Guatemala

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1.0 OVERVIEW

Guatemala imposes corporate and personal income tax, operating under a territorial system in which the income tax is levied only on Guatemalan-source income. Therefore, resident individuals and corporations are subject to income tax on Guatemalan-source income only. On the other hand, non-residents are taxed via withholding on their Guatemalan-source income.

Corporations are considered residents of Guatemala if they are incorporated under Guatemalan law and have their fiscal domicile or corporate headquarters in Guatemala, or if they are a branch of a foreign company operating in Guatemala.

The statutory tax year runs from January 1 to December 31. Under the territorial tax system, residents can opt to be taxed under one of two regimes: (1) the simplified optional tax regime, under which tax is charged on gross revenue at a rate of 5% or 7%; or (2) the general tax regime, under which tax is charged on net taxable income at a rate of 25%. If the residents opt for the last regime, a solidarity tax is also imposed with a rate of 1% on total assets or gross revenue, depending on which one is greater. Passive income is taxed separately, with dividends taxed at a rate of 5% and capital gains taxed at a rate of 10%.

Non-residents to be taxed via withholding are subject to different tax rates that depend on the type of Guatemalan-source income earned. In addition to income tax, a value-added tax (VAT) of 12% is charged on the sale of most goods, the provision of services, the lease, imports and the transfer of real estate. Regarding intentional regulation of taxes, it is important to emphasize that Guatemala has not concluded any bilateral or multilateral tax treaties.

2.0 LEGAL SYSTEM

Guatemala operates under a civil law legal system. It utilizes a civil law system for private law that is based on the Civil Code and Mercantile Code of Guatemala. Guatemala is a unitary state with a central government consisting of three main branches: executive, judicial and legislative. The Congress of Guatemala has exclusive ability to legislate and is therefore the only entity empowered by the constitution to impose taxes. The main applicable tax laws are the Tax Code, the Income Tax Law, the VAT Law and the Solidarity Tax Law.

3.0 TAXATION AUTHORITIES

The tax system in Guatemala is administered by the Superintendence of Tax Administration (SAT) of Guatemala. This decentralized government entity is in charge of collecting taxes throughout the entire Guatemalan territory. Additionally, Guatemala has special tax courts that hear tax litigation cases.

4.0 BUSINESS VEHICLES

A non-resident may either establish a Guatemalan business vehicle to carry on business in Guatemala, or operate directly through a foreign entity, with or without a Guatemalan permanent establishment. Guatemalan business vehicles include corporations (limited liability or unlimited liability) and partnerships. It is also possible to use a trust to carry on business in Guatemala.

4.1 Partnerships

Guatemalan legislation differentiates between partnerships and non-profit partnerships. While non-profit partnerships are exempt from income tax, partnerships are not. Partnerships and corporations are taxed equally.

4.2 Corporations

Corporations can be incorporated in Guatemala within eight days. The use of a limited liability or unlimited liability corporation does not impact the corporation's income tax liability. Although Guatemalan law does not require the directors of the corporation to be Guatemalan residents, the Mercantile Registry regulation does require that at least one of the directors is properly registered with the SAT as a resident. The establishment of a corporation requires a minimum capital of US$25 to have been received by the corporation. The receipt of capital is also a requirement before the corporation can issue shares.

4.3 Foreign corporations

A foreign corporation with a permanent establishment that carries on business in Guatemala is subject to income tax as if it was a Guatemalan resident corporation. Under Guatemalan law, it is understood that a foreign corporation operates with a permanent establishment when:

i. It has a continuous place of business or places of work of any kind, in which all or part of its activities take place in the country; or

ii. A person or entity (not an agent) acts in Guatemala on behalf of a non-resident, especially if that person holds and exercises habitually in Guatemala powers that enable it to conclude contracts on behalf of the company; or if the person does not have such powers, but usually, stocks of goods for delivery on behalf of the non-resident person or entity in Guatemala.

On the other hand, non-residents—foreign corporations without a permanent establishment—are taxed via withholding on their Guatemalan-source income.

