

# DOING BUSINESS Guatemala







# Guatemala

Guatemala is a country in Central America bordered by Mexico to the north and west, the Pacific Ocean to the southwest, Belize to the northeast, the Caribbean and Honduras to the east and El Salvador to the southeast. It is the most populated country in Central America, with a total area of 108,889 km<sup>2</sup>.

Investment areas include agriculture, energy and mining, infrastructure, drawback and services.

## Reasons to Invest in Guatemala

- It is the largest economy in Central America (37.5% of the total GDP).
- It offers access to 67.5 million people in the Mesoamerican market.
- It has a local market of 17 million citizens, 70% of them under the age of 30.
- It has the largest student population in Central America.
- In 2021, there was an amount of USD 3,471.7 million of foreign direct investment.
- Guatemala has a Free Zone Law through Decree 65-89.
- Rated to be the 5th most open Latin American economy to direct foreign investment.
- Nontraditional products are those recently incorporated into the exportable supply of Guatemala. Includes six main groups: agricultural, apparel and textiles, manufacturing goods, seafood products, furniture and forestry, and handicrafts. Throughout the years, non-traditional exports outside the Central American area have shown a remarkable dynamism.

- A small country with key investment and development potential. Recent cluster analysis suggested opportunities in the following fields:

- ✓ Agribusiness, fishery and forestry.
- ✓ Electronic components and software.
- ✓ Infrastructure and services.
- ✓ Renewable Energy.
- ✓ Medical research and development.
- ✓ Textiles and apparel.
- ✓ Tourism.

## Business Presence

- The main types of for-profit business structure in Guatemala are:
  - ✓ Entrepreneurship Society.
  - ✓ Limited liability companies.
  - ✓ Commercial Society.
  - ✓ Registered branches of foreign companies and corporations.
- All companies, corporations and partnerships require a minimum of two shareholders or partners, except the Entrepreneur Society that only requires one partner.
- All societies must have nominative shares.

## Foreign Investments Restrictions and Conditions

- The Central Bank maintains the faculty to intervene in the exchange market, but only indirectly: purchasing and selling foreign exchange.
- All foreign currency transactions must be made through approved financial institutions. A form must be filled out for all transactions involving foreign investments, remittance of dividends and repatriation of capital.
- To increase the efficiency of the mechanisms through which Banco de Guatemala participates in the exchange market, some gradual modifications will be introduced to comply with the following principles to achieve a flexible exchange system:
  - ✓ That it be consistent with a monetary schedule of explicit inflation goals.
  - ✓ That it be based on rules that are clear, transparent and understandable in the markets.
  - ✓ That it eliminates the discretion of the participants of Banco de Guatemala.
  - ✓ That it reduces the volatility of the exchange rate without affecting its trend.

# Taxation System

- Guatemala's Constitution grants the power of taxation to the Congress of the Republic<sup>1</sup>. This provides certainty that no other government body can impose tax burdens on the private sector.
- Guatemala imposes a tax on all income derived in Guatemalan territory, include individuals or legal Entities or estates, domestic or foreign, resident or not in the country. Taxing income depends on your source that can be:
  - ✓ Profit or Revenue Activities:
    - ▶ Regime Utilities Rates: 25% in 2015 onwards.
    - ▶ Optional Regime Income: Less than GTQ 30,000.00 applies 5%, over GTQ 30,000.00 applies 7%.
  - ✓ Revenue Job:
    - ▶ Less than GTQ 30,000.00 applies 5%, over GTQ 30,000.00 applies 7%.
  - ✓ Capital Income and Capital Gains:
    - ▶ Rate of 10% excluding dividends applies 5%.

