



Guatemala

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GUIDE TO DOING BUSINESS IN GUATEMALA

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PREFACE

The following document has been designed with the purpose of providing clients and friends the basic and fundamental information concerning the most relevant legal aspects that must be known in order to invest or do business in Guatemala.

Although this document illustrates, among other things, fundamental aspects and legal requirements applied by certain institutions, at no time should this information be interpreted as legal advice or a legal opinion regarding the subjects discussed herein.

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PART ONE

LOCAL AND FOREIGN CORPORATIONS, LEGAL APPROACH

Guatemala's legal regime on foreign investment has created an open environment for decades. The general rule is that foreign investors can wholly own investment vehicles in Guatemala without any legal requirements concerning local partners, or any restrictions concerning a maximum proportion of foreign shareholders. There are a few exceptions, such as open TV (TV broadcasted through channels given in concession by the state), owning property next to the borders of the country, and broadcasting, where some restrictions apply.

Business in the country can be organized as a sole proprietorship, as a partnership, company or corporation. For this purpose, any of the five legal structures in Guatemala's Code of Commerce can be adopted. Also, as we shall see later in this document, foreign investors do meet burdensome requirements to get established in the country as a foreign corporation, through a branch.

I. CREATION OF BUSINESS PARTNERSHIPS AND CORPORATIONS IN GUATEMALA

The legal regulation of the requirements for the registration of business associations, their different legal structures and their basic legal rules can be found in the Code of Commerce, Statute of Congress number 2 -70.

Business partnerships and corporations constitute legal entities distinct from its members. They come into legal existence by the execution of the corresponding contract between two or more persons or entities with a common purpose and for profit. They must adopt one of the legal structures established in Guatemala's Commerce Code. The rules of the Commerce Code are mostly default rules that apply when investors do not agree in different rules. The variety of structures and the flexibility granted in the creation of the entity provides for the different needs of investors.

In Guatemala, business entities come into existence by following the legal procedure established by law, which begins with the authorization of the articles of incorporation. The process ends with their definite registration before the Commercial Registry. The corporate status is maintained until the date on which the Commercial Registry cancels the registration, after the end of the term chosen by the members of the business association –if the entity had a term fixed by its members-, or after dissolution and winding up.

A. Basic requirements for registration of a corporation

A Stock Company or Corporation (*Sociedad Anónima* or "SA") is by far the most common form of corporate business vehicle used by foreign companies in Guatemala. An SA cannot be set up

through agents, incorporators or third parties that are not the actual shareholders of the company. It also requires at least two shareholders.

Usually, a foreign investor will grant a power of attorney (POA) to a Guatemalan resident individual or firm, to appear before a notary public to set up the SA. The required at least second shareholder would typically do the same POA process. The second shareholder is usually an affiliate, subsidiary or officer of the investor. Typically, each shareholder will hold only one share.

Guatemala is not a party to the Apostille Convention. Thus, the POA must be authenticated by a Guatemalan consul in the jurisdiction of origin and then by the Foreign Affairs Ministry in Guatemala: Afterwards, the POA must be incorporated to a notary public's registry (*Protocolo*), of which a certified copy is issued and registered with the Registry of Powers of Attorney and with the Commercial Registry. Once the POA is in due form in Guatemala, the process of authentication and registration can take approximately ten business days.

The POA and the paid-in equity capital (a minimum of about US\$650) must then be deposited in a local bank in the name of the new entity (although cash is by far the most common way to pay, the Commerce Code allows for in-kind contributions or consideration for stock, including feasibility studies, as specified further ahead).

In practice, the investor will deposit enough funds to cover all the costs and fees involved in the creation and registration of the company in the bank account opened for the company in formation. To avoid any delays with the registration process, a name search for the corporation must be previously done -usually online with the Commercial Registry.

Equity contributions are subject to legal regulation due to their importance for the corporation and its creditors and other stakeholders. Equity contributions can be monetary or in kind.¹ Monetary contributions are paid in currency in the amount, form and term agreed in the articles of incorporation. In-kind equity contributions can be made in personal or real property, as long as they can be given a monetary value.

Shareholders must agree upon the value of In kind contributions, which must be according to a fair market value and if appropriate, also detailed in an inventory. The shareholders are liable before third parties for wrongful valuation of in-kind equity contributions. When these contributions consist of registered real property, the property transfer must be registered with the Property Registry.

The Law requires the following specifications in the articles of incorporations, in addition to the paid-in equity capital (which must be paid at the outset):

¹ The sole credit of the shareholder is not accepted

- Determination of subscribed capital, as an obligation of the shareholder that future equity capital contributions will be paid (at least 25% of the subscribed capital must be paid at the outset, though).
- Determination of authorized capital, which is the maximum amount of shares that can be issued without any amendment to the company's by-laws. Commercial Registry fees are calculated based on it.
- Place and date of incorporation
- Legal structure adopted
- Business or corporate name
- Commercial domicile
- Business activities
- Term (usually indefinite)
- Corporate governance structure, directors and officers
- Partners' (shareholders) signatures
- Notary Public's signature and seal

The SA's usual governance structure includes:

A shareholders' meeting

A board of directors designed as desired or a single director

A general manager (CEO) of the company or multiple officers, as desired

It is possible to impose and design substantive limitations, conditions, and/or special majorities to take any corporate action or to adopt resolutions, either by the directors, officers, or shareholders.

Once a notary public authorizes the company's articles of incorporation and it is executed by the founding shareholders, the registration process can begin with the filing of a certified copy of the company's by-laws with the Commercial Registry (www.registromercantil.gob.gt). This can be done electronically. If the forms and documents filed are in order, the Registry grants a provisional registration automatically, from five to seven business days after the filing. With the provisional registration, the business entity obtains its Taxpayer Identification Number (*Número de Identificación Tributaria* "NIT") before the Tax Authority (*Superintendencia de la Administración Tributaria* "SAT"). Then the entity can begin to fully operate.

The application for registration must be published once in the *Official Gazette* and in one commercial newspaper, so that any potentially affected party can object to the registration. Most of the time, oppositions to registration are related with the corporate name, for being undistinguishable from another already in use. Such objections are usually settled, so as not to incur delays and expenses.

If no objections to the registration are made, the definitive registration will usually be obtained between four and six weeks after the provisional registration date.

This procedure also applies, with some changes, to limited liability companies.

The whole registration procedures are also available electronically, through the website *minegocio.gt*, which allows all documents to be obtained and filed electronically by a notary public or any other person once the necessary documents have been authorized by a notary public.

Online banking services may also be used when paying the Commercial Registry fees² and other expenses. Expenses to take into account for this purpose are, among others, the Commercial Registry fees, the Notary Public's fee for authorizing the articles of incorporation and the Fiscal Stamps Tax.

The electronic procedure significantly reduces the time of definite incorporation, to about 20 business days in total.

Either if registration is done through the traditional method, or electronically, SAT requires a legal representative of the entity (usually the General Manager –CEO-, Single Director or a Director with the capacity to do so) to personally appear to be registered as such.

B. The merger and transformation of corporations

The Code of Commerce establishes two ways of merging corporations: a merger in which the merging entities cease to exist and a new entity is created (merger by creation); and a merger in which one of the merging entities subsists and absorbs the other(s), that ceases to exist (absorption merger).

In both cases, the merged corporations (except for the absorber) must enter into a dissolution procedure as a previous act to the merger, and the new corporation, acquires the rights and obligations of the dissolved corporations.

There are no rules concerning merger control, although a merger or an acquisition of a bank or financial institution must be approved by the banking regulator. There is a bill on competition law, including merger control, pending before Congress.

Mergers must be executed in a public deed by a notary public and filed with the Commercial Registry. They are also published in the *Official Gazette* and other commercial newspaper, and there is a legal term of two months for creditors to oppose the merger or acquisition.

De facto mergers –casted in the form of an acquisition or sale of assets or voting stock- are not restricted and are not expressly regulated as such. Each transaction for sale of specific assets

² There is no Mercantile Registry fee if authorized capital is less than Q299,999.99. If authorized capital is Q300,000.00 or more, the fee is Q8.50 per each thousand quetzals of authorized capital, up to a limit of Q35,000.00. The exchange rate can be estimated to an average of Q7.80 for US\$ 1.00. So the fee would be of US\$ 1.09 per each thousand quetzals of authorized capital, up to a maximum of US\$ 4487.17.

or voting stock, follows the same rules, regardless of whether they have an economic effect of a merger or acquisition.

The Code of Commerce also provides that corporations created in any specific form, may transform into any other specific kind of corporate or business association structure, retaining the same legal personality, rights and obligations of the previous one.

The transformation may result in:

1. A civil law partnership transformed into Business Corporation;
2. The modification of its legal structure;
3. The change of the type of business association along with a change of the system of corporate liability;

These are the only cases recognized by Guatemalan legislation pertaining to transformation of corporations (Article 262 of the Guatemalan Commerce Code).

C. Dissolution and liquidation of corporations

The existence of the corporation ends by dissolution. For dissolution to happen, the specified causes provided by the law or in the articles of incorporation must occur. Dissolution may be partial or total.

Partial dissolution does not imply the extinction and winding up of the corporation. It consists only on the separation of one or more of its members. It can be caused either by a **exclusion**, by shareholder's resolution, or by **voluntary dissociation**, by decision of the member who desires so.

Total dissolution –unless if originated by a merger or acquisition, as stated before-, implies winding up of the entity. Winding up entails covering the entity's liabilities and distribute the remainder among the partners by means of liquidation quotas, in proportion to the amount of equity capital corresponding to each partner or in the previously agreed way –according to rights attaching to shares or interest. The liquidating entity preserves its legal existence during the term necessary to wind up business, which must less than a year.