The tax rate for a foreign corporation without a permanent establishment varies depending on the type of Guatemalan-source income. Dividends and branch remittance are taxed at 5% on the gross amount, whereas interest is taxed at 10% of the gross amount (with exemptions given for banking and finance sectors). Technical service fees and royalties are taxed at 15% on the gross amount, and all the other types of Guatemalan-source income not specifically covered are taxed at 25% on the gross amount.

5.0 FINANCING A COORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

Where an equity investment is made into a Guatemalan corporation in exchange for shares, the amount of the investment is added to the corporation's stated capital account. This transaction is not subject to income tax.

5.1.2 Distributions of dividends and profits

A corporation is permitted to make distributions of dividends and profits to a non-resident shareholder, but these distributions are subject to a withholding tax of 5%.

5.2 Debt financing

5.2.1 Withholding tax implications

Guatemalan corporations are permitted to borrow funds from related or non-related third parties. There are no Guatemalan tax implications on the repayment of the principal amount of such debt. Nonetheless, interest payments made by a Guatemalan resident corporation to a non-resident are subject to a withholding tax of 10%.

5.3 Stamp duty

Guatemala imposes a stamp duty levied on certain official and legal documents related to different transactions. Stamp duty is an ad valorem tax or flat tax levied on certain legal transactions such as the transfer of a property. Documents evidencing such transactions are recorded and become legally enforceable only if they are stamped to show that the proper amount of tax has been paid.

6.0 CORPORATE INCOME TAX

6.1 Income tax rate

The corporate tax rate depends on the regime the corporation opted to be taxed under. The different regimes available include:

i. *The simplified optional tax regime, under which tax is charged on gross revenue at a rate of 5% or 7%*

ii. The general tax regime under which tax is charged on the net taxable income at a rate of 25%. If the residents opt for this last regime, a solidarity tax is also imposed at a rate of 1% on total assets or gross revenue, depending which one is greater.

6.2 Capital gains

In Guatemala, income from capital and capital gains is considered taxable when the income originates from goods or rights whose ownership corresponds to the taxpayer. The different taxable income from capital gains are classified as one of the following:

i. Income from real or immovable property located in Guatemala, arising from leases, sub-leases or constitution and transfer of rights for the use and enjoyment of the property

ii. Income from movable property located in Guatemala including interests from loans, leases, subleases or constitution and transfer of rights for the use and enjoyment of the property, and distribution of dividends and profits

iii. Capital gains from:

- The transfer of movable or immovable assets, lottery tickets, raffle tickets or similar items
- The transfer of shares issued by resident entities
- The incorporation of assets located in Guatemala into the taxpayer´s property
- The transfer of shares issued by foreign entities that own movable or immovable property located in Guatemala.

6.3 Royalties

The income from capital gains from a Guatemalan resident corporation are subject to a 10% tax rate, whereas the distribution of dividends and profits are subject to a tax rate of 5%.

6.4 Computation of taxable income

6.4.1 Taxable base

The taxable base depends on the regime the tax payer chooses. In the simplified optional tax regime, the income tax is charged on gross revenue at a rate of 5% or 7%. In the general tax regime, the income tax is charged on net taxable income at a rate of 25%.

6.4.2 Deductions

Deductions depend on the regime that the taxpayer chooses. Under the general tax regime, corporations may deduct expenses incurred to generate taxable income or to preserve the source of such income. On the other hand, under the simplified optional tax regime, no deductions are permitted, since corporations under this regime are subject to a lower tax rate.

6.5 Income tax reporting

Guatemalan resident corporations operating under the general tax regime must file an annual income tax return and make any payment due within three months after the end of the taxation year. Additionally, corporations must make quarterly advance income tax payments, which are credited against the final income tax liability. In addition, taxpayers that qualify as special taxpayers must file the annual income tax return together with financial statements audited by a certified public accountant or an independent audit firm.

