GUATEMALA

Law and Practice

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Mayora & Mayora, SC

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Mayora & Mayora, SC is a leading law firm in Central America established more than 55 years ago, with offices in Guatemala, El Salvador and Honduras (Tegucigalpa, San Pedro Sula and Roatán). The firm has a team of over 35 legal specialists who are ready to assist clients in a wide range of legal matters. Renowned for its excellence and ethical approach, the firm offers legal assistance in multiple practice areas. It has been the exclusive member for Guatemala of the largest network of private law firms in the world, Lex Mundi, since its inception in the early 1980s. The firm and its attorneys have been recommended by the most reputable and renowned legal ranking agencies.

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Eduardo Mayora is the regional managing partner of Mayora & Mayora and the son of the founder of the firm, Eduardo Mayora Dawe. He has been an attorney and notary since 1980, pursuing various postgraduate studies, including doctorates, in both legal and economic matters. A renowned Guatemalan jurist, his professional practice includes banking, financial, commercial, securities, arbitration, administrative and fiscal matters. He has also excelled in academia and opinion journalism, as a teacher and lecturer at a national and international level and was dean of the faculty of law at Francisco Marroquín University. He has been a board member of banking institutions, trade associations, NGOs and international associations.

Juan Carlos Casellas specialises in tax matters (advisory and litigation) and has achieved successful outcomes in many highly complex cases. He has provided tax advice to clients such as Avianca and Ingenio Palo Gordo. Before joining Mayora & Mayora, he was legal adviser to the Superintendency of Tax Administration (SAT) and consultant to the Constitutional Court of Guatemala, as well as a researcher in tax law at the University of Salamanca. He has been a professor of tax law at several universities, both in undergraduate, master's and doctoral studies. He has also served as president of the Latin American Institute of Tax Law, the only Guatemalan lawyer to have held such a position.

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Juan Pablo Gramajo has been an attorney and notary since 2009 and joined Mayora & Mayora in 2015. He is the associate in charge of knowledge management and the research specialist at the firm, having the chance to exchange know-how and experience with colleagues across all practice areas. He also handles labour and administrative matters. He holds a master's degree in history and a doctorate in law. Additionally, he has published academic articles on constitutional, philosophical and historical topics.

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1. Types of Business Entities, Their Residence and Basic Tax Treatment

1.1 Corporate Structures and Tax Treatment

Businesses in Guatemala generally adopt a corporate form. Regardless of the corporate form adopted, each entity is taxed as a separate legal entity from its members, partners or shareholders. The Guatemalan Commercial Code regulates five basic types of corporate entity as follows:

- general partnership (*Sociedad Colectiva*);
- limited liability company or LLC (*Sociedad de Responsabilidad Limitada*);
- limited partnership (*Sociedad en Comandita Simple*);
- stock corporation (*Sociedad Anónima*); and
- stock corporation (*Sociedad Comandita por Acciones*).

Foreign corporations may organise branches or agencies.

The most commonly used corporate form is the stock corporation (*Sociedad Anónima* or SA). American corporations often adopt the corporate form of a limited liability company (*Sociedad de Responsabilidad Limitada* or SRL) for their subsidiaries, in order to achieve look-through tax treatment.

As mentioned above, the corporate entity is taxed separately and must obtain a separate taxpayer number.

A simplified and simpler corporate form, called *“for entrepreneurship”*, is now available for some specific corporate purposes, with lower capital requirements and fewer formalities. It can be organised as *“one-person company”*.

1.2 Transparent Entities

Under local law, there are no transparent entities for tax purposes. However, the Guatemalan LLC is commonly used by US corporations in order to achieve transparency before the US tax authorities.

1.3 Determining Residence of Incorporated Businesses

Guatemala has no double taxation treaties currently in force. However, Guatemalan Tax Law sets certain standards regarding residence. A corporation is considered *“resident”* for tax purposes if:

- it has been organised under Guatemalan law;
- the corporation is managed in/from Guatemala;
- the corporation has a tax or corporate seat in Guatemala;
- the corporation has its centre of economic interests located in Guatemala; and
- the corporation has a permanent establishment in Guatemala which would be subject to taxation in Guatemala (not the foreign corporation).

1.4 Tax Rates

The Guatemalan income tax system differentiates between certain kinds of income. However, corporate and individually owned businesses are taxed at the same rate of:

- the general statutory regimen of 25% on net income; or
- (at the election of the taxpayer for each fiscal year) at a flat rate of 7% or 5% on gross income (excluding exemptions).

Annual income up to approximately USD46,800 is taxed at 5%, with a 7% tax rate being applied on the surplus above that amount.

2. Key General Features of the Tax Regime Applicable to Incorporated Businesses

2.1 Calculation for Taxable Profits

As a rule, profits are taxed based on the accounting profits subject to some adjustments. The most common tax adjustments are certain limits to deductible expenses. Profits are taxed on an accrual basis.

