Guatemala

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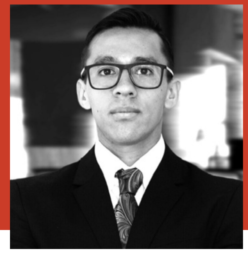

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INCOME TAXES

Corporate Income Tax (CIT):

Guatemalan law mandates a territorial tax system, pursuant to which Guatemalan incomes, operations and transactions are taxable in Guatemala. Corporations incorporated under Guatemalan laws are considered Guatemalan Residents. As a Guatemalan Resident, corporations must be registered before the Tax Authority ("Superintendencia de Administración Tributaria"). Corporations must have a legal representative, an Accountant and a domicile registered with the Tax Authority.

Guatemalan Corporation are obligated to present and submit any information requested by the Tax Authority. This information may include documentation, explanations, materials and data (e.g., accounting books, agreements, invoices, receipts, proof of payment, bank deposits, bank accounts) pursuant to which the Tax Authority may verify fulfillment of tax obligations;

Guatemala Corporate Tax is governed by the Income Tax Law ("Ley del Impuesto Sobre la Renta") which is contained in Tax Update Law Congress Decree 10-2012. Guatemala has a territorial tax system, pursuant to which only acts linked with Guatemala are taxable in Guatemala.

Guatemalan sourced income generated by Guatemalan Residents or Non-Residents with permanent establishment trigger Income Tax. Income Tax is generated by profitable activities (i.e., income from trade and business activities, sales of goods and services rendered). Pursuant to Income Tax Law, taxpayers may select between two different Income Tax Law regimes: A so called "Optional Income Tax Regime" (5-7% of gross income over "profitable activities") or Net Profit Income Tax Regime (25% calculated over net income).

The Optional Income Tax Regime requires monthly declarations while the Net Profit Regime is declared quarterly and paid quarterly. A final yearly income tax return must be filed up until March of the following year; total yearly income is declared in a yearly income tax return and outstanding amounts are paid then. The tax year for settling the income tax starts January 1 and ends December 31 of each year and must be coincident with the accounting period of the taxpayer. Taxpayers under the Net Profit Regime are not subject to paying the Solidarity Tax equivalent to a 1% calculated over one fourth of the value of the net asset or of the gross income, whichever is higher. This tax applies when the corporation generates a 4% or higher gross margin.

Under the Net Profit Regime, taxpayers deduct costs and expenses from gross income (total income) resulting in the taxable income to which 25% rate is applicable. The general rule is that the only deductible expenses from income are costs and expenses necessary to generate taxable income. Deductible expenses must be supported by the corresponding legal documentation (i.e., authorized invoices, special invoices, invoices issued by non-resident entities, importation documents and receipts for payments of wages, among others.) The law for certain activities requires notarial documents and use of the local banking system.

The elected Income Tax regime may be changed. Prior to changing the Income Tax Regime, corporation must submit a written notice to the Tax Authority, coming into effect the next fiscal year.

Dividend Tax (DT):

Dividends payment are subject to a 5% Income Tax Withholding by the entity that distributes profits. Such Tax must be paid within the first ten days of the following month in which payment was made. A 5% dividend Income Tax Withholding is triggered by payment of profits from Guatemalan Residents and Non-Residents with permanent establishments; profits accrued by Guatemalan Tax Payers from Non-Residents without permanent establishments are not considered as taxable in Guatemala.

Capital Gains Tax (CGT):

Assets considered as Guatemalan Assets (e.g., assets located in Guatemala, Guatemalan Real Estate, securities issued by Guatemalan Residents or Non-Residents with Permanent Establishments, shares issued by Guatemalan Residents) transfer is subject to a Capital Gain Tax, if sold over book value or acquisition value. A 2013 amendment considers CGT for shares of non-domiciled entities with assets in Guatemala, this is subject to certain qualifications. If Capital Gain apply, a special Tax Return must be filed and 10% of such gain must be paid during the first ten days of the following month in which the payment was received.

Incomes deriving from assets considered as Guatemalan (e.g., interest, rents, royalties) are considered as an Income Tax Capital Gain and a rate of 10% of the profit will apply. If the payor does not withhold this tax, payee must file the corresponding tax return and pay it within the first ten days of the following month in which payment was received.

Capital Gains as Income Tax are applicable if in case there is a surplus for the transferee of a stock transfer. In order to determine if a capital gains tax is applicable, in the event that a surplus between the book value of the shares (determined by share issuer) or stock acquisition value and the transfer value exists.