D. Corporate structures

The Guatemalan Code of Commerce contains five different business association structures which may be adopted. Some of them have a stronger focus on the personal quality of its members, while others have a focus on the equity capital contributed by the members rather than who the members are (their unique personal or professional attributes).

The main business vehicles used are the:

Stock company or Corporation (Sociedad Anónima "SA").

Limited liability company.
Local branch.

Trusts are also available for almost any legal purpose, although the cost of organizing and running a trust might not be justified for smaller size transactions and/or operations, since only banks and credit institutions can act as trustees. There is a specific type of agreement for joint ventures (Contrato de Participación); however, most joint ventures are usually corporate joint ventures, thus structured as an SA.

1. Stock Corporation or SA

As stated above, this is 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 with the participations in a limited liability company.

It's a capitalist corporation (what matters here is the capital stock conforming it and not the persons) identified with a denomination, which is nothing else than the name of the corporation, to which you can also add the name of a founding partner or the last names of two or more of them, being mandatory to include in the name, the main activity that the corporation will conduct. The capital is divided and represented by titles called "shares" and the shareholders limit their liabilities up to the total amount of shares subscribed by them.

The Stock Corporation grants full freedom to transmit the capacity of shareholder by share transference, but that freedom may be limited in the articles of incorporation when the corporation extends nominal titles. It's a corporation ruled by majority's will, which gives foundation to social agreements. The capital stock can be defined as the addition of the nominal value of the shares in which it is divided. The capital stock is divided in authorized, subscribed and paid. The authorized capital stock is the sum up to where the corporation is able to issue shares without modifying its authorized capital stock. It may be subscribed totally or partially. The paid capital stock is the minimum that must be paid from the capital already subscribed (25% or no less than Q5,000.00, as stated above). Shares are credit instruments representing the value corresponding to an aliquot part of the capital stock.

Since they are considered as personal property by law, they can be object of pledge agreement and usufruct; they admit joint tenancy and they can be claimed. Besides the shares, to stimulate and recognize the work done by organizing and founding partners, "Founder Bonds" have been established. They are titles that grant founders the right to collect dividends not greater than 10% of the annual net profit for a term not exceeding ten years. This restriction was established to avoid putting founder partners in permanent privileged positions.³

³Rene Arturo Villegas Lara. Guatemalan Commercial Law. Editorial Universitaria (Publishing Company). Universidad de San Carlos de Guatemala.

There are also corporations that may be called special, since they are subject to requirements, procedures and authorizations different from the current ones. Among them we have the Investment Corporation, the corporation used as basis for the foundation of a Bank, the Insurance Corporation, the Finance Corporation, the Storage Corporation and the Bond Corporation.

The equivalent to the corporation is the American "Business Corporation"⁴ in which, differently from the Guatemalan Corporation, the total amount of shares may be owned by a single individual.

An SA can operate with a single director (Administrador Único), or through a board of directors, including a general manager (and in certain cases several other managers and committees in charge of supervising company business).

Board members can meet anywhere in the world, depending on the company's by-laws, and can have members and alternate members. Board members must be present at the meetings, which some interpret as meaning physically present and some as being present through a telephone conference or a videoconference. However, the Commercial Registry has not rejected the registration of by-laws that provide for board meetings to take place over a telephone and/or a videoconference. If expressly provided by the company's by-laws, directors can be represented by other directors at a board meeting.

The company's "legal representation" (agency by directors and officers) is usually held by the general manager, or by the single director or chairman of the board –meaning that his or her actions within the ordinary course of the company's business, as defined in the articles of incorporation, will bind the company. The legal representation can be granted to other board members, or officers, jointly or severally, or for specific areas of business or the administration of the company (labor matters, tax matters, financial transactions, and so on).

Generally, the directors set general policies under the rules and framework given by the law and the company's by-laws, while the officers, including the general manager and/or any other managers, handle the day-to-day business of the company to achieve the goals and objectives set by the board.

2. General Partnerships.

It's a business association of the personalist type identified with a firm name in which partners by their social liabilities, respond in a subsidiary, unlimited, joint and collateral way. The idea of including in the firm name the first and last name of one of the partners, or the last names of one or more of them, is to let third parties know totally or partially, who is the individual component of the legal entity. As for the collateral nature, we must understand that it only becomes the main responsibility when the partnership is not able to respond with its assets. As

⁴ Hamilton, Robert W. "The Law of Corporations" in a Nutshell. Fifth Edition. West Group, St. Paul Minnesota 2000; State Bar of Texas "Doing Business in Texas", International Law Section. State Bar of Texas. Editor Larry B. Pascal, 1999

for the unlimited nature, it means that the partner responds even with his personal assets. Among the advantages of a General Partnership we can mention:

- Easy and inexpensive registration
- Unlimited liability of the partners as guaranty for corporate creditors
- The personal credit of the partner may contribute to the economical success of the company
- Flexible administration
- Simple operation⁵

The General Partnership in the United States of America is a business operated by co-owners where the partners are responsible without limitations of the commercial liabilities acquired. For most American States it is not a separate entity from its members, but in the case of a litigious matter it is taken as a sole entity. It has similarities to a general partnership, but it's more like a co-ownership of a business enterprise.⁶

3. Limited Liability Company

According to the Guatemalan Commerce Code, it's a company identified with a firm name or denomination which has an original capital stock divided into contributions not transferable to credit instruments and in which partners limit their responsibility by the social liabilities up to the amount of their contributions. This company structure may be useful for entrepreneurs who wish to simplify their organization and limit the partner's responsibility.

The Guatemalan Limited Liability Company is very similar to the American Limited Liability Company.⁷ 7

4. Joint Liability Company.

It is a kind of business association identified with a firm name in which two types of partners coexist with different grades of responsibility. One type of partners, respond to their social liabilities in a subsidiary, unlimited and joint way. The limited partners respond in a limited way, according to the amount of their contribution. The capital stock must be fully paid in order to subscribe the articles of incorporation.

5. Joint Stock Company.

⁵ Villegas Lara, Rene Arturo. "Guatemalan Mercantile Law". Editorial Universitaria. Universidad de San Carlos de Guatemala

⁶ Hynes, Dennis J. "Agency, Partnership, and LLC" In a Nutshell. Second Edition. West Group, St. Paul Minnesota. 2001.

⁷ Hamilton, Robert W. "The Law of Corporations" in a Nutshell. Fifth edition. West Group, St. Paul Minnesota 2000. State Bar of Texas "Doing Business in Texas". International Law Section. State Bar of Texas. Editor Larry B. Pascal, 1999.

It also has two kinds of partners. Its main feature is that the capital stock is divided and represented by titles called shares. The capital stock may be partially paid when subscribing the articles of incorporation, just as in the Stock Corporation. Its operating way is ruled by the regulations of the Stock Corporation. The law limits the right of voting only to the limited shareholders.

The Joint Stock Company is similar to the American Limited Partnerships,⁸ where two kinds of partners exist; some of them respond unlimitedly by the obligations acquired, and others respond in a limited way.

E. Business associations not formed pursuant to formal legal requirements and de facto business associations.

The Guatemalan Commerce Code, preventing a company from operating in violation of the law and with the purpose to protect third parties, has established the legal effects produced by the business associations not duly registered with the Commercial Registry, and the de facto business associations in which the articles of incorporation or of organization weren't subscribed, provides for the unlimited and joint liability of the purported or self-proclaimed partners toward the liabilities acquired.

F. The business enterprise

The Guatemalan Code of Commerce has classified it as a "mercantile asset". It is a common error to confuse the enterprise with the corporation, granting it an institutional character or juridical personality. When actually, the prevalent meaning of the business enterprise is an organized group of elements, including assets, relationships, and others, considered to be an asset that belongs to the business association or entity that sets forth its organization.

The Code of Commerce in Article 655 defines it as follows:

"Enterprise means the organization of work, material elements and incorporeal values coordinated to offer to the public, with profit purposes, and in a systematic way, goods or services. The business enterprise will be legally reputed as personal property."

The law addresses as elements to form an enterprise, among others, the commercial establishment, the customers, commercial reputation, trade name, distinctive signs, etc.

II. FOREIGN CORPORATIONS IN GUATEMALA.

⁸ Idem.

Guatemala is an open country for foreign investment. There are no restrictions regarding the destiny given to income obtained within the national territory, except taxes applicable to specific activities.

The Guatemalan law promotes investment. Its Constitution, statutes and regulations recognize and protect the right to private property, for both Guatemalan and foreign investors. Statute 9-98 of Congress, "Foreign Investment Law", guarantees, among other things, the same treatment and enjoyment of constitutional warranties, both to foreign and local investors. It guarantees the right to participate in any licit economic activity in the country, the right to submit to foreign countries any profit generated in the country, or to make capital transfers out of the country's territory.

As it was mentioned before, a corporation legally established in a foreign country that wishes to invest in Guatemala, can do it by means of the creation of a business association adopting any of the corporate structures contained in the Commerce Code, or it can operate through a branch, previous completion of a series of requirements contained in the Commerce Code.

A. Foreign Corporations Registration at the Commercial Registry.

Foreign corporations or companies can register in Guatemala and operate through branches. Local branches are usually accorded tax transparency, as the branch is merely an extension of a foreign legal entity into Guatemala. One of the results of this is that, unlike the stock company and limited liability company, the foreign corporation is fully liable for its obligations in Guatemala

The Guatemalan Commerce Code states the following requirements for a legally constituted corporation in a foreign country to establish itself in the country or to have branches in it –not subsidiaries:

- Demonstration of being duly constituted, in existence and operation according to the laws of its country of origin
- Filing a certified copy of its articles of incorporation and its by-laws, if any
- Demonstration of corporate authorizations by internal resolution of its competent organ, for establishing itself as a branch in the country
- Constitution of proxy in the country entitled to execute all legal acts and business of its line and to legally represent the corporation in and out of trial
- Constitute an assigned equity capital for its operations in the country
- Issuance of a guarantee bond in favor of undetermined third parties, for no less than US\$50,000.00 in local currency, established by the Commercial Registry, and which must remain in force during the term of operation of said corporation in the country, as well as being responsible to respond not only with the assets owned within the Guatemalan territory, but also with the ones owned in foreign countries for all the company's liabilities in the country.