## Value Added Tax (VAT)

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- The VAT standard rate is 12%<sup>2</sup>, generally chargeable on<sup>3</sup>:
  - ✓ Supplies of goods made in Guatemala. Real Estate taxed with 3% tax stamps, in case of second or subsequent sale.
  - ✓ Supplies of services made in Guatemala.
  - ✓ The import of goods and certain services into Guatemala.
  - ✓ Leases.
  - ✓ First sale or exchange and awards of Real Estate Property.
  - ✓ Donation of movable property or real property.
- There are various transactions that are exempt for VAT purposes including:
  - ✓ Exports of goods and services.
  - ✓ Services provided by banks and financial institutions.
  - ✓ Contributions in kind. Will not be exempted when this one to be brought is all or part of a real estate which has been previously given to a society that works for the real estate performance.

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<sup>1</sup>Article 239 of the Political Constitution of the Republic of Guatemala

<sup>2</sup>Article 10 of the VAT Law, Decree 27-92

<sup>3</sup>Article 3 of the VAT Law, Decree 27-92

<sup>4</sup>Article 4 of the Law & Tax Stamps and Special Stamped Paper for Protocols, Decree 37-92.



- ✓ Mergers.
- ✓ The issue and transfer of shares, credit titles and any kind of security.
- ✓ The transfer of goods under trust and the return of trusted goods to the settler.

## Stamp Tax

- Tax in documents containing the following acts and contracts:
  - ✓ Civil and merchant contracts.
  - ✓ Documents issued abroad to take effect in the country.
  - ✓ Public or private documents for proof of payment with goods or sums of money.
  - ✓ Receipts issued by insurance or surety in respect of premiums paid or payments of bonds corresponding to policies of all kinds of insurance or bond.
  - ✓ Proof of payment of winnings from lotteries, raffles and drawings by private and public entities.
  - ✓ Documents proving commissions that pays the state for tax collection, tax purchases of species and any commission established in law.
  - ✓ Receipts, payroll or other documents supporting the payment of dividends or profits, both in cash and in kind. Dividends credited with coupons are also subject to the payment of the tax.
  - ✓ Second and subsequent sale or exchange of real estate.
  - ✓ The 3%<sup>4</sup> Stamp Tax applies to dividend payments and documents issued abroad and used locally as documentary evidence for transactions not subject to VAT.
  - ✓ The tax is determined applying the rate to the value of the acts and contracts subjects to tax. The value is reflected on the document, which cannot be lower than the one registered in the public records, registrations, property registries or in the official listing.



<sup>4</sup>Article 4 of the Stamp Law, Decree 37-92

## Solidarity Tax

- There are exemptions to this tax applied to:
  - ✓ The institutions of the State, their decentralized or autonomous entities, and the municipalities and their enterprises, with the exception of the legal entities formed with mixed capital.
  - ✓ The universities and the private and public educational centers legally authorized to operate in the country.
  - ✓ The persons subject to this tax who are commencing business activities, during the first four quarters of operation.
  - ✓ The commercial and agricultural activities conducted by individual persons or legal entities that per a specific law or due to operating within the special regimes established by the Law of Promotion and Development of Export and Drawback Activities, Decree 29-89 and the Law of Free Trade Zones, Decree 65-89, both of the Congress of the Republic, and their reforms are exempt from the payment of Income Tax, during the term of the exemption that they enjoy.
  - ✓ The individual persons or legal entities and the other entities that are subject to the Solidarity Tax who pay Income Tax according to the Simplified Optional Regime over income from lucrative activities of this tax (Decree 10-2012).
  - ✓ The taxpayers who as of the date on which the Solidarity Tax established in this Law went into effect incur in operational losses during two consecutive years. This exemption is solely applicable for the four tax periods following the second year in which the cited losses occurred.
- The tax basis for this tax is comprised of whichever is greater between:
  - ✓ One-fourth of the total net assets.
  - ✓ One-fourth of the gross income (taking as a basis the last Income Tax return).
  - ✓ The tax period is quarterly and shall be calculated by calendar quarters.
  - ✓ The tax rate for this tax is 1%.
  - ✓ In cases of periods less than one quarter, the tax is determined in proportion to the number of days of the quarter that have transpired.
  - ✓ The tax must be paid within the month immediately following the end of each calendar quarter, using the means that the Tax Administration has made available to the taxpayers for this purpose.