Guatemalan Income Tax Law provides that Capital Gains apply to surpluses on transfer of stocks which provide ownership over Guatemalan assets (such as a Guatemalan Entity Stock). Pursuant to such provision, it could be argued by Guatemalan Tax Authorities that the Indirect Transfer of Stock is subject to Income Tax if there is a surplus on the transfer. This provision has not been strongly enforced by Guatemalan Tax Authority. It must be considered that under an Indirect Transfers, (unless specified) it would not be possible to determine specific values over the Guatemalan Entity Stock portion. An in-depth analysis of the specifics of a case is recommended to properly document the transaction in order to avoid unnecessary scrutiny over the transaction.

Withholding Tax (WHT):

Guatemalan sourced income (i.e., the payment is linked to an activity in Guatemala) obtained by Non-Residents without permanent establishments are subject to Withholding Tax in Guatemala. Withholding tax rate for non-resident payments is progressive (i.e., 5% to 25%) depending on the nature of the taxable event. Such Tax must be paid within the first ten days of the following month in which payment was done.

The Following Withholding rates are applicable:

- 3% applies to foreign news, movies, music etc.
- 5% to Dividends, air transport, cargo, reinsurance, voice and data transfer, electricity services.
- 10% on Interest, unless paid to foreign financial services companies (and multilateral organizations) or banks regulated by their country of origin, "in conformity with the Guatemalan Banking law". (The scope and constitutionality of this provisions is being increasingly questioned).
- 15% Commissions, salaries, bonuses, other than expense reimbursements. Payments to athletes, artists. Royalties. Fees. Consulting services.
- 25% Other undetermined income.

Income Tax might be directly paid by Non-Residents if withhold is not performed. Non tax registration is needed to perform direct payment.

TRADING TAXES

Value Added Tax (VAT):

Value Added Tax is triggered by the sale of goods, leases and services rendered within Guatemalan territory. Value Added Tax is also generated due to import of goods, donations, inventory destruction and/or lost and award of goods.

Sale of goods, leases and services rendered in Guatemala must be invoiced and such invoices must be previously authorized by the Tax Authority. Recently, it has been enforced Electronic Invoice and VAT tax payers must issue Electronic Invoices; also, is mandatory to include Tax ID on invoices issued on transactions over approximately US$ 300.00.

VAT formal obligations include keeping VAT record documentations. Tax payer must submit a request to the Tax Authority, in order for it to authorize the Book of Sales and Services Rendered as well as a Book of Purchases and Services Received. VAT tax payers are obliged to record its sales, services rendered, purchases and services received.

Payable Value Added Tax is determined using the difference between Value Added Tax Credit (i.e., generated due to the acquisition of goods and services related with its commercial activity) and Value Added Tax Debit (i.e., generated from Value Added Tax operations). Value Added Tax return shall be filed monthly (during the following month) and if there is a remainder of Value Added Tax Debit, 12% of said remainder must be paid as Value Added Tax.

Free-Trade Zones System (FTZ):

Guatemala Free-Trade Zone is Zona Libre Santo Tomas de Castilla-ZOLIC- which is a free trade zone where products can be internalized into Guatemala with a tax suspension until the products are effectively commercialized into Guatemala. Products might be imported, stored, transformed, transported, and commercialized into Guatemala or abroad by Free Trade Zone users.

ZOLIC is a decentralized and semi-autonomous entity of the Government of the Republic of Guatemala, created in 1973, by Decree 22-73 of the Congress of the Republic.

Free Trade users are subject to tax benefits including: Income Tax Exemption for a period of 10 years, Dividends Tax Exemption for 10 years, Exemption from Value Added Tax, customs duties and other charges applicable to the importation of merchandise entering the Free Zone, Value Added Tax exemption for transactions carried out within the Free Zone, Import Value Added Tax and Custom Allowances for raw materials, inputs, machinery and equipment entering the Free Zone, Exemption of Stamp Tax, on documents that contain acts or contracts in the Free Zone. Free Trade Zone users also are settled in the zone due to logistic strategy location of ZOLIC.

Recently, it has been issued regulation aiming to authorize Free Trade Zone branches authorization. The purpose of this Regulation is to develop the applicable provisions for the authorization, qualification and operation of the Public Special Economic Development Zones and the authorization and installation of the users that settle in them. Public Special Economic Development Zones operate as Free Trade Zones that might be managed by ZOLIC or a private third party.

Public Special Economic Development Zones have had a significant interest and have been installed multiple Public Special Economic Development Zones in different territories of Guatemala.

Custom Allowances:

Guatemala is part of the Central American Customs Union which is governed by CAUCA – Código Aduanero Uniforme Centroamericano (Uniform Customs Code for Central America and RECAUCA Reglamentos del Código Aduanero Uniforme Centroamerican (Regulations of the Uniform Customs Code for Central America). As a general rule, goods imported into Guatemala are subject to Custom Tariff (DAI – Derecho Arancelario de Importación) and Value Added Tax.

Certain goods are exempted from duties through special agreements and Guatemala has executed Free Trade Agreements pursuant to which-by-which preferential tariff treatment is provided to goods of origin from the signatory countries.