- Choosing the forum and jurisdiction of the local courts, as well as to the Guatemalan laws for their operation in the country.
- Filing of a statement declaring that neither the corporation nor its representatives or employees will invoke any foreign law regulating the rights and obligations of aliens.
- Declaration that the company will fulfill all the legal requirements set up by the law, before leaving the country. Thus obliging itself to wind up its operation in the country before closing it and leaving.
- Filing of a certified copy of its last financial statements (at least balance sheet and profit and loss statements).

All these documents must be filed with the Commercial Registry. They must be certified and authorized by the corresponding authority of their country of origin and legalized by the Guatemalan Consulate or Embassy in that country. They must be translated into Spanish language by a legal certified translator. Finally, they must be notarized by a Guatemalan Notary Public before submitting them to the Commercial Registry for their registration.

Having this documentation in order, the Commercial Registry orders a publication in the *Official Gazette*. If there is no opposition within the following 8 days to the publication, the Commercial Registry verifies the effectiveness of the capital assigned to the branch.

Afterwards, the definite registration is made at the Foreign Corporation Registry where a Patent of Commerce is issued to evidence the registration. Any important change that occurs to the foreign corporation in its country of origin, like dissolution or bankruptcy, must be notified to the Commercial Registry. Also, before leaving the country, i.e. suspending operations in Guatemala, or winding up the branch, the foreign corporation must obtain an authorization to do so, which will be extended by the Commercial Registry upon filing of certain documentation proving that no third parties will be affected.

B. Registration upon Local Tax Authorities

The definite registration of the foreign corporation is an essential requirement for the Tax Administration to record the corporation as taxpayer and assign it a Taxpayer Identification Number (*Número de Identificación Tributaria* "NIT").

Foreign corporations authorized to operate in Guatemala are obliged to pay local taxes, according to specific tax laws. Income tax, for instance, is calculated in the same manner for local and foreign entities. Therefore, in the moment in which the subsidiary –local vehicle- is incorporated and provisionally registered, the business entity obtains its NIT before the Tax Authority (*Superintendencia de la Administración Tributaria* "SAT"), which shall be used in all tax returns and other taxation documents.

C. Temporary Operations

The Code of Commerce states that foreign corporations with the intention of having temporary operations in the country, for a term no longer than two years, must previously obtain a special authorization from the Commercial Registry with the following requirements, among others:

- Establishment of a guarantee bond of an amount set by the Commercial Registry, but of no less than US\$50,000.00.
- Verification that the foreign company is duly constituted and exists according to the laws of the country where it was organized.
- Constitute proxy in the country, entitled to perform all legal acts and business of its ordinary and extraordinary courses and to legally represent the entity in and out of trial.

D. Operations that do not require authorization

Foreign business entities are able to perform the following operations without any authorization:

- Be a part of any proceeding or trial being before the courts of the country or in administrative proceedings.
- Open or keep bank accounts in its name at any of the authorized local banks.
- Buy from or sell products or services to independent trade agents legally established in the country.
- Negotiate orders through legally established agents in the country, if and when orders remain subject to confirmation or acceptance out of the country's territory.
- Grant loans or open credits in favor of individuals or companies established in the country.
- Issue, endorse, or protest, collect or being a holder of credit instruments in or issued in the country.
- Acquire personal property, real estate or real property rights, if and when they are not part of an enterprise or of the kind it usually deals with.

III. GUATEMALAN BANKING AND SECURITIES MARKET EXCHANGE SYSTEMS

A. Banking System

There are specific individual statutes for financial organizations and activities, such as commercial banking, investment banking and insurance, as well as for the public offering and exchange of securities.

Guatemala has a Central Banking System. The Constitution establishes as the main function of the Central Banking System, the overseeing of activities related to money circulation, interest and exchange rates. Article 132 of the Constitution states that:

“It is an exclusive power of the State, to issue and regulate currency, as well as to formulate and put into practice policies tending to create and maintain credit and exchange conditions favorable to the organized development of the national economy. All monetary, banking and financial activities will be organized under the Central Banking System, which exercises vigilance over everything related to circulation of money and the public debt. This system will be directed by the Monetary Board to which the National Bank (*Banco de Guatemala*) belongs to, a self-governed entity with its own patrimony, which will be ruled by its Organic Law and the Monetary Law”.

The Bank of Guatemala has, among others determining its Organic Law, the following functions:

- A) Be the only issuer of national currency, the Quetzal (Q);
- B) Endeavor to keep an adequate level of liquidity of the banking and monetary system, by the use of the foreseen instruments in its Organic Law;
- C) Endeavor to keep the good performance of the payments system;
- D) Receive deposits to the bank reserves and the legal deposits mentioned in its Organic Law;
- E) To administer the Guatemalan international monetary reserves, in accordance to the general outlines dictated by the Monetary Board; and,
- F) Other compatible functions with its nature of Central Bank assigned by legal mandate.

Private Banking is now regulated by the Banks and Financial Groups Law, Statute 19-2002 of Congress. This statute is fundamentally oriented to propitiate the stability of the financial system, to allow a major effectiveness in the canalization of savings, to enforce the payment system and to increase the solvency and solidity of the financial system.

For this purpose a general, flexible and agile background should be established for the functioning of the financial groups, which should allow the consolidated supervision, favoring risk management and the agile and organized way out of banks with Problems.⁹

B. Securities Market System

The lack of an organized and specialized market in which, through professional intermediaries, transactions of securities admitted to estimates would be made and their prices would be determined by the free gambling of the supply and demand, motivated a group of Guatemalans in 1986 to fill that gap existing in the financial sector of the country.

So, by the end of 1987, by means of Ministerial Resolution 99-87, the Ministry of Economy authorized the operation of the National Securities Market (*Bolsa de Valores Nacional*), which formally established the Securities Market in Guatemala.

⁹ Information taken from the Banco de Guatemala's website, www.banguat.gob.gt

The Commodities Exchange and Trade Market Law, Decree 34-96 of Congress, in force since December 23, 1996, seeks to promote the Nation's economic development, by means of national and foreign capital investment governed by modern regulations, which allow the transparent, efficient and dynamic development of the Securities Market.¹⁰

PART TWO

GUATEMALAN TAX SYSTEM

The tax system is one of the most dynamic fields of any country. The purpose of assessing certain activities is to pay the public spending; covering the needs of the government, and in many times is where the weakness of any country is. In other words, there can be many formal limits to restrict the power of the government in creating taxes, but it turns difficult to establish a material limit, since the "needs" of the government may become limitless.

In the Guatemalan tax system, taxes become more relevant in our country due to the low capacity of the government to collect, and a strong anti-fiscal culture arising from the lack of credibility in government institutions, as well as the well-known existence of the "informal or underground economy". In addition to this, we can add the incapability of the tax collection institutions for making a uniform, constant and stable supervision of all categories of taxpayers. All these aspects have as a result that every incoming government is more creative than its predecessor when it comes to looking for a new and immediate source of income to cover their expenses, being the most accessible, the creation of new taxes.

Since 1991, Decree 6-91 of Congress, Tax Code, enters in force. It contains substantive concepts regarding tax legislation, as well as a procedures section where the main tax administrative procedures are described. It also contains the obligations of taxpayers, and the administrative infractions and sanctions to which he could be subject to in case of breach. Through this Decree, the Guatemalan government is empowered to examine, rectify, adjust and demand payments, fines and sanctions imposed to taxpayers. It establishes a period of 4 years for the tax obligations to be unenforceable if the taxpayer is registered at the Tax Administration, and 8 years if he is not.

Guatemala has a widespread constitutional order control for the ordinary courts to take cognizance of petitions such as Appeal for Legal Protection and Unconstitutionality in Concrete Case, and also with a centralized constitutional order control, where the Court of Constitutionality, an independent and supreme tribunal in constitutional matters, hears the level of appeal of the petitions aforementioned, about the General Unconstitutionality presented against Congress Laws, Regulations and any provision in general, considered to somehow

¹⁰ Information taken from the website of the Bolsa de Valores Nacional, Sociedad Anónima. (Stock Market) www.bvnsa.com.gt

transgress the constitutional order. In more than one occasion precedents have been set pertaining tax matters, in constitutional issues, as well as judicial or administrative, which have contributed to set a limit on any abuse in this subject with such delicate implications.

I. GENERAL TAX PRINCIPLES

The Constitution of Guatemala establishes as tax principles the following:

A. Rule of Law

It states that the power to create taxes corresponds exclusively¹¹ to Congress.

The Guatemalan Constitution declares that the Congress has exclusive authority of enacting ordinary and extraordinary taxes, local excise taxes and special contributions, in accordance to the government's needs and according to tax equity and justice, as well as to determine the collection basis among the following:

1. Generating fact of tax relation (alleged abstract foreseen in the legal regulations to form the tax, that, when it actually happens, the tax obligation arises).
2. Exemptions (total or partial dispensation from compliance of a tax liability, granted by law to taxpayers, when the cases established by law are verified).
3. The taxpayer and the common responsibility (taxpayer is the one obliged to the satisfaction of the tax obligation, either as taxpayer or as responsible).
4. Tax base and tax rate (the tax base is the amount over which the tax rate or deduction percentage will be applied to).
5. Deductions, discounts, reductions and surcharges.
6. Tax infractions and sanctions. Also, the Constitution prescribes that all regulations that contradict or distort the law regarding the tax collection basis are void *ipso jure*; and that the regulations enforced by the executive branch will not be able to amend collection basis and will remain exclusively ruling administrative tax charge and to establish the procedures to facilitate its collection.

