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## **Doing Business in Guatemala**

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# Doing business in Guatemala



**MSI's guide on Doing Business in Guatemala provides current information about the financial, regulatory and legal considerations that could affect business dealings within Guatemala. For further assistance please contact our MSI member firms in Guatemala.**

## Country overview

### Population

Guatemala has a total population of 17.3 million inhabitants (as October 2018).

### Government

Guatemala is a presidential representative democratic republic whereby the president is both, the head of state and government. This governmental framework means that the general population votes for individuals to represent their interests in politics.

Guatemala is divided into 22 departments, which are in turn divided into 340 municipalities, each with its own local authorities.

### Languages

The national language is Spanish. However, the linguistic landscape of Guatemala is highly diverse with Spanish, 22 Mayan, one Xinka and one Arawakan languages being spoken in the country.

### Currency

The national currency is the Quetzal.

### Economic summary

GDP: USD75.6 billion  
Income per capita: USD4,471  
Inflation: 3.9%

### Main sectors of the economy

Guatemala's economy, while still largely dependent on the income and employment provided by the agricultural sector, has been successful in developing its manufacturing and service sectors, thereby remaining competitive within the global market. Among the products and services most important to

Guatemala's economy are coffee, sugar, cotton, bananas, apparel, food processing, and tourism.

The economy of Guatemala is one that continues to grow and develop with each passing year. Although as stated in the general description, Guatemala has a smaller GDP per capita than such larger countries as Brazil, Chile, and Argentina, Guatemala is the most populous of the Central American countries and their GDP is growing at a rate of nearly 5% per year.

### Guatemala as member of the Central America Region and its impact on businesses and investors

Guatemala is a member state of the North Triangle and part of the Central America countries.

Guatemala is an attractive base for doing business and for investment. Its open and international perspective, its competitive work force and its strategic location are essential contributors to achieve attractiveness for the foreign investor.

The attractive fiscal climate, the geostrategic position of Guatemala in the Central American area and technological infrastructure create favourable propositions for international business.

The geostrategic position of Guatemala in the Central American area and as an integral part of the northern triangle is extremely important and attractive. Being Guatemala, the commercial link between South America and North America.

## Setting up a business

According to the commercial law of Guatemala, a foreign person or company can operate in Guatemala through the creation of a local company or what is also called a branch.

Guatemala's corporate law provides a flexible and liberal framework for the organization of subsidiaries or branches. There are no special legal or economic restrictions for a foreign businessman to do business in Guatemala.

In view of the foregoing, we find that in Guatemala, both the individual and the foreign legal entity can establish commercial operations provided they comply with simply legal requirements, to establish itself as a local Company or a Branch in Guatemala.

### Legal types of business entities

1. Sole proprietorship
2. Partnership
3. Limited partnership
4. Limited liability company
5. Stock company
6. Branch office

### Process of how to set up a business

Stock Companies (SC) are the most common form of business vehicle used in Guatemala. It offers the most flexibility, allowing shares to be freely transferred, which is not the case for a limited liability company. The costs are reasonable, as the minimum capital required is the equivalent of approximately USD650, and the cost of setting up the company is approximately USD1,850 (including legal fees).

The shareholders of the SC are not personally liable for the SC's obligations beyond the amount of capital each shareholder subscribes and pays. The company's assets and the shareholders' subscribed and paid capital guarantee the SC's obligations.

A Limited Liability Company requires two shareholders, who invest more than at least 260 US dollars (\$ 260), approximately (GTQ2, 000) in the paid-up capital of the company and one director.

However, it must be borne in mind that in order for a company to have legal and commercial viability, the requirements of constituting it through Notary Public Deeds and the corresponding registration with the Commercial Registry must be met.

In Guatemala, a branch of a foreign company is subject to taxation just as any other local business firm. Unlike the SC and Limited Liability Company, the foreign corporation is fully liable for the obligations of its branch in Guatemala and risks any assets it has, both in Guatemala and anywhere else.

### **Financial year of taxes and financial accounts**

The financial/ fiscal year coincides with the calendar year. Notwithstanding not legally adopted, most business firms adopted the International Accounting Standards (IAS) and the International Financial Reporting Standards (IFRS).

However, legal entities may choose for a different financial year if they wish. All business firms are subject to corporation income tax. The branch is taxed with corporation income tax as well.

### **Accounting and auditing**

When is a statutory audit required? A statutory audit is required for those tax payers subject to the profit activities regimen, when 1 out of the following 2 criteria are met:

1. They are qualified as a VAT withholding agent;

2. They are qualified as a Special Taxpayer.

### **Economic and fiscal incentives**

Discussing the issue of fiscal incentives in Guatemala leads us to the idea of how the country has evolved.

We are facing Guatemala that as part of its fiscal policies has developed the textile sector, the tourism sector and the rise of its free zones with all that this entails.

With regard to tax incentives in the textile industry, we see how the growth and development of the maquilas has been encouraged, which, together with the ease of imports, provides machinery for this industry and causes the increase in employment.

Regarding the Free Zones, we find areas where multiple taxes are exempted such as Income Tax, Real Estate Tax, Stamp Tax and Value Added Tax) on internal transactions, among others. This always, with the purpose of encouraging the growth of productivity and production in the country, while looking for an increase in direct foreign investment.

### **Incentives foreign investors/ local investors**

There are tax incentives for a 10-year term to renewable energy generation projects.