## Real Estate Tax

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- The Single Property Tax (IUSI, for its acronym in Spanish) event is applied owning real estate within the Republic's territory. Rates are applied on the registered value of real estate in Quetzales (USD 1.00 = GTQ 7.80 approx.), as follows:
  - ✓ From 0 to GTQ 2,000.00 exempted.
  - ✓ From GTQ 2,001.00 to GTQ 20,000.00 2 per thousand annually.
  - ✓ From GTQ 20,001.00 to GTQ 70,000.00 6 per thousand annually.
  - ✓ From GTQ 70,000.00 and up 9 per thousand annually.
- This tax is paid on a quarterly basis.

## Incentive Law for the Development of Renewable Energy Projects

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- Exemption on customs duties and VAT on the import of machinery and equipment to be used in the project. In this case the exemption should be authorized by the Tax Office.
- 10-year income tax exemption as of the starting date of the commercial operations.
- Created to take advantage of the strategic position of Guatemala that allows the development of different renewable energy sources; it is desired to cover the market through micro, small, medium and large power generating plants.



# Agency Distribution or Representation Contracts

- If an individual decides to appoint an agent, distributor or representative for your products and/or services in Guatemala, it is recommended to contract a legal advisor for the preparation, negotiation and execution of a written contract. This contract should include:
  - ✓ Type of contract (i.e.: agency, distribution or representation).
  - ✓ Term of contract with a possibility of extension.
  - ✓ Territory covered by the contract.
  - ✓ Is it exclusive or not.
  - ✓ Principal duties of the parties.
  - ✓ Remuneration of the agent, if any, or sale price of the products or services to the distributor or representative.
  - ✓ A clause of the resolution of controversies, number of arbiters, entity in charge of arbitration, as well as procedures, language and location.

## Benefits of the Free Trade Zones

- The Industrial or service provider authorized to operate in the Free Trade Zones will enjoy the following tax incentives:
  - ✓ Equipment, machinery, tools, raw materials, inputs, semi elaborated products, containers, packaging and in general in goods used for production or the offering of services, are not subjects to taxes, custom duties and import charges.
  - ✓ Total income tax exemption on income obtained exclusively from the activity as an industrial Permit-Holder, for a period of ten years.
  - ✓ Exemption from the Value Added Tax, in the transfer of merchandise within and between Free Trade Zones.





## Labor Relations

- Guatemala is a country with considerable human capital that offers attractive, high-quality and low-cost labor to local and foreign investors. In Guatemala labor relations are governed by the Political Constitution of the Republic, by the Labor Code, International Treaties and by several laws and regulations which rule different labor related areas.
- Other regulations have been implemented to formalize and improve labor relations to meet the needs of national and foreign investors, such as hourly work. Unfortunately no advance has been made to achieve a through labor reform, incorporating regulations that meet the needs of the growing population. In addition to the protection to the workers, regulations are still needed to promote recruitment and to improve economic activities which will result in an important growth of the economy.
- In the meantime, legislation is complemented by labor contracts and internal labor regulations which rule labor relations. Thus, it is important that all employers enforce clear policies and comply with present regulations.
- In 2021, the Constitutional Court revoked the suspension of partial work in Guatemala. It seeks to encourage a labor system where the greatest number of employees can be integrated into decent work and where they can be accommodated according to their needs, as long as individual rights continue to be respected. In this way, it is again easy to generate part-time jobs so that employers can have more supply and employees contribute to more labor demand to support the country's economic growth.
- The Guatemalan Labor Code regulates vacations within the territory whereby law stipulate that every worker has the right to a paid vacation period whose minimum duration is fifteen days. To be able to opt for these, the worker must have a minimum of (150) days worked in the year. Vacations may not be accumulated over the years to enjoy more time than is stipulated by law.