B. Payment Capacity Principle

Through the payment capacity principle, there is a material limit to the tax power of the government. The Constitution prescribes that the tax system must be fair and just, and tax laws must adequate to this principle¹², according to article 243. This article also contemplates the prohibition to confiscatory taxes and to double or multiple territorial taxation.¹³

¹¹ The Court of Constitutionality has stated several times already the following criteria regarding tariff: "Tariffs are classic taxes, and as such, it is obvious that its only source constitutes the Governing Body which according to the Constitution of the Republic is the legitimated to create, amend or derogate ordinary and extraordinary taxes, as provided in articles 171 c) and 239...". Sentences files 293-87, 977-2001 and 1589 -2002.

¹² Related to this principle, the Court of Constitutionality has stated that taxes must affect proportionally the capacity of payment of taxpayers. Fees must be progressive and also contemplated in the tax base depuration, excluding encumbrance, the necessary expenses to produce the rent. Gazette No.37, page 45, fileNo.167-95; Gazette No.41, page 14, file 889-95.

¹³ In sentence of 05-10-00, File No.829-98, Gazette No.56 of the Court of Constitutionality it's stated

The tax administration authority in charge of the administration and collection of taxes is the *Superintendencia de Administración Tributaria (SAT)*.

II. INCOME TAX

The income tax system is based on a territoriality principle; resident and non-resident persons are subject to income tax only on their Guatemalan–source income.

According to the Income Tax Law, Decree 12-2010 (*Libro I de la Ley de Actualización Tributaria LAT*), income tax is levied on all resident or non-resident legal entities, trusts, informal associations, joint ownerships, permanent establishments of foreign enterprises and, in general, any productive or economic unit deriving taxable income.

A. Taxable income

The taxable events are the following:

- production, sale and commercialization of goods in Guatemala;
- export of goods produced, manufactured, treated or commercialized (including the sole remission of the goods for export), even when executed through agents, subsidiaries, representatives, purchasing agents or other intermediaries;
- services provided in Guatemala and export of services from Guatemala;
- transportation of goods or individuals;
- communication services of any nature and means between Guatemala and other countries, including telecommunications;
- legal, technical, financial, administrative or any other advisory or assistance service to be used in Guatemala or supplied from abroad to Guatemalan residents or to Guatemalan permanent establishments of non-residents and to be used in Guatemala;
- public shows and performances in Guatemala by artists, sportsmen and any other related activities even if the income is obtained by entities different from the organizer or the performer;
- production, distribution, leasing, brokerage or any other similar transaction in Guatemala relating to films for cinemas or
- television, videos, radio serials, records, drama or comic magazines and any other similar means of reproduction of images or sounds, including cable, satellite or multimedia broadcasting;
- subsidies paid by public or private entities to resident taxpayers;

that: ‘article 243 imposes to the State the obligation of eliminating the cases of double or multiple tax in a progressive way to avoid harming the treasury. This progressive way allows two actions: First, definite elimination of one of the coexisting taxes. Second, the amendment of these taxes making them less burdening. Then it is obvious that it is not admissible to make a tax more burdening, because that increase would not tend to progressive elimination but to aggravate the tax burden, and it will constitute a clear breach of the aforementioned obligation of the State...’

- independent personal services;
- Salaries, pensions, bonuses, commissions etc;
- dividends, profits, benefits and any other income derived from a participation or stockholding;
- interests derived from cash deposits, investment of money in financial instruments, possession of debentures, financial leasing, factoring, etc.;
- royalties paid or used in Guatemala by resident companies or PEs doing business in Guatemala;
- income from brands, commercial names etc;
- income from rights over intangible assets;
- income derived from movable and immovable properties located in Guatemala;
- income derived from the alienation of movable or immovable property located in Guatemala or rights related to them;
- income derived from shares or credit instruments issued by resident companies or individuals; and
- capital gains derived from rights, shares or participations in companies whose assets are represented by immovable property located in Guatemala;
- income derived from lottery prizes, bingos, etc.

B. Taxes on Employment

Employees are taxed on Guatemalan-sourced income. The definition of "Guatemalan source" is broad, including not only the employee's salary but any income derived from capital investments, interest, capital gains, or property leased, in all cases, within the jurisdiction of Guatemala.

Different tax treatment applies to resident and non-resident employees. Presence in the country for more than 183 days a year would usually give rise to tax residence. Other situations may give rise to withholding tax obligations (regardless of whether the income is characterized as derived from a labor law relationship).

Tax-resident employees are liable to pay income taxes at 5% or 7%, depending on the amount of the taxable income. Employees with income above the equivalent of US\$37,975 are taxed at a rate of 7%; other employees are taxed at a rate of 5%. The only deductions allowed include:

- Cost of living allowance at about US\$6,076 per year.
- Social security contributions and contributions to pension funds.
- Life insurance premiums, which do not provide for a rescue value.
- The employer must calculate the monthly withholding to be made through the year, but a final payment is made at the end of the fiscal year, if more or less than the required tax would have been withheld.

Social security contributions amount to a total of 17%, of which 12.67% must be contributed by the employer and 4.83% must be contributed by the employee.

A 15% withholding tax rate applies to income for non-tax resident employees that falls under the general category of remuneration for services. The employer must withhold the tax on credit or payment for the services and pay it on behalf of the employee to the Tax Administration within the next ten working days of withholding. No filing requirements apply to non-tax resident employees.

Employers must withhold and pay on behalf of their employees the applicable income tax and social security contributions, including employer's social security contributions.

C. Corporate Tax

A business vehicle must pay income tax in Guatemala on Guatemalan-sourced income, regardless of nationality or residence. However, the tax regime applicable to residents differs from that applicable to non-residents. While tax-resident vehicles are taxed according to the nature of their income (whether derived from their main business activity or from capital investments, and so on), non-tax resident vehicles are subject to withholding taxes, the rates of which vary according to several categories of income (interest, dividends, remuneration for services, royalties on IP, and so on). Tax-resident businesses are not liable to pay tax on worldwide income.

Residence depends, broadly, on:

- Physical presence in Guatemala for more than 183 days in a year.
- Carrying on business activities in Guatemala on a habitual basis.
- Having the company's main business interests or administrative headquarters in Guatemala.
- Becoming organized under the laws of Guatemala and establishing its tax residence in Guatemala.

Non-residents are subject to tax in Guatemala only on Guatemalan-sourced income. This includes income derived from the provision of services, capital investments, labor, royalties on intangible assets, and capital gains.

Corporate business vehicles are generally subject to a 25% tax rate on net income. There is an alternative regime available to all taxpayers where gross income is taxed at 7%. For those taxpayers with an effective tax rate of 7% or more, this may be the best choice as administrative costs are very low (meaning that there is no need to determine applicable deductibles or their amount). The default and main method of payment of income taxes consists of a quarterly interim payment (calculated on the previous fiscal year's results or, alternatively, on a forecast for the current fiscal year) to be liquidated at the end of the fiscal year when compared to the definitive results. The alternative method, calculated on gross income, consists of either a withholding applicable to every amount paid to the taxpayer or a direct monthly payment by the taxpayer of the 5% or 7% on gross income.

D. Capital Gains

Dividends distributed to shareholders, whether resident or non-resident, are taxed at a rate of 5% and withheld by the paying company.

Dividends received from Guatemalan companies would normally have been subject to withholding tax. Dividends received from foreign companies, that do not operate or have a permanent establishment in Guatemala, are considered to be foreign source income and therefore not subject to taxation in Guatemala. Dividends are not deductible.

As a general rule, the payment of interest is subject to 10% tax, whether paid to residents or to non-residents, with some exemptions, such as:

- Government bonds.
- Insured mortgage backed securities, for the development of low income housing projects.
- For foreign financing, interest on loans made by fully licensed banks or financial institutions to Guatemalan companies is also exempt (though it is recommended that a ruling is sought from the Tax Administration).

However, if the resident regularly pays interest, the income will be subject to corporate income tax.

IP royalties paid to non-residents are subject to a 15% withholding tax.

III. ALTERNATIVE MINIMUM TAX

An alternative minimum tax (*Impuesto de Solidaridad*, ISO) is levied on persons or entities that perform commercial or agricultural activities in Guatemala and derive a gross margin of more than 4% of their gross income.

The tax base is the greater amount of either 25% of the net asset value or 25% of the gross income, and when the net asset value exceeds four times the gross income, the tax base will be 25% of the gross income.

The ISO is imposed on a quarterly basis.

IV. VALUE ADDED TAX

The Value Added Tax (*Impuesto al Valor Agregado IVA*) imposes a single rate of 12%, applicable following taxable events such as supply of goods, supply of services and importation. VAT is tax return is filed and paid on a monthly basis.

With respect to sales and services, the taxable amount is the price excluding any discounts granted in accordance with trade practices, and including amounts charged separately to the acquiring party also including taxes other than VAT.

With respect to imports, the taxable amount is the stated value for customs purposes or, failing this, the CIF value.

With respect to the leasing of movable or immovable property, the taxable amount is equal to the rent plus any financing charge. With respect to withdrawals of movable goods from an enterprise, the taxable amount is the acquisition price or the production cost of the goods.