2.2 Special Incentives for Technology Investments

There are currently no incentives directly applicable to technology investments.

2.3 Other Special Incentives

There are currently tax incentives for the following industries:

- power generation using clean energy technology;
- manufacturing for exportation to foreign markets;
- BPO services online for foreign clients/users; and
- any other industries operating in a special economic development zone, qualified by the Free Trade Zone Administration (*"ZOLIC"*).

Generally, the tax incentives are:

- income tax exemption for up to ten years;
- exemption from or suspension of (as applicable) customs duties on the importation of machinery and capital goods related to the activity;
- exemption from or suspension of (as applicable) VAT on the importation of machinery and capital goods related to the activity; and
- exemption from VAT on the purchase of locally produced goods (for manufacturers that export to foreign markets).

2.4 Basic Rules on Loss Relief

Losses incurred during a fiscal year can only be offset against profits in the same fiscal year. No carry forward or carry back is therefore allowed. However, in the case of capital losses, these may be offset against capital gains only and carried forward for up to two years.

2.5 Imposed Limits on Deduction of Interest

Interest is deductible if paid in order to generate taxable income. Interest can only be deducted up to an amount equal to the interest rate determined by the Monetary Board, multiplied by the average net assets in any fiscal year, times three.

2.6 Basic Rules on Consolidated Tax Grouping

Group consolidation is not permitted for tax purposes. Each entity is considered a separate taxpayer.

2.7 Capital Gains Taxation

Capital gains are taxed at a rate of 10%. As a general rule, the taxable gain is determined by the difference between the book value or cost of acquisition (as applicable) and the sale price.

The cost of shares or participations is:

- the cost of acquisition; or
- the value of the shares or participations recorded by the issuing company.

The cost of goods and rights granted as a gift is the value attributed in the deed by which they are donated.

There are no exemptions or reliefs relative to capital gains. However, it is possible to deduct up to 15% of the transaction value as transaction costs.

Capital gains as a consequence of mergers and acquisitions are also taxable.

2.8 Other Taxes Payable by an Incorporated Business

Transactions are subject to VAT or to stamp tax depending on their nature. In general, goods, services and merchandise transacted on commercial markets are subject to VAT at a rate of 12%. The assignment of personal rights is generally subject to stamp tax at a rate of 3%.

Real estate sold on secondary markets is subject to stamp tax, but, if sold by a developer, it is subject to VAT. However, real estate assets contributed to business corporations are exempt if they were not previously contributed to a real estate developer company.

Securities transactions are generally exempt from VAT and stamp tax.

2.9 Incorporated Businesses and Notable Taxes

Creditable tax on revenues or assets (*Impuesto de Solidaridad* or ISO) is charged at a rate of 1% on the greater of:

- one-quarter of the annual gross income of the taxpayer; or
- one-quarter of the net assets of the taxpayer.

The amounts paid for this tax can be credited to the income tax of the taxpayer.

3. Division of Tax Base Between Corporations and Non-Corporate Businesses

3.1 Closely Held Local Businesses

Most closely held local businesses operate in corporate form.

3.2 Individual Rates and Corporate Rates

There are two kinds of corporate tax, and the taxpayer may elect which one to apply. The taxpayer may elect to pay on gross income or on net income. If the former, the rates are 5% and 7% (see **1.4 Tax Rates**). If the latter, the rate is 25%.

Corporate tax is therefore not necessarily higher or lower than individual rates, although any corporation paying a marginal rate equal to or higher than 5% (if the gross annual income is less than USD48,000) or 7% (if the gross annual income is more than USD48,000) is expected to elect the flat tax option.

Compared with the rates applicable to individual professionals, the rates and taxable bases are roughly the same as the flat tax option for corporations and, presumably, higher than the net income option for corporations. That said, the administrative costs incurred in this latter case can be relatively higher for an individual professional than for a corporation.

Although not directed at this issue, the Code of Commerce does not allow any profession regulated by a bar association or a professional board to use a corporate structure. Additionally, at the time a taxpayer applies for a taxpayer number, it is required to provide the Tax Administration with a description of its business activity.

As of 8 April 2025, individual or corporate taxpayers deriving annual income of approximately GTQ496,000 (approximately USD65,000) or less are eligible for the special small taxpayer regime. Under this small taxpayer regimen taxpayers are subject to a flat 5% tax on their gross income. Their transactions will not be subject to VAT.

Similarly, as of 8 April 2025 two new regimes will be in effect: the *“Primary Regime”* and the *“Livestock Regime”*. These regimes are applicable to individual or corporate taxpayers in the agricultural and livestock business for supplying primary markets (for supplying local markets) with annual income equal or less than GTQ13 million (approximately USD1.6 million). Taxpayers registered under either of these regimes are subject to 1.5% tax levied on their gross sales and are exempt from VAT and income tax. However, dealers of livestock will be subject to a 10% tax rate on their profits.

