

NARRATIVE REPORT ON GUATEMALA



PART 1: NARRATIVE REPORT

Overview

For Guatemala, a country with a history of military rule and civil war, corruption and violence, financial transparency was not high on the agenda for along time. However, after the Civil War ended in 1996 the country has slowly started to get back on its feet, and since the mid-2000s, Guatemala has made some efforts to comply with international transparency standards, and to remove itself from international blacklists.

These efforts have intensified over the last couple of years, resulting in the removal of Guatemala from the OECD blacklist in 2017. However, with a secrecy score of 73 in the 2018 FSI, the country still has along way to go.

Guatemala is in 78th position in the 2018 FSI. Although the country has a relatively high secrecy score of 73, it has a tiny market for offshore financial services. However, the poor state of financial regulation in the country remains highly damaging for the administration of government in the country.

Telling the Story

13 October 2017

In 2012 France put Guatemala on its blacklist of non-co-operative countries in the field of international transparency and information exchange,¹ mainly due to the Guatemalan tax administration’s lack of access to bank information in the country, and the fact that tax information exchange agreements signed in recent years between Guatemala and other countries have largely not been functioning.

As a result of the fight against corruption fight led by Cicig, the International Commission against Impunity in Guatemala, a UN backed Commission to strengthen the rule of law in the country, and the public prosecutor,² Icefi,³ a law project was established to strengthen the capacities of the tax administration. One of the main objectives of the project was to allow the tax administration to gain access to taxpayers’ bank information and to provide data to tax administrations from foreign countries.

The Congress of the Republic and the Ministry of Finance embrace the idea and have sought to build support for it. The private sector, specially the banking sector, opposed the proposals but the legislature approved them anyway, passing Decree 37-2016 “Law for fiscal transparency strengthening and governance of the Superintendence of Tax Administration”.

The law includes on its books provisions that allow the tax administration to obtain taxpayers’ banking information by seeking approval from a judge. That law took effect in February 2017 and in September it was reported that the tax authority was preparing 50 cases where it

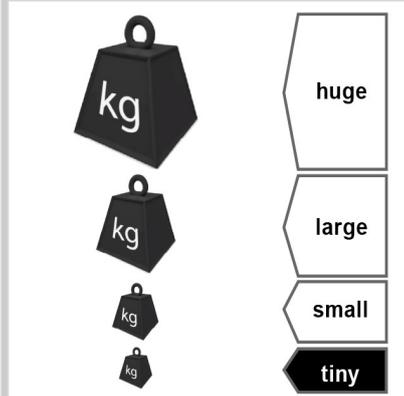
Rank: 78

Chart 1 - How Secretive?

73
Secrecy Score



Chart 2 - How Big?



Guatemala accounts for less than 0.1 per cent of the global market for offshore financial services, making it a tiny player compared with other secrecy jurisdictions.

The ranking is based on a combination of its secrecy score and scale weighting.

Full data on Guatemala is available here: <http://www.financialsecrecyindex.com/database>.

To find out more about the Financial Secrecy Index, please visit <http://www.financial-secrecyindex.com>.

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would seek to make use of the new law.⁴ There is no evidence that the tax administration has started exchanging information with other tax administration.

At the time of writing, Guatemala had signed 39 information-sharing agreements. The latest information exchange agreement was signed with Mexico, but is mainly focused on measures aimed at fighting smuggling.

Guatemala approved a 'Domain Extinction Law' (*Ley Extinción de Dominio, Decree 55-2010*) which in theory could prove very useful in the fight against money laundering, tax evasion and other offences. Among other things this law abolishes bearer share corporations – until now completely anonymous. As of June 30 2013 bearer shares must be registered (anonymous bearer bonds remain possible). However, many companies have not converted their bearer shares and the commercial registry (*Registro Mercantil*) hasn't got the ability to enforce the changes.

The Income Tax Law approved in February 2012 contained the first ever measures designed to combat transfer pricing abuses. However, businesses mounted a legal and lobbying campaign against the law and succeeded in delaying implementation until 2015. In any event practical implementation is an issue. Experts have commented that the tax administration does not have the capacity to begin the administration of transfer pricing legislation.