## Foreign Investment Law

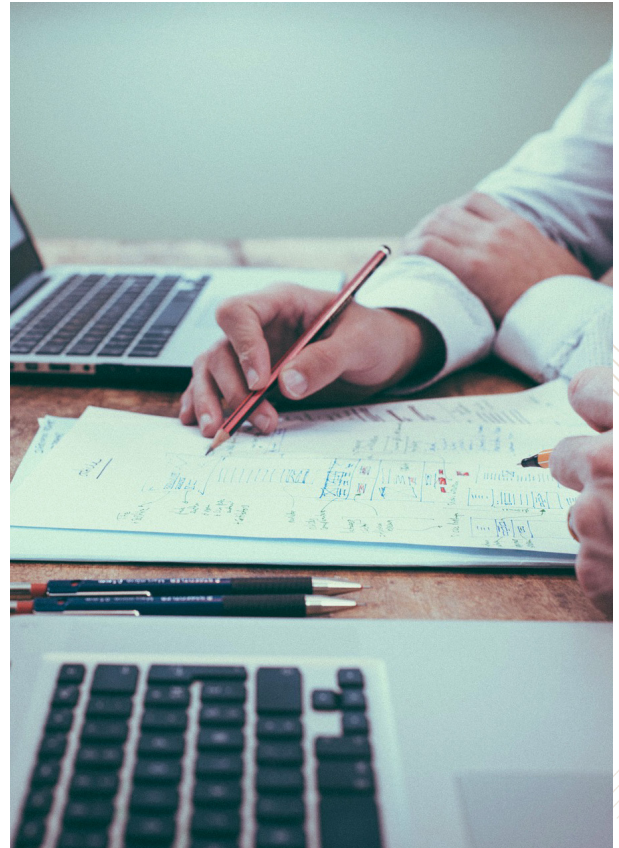
- Promotes foreign investment and includes provisions that recognize and guarantee private property rights equally for Guatemalan nationals and foreign investors and establishes an equal treatment between domestic and foreign investors.
- Any foreign investor has equal legal conditions as domestic investors and this is a great incentive for foreign investors in Guatemala, given that not every country grants this.



- Foreign Investment Law recognizes the following rights for all foreign investor:
- ✓ Private Property.
- ✓ Expropriation, only for reasons of collective, social benefit or social interest can be proven.
- ✓ Free trade.
- ✓ Free access to foreign exchange.
- ✓ Prohibition of confiscatory taxation and double taxation.

## Government Procurement

- Government Procurement Law regulates all the agreements of sales, purchase, supplies of goods, construction and services between private suppliers and the governmental institutions, which includes all decentralized entities, municipalities and public corporations.
- The Government Procurement Law states three types of procurements:
  - ✓ Direct Sales or Contracts: These are executed with the State when the purchase is under thirty thousand quetzals (GTQ 30,000.00) approximately three thousand eight hundred fifty dollars (USD 3,850.00).
  - ✓ Request of Quotes: These are executed when the acquisitions are below nine hundred thousand quetzals (GTQ 900,000.00) or approximately one hundred fifteen thousand three hundred eighty five dollars (USD 115,385.00).
  - Public Tender: This is executed for acquisitions above nine hundred thousand quetzals (GTQ 900,000.00) or approximately one hundred fifteen thousand three hundred eighty five dollars (USD 115,385.00).



## Insolvency Law

- At the beginning of 2022, the modifications to the Insolvency Law in Guatemala were approved. These changes seek to help individuals or businesses that have failed to meet financial obligations and are at risk of being repossessed or evicted from their properties. It seeks to protect the credit through the recovery and conservation of the company to find a solution in a way where those involved can be supported and a strategy is generated where those involved can rotate the business to obtain greater economic benefits.



We, at García & Bodán, are ready to support you in all legal matters of interest to your company or business, we have highly qualified lawyers on investment issues.

For further information related to investment matters or any of the topics included on this document, please contact:



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Last revised date: October, 2022

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