



**GARCIA & BODAN**  
Attorneys & Counselors at Law

# DOING BUSINESS Guatemala





# Guatemala

**G**uatemala is a country in Central America bordered to the north and west by Mexico, to the southwest by the Pacific Ocean, to the northeast by Belize, to the east by the Caribbean and Honduras, and to the southeast by El Salvador. It is the most populous country in Central America, with an 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 and the ninth most important economy in Latin America (with gross domestic product - GDP - of USD 92.7 billion in 2023).
- Guatemala's GDP grew by 4.1% in 2022 and 3.5% in 2023, and it is expected to grow by 3% in 2024.
- It has a local market of 17.6 million inhabitants (2023). Its population is young and growing, with great potential in terms of skilled labor and competitive costs compared to other countries in the region.
- In 2023, there was an amount of USD 1,552.3 million in foreign direct investment.
- Guatemala has a Free Trade Zone Law through Decree 65-89, as well as a law that regulates the export activity and maquila, both enacted by the Congress of the Republic, offering attractive fiscal incentives for foreign investment.
- In 2022, total exports from this sector amounted to USD 622.6 million and imports to USD 313.5 million.

- The Fintech industry in Guatemala has seen an increase of 416.7% in the last five years, from 2017 to 2021, going from 6 to 31 operational Fintechs.
- The country is rich in natural resources, is one of the megadiverse countries in the world, and has vast cultural wealth.
- A country with key investment and development potential. A recent analysis suggests opportunities in the following fields:
  - ✓ Agribusiness, fishing and forestry.
  - ✓ Electronic components and software.
  - ✓ Infrastructure and services.
  - ✓ Renewable Energy.
  - ✓ Medical research and development.
  - ✓ Textiles and clothing.
  - ✓ Tourism.

## Commercial Presence

- The main types business structures with profit in Guatemala are:
  - ✓ Civil Society.
  - ✓ Commercial Companies:
    - Collective Society.
    - Simple Limited Partnership.
    - Limited Liability Company.
    - Corporation.
    - Limited Partnership by Shares.
    - Entrepreneurial Society.
  - ✓ Foreign Agencies or Branches.
- All societies require a minimum of two shareholders, except for the Entrepreneurial Society, which can operate with a single shareholder.
- All societies must have nominative shares.



# Restrictions and Conditions for Foreign Investment

- The Bank of Guatemala maintains the authority to intervene in the currency market, but only indirectly: buying and selling foreign currencies.
- The use of foreign currencies is free. Each person is responsible for the losses and risks derived from operations using foreign currencies. The Law of Free Negotiation of Foreign Currencies has made possible that the negotiation, possession, purchase, sale and other operations are possible in Guatemala without major state intervention.

## Tax System

- The Constitution of Guatemala grants the power to decree taxes, duties, and contributions to the Congress of the Republic<sup>1</sup>. This provides certainty that no government body can impose a fiscal burden on the private sector arbitrarily.
- Guatemala imposes an income tax on all income obtained within Guatemalan territory by individuals, legal entities, entities or estates, nationals, or foreigners, whether residents or not. The tax imposed depends on its source, which may be:
  - ✓ Income from Lucrative Activities:
    - Utility Regime Rates: 25% from 2015 onwards.
    - Optional Regime Income: Less than GTQ 30,000.00 applies a 5% rate, and more than GTQ 30,000.00 applies a 7% rate.
  - ✓ Labor Income:
    - Less than GTQ 30,000.00 applies a 5% rate, and more than GTQ 30,000.00 applies a 7% rate.
  - ✓ Capital Income and Capital Gains:
    - Rate of 10%, except for dividends, which apply an 5%.