Corporations operating under the simplified optional tax regime must file an annual information tax return within three months after the end of the tax year. Interest and penalty charges are imposed for late payments of taxes. Corporations settle their tax through final withholding payments made by the payer. They must file a monthly tax return in which they separately determine the total amounts of gross income, exempt income, income subject to withholding tax and income subject to direct payment. Companies may be required to make direct payments of tax if they are transacting with persons not required by law to make withholdings or if they have been previously authorized by the tax authorities. The tax return must be filed within the first 10 business days of the month following the month in which the tax was incurred.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

Guatemalan transfer pricing rules apply to any transactions between a Guatemalan resident taxpayer and a non-resident related party where the transaction affects the calculation of the taxable income of the fiscal year and subsequent fiscal year. The transfer pricing rules are aligned with the Organization for Economic Co-operation and Development guidelines, and there is a sixth transfer pricing method for commodities.

7.2 Withholding tax on passive income

Payments made by a resident of Guatemala to a non-resident from Guatemalan-source income are subject to withholding tax at different tax rates. As previously mentioned, dividends are subject to a 5% rate on the gross amount; interest to a 10% rate of the gross amount (exemptions are given for banking and finance sectors); royalties a 15% rate on the gross amount; and all the other types of passive income of Guatemalan-source not specifically covered are subject to a 25% rate on the gross amount.

7.3 Withholding tax on services fees

Payments made by a resident of Guatemala to a non-resident in respect of services performed in Guatemala are subject to a withholding tax rate of 15%.

8.0 PAYROLL TAXES

8.1 Social security tax

Guatemalan employers are obliged to withhold a social security tax that contributes towards the Guatemalan pension plan and employment insurance. The social security tax is withheld from the employee's wages. The employer contributes 12.67% and the employee contributes 4.83% of the employee's wages.

9.0 INDIRECT TAXES

9.1 Value-added tax (VAT)

Guatemala imposes a VAT of 12% which applies to all transactions and contracts regarding:

i. The sale or exchange of personal property (movable or immovable) or *rights in rem*

ii. The provision of services in Guatemalan territory

iii. Imports

iv. Movable or immovable property leasing

v. Assets (movable or immovable property) received in lieu of payment, except those that are carried out on the occasion of the partition of the inheritance or the termination of joint ownership

vi. Withdrawals of personal property made by a taxpayer or by the owner, partners, directors or employees of the respective company for their personal or their family use or consumption, whether from their own production or purchased for the resale, or the self-supply of services, whatever the legal nature of the company

vii. The destruction, loss or any event that implies a lack of inventory, except in the case of perishable goods, fortuitous events, force majeure or crimes against property

viii.The inter vivos donation of movable and immovable property

ix. The capital contribution of real estate made by companies that are dedicated to real estate development to another company (dedicated or not to real estate).

9.2 Levies on petroleum distribution

For levies on petroleum distribution, the rate varies by type of fuel between US$0.18 – 0.64 per gallon.

9.3 Land tax

Guatemala imposes a land tax annually on value of land. The maximum rate of 0.9% is applicable to the value of land in excess of GTQ 70,000 (approximately US$9,545).

9.4 Revaluation tax

Guatemala imposes a revaluation tax of 10% on the appreciation in value resulting from a revaluation of immovable property or any other fixed assets by an authorized third-party adjuster.

9.5 Import duties

Guatemala is a State Party of the Convention on the Central American Tariff and Customs Regime. In said convention, a Central American Import Tariff is regulated, which is the instrument containing the nomenclature for the official classification of goods that are likely to be imported into the territory of the Member States Party, as well as customs duties on imports and the rules that regulate the execution of its provisions. According to said rules, Guatemala imposes import duties (*Derechos Arancelarios de Importación known as DAI*) that range from 0% to 20% depending on the type of goods that are being imported.

9.6 Solidarity tax (ISO)

Guatemala imposes a 1% ISO on legal entities subject to the Simplified Optional tax regime. The ISO tax rate applied is the higher of 1/4 of net assets value or 1/4 of gross income. Newly organized entities are not subject to ISO during their first four quarters of operations and entities that have a gross margin of lower than 4% of its gross income, or incur losses for two consecutive years, are also not subject to ISO.