## **Taxation**

Guatemala is very attractive for any investor, as only income generated within the territory is taxable. Guatemala is one of the countries with the lowest tax burden in Latin America and the Caribbean. The constitutional principles that rules taxation are:

1. **Legality:** Only the Congress has the power to impose taxes, municipal taxes and special contributions, according with the State needs, equity and tax justice principles.
2. **Payment Capacity:** The tax system should be fair and equitable

3. **Prohibition of multiple taxation:** Double or multiple taxation is constitutional prohibited.

In Guatemala, there are three fundamental taxes that every business firm must pay: Value Added Tax (VAT), Income Tax and Solidarity Tax.

### **VAT**

Sale of all goods and provision of services in general, as well as other activities regulated in Article 3 of the Law on Value Added Tax, are subject to VAT. The VAT rate is 12% on all commercial transaction. There are few exceptions; but it is noteworthy that among them, one of the most significant is that the second and subsequent sale of real estate are not affected to VAT but to Stamp Tax at a rate of 3%. VAT must be paid on a monthly basis.

### **Income tax**

Guatemalan income tax system provides different regimes to calculate and pay it. These regimes are:

- Small taxpayer
- Profit activities
- Optional simplified

The best tax regime is one that can respond appropriately to the type of business being planned or carried out, where you have to evaluate aspects such as sales, costs, profits, type of business, etc.

Specifically for each business firm, there are benefits and disadvantages that each tax regime can provide. Thus, is very important to evaluate which tax regime is the most convenient and suitable.

The profit activities regime is the most widely used and recommended for business firms that have a net margin lower than 28%. The tax rate is 25% over taxable income. Income tax is to be paid on a quarterly basis

If net margin is higher than 28%, then the optional simplified regime is the most recommended one. The tax rate is 7% over gross income. Income tax is to be paid on a monthly basis.

Capital income and gains are also taxable with a 10% rate, except for dividends that are subject to a 5% withholding tax rate.

Permanent Establishment (PE) and Transfer Pricing (TP) rules apply in Guatemala since 2015, mostly according to the OECD guidelines. Proper advice shall be sought on the application of such rules.

### **The Solidarity Tax**

This is a flat tax of 1% over gross income or net assets whichever is greater, for those taxpayers subject to the profit activities regime and that have a gross margin higher than 4%. The tax is to be paid on a quarterly basis and is creditable to income tax and vice versa.

### **What tax obligations I have in Guatemala?**

General obligations besides tax payment are: accounting books, invoices, credit and debit notes authorized by the Superintendence of Tax Administration; file most tax reports and returns in electronic formats provided by the Superintendence of Tax Administration; and for special taxpayer to issue electronic invoices and to be a VAT withholding agent.

In that sense, Guatemala, has cutting-edge electronic tools for fulfilment in the filing of tax returns and control of taxpayers, what possessions the country as a place where it is very difficult to fall into tax non-compliance that generate monetary losses. All this, and the rules not complicated for foreign investment, makes Guatemala be the perfect place to invest easily and with minimum risk.

### **The Legal regulations**

The main tax instruments applicable in Guatemala are as follows:

1. Tax Code, Decree Number 6-91 of Congress.
2. Organic Law of the Superintendence of Tax Administration, Decree Number 1-98 of the Congress.
3. Tax Update Law, Decree Number 10-2012, addressing the income tax legal rules.

There are other specific tax laws, such as the VAT, Solidarity Tax, Stamp Tax and Real Estate Tax, each of one addressing such specific taxes.

## **HR/ Labour Law**

### **Employment law**

An employment agreement may be agreed for an indefinite or fixed period of time. If an employment agreement for a fixed period of time is continued, a new agreement will then be deemed to have been entered into under the same conditions and for the same period of time as the former employment agreement.

The employment agreement for a fixed period of time can only be extended once, for the same period. If the employment agreement is extended a second time, it is considered that the employment agreement is for an indefinite period.

It is compulsory to sign an individual work agreement between an employer and an employee, except the case of: (i) agricultural or livestock work; (ii) domestic service; or (iii) accidental or temporary work not exceeding 60 days

### **Wage tax**

The rate of wage tax is 7% on taxable income. Wage tax is a withholding tax and as such it is an advance payment on income tax.

### **Social security**

Participation in a social security program is obligatory. Workers are insured for disability, old age and survival.

The employer is obliged to pay the labour and employer quotas directly to the Guatemalan Social Security Institute

Rates differ between the labour and employer quotas. The labour quota constitutes a 4.83% calculated on the salary of the employee, which is deducted from the monthly payment. The employer quota constitutes a 12.67%, which is calculated from the monthly salary of the employee. Both quotas total a 17.5% that the employer

must pay directly to the Guatemalan Social Security Institute.

### **Pension**

The pension is included in the social security payment that the employer makes each month on the salary of each employee.

The age for retirement is 62 years old and pension is granted if the employees have accredited at least 240 quotas, effectively paid to the Guatemalan Social Security Institute.

### **Payroll**

When starting a business and employing staff, the business firm must register at the Social Security Institute when hires more than 3 or more employees. Staff can be employed even if registration is not complete. The social security is paid monthly to Guatemalan Social Security Institute.

### **Visa and work permits**

All foreign employees need to process their temporary residence visa, according to Guatemalan Laws.

After processing their temporary residence, the foreign employee must process a work permit to be able to provide their services for a Guatemalan employer.

## Contact us

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The information provided in this guide cannot be exhaustive and we recommend anyone considering doing business in Guatemala should seek professional advice from our member firms before making any business or investment decision.

### Contact our member firms in Guatemala to discuss your requirements:

#### Legal member

**ECIJA Integrum**  
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