A. Taxable and exempt operations

The law prescribes as taxable event the following:

- The selling or bartering of personal property or real property rights constituted over them.
- Rendering of services in Guatemalan territory.
- Importations
- Income of leasing movables and real estate.
- Allotments of movables and real estate, unless they are made when distributing the hereditary estate or terminating co-proprietorship.
- Taking of movables by a taxpayer or by the owner, partner, director or employee of the company for his personal use and consumption.
- Destruction or loss or any event implying something missing in inventory, unless when dealing with perishable goods or any misfortune.
- The selling or bartering of real estate.
- Absolute gifts of movables and real estate.

Among the general exemptions we can mention the following:

- Imports of movables made by cooperatives, federations and confederations; individuals and legal entities in a temporary import regime. Travelers that enter those goods as luggage, house effects of Guatemalan diplomats returning to the country; missions and foreign diplomats, among others.
- Exports of goods and services.
- Transfer of ownership of movables and real estate in the following cases:
 - contributions to civil or commercial entities;
 - mergers of
 - corporations;
 - Inheritances, legacies and donations.

- Services provided by institutions under the vigilance of the Banks' Superintendence. Regarding the insurance and bond institutions, only re-insurance and re-bonding operations are exempt.
- The making, issuing, circulation or transference of credit instruments, and any kind of shares, except memorandum invoices when they are issued, accepted and negotiated by acts according to the VAT law.
- The constitution of trusts and the restitution of the trusted goods to the trustee.
- Contributions and donations made to associations, foundations and educational, cultural, social service and religious non-lucrative institutions.
- Retail sales of meat, fruits, vegetables and basic grains to final consumers in marketplaces in villages and municipalities.
- Services provided by associations, foundations and educational, social assistance and religious non-lucrative institutions.
- The selling of assets of banks of financial corporations with a regulatory plan or a Board of Exclusion of Assets and Liabilities approved by the Banks' Superintendence, when transferring to other banks with previous authorization of the Monetary Board.¹⁴
- Buying and selling, as well as the cancellation of import taxes and tariffs of generic and alternative natural medicines; and antiretroviral medicines.

Among the specific exemptions we find that the tax on operations of sales or services should not be imposed to the following persons:

- Educational Centers, public and private.
- Universities.
- Autonomous Sports Confederation of Guatemala and the Guatemalan Olympic Committee.
- Guatemalan Institute of Social Security.
- Diplomatic and consular missions accredited before the Guatemalan government.
- International organizations that according to previously subscribed agreements have been granted tax exemptions.

The aforementioned persons are also exempt of the tax generated by acts imposed by this law.

B. Determination

On imports, the tax is calculated by applying 12% to the value resulting from adding to the imported merchandise CIF price the amount of the tariff and the rest of the surcharges charged regarding the import.

In other cases, the tax results from the difference between the Fiscal Credit and de Fiscal Debit.

Fiscal Credit is the sum of the tax charged to the taxpayer in imports and purchases of local goods and services directly related to their production, distribution and sale process.

¹⁴ These are institutions created by the Banks Law, Decree 19 -2002 that are applied to banks with liquidity problems.

On the other hand, Fiscal Debit is the sum of the charged tax by the taxpayer in the operations subject to IVA charge done in the same period. The tax to pay is the difference between the generated total Fiscal Debits and Credits.

C. Value Added Tax surplus

Two situations can arise monthly:

1. Fiscal Credit (tax charged to the taxpayer) smaller than the Fiscal Debit (tax charged by the taxpayer). This is the common scenario. The taxpayer must pay the Local Tax Authorities that difference.
2. Fiscal Credit larger than the Fiscal Debit. In this case, the difference is carried forward for the taxpayer to use in future tax periods until it is depleted.

D. Value Added Reimbursement

Persons dedicated to exports have the right to ask for a refund from the Fiscal Credit in their favor. The reimbursement is made by due monthly periods and it has to be requested to the Tax Authority.

The Fiscal Credit exporters can regain is the result of the tax that they have been charged through invoices of purchased goods and services destined to their commercial activity or paid by them in the import of goods. This right of cash reimbursement comes from the moment the exporters can't charge this tax to anyone, since they don't sell in the country, because, like it was mentioned before, VAT is a tax on consumption and it must be paid by the final consumer.

V. DOCUMENTARY STAMP TAX LAW

Stamp duty is levied at the general rate of 3% on documents providing for acts or contracts specified in the law, as well as on paper use in notarial registers.

A. Taxable documents and acts

The general rule is that the amount of this tax is of 3% of the value tendered in the document concerning the following acts and contracts:

- Civil and Mercantile contracts.
- Documents issued abroad to have an effect in Guatemala.
- Public and/or private documents with the purpose of vouching for payment in goods or money.
- Receipts issued by insurance or bond companies in concept of paid primes or the corresponding bond payments or policies of any kind of insurance or bond.
- Receipts of payments of lottery and raffle prizes.
- Receipts of payment of fund withdrawals from companies or businesses for their owners' non provable personal or travel expenses.

- Documents accrediting payment of commissions on behalf of the government regarding tax collection, purchase of fiscal species and any other commission.

Added to the 3%, the law provides a list of specific fees for certain documents where the amount to pay is already determined by law.

B. Exempt documents and acts

Transactions exempt from stamp tax include:

- transactions subject to VAT;
- credit transactions entered into by banks and financial institutions;
- documented loans and other draft documents issued abroad to be paid in Guatemala, or issued in Guatemala to be paid abroad;
- contributions to companies and the subscription, issuance, payment and transfer of shares or participating rights;
- foreign loans, provided that the loan is used to finance the actual importation of goods or the loan proceeds are sold to Guatemalan banks;
- exports of merchandise and products, and the sale of merchandise and products for subsequent export; and
- the incorporation, transformation, amendment or dissolution of mercantile companies, as well as capital increases (except for a fixed tax levied on the first page).

VI. IMPORT DUTIES, TRADE AGREEMENTS AND CUSTOMS SYSTEM

A. Central American Common Market (CACM)

The Central American Common Market, created in 1960 through the General Covenant of Central American Economic Integration, establishes a common market and customs union between Guatemala, Honduras, Nicaragua, El Salvador and Costa Rica. Its main objective is to avoid disloyal commercial practices and to reduce intraregional tariffs.

B. North Triangle - Mexico Trade Agreement

This is an Agreement between Mexico and Guatemala, El Salvador and Honduras in force since March 16, 2001. Allowing a rise in commerce and investment; intensifying of preferences granted to commerce and goods of origin; Intellectual Property protection; creation of antidumping policies and agreements regarding customs are among the benefits accomplished.¹⁵

¹⁵ KPMG "Investment in Guatemala", 2001.

C. Trade Agreements with The Dominican Republic, Chile, Panama, Colombia, Taiwan, the European Union and others

Central America Free Trade Agreements in vigor with The Dominican Republic, Chile, Panama and the European Union. Guatemala also has Free Trade Agreements with Colombia and Taiwan.

Guatemala also has investment agreements with several countries, and partial scope trade agreements with others such as Belize, Cuba, Ecuador and Venezuela. It has also reached a trade agreement with Peru, Peru that has not in vigor yet.¹⁶

D. Dominican Republic - Central American Free Trade Agreement (DR-CAFTA)

The Free Trade Agreement between the United States of America and Guatemala, El Salvador, Honduras, Nicaragua, Dominican Republic and Costa Rica is currently in vigor. This is a multilateral agreement that allows for imports and exports between each of the parties to have benefits among them all.

E. Import Duties

Guatemala is part of the Central American Integration System, which is based on a series of treaties that regulate, among others, international trade among the member states and between the member states and non-member states. The full members of the system are Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Belize, and the Dominican Republic. There is a Central American Uniform Customs Code and a common customs product nomenclature across the region. Both have been developed to comply with basic World Trade Organization rules and policies. Trade among the member states is now basically free of any import duties, except for a few products that have a sensitive character for the economy of the member states.

Through Decree-Law 123-84, ratified by Government Agreement 771- 85, Guatemala becomes part of the Central American Convention on the Tariff and Customs Regime (*Convenio sobre el Régimen Arancelario y Aduanero Centroamericano "CRAAC"*).

One of the authorities created by this Convention is the Central American Tariff and Customs Council, that, according to article 7 paragraph c) of the Convention, is in charge of approving tariff rights and their modifications.

The Central American Imports schedule is formed by the Central American Schedule System (*Sistema Arancelario Centroamericano "SAC"*) -harmonized code system- and the corresponding Importation Schedule Rights (*Derechos Arancelarios de la Importación "DAI"*).

¹⁶ Website of the Ministry of Economy: <http://portaldace.mineco.gob.gt/tratados-y-acuerdos-comerciales>

The numeric code of SAC is represented by eight digits that identify: the first two, the chapter; the next two, the entry; the third pair, the sub-entry; and the last two, the paragraphs. The merchandise's identification is always done with the eight digits of this numeric code.

The Central American schedule, to the day, has harmonized approximately 87% of the amounts in the tariff universe.¹⁷ Importations of products manufactured out of Central America to any Central American country must pay the Value Added Tax (IVA) and the Importations Schedule Rights (DAI). If the goods were to be imported to another Central American country, they are subject to making the same payments (IVA and DAI).

On the other side, the transference of merchandise originated in Central American countries is exempt of the payment of DAI, but not of IVA (value added tax).

All of these agreements create a fairly open international trade environment with only a few products subject to import duties, which will gradually be reduced at various points of time.

There are no export duties, but there are products, such as sugar, which are subject to export quotas.

VI. SPECIFIC TAXES

A. Tax on Petroleum and its Derivatives Law (Decree 38-92)

Decree 38-92 establishes a tax on crude petroleum and fuels derived from petroleum imported or national, processed in the country and distributed in national territory.