On May 23rd 2017, Guatemala's parliament agreed the Decree 9-2017 containing the approval of the Convention on Mutual Administrative Assistance on Fiscal Issues, subscribed with the OECD. Following that, the Ministry of Public Finance presented in Panamá the advances made to meet the OECD conditions. The OECD announced in June 2017 that Guatemala had been taken off the list of non compliant countries caused by the "massive progress" made in the last fifteen months.⁵ The OECD will undertake a complete review of Guatemala in the second trimester of 2018⁶.

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Endnotes:

- 1 http://ec.europa.eu/taxation_customs/taxation/gen_info/good_governance_matters/lists_of_countries/index_en.htm; 27.10.2015.
- 2 The real efforts began in April 2015 and continue until now, with the unveiling of customs fraud case named "La Línea", and the resignation of republic's president and vice president and latter incarceration. To date, there are more than one hundred former public servers and private sector entrepreneurs, accused of corruption, money laundering and other illicit.
- 3 Centroamerican Institute for fiscal studies, an NGO specialized on fiscal analysis
- 4 <https://elperiodico.com.gt/inversion/2017/09/20/sat-tendria-50-casos-para-levantar-secreto-bancario/>; 30.1.2018.
- 5 <http://www.prensalibre.com/guatemala/politica/panama-guatemala-y-micronesia-salen-de-una-lista-negra-de-evasion-fiscal>; 30.1.2018.
- 6 <https://elperiodico.com.gt/inversion/2017/06/29/guatemala-mejora-calificacion-ante-el-foro-global-de-la-ocde/>; 30.1.2018.

PART 2: GUATEMALA'S SECRECY SCORE

OWNERSHIP REGISTRATION

- 37% 1. Banking Secrecy
- 50% 2. Trust and Foundations Register
- 100% 3. Recorded Company Ownership
- 50% 4. Other Wealth Ownership
- 100% 5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

- 100% 6. Public Company Ownership
- 100% 7. Public Company Accounts
- 100% 8. Country-by-Country Reporting
- 100% 9. Corporate Tax Disclosure
- 100% 10. Legal Entity Identifier

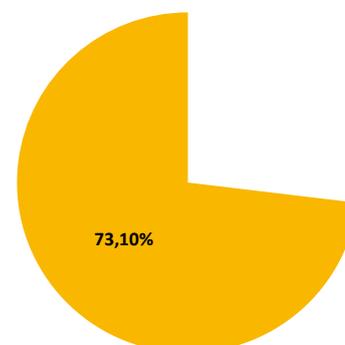
INTEGRITY OF TAX AND FINANCIAL REGULATION

- 88% 11. Tax Administration Capacity
- 75% 12. Consistent Personal Income Tax
- 100% 13. Avoids Promoting Tax Evasion
- 100% 14. Tax Court Secrecy
- 50% 15. Harmful Structures
- 60% 16. Public Statistics

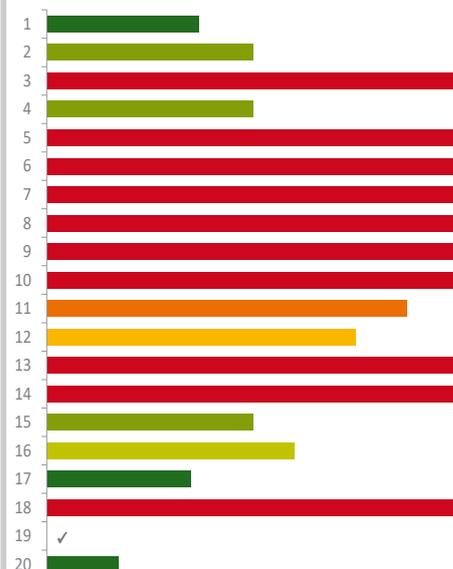
INTERNATIONAL STANDARDS AND COOPERATION

- 35% 17. Anti-Money Laundering
- 100% 18. Automatic Information Exchange
- 0% 19. Bilateral Treaties
- 18% 20. International Legal Cooperation

Guatemala - Secrecy Score



Guatemala KFSI-Assessment Secrecy Scores



Notes and Sources

The ranking is based on a combination of its secrecy score and scale weighting (click [here](#) to see our full methodology).

The secrecy score of 73 per cent has been computed as the average score of 20 Key Financial Secrecy Indicators (KFSI), listed on the left. Each KFSI is explained in more detail by clicking on the name of the indicator.

A grey tick indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This paper draws on data sources including regulatory reports, legislation, regulation and news available as of 30.09.2017.

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To find out more about the Financial Secrecy Index, please visit <http://www.financialsecrecyindex.com>.