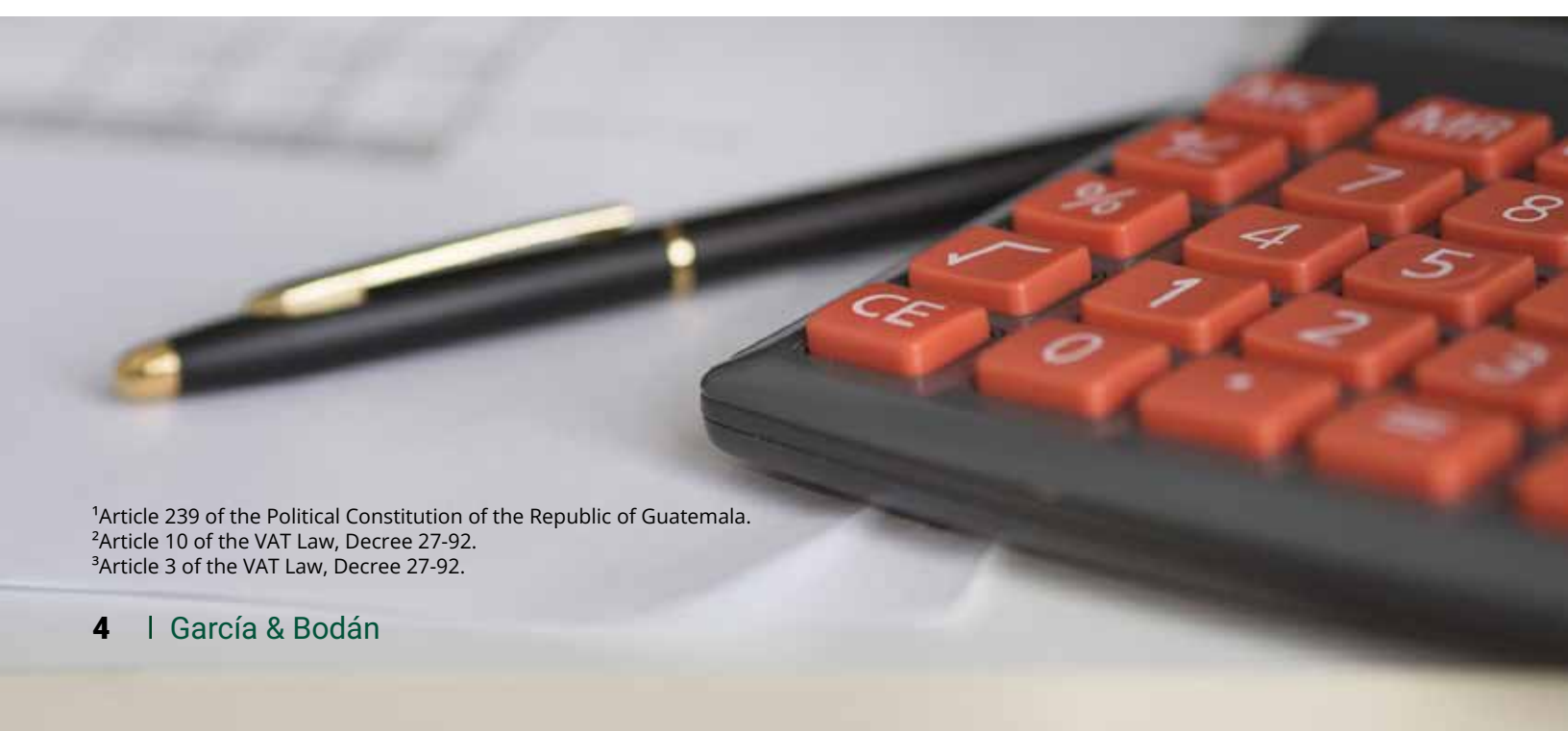
## Value Added Tax (VAT)

- The standard VAT rate is 12%<sup>2</sup> applicable to<sup>3</sup>:

<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.



- ✓ Sale of real estate subject to stamp duty of 3% in the case of second or subsequent sales.
- ✓ Provision of services within Guatemalan territory.
- ✓ Imports.
- ✓ Leasing of movable and immovable property.
- ✓ First sale or barter and awards of real estate.
- ✓ Donations among living persons of movable and immovable property.
  - Transactions exempt from VAT:
    - ✓ Exports of goods and services.
    - ✓ Services provided by banks and financial institutions.
    - ✓ Contributions in kind. The contribution of real estate to companies is not exempt when the property to be contributed is part of a property previously contributed to a company dedicated to real estate development.
    - ✓ Mergers.
    - ✓ The issuance and transfer of shares, credit titles, and any kind of security.
    - ✓ The constitution of trusts and the return of trust assets to the trustor.

### Solidarity Tax

- Exempt from the solidarity tax:
  - ✓ State agencies, their decentralized or autonomous entities, and municipalities and their companies, except for legal entities formed by mixed capital.
  - ✓ Universities and legally authorized public and private educational centers to operate in the country.



- ✓ Individuals subject to this tax who start business entities during the first four operating quarters.
- ✓ Commercial and agricultural activities carried out by individuals or legal entities that by law are specified or operate within the special regimes established by the Law on the Promotion and Development of Export Activity and Maquila Decree Number 29-89 and the Free Zones Law Decree Number 65-89, both from the Congress of the Republic, and its reforms are exempt from paying Income Tax during the period they enjoy the exemption.
- ✓ Individuals or legal entities and other entities or estates subject to the solidarity tax that pays the Income Tax in accordance with the Optional Simplified Regime on income from lucrative activities of this tax (Decree 10-2012).
- ✓ Taxpayers who, as of the effective date of the Solidarity Tax establishing the law, incur operating losses for 2 consecutive years. This exemption applies exclusively for the four tax periods following the second year in which the cited losses occurred.
  - The taxable base of the tax is constituted by whichever is greater:
    - ✓ One-fourth of the amount of the net assets.
    - ✓ One-fourth of the gross income.
- ✓ The tax period is quarterly and will be calculated by calendar quarters.
- ✓ The tax rate for this tax is 1%.
- ✓ In the case of periods less than a quarter, the tax is determined in proportion to the number of days of the quarter that have elapsed.
- ✓ The tax must be paid within the month immediately following the end of each calendar quarter, using the means provided for tax administration available to taxpayers.



