduciary, who must administer them in accordance with the lawful and predetermined purposes expressed by the settlor (*fideicomitente*). The trust becomes effective at death and has been recognised in Costa Rican legislation as a typical and regulated legal institution, primarily governed by the Commercial Code.

Unlike other jurisdictions, especially those governed by common law, Costa Rica does not have a fully developed trust system. Nevertheless, Costa Rican law provides functional equivalents through fiduciary contracts and statutory mechanisms whereby the settlor (*fideicomitente*) transfers ownership of his or her assets into a trust, to be administered by a trustee (*fiduciario*). The trustee is charged with managing and distributing said assets strictly in accordance with the settlor's instructions and requirements, which shall only take effect upon the settlor's death. In practice, fiduciary services are generally onerous, as the fiduciary is entitled to compensation, although Costa Rican law does not regulate specific fee structures.

The testamentary trust is entirely revocable during the testator's lifetime and may be amended or substituted prior to death. The trust is also temporally limited because the fiduciary holds title only until the trust's purpose or condition is fulfilled, after which the assets must be transferred to the beneficiaries designated by the settlor (*fideicomitente*).

In summary, the testamentary trust functions as a flexible estate planning tool within the Costa Rican legal system, allowing the settlor (*fideicomitente*) to impose structured administration, asset protection and conditional transfers that extend beyond death, while remaining subject to statutory limits that prevent perpetuities and ensure the transparency and legality of its objectives.

III. Taxation

A. General considerations of the Costa Rican tax system

1. Territoriality

The Costa Rican tax system is based on the 'territoriality principle', whereby only income derived from Costa Rican sources would be subject to income tax. Income tax is imposed on occasional or continual revenues derived by legal entities or individuals within the national territory, regardless of the citizenship or residence of the recipient of such income.

Costa Rican source income is defined as any income derived from services rendered, goods located or investments used within national territory.¹

Based on the above, to consider income as taxable, it must have been generated within national territory, with the exceptions included in the law, therefore, any income derived from offshore assets or investments, by a Costa Rica tax resident would not be considered taxable locally. Also, a tax resident with no Costa Rican source income is not required to file a personal income tax return.

2. Tax Residence

The Income Tax Law² (ITL) establishes that an individual domiciled in Costa Rica will be considered a taxpayer, regardless of his or her citizenship, or the place where contracts are executed. Furthermore, the Regulations to the ITL³ establish that individuals who remain, continuously or intermittently, in the country for more than 183 days, including the days of entry and exit from the country, during the same fiscal period, are Costa Rican tax residents.

To determine the period of stay in Costa Rican territory, the tax authorities will consider sporadic absences. Sporadic absences are to be understood as any departure from the national territory that does not exceed 30 continuous calendar days.

The tax authorities are entitled to request, from the immigration authorities, a certificate of entries and exits from the individual during the year.

3. Fiscal year

The fiscal year is a calendar year: from 1 January to 31 December. The filing deadline of the return and payment of the corresponding tax, in accordance with Article 20 of the Income Tax Law, is two months and 15 days after the end of the tax period.

¹ Law No 7092: Income Tax Law.

² Art 2, para e, Law No 7092: Income Tax Law.

³ Regulations to the Income Tax Law, Art 10, para 1.

4. Passive income

Passive income generated by Costa Rican companies abroad can be taxable exceptionally. Passive income includes dividends, royalties, interest, and income from movable and immovable assets.

For income from an extraterritorial source to be taxed in Costa Rica, two essential requirements⁴ must be met: (1) the company that generates said income must belong to a multinational group; and (2) the company is considered 'non-qualified' according to the requirements established by the ITL and tax administration.

The difference between a 'qualified' or 'non-qualified' company depends on the economic substance of the entity. Article 2 bis of the ITL indicates that the analysis of the economic substance must be carried out for each investment held abroad and not for the company as a whole.

B. Taxes

1. Estate tax

Costa Rica has no estate tax.

2. Gift tax

Costa Rica has no gift tax.

3. Exit tax

Costa Rica has no exit tax.

4. Wealth tax

Costa Rica has no wealth tax.

5. Capital gains tax

The general tax rate is 15 per cent. Capital gains generated abroad by individuals considered tax residents in Costa Rica are not subject to taxation locally, based on the territorial tax principle. Capital gains generated abroad by a Costa Rican company can be taxed if the company is considered 'non-qualified', as explained above.

If a non-resident generates a capital gain derived from the disposal of Costa Rican assets, the ITL establishes the 'withholding' mechanism to make the collection of said tax effective. Article 28 ter of the ITL states that, in the case of real estate assets located in Costa Rica, the buyer has the obligation to withhold 2.5 per cent of the purchase price as tax on capital gains.

In cases where the asset sold is an intangible asset or securities, the withholding would apply only when the buyer is a taxpayer in Costa Rica.

⁴ *Ibid.*