The calculating base to apply the tax is fixed according to de American gallon of 3,785 liters at room temperature.

The tax rates (ruling since April 15, 2003) are:

Superior Gasoline: Q. 4.70 (Equivalent to US\$0.58 approx.).

Regular Gasoline: Q. 4.60 (Equivalent to US\$0.57 approx.).

Aviation Gasoline: Q. 4.70 (Equivalent to US\$0.58 approx.).

Diesel and gas oil: Q. 1.30 (Equivalent to US\$0.16 approx.).

If any of these fuels is going to be used to generate electricity in thermoelectric plants from the National Electric System, the law foresees some exemptions.

The tax is also imposed on products like kerosene, kerosene for reaction motors, Nafta and Gas blend of petroleum (propane, butane, methane and similar gases) in a heap and in carburetion; all with Q. 0.50 per gallon (equivalent to US\$0.06).

¹⁷ Data obtained from the Economic Integration Secretary (Secretaría de Integración Económica) (SIECA).

The tax rates that encumber Fuel Oil (Bunker C) Crude Petroleum as fuel, other fuels derived from petroleum and asphalts have been modified and added to this law by Decree 11-2003 of Congress imposing a tax between Q. 0.50 and Q. 4.00 (US\$0.06 and US\$0.50) per gallon, nonetheless, the Constitutional Court declared the unconstitutionality of the article that modified the imposed tax rate.¹⁸

On the other side, this law also foresees exemptions for institutions and agencies that have complete exemptions by constitutional mandate; public or private international institutions operating in the country in social causes or supporting the government and economic and social development, as long as the respective legally approved covenants or contracts say so.

The Executive Power, by a Government Agreement issued through the Ministry of Public Finances, will grant the tax exemptions to the beneficiaries. This tax is not imposed on national crude petroleum, or imported reconstituted crude petroleum processed by the refineries installed in the country. It is also not imposed on finished products or in national crude petroleum later exported.¹⁹

B. Taxes on the distribution of soft drinks and other beverages, including alcoholic beverages

1. Tax on the Distribution of Alcoholic Distilled Beverages, Beer and other Fermented Beverages (Decree 21-2004)

Different laws have ruled in the beverages' sphere. With the legal force of Decree 21-2004 of Congress, "Tax on the Distribution of Alcoholic Distilled Beverages, Beer and other Fermented Beverages", and reformed in 2010.

According to the law the taxable event is the moment the alcoholic distilled beverages, beer and other fermented beverages are taken out of the warehouse or storage facilities used by the producers or registered importers, for its distribution in the Guatemalan territory.

¹⁸ Through the Sentence of August 6, 2003, of File 684-2003, the Constitutional Court determined that there were various events in the case of petroleum (importation, distribution and sale) that originated different tax obligations, being a case of **multiple taxation**, contradicting the Constitution which orders to progressively eliminate these cases, declaring the unconstitutionality of article 7 of Decree 11-2003 that increased the tax load in certain petroleum products.

¹⁹ On December 16, 2004 the Official Gazette published the Decision of File 361-2003 where the Constitutional Court declared where applicable the unconstitutionality of the article of said law that comprised the generating fact of the tax; this way, the law was left practically without application; nonetheless, a day after, December 17, 2004, Ministry Agreement 0601-2004 was published in the Official Gazette which orders the publication of decision 132-2004 (Council of Economy Ministers of Central America) and that comprises modifications to importation tariff rights, that were left encumbered with tariffs up to 40% (before, tariff rights on most of the products derived from petroleum were of "0" and in few cases, they were encumbered with a 10% of tariff rights). This modification to DAI had the purpose of "compensating" the lack of income that the Government could have suffered by a specific tax.

2. Tax on the distribution of soft drinks, isotonic or sports beverages, juices or fruit nectars, yoghurts, concentrates or powder preparations for making beverages and bottled water (Decree 9-2002).

Decree 9-2002 contains a specific tax imposed on the distribution in the national territory of any kind of beverages, juices, nectars, yoghurts, concentrates or powder preparations and bottled water, from national production or imported.

The tax is generated on the date the products leave the warehouse or place where they are stored of the manufacturers or importers registered for distribution in the national territory.

In the case of individuals or legal entities that are not manufacturers or importers that make sporadic importations for their own consumption, the tax is generated in the moment of the importation or when the products enter the country.

For the application of this tax, the measurement unit is the liter or its equivalent. The imposing period is monthly. The base used for imposing the tax is constituted by the quantity in liters, from national production or imported, that are distributed in Guatemalan territory by a passive subject, during a month.

These are some of the exemptions:

Importations of the products imposed by this law made by International Organizations that have been granted tax exemptions according to covenants subscribed between the Guatemalan Government and the agencies.

- Exportations or re-exportations of the products imposed by this law.
- Persons that are passive subjects of this tax (manufacturers and importers) must register as taxpayers at the Tax Authority (SAT) as manufacturers or importers. Article 10 of this law names the specific fees per liter for each product, making reference to fractions and tariff entries from SAC regarding the description of these products; among these tariffs we have:
- Sodas with or without sugar, with or without carbonic gas, as well as syrups and/or concentrates used to make sodas: fee Q. 0.18 per liter.
- Isotonic or sports beverages (tariff fraction 2202.90.90): fee Q. 0.12 per liter.
- Natural fruit juices or nectars and artificial juices (tariff fraction 2202.90.90) fee Q. 0.10 per liter.
- Any kind of yoghurt beverages (tariff fraction 0403.10.00) fee Q. 0.10 per liter.
- Natural bottled water, referred to in tariff entry 2201, in presentations of up to four liters. The tax on natural bottled water in presentations of more than four liters for home use is not included. Fee Q. 0.18.

The tax must be paid at the end of each month.

C. LAW ON TOBACCO AND ITS PRODUCTS (DECREE 61-77)

This law's purpose is to regulate planting, cultivating, transit, manufacturing, commerce, consumption, importation and exportation of tobacco and its products.

Any person can plant and cultivate tobacco; nonetheless, notice has to be given to the Tax Authority. Such activities are controlled by the Ministry of Public Finances. Any person or legal entity can also manufacture products from tobacco.

Regarding the taxes, cigarettes manufactured by machines cause a conveyance tax equivalent to 100% of the selling factory price. Machine made cigarettes' manufacturers must use invoices where the selling factory prices without the tax are already printed, putting the tax amount separately. Importers of machine made cigarettes are responsible of paying a tax of 100%. Handmade cigarettes are not imposed by this tax.

PART THREE RELEVANT ASPECTS AND LEGISLATION RELATED WITH FOREIGN INVESTMENTS IN GUATEMALA

I. LABOR LAW

The Labor Code is the main source of labor law. Other rules can be found in:

- The Constitution.
- Specific statutes, which have either amended the Labor Code or created new obligations.
- International treaties ratified by Guatemala.
- Collective Bargaining Agreements

The laws regulating the employment relationship, however, will depend on the facts of the situation. A Labor Judge is likely to find an individual employment contract in an agreement, memorandums, and accounting documents, if that document contains issues such as employment hierarchy, working time, disciplinary measures, and so on.

The parties can only agree to override provisions of the Constitution, Labor Code, and those established by collective agreements, where the provisions agreed between the parties improve the conditions of employment for the employees. The conditions can also be improved by custom or practice at the labor place.

Finally, when it comes to determining rules governing employment the employer has the burden of proof and the employee can broadly state the facts as he views them.

The same rules apply to national, resident, and/or foreign employees working in Guatemala.

The following are among the most important aspects of Guatemalan labor law:

A. Wages

Wages can be agreed as follows:

- a) Time unit (monthly, biweekly, weekly, daily or per hour).
- b) Work unit (by piece, task, by the lump, or by fixed price).
- c) By participation in utilities, sales or charges made by the employer; but in no case the employee can assume the risks of the employer's losses.

The minimum wage for agricultural and non-agricultural activities is set yearly by Presidential Decree, based on the recommendations of the Ministry of Labor (*Ministerio de Trabajo y Previsión Social*) and the National Wages Committee (*Comision Nacional del Salario*), as provided by Guatemalan Labor Law.

B. Vacations

Our Constitution provides as a minimum nontransferable right of all employees a 15 working days' vacation period per worked year.

Vacations are not exchangeable for money, unless the employee did not enjoy them, no matter the cause.

Employees can't accrue vacation periods year by year with the purpose of having a longer vacation period afterwards. If an employee terminates his work contract, he can ask for payment of all vacation periods he didn't enjoy in the last five years.

Labor law provides that all employees must enjoy the complete, uninterrupted vacation period, meaning that the employer can't ask an employee to suspend it.

C. Shifts and overtime

In accordance with Guatemalan law, ordinary work shifts can be agreed upon by the parties in compliance with the following parameters:

a) **Day Shift:** It's all the work done in a day between six in the morning (6:00 am) and six in the evening (6:00 pm). It can't exceed eight daily hours or forty-four hours in a seven day working week, equivalent to forty-eight hours for salary effects.

b) **Night Shift:** It's all the work done between six in the evening (6:00 pm) of one day to six in the morning (6:00 am) of the next day. It can't exceed six hours a day or thirty-six hours in a seven day working week.

c) **Mixed Shift:** It's all the work done in a period of time that includes hours from the day shift and the night shift. It can't exceed seven hours a day or forty-two hours in a seven day working week.

It's important to mention that all the work done outside of a shift constitutes **overtime** and it must be paid as such.

Ordinary shifts and overtime can't exceed twelve hours in a day.

A premium of 1.5 times the employee's regular rate must be paid for each hour worked as overtime.