These regimes are not applicable to persons selling to end consumers and to exporters. Exporters of goods related to these regimens will be subject to 2% tax on their gross exports.

3.3 Accumulating Earnings for Investment Purposes

There are no rules preventing closely held corporations from accumulating earnings for investment purposes. It is mandatory to create a 5% reserve every year, but when this surpasses 15% of the corporation’s capital, it can be capitalised. Thereafter, the obligation to make a 5% reserve on earnings continues.

3.4 Sales of Shares by Individuals in Closely Held Corporations

Dividends are taxed at a final 5% withholding tax rate independently of the beneficiary’s residence. Gains on the sale of shares are taxed at 10%. The taxable gain is determined by the difference between the book value or purchase value (as applicable) and the price at which the shares are sold.

3.5 Sales of Shares by Individuals in Publicly Traded Corporations

There are no differences between closely or publicly held corporations.

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

Withholding taxes applicable to non-residents without a permanent establishment are as follows:

- dividends and profit distributions: 5%;
- interest: 10% (foreign fully licensed banking and financial institutions are exempt); and
- royalties: 15%.

It is important to note that the notions of *“interest”* and *“royalties”* under the law are wider than usually understood.

No reliefs are available.

4.2 Primary Tax Treaty Countries

There are currently no tax treaties in force.

4.3 Use of Treaty Country Entities by Non-Treaty Country Residents

There are currently no tax treaties in force.

4.4 Transfer Pricing Issues

There are no particular issues specifically affecting inbound investors.

4.5 Related-Party Limited Risk Distribution Arrangements

Limited-risk distribution arrangements have not yet surfaced as a focus for the Tax Administration. However, any related-party arrangement that does not comply with transfer pricing rules could be challenged by the tax authorities.

4.6 Comparing Local Transfer Pricing Rules and/or Enforcement and OECD Standards

The main differences between local transfer pricing rules and OECD standards concern:

- the value method for imports and exports (sixth method in the local provisions, not considered by the OECD Guidelines). The Tax Administration favours the application of this method before any of the five OECD methods; and
- the adoption of a criterion of *"related party"* based on the parties to the transaction being relatives within certain degrees.

4.7 International Transfer Pricing Disputes

The local tax authorities are more aggressive on transfer pricing than they used to be. However, new information does not appear to have been used to re-open earlier disputes.

Since Guatemala has not ratified any double tax treaties, no mutual agreement procedures have been used to resolve international transfer pricing disputes.

5. Key Features of Taxation of Non-Local Corporations

5.1 Compensating Adjustments When Transfer Pricing Claims Are Settled

Within the proceedings leading to a transfer pricing-related claim, the Tax Administration and the taxpayer can voluntarily review the matter and settle the disagreement. Some Tax Administration officials have reported cases where a taxpayer has proceeded with the adjustments upon settlement.

5.2 Taxation Differences Between Local Branches and Local Subsidiaries of Non-Local Corporations

Local branches of non-local corporations and local subsidiaries of non-local corporations are not taxed differently.

5.3 Capital Gains of Non-Residents

The capital gains of non-residents on the sale of stock in local corporations are taxed in Guatemala. However, if the transaction is executed in a jurisdiction other than Guatemala, on terms and conditions such that the capital gain is not generated in Guatemala and the party selling the stock is *"acting"* (disposing of the stock) outside Guatemala, the capital gain would not be subject to tax in Guatemala.

5.4 Change of Control Provisions

A change of control that results in one of the parties indirectly disposing of an indirect holding higher up overseas is not taxed. However, this is subject to a substance test in the sense that the structure has not been set up to avoid taxation in Guatemala.

5.5 Formulas Used to Determine Income of Foreign-Owned Local Affiliates

No formulas are used to determine the income of foreign-owned local affiliates.

5.6 Deductions for Payments by Local Affiliates

Local affiliates are allowed a deduction for payments for management and administrative expenses by a non-local affiliate on condition that:

- the payment is duly supported;
- the expense is necessary to generate taxable income;
- where applicable, the withholding tax has been charged to the non-local affiliate; and
- the applicable international financial reporting standards allow for the expense to be recognised as such by the taxpayer.

5.7 Constraints on Related-Party Borrowing

Besides transfer pricing rules and 10% withholding tax, interest paid to a non-local affiliate is not deductible, unless the beneficiary is a fully licensed financial institution.

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations

The foreign income of local corporations is exempt from corporate tax. The Guatemalan system is fundamentally one of domestic-sourced income.

6.2 Non-Deductible Local Expenses

If a company has incurred any costs or expenses to generate foreign income, these would not be deductible, because it is required by law that any costs or expenses must generate *"taxable"* income in order to be deductible.

