

# NARRATIVE REPORT ON GUATEMALA



## PART 1: NARRATIVE REPORT

For Guatemala – a country with a history of military rule, civil war, corruption, and violence – financial transparency was not considered a priority for a long time. The country has slowly started to get back on its feet after the civil war ended in 1996. Since the mid-2000s, Guatemala has made efforts to comply with international transparency standards and was removed from the OECD blacklist in 2017.<sup>1</sup> However, since 2018, Guatemala has experienced serious setbacks in transparency and the fight against impunity as a result of an alliance between officials of different state agencies, the traditional lethargy of the judiciary system and the interests of the business elite who are invested in maintaining international financial opacity. In 2019, Guatemala was reinstated as “non-compliant” by the OECD’s Global Forum second round of reviews.<sup>2</sup> With a secrecy score of 74 out of 100 in the 2020 Financial Secrecy Index, ranking it 69th, the country still has a long way to go.

Although Guatemala has a relatively high secrecy score, it has a tiny market for offshore financial services. Its poor state of financial regulation, however, remains highly damaging to the country.

### Initial Progress

Guatemala had taken transformational steps in the past to avoid being considered a non-collaborator in international transparency. The Income Tax Law, approved in February 2012, contained the nation’s first measures to combat transfer pricing abuses. However, the business sector mounted a legal and lobbying campaign against the legislation and succeeded in delaying implementation until 2015. Nevertheless, practical and effective implementation remains an issue, and experts assert that the country’s tax agency does not have the capacity to enforce the transfer-pricing law.

In 2016<sup>3</sup> the Legislative Decree 37-2016 Law to Strengthen Fiscal Transparency and Tax Administration Governance was approved, enabling the tax authority access to banking information for control purposes and to cooperate in the international exchange of financial information. Unfortunately, in August 2018, the Constitutional Court voided part of the law that gave tax officials access to banking information, citing the possibility of a violation of the country’s constitution.<sup>4</sup>

In 2017, Guatemala’s parliament passed Decree 9-2017, which approved the Convention on Mutual Administrative Assistance on Fiscal Issues developed by the OECD. In June 2017, the OECD announced that Guatemala had been taken off its list of noncompliant countries due to the “massive progress” it had made in the previous fifteen months.<sup>5</sup>

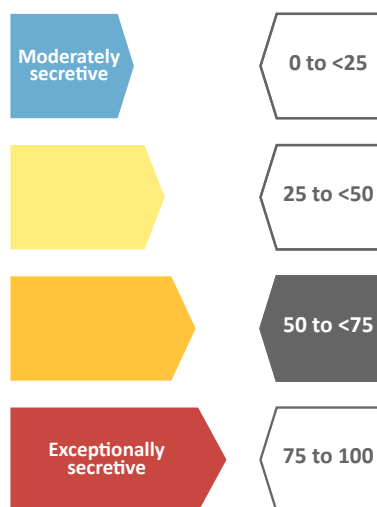
### Regression

As a result of a decision by President Jimmy Morales on January 8, 2019, Guatemala unilaterally decided to terminate the International Commission to Combat Impunity in Guatemala (Cicig).<sup>6</sup> The ending of Cicig’s work in the first days of September 2019 closed a period of strong criminal prosecution of corruption, influence peddling, and money laundering, among other crimes.

Rank: 69 of 133

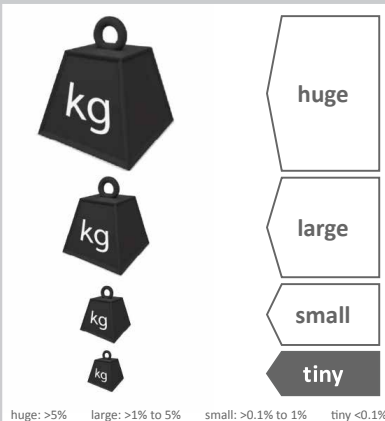
How Secretive?

74



How big?

0.01%



Guatemala accounts for 0.01 per cent of the global market for offshore financial services. This makes it a tiny player compared to other secrecy jurisdictions.

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

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

To find out more about the Financial Secrecy Index, please visit

<http://www.financialsecrecyindex.com>.

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In parallel to this worsening of the situation in Guatemala, on July 30, 2019, the OECD publicly released the results of its peer review report.<sup>7</sup> This report reviewed the progress that Guatemala made on tax transparency, specifically with regard to the exchange of information made upon request. The report evaluated its response to requests received and sent during the period from January 1, 2015, to December 31, 2017, and concluded that Guatemala, generally, does not comply with the international standard. The 2019 report described the ineffectiveness of Guatemala's information exchange agreements,<sup>8</sup> the unclear definition for the identification of beneficial owners,<sup>9</sup> and the continued failure to transform bearer shares into nominative ones despite the 2013 Domain Extinction Law (Decree 55-2010) that requires it.<sup>10</sup> Therefore, Guatemala was considered "non-compliant" again by the OECD's Global Forum, reverting the 2017 conclusions.<sup>11</sup>

As a positive step for the country, on July 30, 2019, the Constitutional Court revoked its August 2018 suspension of the law which gives tax officials access to banking information.<sup>12</sup> Now the tax agency can again start with the application process and potential information exchange.