The following persons are not subject to the limitations of work shifts:

- a) The representatives of the employer (*e.g. General Managers, CEOs, etc.*).
- b) Employees working without immediate superior supervision;
- c) Employees working as security guards or in surveillance, where only their presence is required;
- d) Employees working outside of the company's facilities;
- e) Employees whose work can't be done in shifts because of its very nature.

Nonetheless, in all of these cases, the employees can't be persuaded into working more than twelve hours a day, and if they do, the employer must pay them overtime.

D. Christmas, Annual, and Productivity Incentive Bonuses

Pursuant to Guatemalan labor law, the employer must pay his employees a Christmas Bonus on the second week of December of every year, equivalent to a month's salary, calculated on the average ordinary salaries earned by the employee during December 1 of the previous year through November 30 of the year in which the bonus must be paid. If the employee didn't work the whole period, the bonus must be paid proportionately to the time worked.

The Annual Bonus (Bono 14) must be paid by the employer on the second week of July of every year, equal to a month's salary, according to Decree 42-92 of Congress ("*Annual Bonus for workers of the Private and Public Sectors*").

Finally, the employer must pay his employees a Productivity Incentive Bonus of Q. 250.00 (approx. US\$ 31.25) every month, according to Decree 37-2001 of Congress.

E. Salary Deductions and Employee Tax

Tax-resident employees are liable to pay income taxes at 5% or 7%, depending on the amount of the taxable income. Employees with income above the equivalent of US\$37,975 are taxed at 7%; other employees are taxed at 5%. The only deductions allowed include:

- Cost of living allowance at about US\$6,076 per year.
- Social security contributions and contributions to pension funds.
- Life insurance premiums, which do not provide for a rescue value.

The employer must calculate the monthly withholding to be made through the year, but a final payment is made at the end of the fiscal year, if more or less than the required tax would have been withheld.

Social security contributions amount to a total of 17%, of which 12.67% must be contributed by the employer and 4.83% must be contributed by the employee.

F. Foreign Employees:

Foreign employees need work permits to work legally in Guatemala in addition to temporary residence visas and permanent residence visas. To obtain a work permit the main condition is

that the employer declare not only that the employee will be hired on the granting of the work permit, but also that the employer agree to guarantee that the employees' legal obligations in Guatemala are fulfilled. In practice, this guarantee is rarely enforced.

There is a total legal maximum of 10% of foreign workers (excluding foreign managers) that can be employed at any time in the company.

G. Additional benefits required by law

a) **Employees' Recreation Institute** (*Instituto de Recreación de los Trabajadores*) (IRTRA): The employer must make a monthly contribution to IRTRA of 1% of the total of salaries paid to his employees.

b) **Technical Training Institute** (*Instituto Técnico de Capacitación*) (INTECAP): The employer must make a monthly contribution to INTECAP of 1% of the total of salaries paid to his employees.

II. FREE CURRENCY NEGOTIATION LAW

Statute 94-2000 of Congress establishes the liberty of disposing, having, hiring, remitting, transferring, purchasing, selling, charging, and paying in any currency.

Having and handling deposits or accounts in foreign currency as well as having, exporting, importing, purchasing and selling in gold coins or bars, is also allowed.

The coin and means of payment in any act or business transaction of monetary content used in Guatemala is the quetzal (Q. 7.80.00 is equivalent to approximately US\$1.00), unless the contracting parties conventionally or expressly decide otherwise.

III. FOREIGN INVESTMENT LAW

The main principle concerning foreign investment, under the Foreign Investment Protection Act, is that of equal treatment for local and foreign investors. This applies to the few investment incentives that are available, such as incentives for the draw-back industry (which involves lowering tariffs on the import of raw materials, machinery, and so on, for the purpose of exporting manufactured products from those materials outside Central America) and forestry projects.

Statute 9-98 of Congress, Foreign Investment Protection Act, sets forth that national and foreign investment must be treated equally. It also abolishes all regulations against the aforementioned principal.

Basically, it guarantees equal treatment and enjoyment of constitutional rights to foreign and local investors, in the sense that different restrictions from the ones local investors enjoy will not be imposed on foreign investors in the subjects of private property, expropriation and importation. It guarantees the right to participate in any licit economic activity in the country, the right to remit out of Guatemala any profits generated in the country, or to make transfers of money out of the national territory, among other things.

IV. INTELLECTUAL PROPERTY

Intellectual Property is recognized by Guatemalan Law and protects the result of man's creative effort and some of the activities with the object of divulging those creations. Depending on the field the protected creations belong to, In accordance with Guatemalan law, Intellectual Property is classified in two large branches: copyright law and industrial property.

A. Copyrights

Copyright concerns the moral and patrimonial (that is, economic) rights to the authorship, integrity of, and to profit from a created work. Copyright arises out of the creation of the work and the attribution to it of the name or the known pseudonym of the author.

Works are defined very broadly and range from traditional written works to audio-visual works, choreography, conferences, illustrations, applied plastic, and so on.

Although registration is not required for the protection of a copyright, copyright can be registered with the Intellectual Property Registry, which gives a formal determination that the copyright legally exists.

Several actions, including injunctive relief to get an infringer to cease and desist, are available to the copyright holder. Additionally, Guatemala grants protection under copyright treaties including the:

- WIPO Berne Convention for the Protection of Literary and Artistic Works 1971.
- WIPO Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms 1971.
- WIPO Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations 1961.
- Convention Establishing the World Intellectual Property Organization 1979.
- WIPO Copyright Treaty 1996.
- WIPO Performances and Phonograms Treaty 1996.

- Inter-American Convention on the Rights of the Author in Literary, Scientific and Artistic Works.
- TRIPS.
- UN Universal Copyright Convention.

Copyright protection relating to the patrimonial right is granted for a term of 75 years from the death of the author. If the copyrighted work has more than one author, the term of protection is 75 years from the death of the last author. Computer programs and collective works are protected for a term of 75 years from the "first publication" date. Audio-visual works are protected for 75 years from the first public exhibition of the work. Moral rights are recognised in perpetuity.

B. Industrial Property

Trademarks

Trade marks comprise a broad variety of words, symbols, signs or combinations of these, including odours and sounds, which acquire a distinctive character in respect of the products or services covered by the trade mark. Trade marks can also consist of national or geographical denominations, so long as these bear a direct connection with the corresponding product or service.

Trade marks can be registered with the Intellectual Property Registry and the relevant procedures are described on the Registry's website. Unregistered trademarks are not protected, except where they are protected by treaty or except where they are well-known trademarks under Article 6bis of the Paris Convention.

The owner of the registered trade mark can bring actions in order to:

- Seek injunctive relief to make infringers cease and desist.
- Nullify trademarks that infringe pre-existing trademarks or trademarks subject to treaty protection (such as well-known trade marks).

In addition, actions can be brought in the context of unfair competition, where trademarks are infringed through references, imitation, or the like.

Trademarks are granted for a period of ten years and are renewable for further periods of ten years.

Patents

A patent is a title which recognises the rights of an inventor to his invention. To be granted, a patent must:

- Be novel.
- Consist of an inventive step.
- Be capable of industrial application.

The main types of patents protected relate to medicines or drugs.

Articles referring to the protection of plant varieties by patents were repealed from the Industrial Property Law by decree of Congress 19-2014. Congress is expected to enact a new law for the protection of plant varieties.

Patents must be registered with the Intellectual Property Registry, whose website provides guidance on the applicable procedure (<https://www.rpi.gob.gt>).

Patents can be enforced by those named in the Patent Title or certificate, or by their registered assignees or successors, where applicable. A number of actions can be taken to enforce a patent, including actions seeking:

- Injunctive relief from infringers and actions.
- The nullity of another patent that has been granted, where it partially or completely infringed an earlier patent.

Additionally, Guatemala is a signatory of the following major international treaties on patents, which provide additional protection:

- WIPO Paris Convention for the Protection of Industrial Property 1883.
- Patent Cooperation Treaty 1970.
- Convention establishing the World Intellectual Property Organization 1979.
- WTO Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS).
- Convention on Biological Diversity 1992.
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure 1977.

Patents are granted for a term of 20 years, counted from the patent application's filing date.

Registered designs

Utility models and industrial drawings and designs are broadly defined to comprise the plans and/or depictions of industrial and/or artisanal products. They are subject (with the necessary changes) to the same rules that apply to patent registration and enforcement

Industrial designs must be registered with the Intellectual Property Registry. Registered industrial designs and drawings can be enforced in practically the same way as patents.

Industrial designs and drawings are protected for a term of ten years and renewable only once for an additional term of five years.

Unregistered designs

Unregistered industrial designs are also legally protected on disclosure, that is, the first time the industrial design is made public by any means and in any place by the designer, the owner or by any third party that may have acquired the design.

Generally, the enforcement of unregistered industrial designs is the same as for patents.

Unregistered industrial designs are granted a protection of three years from the date of disclosure.

Criminal Offenses

The Guatemalan Penal Code provides a series of offences related to Intellectual Property with prison terms between 1 and 4 years and fines between Q.1,000.00 and Q.500,000.00 (approx. between US\$125 and US\$62,500).

V. CONSUMER PROTECTION LAW

The Consumer Protection Act of 2003, enacted by the Guatemalan Congress, has the purpose of promoting, divulging and defending consumers' rights, providing infractions, sanctions and applicable proceedings in this subject matter. This statute grants a minimum of compulsory rights and guarantees of social interest and of public policy in favor of consumers.

It is applicable to all agreements entered into between suppliers and consumers in Guatemala. Services provided under a specific statute or regulation, such as public services and utilities, will only be subject to this law by default.

In accordance with the Consumer Protection Act, every supplier must comply a series of general obligations for the protection of consumers' lives, health and safety, provide clear and

reliable information regarding the goods and services provided, repair or refund consumers for the quality of the goods provided, among other obligations that can be considered a code of conduct for suppliers of goods and services.