6.3 Taxation on Dividends From Foreign Subsidiaries

Dividends from foreign subsidiaries of local corporations are not taxed.

6.4 Use of Intangibles by Non-Local Subsidiaries

Intangibles developed by local corporations can be used by non-local subsidiaries in their business at prices complying with transfer pricing rules. The price paid to the local corporation would be taxed at the ordinary corporate income tax rates if the transaction is in the ordinary course of business. Otherwise, it would be taxed as passive income at a 10% rate.

6.5 Taxation of Income of Non-Local Subsidiaries Under Controlled Foreign Corporation-Type Rules

Local corporations are not taxed on the income of their non-local subsidiaries or non-local branches under CFC-type rules. There are no CFC-type rules.

6.6 Rules Related to the Substance of Non-Local Affiliates

There are no substance-related rules applicable to non-local affiliates, although the Tax Administration has investigated the substance of the beneficiary (whether or not related) to allow the deductibility of certain expenses.

6.7 Taxation on Gain on the Sale of Shares in Non-Local Affiliates

Provided the sale takes place in a jurisdiction other than Guatemala, the capital gain on the sale of shares in non-local affiliates is not taxed.

7. Anti-Avoidance

7.1 Overarching Anti-Avoidance Provisions

Guatemala does not have general anti-avoidance rules, other than those related to tax assessments for characterising the taxable base.

8. Audit Cycles

8.1 Regular Routine Audit Cycle

Guatemala does not have a regular routine audit cycle. However, any tax refund, including the VAT tax reimbursement, is subject to a previous tax audit. According to the law, the annual planned tax audit must be placed on the Tax Agency website.

9. BEPS

9.1 Recommended Changes

The Income Tax Act of 2012 includes some provisions that partly reflect BEPS guidelines, such as transfer pricing regulations heavily influenced by Action 13.

9.2 Government Attitudes

The Tax Administration usually implements BEPS guidelines in Guatemala, although many of them require legislative and/or executive action. However, no official policy has been developed in order to adopt and implement BEPS guidelines.

9.3 Profile of International Tax

The Guatemalan domestic-sourced income system does not presently reflect many of the BEPS recommendations. However, the Tax Administration has sought to adopt and implement some of them.

9.4 Competitive Tax Policy Objective

The Guatemalan government does not have a competitive tax policy objective. The private sector lobbies on a casuistic basis in favour of a competitive tax policy, as they see it, but there is no official policy.

9.5 Features of the Competitive Tax System

Although not intended to be a feature of *"competitive"* tax system, the Guatemalan corporate tax law is relatively simple. It is domestic source-based and the rates are competitive with those of other countries in the region.

9.6 Proposals for Dealing With Hybrid Instruments

There is a draft securities law that will regulate hybrid instruments. It might be passed in the near future and includes the taxation of investment vehicles. At this point, this is not a policy issue.

9.7 Territorial Tax Regime

Guatemala has a territorial tax regime and there are some deductibility restrictions. These are as follows:

- interest payments to non-residents are not deductible, except where the beneficiary is a non-resident fully licensed financial institution;
- interest is deductible up to the interest rate published by the Monetary Board; and

- interest is deductible up to the interest rate times the annual average net assets of the taxpayer times three.

It is not likely that interest deductibility proposals will affect people investing in and from this jurisdiction.

9.8 Controlled Foreign Corporation Proposals

Guatemalan law provides for certain limits on the deduction of interest (see **9.7 Territorial Tax Regime**) that do not correspond to CFC rules but have a similar result in practice.

9.9 Anti-Avoidance Rules

Guatemalan tax law does not grant any DTC to outbound investors. If other jurisdictions created limitations on any DTC allowed to inbound investors, this would likely have some impact on direct foreign investments into Guatemala.

9.10 Transfer Pricing Changes

Transfer pricing changes introduced by BEPS after the transfer pricing rules came into force in Guatemala in 2015, are not changing things radically. The taxation of profits from intellectual property is not a particular source of controversy in Guatemala.

9.11 Transparency and Country-by-Country Reporting

The Guatemalan tax regime has included provisions for transparency (Decree 20-2006) and also country-by-country reporting.

9.12 Taxation of Digital Economy Businesses

The Tax Administration has proposed regulating the taxation of transactions effected or profits generated by digital economy businesses operating outside Guatemala. At this point, the general rules apply, but not outside the jurisdiction.

9.13 Digital Taxation

The Tax Administration has proposed taxing transactions and profits generated by businesses in the digital economy.

9.14 Taxation of Offshore IP

Payments to non-residents for intellectual property deployed in Guatemala are taxed at 15% withholding tax and are subject to a deductibility cap of 5% of gross income (of the intellectual property user). No distinction is made between tax havens and other countries.