## Real Estate Tax

- The Single Real Estate Tax (IUSI) is applied to real estate within the territory of the Republic. The rates are applicable according to the registered value of the property (USD 1.00 = GTQ 7.80 approx.), as follows:
  - ✓ From 0 to GTQ 2,000.00 exempt.
  - ✓ 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 onwards 9 per thousand annually.
- This tax is paid quarterly.

## Incentives Law for the Development of Renewable Energy Projects

- Exemption from customs duties and VAT on the importation of machinery and equipment to be used in the project. In this case, the exemption must be authorized by the Fiscal Office.
- Exemption from income tax for 10 years from the start of commercial operations.
- Created to take advantage of Guatemala's strategic position that allows the development of different renewable energy sources; aims to cover the market through micro, small, medium, and large power generation plants.

## Agency, Distribution or Representation Contracts

- If an individual decides to appoint a distributor or representative for their products and/or services in Guatemala, it is recommended to hire a legal counsel for the preparation, negotiation, and execution of a contract. This contract should include:



- ✓ Type of contract (i.e.: agency, distribution or representation).
- ✓ Contract term with a possibility of extension.
- ✓ Territory covered by the contract.
- ✓ Exclusivity or not.
- ✓ Main functions of the parties.
- ✓ Remuneration of the agent, if any, or the sale price of the products or services to the distributor or representative.
- ✓ A clause for dispute resolution, number of arbitrators, entity responsible for arbitration, as well as procedures, language, and location.

## Benefits of Free Trade Agreements

- The industry or service provider authorized to operate in the Free Trade Zones will enjoy the following tax incentives:
  - ✓ Equipment, machinery, instruments, raw materials, inputs, semi-finished products, containers, packaging, and generally goods used for production and service provision, are not subject to taxes, customs duties, and freight and packaging charges.
  - ✓ Exemption from income tax on income obtained exclusively from activity as an industrial permit holder, for a period of ten years.
  - ✓ Exemption from the Value Added Tax on the transfer of goods within and between Free Trade Zones.

## Labor Relations

- Guatemala is a country with considerable attractive human capital, of high-quality and economical for local and foreign investors. Labor relations in Guatemala are regulated according to the Political Constitution of the Republic, the Labor Code, International Treaties, and in line with various laws and regulations that govern work in different related areas.





- Other regulations have been implemented to improve labor relations to meet the needs of national and foreign investors, such as hourly work. Unfortunately, no progress has been made to achieve a careful labor reform, incorporating regulations that meet the needs of growing population. In addition to the protection to the workers, the necessary regulations are still required to promote recruitment and improve economic activities that will result in economic growth.
- Meanwhile, the legislation is supplemented according to labor contracts and internal labor regulations that govern labor relations. Therefore, it is important that all employers implement clear policies and comply with current regulations.
- In 2021, the Constitutional Court revoked the suspension of part-time work in Guatemala. It seeks to encourage a labor system where the greatest number of workers can be integrated into a decent job 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 possible to generate part-time jobs so that employers can have more supply and workers can contribute to more labor demand to support the country's economic growth.
- The Guatemalan Labor Code regulates vacations within the territory, where by law it stipulates that every worker is entitled to a paid vacation period with a minimum duration of fifteen days. To be eligible for this, the worker must have worked a minimum of 150 days in the year. Vacations cannot be accumulated over the years to enjoy more time than stipulated by law.

## Foreign Investment Law

- Promotes foreign investment and includes provisions that recognize and guarantee property rights for both nationals of Guatemala and foreign investors, thus establishing equal treatment between local and foreign investors.
- Any foreign investor has equal legal conditions as the national investor and this is a great incentive for foreign investors in Guatemala, since not all countries grant this.
- The Foreign Investment Law recognizes the following rights for all foreign investors:
  - ✓ Private Property.



- ✓ Expropriation, only for reasons of collective benefit, social interest or proven public interest.
- ✓ Free trade.
- ✓ Free access to foreign exchange.
- ✓ Prohibition of confiscatory taxes and double taxation.

## Public Sector Purchases

- The State Procurement Law regulates all sales, purchase, construction, product supply, and service agreements between private suppliers and government institutions, including all decentralized institutions, municipalities, and public corporations.
- The State Procurement Law contemplates three types of acquisitions:
  - ✓ Direct Purchases and Contracts: These are executed by the State when the purchase amount is below thirty thousand quetzals (GTQ 30,000.00) or approximately three thousand eight hundred fifty dollars (USD 3,850.00).
  - ✓ Quotation Request: These are executed when the purchases 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 Bidding: These are executed for purchases 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, modifications to the Insolvency Law in Guatemala were approved. These changes aim to help individuals or companies that failed to meet their financial obligations and are at risk of having their properties seized or evicted. The goal is to protect credit through the recovery and conservation of the company to find a solution that can support those involved and generate a strategy where the involved parties can turn the business around to achieve 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 more information related to investment issues or any of the topics included on this document, please contact:



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