The government agency in charge of overseeing the compliance of the Consumer Protection Act is the *Dirección de Atención y Asistencia al Consumidor* (DIACO), a part of the Ministry of Economy. It can impose sanctions, such as fines, for violations to the Consumer Protection Act and other regulations.

VI. IMMIGRATION LAW

According to Statute 95-98 of Congress, any foreigner may be granted a Guatemalan Residence.

The migratory categories for foreigners entering the country are:

A) Non-residents, Tourists or Visitors: Persons in transit. Persons who stay in the country no longer than 72 hours. Tourists or visitors are the aliens that enter the country with legal purposes, without the object of immigration or residence, for reasons that do not imply gratuity, and for a period no longer than 90 days, that can be extended only once for an

equal period. During their stay in the country, tourists or visitors cannot be employed by the government or private persons or entities or establish themselves with commercial purposes.

B) Residents: Temporary Residents are aliens that are authorized to stay in the country for 2 years with the purpose of engaging in any legal activity temporarily. This stay can be extended by equal periods. Temporary residents can be employed in any paying job or invest in the country as long as the funds come from licit activities. Aliens that wish to obtain their Temporary Residence from their country of origin or from the country where they are legally residing must apply for it personally.

Permanent Residents are aliens that according to Guatemalan legislation can opt for this category (investors, retired persons, rentiers and their spouses and under age children and temporary residents, among others) that constitute their domicile in Guatemala.

Aliens married to Guatemalans for more than one year can acquire the category of permanent residents by having contracted marriage. Aliens that obtain temporary or permanent residence, that wish to be employed must do so in legal activities and they must obtain an authorization of the National Employment Office (Ministerio de Trabajo y Previsión Social).

To enter national territory, aliens must present a valid traveling document and the corresponding visa, unless it is not required due to International Treaties, Agreements or Covenants where

Guatemala participated. The Foreign Affairs Ministry can authorize agreements of visa suppression to persons from other countries by simple exchange of letters, except temporary, permanent and student visas.

Visas can be simple (valid for one entry and exit from Guatemalan territory) or multiple (valid to enter and exit Guatemala freely for an undefined number of times).

There are also business visas that can be granted by Guatemalan Consulates duly accredited in other countries and by the General Migration Office (Dirección General de Migración) to foreigners that are acting individually or representing a duly accredited foreign entity with commercial means, traveling for legal business purposes. These visas are valid for 180 days that can be elongated only once by the same number of days.

VII. MINING LAW

On a constitutional level, the Guatemalan Constitution provides that the subsoil where minerals and hydrocarbons can be found in their natural state, as well as any other organic or inorganic substance found in the subsoil, is owned by the Guatemalan Government. However, the Constitution also provides that all minerals, hydrocarbons and other nonrenewable resources can be rationally and technically explored, exploited and commercialized.

The Guatemalan Mining Act of 1997, enacted by the Guatemalan Congress, regulates all mining activity in the country. It stipulates that any person or legal entity, local or foreign that wishes to undertake mining activities in the country needs to obtain a license from the Ministry of Energy and Mining. The license grants its holder mining rights to undertake recognition, exploration and exploitation activities in a determined area, following the execution of an Agreement between the license holder and the Guatemalan government. The license is granted for a 25 year term, extendable up to another 25 year period.

In 2015, the Guatemalan Congress amended the Guatemalan Mining Act, requiring the license holders to pay the Guatemalan Government a 10% royalty fee in exchange of the mining rights. However, such increase in royalties was declared unconstitutional by the Guatemalan Constitutional Court. Therefore, as of the date of this publication, the amount of royalties to be paid by license holders is 1% over the volume of extracted minerals and the price given by the international commodities exchanges.

Petroleum and hydrocarbons exploration and production are regulated by the Hydrocarbons Act of 1983. This statute regulates the exploration and production of hydrocarbons in the country, being regulated separately from mining activities. The Ministry of Energy and Mining is the government agency in charge of overseeing all hydrocarbon exploration and production activities in the country.

Before undertaking any exploration or production activity in the intended area, the interested party needs to execute a Petroleum Exploration and Production Contract with the Guatemalan Government. Through this agreement, the Guatemalan Government grants the authorization to the Operator to carry out the activities of petroleum exploration and production in an exploration block; however the Operator does not have any property right or concession over the land, surface, subsoil nor any natural resource discovered in the Contract Area. In consideration for such authorization, the operator pays the Guatemalan government a royalty fee, determined by the Guatemalan Ministry of Energy and Mining.

VIII. ENVIRONMENTAL PROTECTION LAW

The Guatemalan Congress enacted the Environment Protection Act of 1986. This statute provides the basis rules and obligations of every citizen for the protection and improvement of Guatemala's natural environment.

The government agency in charge of overseeing and applying this statute and all of the environmental protection regulations is the Environment and Natural Resources Ministry.

Guatemalan law prohibits bringing into the country contaminating products and materials that are banned in their country of origin, as well as multiple substances, residues, radioactive materials and waste that can infect, contaminate or degrade the environment.

An **Environmental Impact Assessment** is required to be approved by the Environment Ministry before any project, construction work, industry or any other activity takes place that can in any way harm, pollute or disturb the environment. Once the EIA is approved, the Environment Ministry issues an Environmental License, authorizing the project to begin construction, or the industry to begin operations. The EIA must be done by a specialized technician approved by the environmental authority. If this requirement is not fulfilled, the law establishes a fine between Q. 5,000.00 and Q. 100,000.00 (approximately US\$625 and US\$12,500) and the closing of the business or project until the fines are paid.

Any person can report before the authorities any act or omission that generates pollution and the detriment or loss of natural resources or that affects the levels of quality of life.

IX. DUTY FREE ZONES LAW

Statute 65-89 of Congress regulates the Duty Free Zones. This law's objective is to promote and regulate the establishment of Duty Free Zones. Article 2 of said law states that Duty Free Zones are the portions of delimited land, planned and designed, subject to a special customs regime. This special customs regime is regulated by this Decree.

The objective of this statute is for persons or legal entities to establish themselves with the purpose of engaging in production or commercialization of goods for exportation or re-exportation, as well as for granting services related to international commerce.

Duty Free Zones can be public or private; they can be established in any part of the country with the authorization of the Ministry of Economy so the consumer (persons or legal entities) can operate legally. They require an administrative entity, which has to be a legal entity authorized by a Notary Public. Duty Free Zones are guarded and controlled by the customs authority.

Consumers can be industrial when they produce or ensemble goods for exportation outside the national customs territory, re-exportation, or research and technical development. Service Consumers are the ones that offer services related to international commerce; and Commercial Consumers are dedicated to the commercialization of merchandise destined to be exported outside the national customs territory, as well as re-exportation without changing the products' characteristics or alter their origin.

Exports from a Duty Free Zones to any Central American area is subject to tariffs as if they were products coming from a country outside of Central America.

Consumers authorized to operate in a Duty Free Zones have the following tax benefits:

- Exemption of taxes, tariff rights and charges applicable to the imports to a Duty Free Zones of machinery, equipment, tools, raw materials and in general, all merchandise used in the production of goods and granting services.
- Total exemption of Income Tax caused by rents coming exclusively from activities as Industrial Consumer or Duty Free Zones services, for 12 years in the case of Industrial and Service Consumers and 5 years for Commercial Consumers. Industrial or Service Consumers domiciled outside of the country that operate in Guatemala won't have this exoneration if in their country of origin fiscal credit is granted by Income Tax paid in Guatemala.
- Exemption of the Value Added Tax (IVA) in the transferal of merchandise done inside and among Duty Free Zones.

This exemption also defines as rents exempt, dividends or utilities distributed by the Administrative Authorities or Consumers of Duty Free Zones, persons or legal entities domiciled in Guatemala.

Temporary exportation from a Duty Free Zones to Central American territory and vice versa is allowed when its purpose is perfecting, transforming, creating or repairing the merchandise and for a period no longer than 6 months.

Article 41 of the statute states that the following activities can't be produced or commercialized nor developed in a Duty Free Zones:

- Exploitation of gas and petroleum.
- Fishing or raising sea species or species from inland waters.

- Leisure centers and hotels.
- Wood pieces and planks.
- Cane sugar, refined or non-refined and molasses.
- Coffee, cardamom, cotton, fresh banana and sesame seeds.
- Natural Indian-rubber.
- Breeding, raising and feeding cattle.
- Mining in the extraction phase.
- Merchandise that can cause pollution.
- Processing and handling explosives and radioactive materials.
- Breeding, cultivating and processing species of flora and fauna protected or prohibited by covenants or specific legislation.
- Packaging, tuning or labeling of products on which Guatemala is subject to allotment.

X. LAW ON THE PROMOTION AND DEVELOPMENT OF THE EXPORT AND DRAWBACK ACTIVITIES

Statute 29-89 is another one with the purpose of promoting merchandise production activities destined to be exported to countries outside of Central America.

Exports of coffee in any way; cardamom in cherry, parchment and gold; sesame seed with its bark; fresh bananas; fine and ordinary breeds of cattle; fresh bovine meat, refrigerated or frozen; refined sugar from cane, unrefined and molasses; raw cotton; raw petroleum without refining and wood pieces and planks, do not benefit from this law.

The law establishes different regimes through which persons and legal entities can obtain tax benefits in this statute that can consist on exemption from raw material import tariffs, exemption from Income Tax on profits coming from the exports, etc.

To enjoy the benefits granted by this statute, an application must be submitted to the Industrial Politics Direction of the Ministry of Economy, enclosing a technical-economical study subscribed by an active Economist or Industrial Engineer, fulfilling the requirements and information required by this institution.