OECD/INTERNATIONAL RULES

BEPS Multilateral Instrument (MLI):

Guatemala is not a signatory to Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

Tax Conventions for Avoiding Double Taxation:

As of today, Guatemala as not subscribed any Tax Conventions for Avoiding Double Taxation.

Multilateral Assistance Convention (MAC):

In December 2012, Guatemala signed the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, allowing it to be removed from the list of countries that have not yet substantially implemented the internationally agreed tax standard. According to OECD, Guatemala is the second Central American country, after Costa Rica, to sign since the Convention was opened for signature to all countries in June 2011. With the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Guatemala became de 54th member of OECD. Guatemala has ratified the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which entered into force for Guatemala on 1 October 2017.

Common Reporting Standard (CRS):

Currently Guatemala has not implemented Common Reporting Standard pursuant to OECD requirements.

Controlled Foreign Corporation Rules (CFC):

Guatemala is governed by a territorial tax system and therefore foreign-sourced income is not taxable nor relevant to Guatemala. Guatemala does not have CFC rules.

Transfer Pricing Rules (TP):

Following somewhat the OECD model, transfer pricing rules are introduced to the Income Tax legislation. A wide-ranging set of rules and reporting is introduced to determine related parties, including stock ownership, business groups, and control rules. Additionally, the definition of related parties is extended to distributors and exclusive agents. No limitations regarding amounts or periodicity of the transactions between related parties are contemplated.

Thin Capitalisation Rules (TC):

Thin Capitalization rules, at a 3:1 debt/net assets ratio are now included in the Income Tax law; net asset is defined as the average between net assets of previous fiscal year and net assets of current fiscal year (according to declarations made on Income Tax Returns). This limitation is not applicable to banks, financial institutions and savings and loans associations that operate under the supervision of the Banks Superintendency. The interest rate of any debt cannot exceed the annual rate set by the Guatemalan Central Bank Authority (Junta Monetaria) to be considered a deductible expense.

Hybrid Structures Rules (HS):

As of today, Guatemala has not issued rules regarding Hybrid mismatch arrangements.

International Services rules:

Guatemala is governed by a territorial tax system and therefore are taxable in Guatemala services rendered within the Guatemalan territory. Services rendered from Guatemala are subject to Income Tax, services used in Guatemala are subject to Value Added Tax and services exported from Guatemala are Value Added Tax exempted.

Services rendered by Non-Residents with no Permanent Establishment abroad to be used in Guatemala are subject to an Income Tax Withholding. Non-Residents providing services within Guatemalan territory on a continuous basis might be considered as having a Permanent Establishment in Guatemala by maintaining a fixed place of business in Guatemala Territory.

SPECIAL PROMOTIONS

Tax Allowances by Industry/Market

Guatemala has the following Tax Allowances by industry:

1. Renewable Source Energy Generators:
2. Textile manufacture:
3. Call Centers and Business Process outsourcing.

On General terms, the tax benefits include:

1. income tax exemption for up to ten years;
2. exemption or suspension (as applicable) of custom duties and import Value Added Tax on the importation of machinery and capital goods related to the activity;
3. exemption of stamp tax,
4. exemption of Solidarity Tax.

Guatemalan Political Constitution provides an absolute tax exemption to dully authorized Universities and exemption for education services from schools. Financial services provided by local banks are Value Added Tax exempted.

Other Concessions by Industry/Market:

Guatemala tax laws provide special tax concession to certain industries and market as below detailed:

a. Interest paid to Non-Resident banks and financial dully registered and authorized on its jurisdiction;
b. Dividends paid by entities forming a Financial Group that are no final beneficiaries;
c. Assignment of credits under factoring and discount transactions;
d. Value Added Tax on import and sale of generic drugs and HIV medicines; and

Value Added Tax on transaction between coops and its associates.

Special Tax Regimes, Incentives or Subsidies:

Guatemala has legal provision for special tax regimes of maquila industry (industria de maquila) and custom free zone (zonas francas). This special tax regimes aim to promote invest in Guatemala and generate source of employment and benefit industries dedicated to transformation of goods in Guatemala for export.

On General terms, the tax benefits for special tax regimes include:

1. income tax exemption for up to ten years;
2. exemption or suspension (as applicable) of custom duties and import Value Added Tax on the importation of machinery and capital goods related to the activity;
3. exemption of stamp tax,
4. exemption of Solidarity Tax.

Tax Exemptions:

Guatemalan Tax Law provide specific tax exemptions to specific taxable acts and entities. Tax exemptions must be declared by law. On general terms, tax exemptions are provided to Universities, Churches, humanitarian, charity and non-profitable operations. Also, tax exemption to Value Added Tax is legally provided to transaction performed by banks.