Nevertheless, on September 24, 2019, the Congress of the Republic approved Decree 07-2019, the Law on Tax Simplification, Update and Incorporation,<sup>13</sup> which includes the creation of a simplified system of tax payments for agricultural producers, especially cattle breeders, some of whom have been linked with drug traffickers in the country; amnesty for those who are being prosecuted by the tax administration; and a waiver of criminal penalties for agricultural exporters accused of fraudulent VAT refund requests. This law has not yet been officially enacted, and many interest groups are requesting a presidential veto. If enacted, it opens up major possibilities for money laundering in poorly controlled sectors outside of tax compliance, as well as the likelihood of upsetting regular taxpayers.

In the field of international fiscal transparency, there is no evidence for leadership in the actions of the current government to meet the recommendations and observations that were issued in the OECD report (except on access to bank information by the tax administration), so Guatemala seems likely to remain non-cooperating country for the foreseeable future.

*With thanks to Abelardo Medina Bermejo, ICEFI, Guatemala*

## Endnotes

- 1 <https://www.oecd.org/tax/transparency/brief-and-FAQ-on-progress-on-tax-transparency.pdf>; 17.2.2020.
- 2 <https://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/>; 17.2.2020.
- 3 <https://taxinsights.ey.com/archive/archive-news/guatemala--law-to-strengthen-fiscal-transparency.aspx>; 17.2.2020.
- 4 <https://www.prensalibre.com/economia/sat-ya-no-podra-investigar-a-contribuyentes-por-orden-de-la-cc/>; 17.2.2020.
- 5 <http://www.prensalibre.com/guatemala/politica/panama-guatemala-y-micronesia-salen-de-una-lista-negra-de-evasion-fiscal>; 17.2.2020.
- 6 <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/70-saving-guatemalas-fight-against-crime-and-impunity>; <https://www.theguardian.com/world/2019/jan/08/guatemalan-president-condemned-after-ejecting-un-anti-corruption-group>; 17.2.2020.
- 7 [https://read.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-guatemala-2019-second-round\\_5ce22634-en#page13](https://read.oecd-ilibrary.org/taxation/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-guatemala-2019-second-round_5ce22634-en#page13); 17.2.2020.
- 8 p. 53, in: [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cad=1&cad=rja&uact=8&ved=2ahUKewjD-5q3N4ZjnAhVMGTQIHbdrDLQQFJAegQIA-hAB&url=http%3A%2F%2Fdocuments.worldbank.org%2Fcurated%2Fpt%2F562551479418605535%2Ftext%2FPID-Appraisal-Print-P153366-11-17-2016-1479418602390.txt&usg=AOvVaw04\\_GhH6kz-lvAJeysVg\\_zk](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cad=1&cad=rja&uact=8&ved=2ahUKewjD-5q3N4ZjnAhVMGTQIHbdrDLQQFJAegQIA-hAB&url=http%3A%2F%2Fdocuments.worldbank.org%2Fcurated%2Fpt%2F562551479418605535%2Ftext%2FPID-Appraisal-Print-P153366-11-17-2016-1479418602390.txt&usg=AOvVaw04_GhH6kz-lvAJeysVg_zk); 17.2.2020.
- 9 <https://books.google.com/books?id=N-COmDwAAQBAJ&pg=PA61&lpg=PA61&dq=guatemala+%22ultimate+beneficial+owner%22&source=bl&ots=9jEy3fybgP&sig=ACfU3U3sWTr5U-rt-qzFm7G-AWktH1c85XQ&hl=en&sa=X&ved=2ahUKewi8zduv3ZjnAhWIIjQIHlMMap0Q6AEwA-noECAoQAQ#v=onepage&q=guatemala%20%22ultimate%20beneficial%20owner%22&f=false>; 17.2.2020.
- 10 Domain Extinction Law (Decree 55-2010).

11 <https://www.oecd.org/tax/transparency/exchange-of-information-on-request/ratings/>;  
17.2.2020.

12 <https://lahora.gt/la-cc-permite-el-levantamiento-del-secreto-bancario-para-uso-de-sat/>;  
17.2.2020.

13 <https://www.prensalibre.com/economia/amnistia-convenios-de-pago-y-exenciones-asi-son-los-beneficios-de-la-polemica-ley-tributaria-para-agro-productores/>;  
17.2.2020.

## PART 2: SECRECY SCORE

### OWNERSHIP REGISTRATION

- 47 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

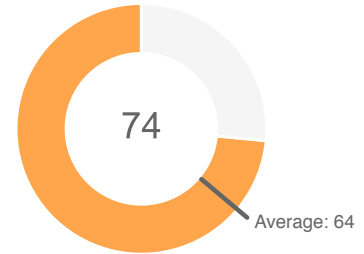
### INTEGRITY OF TAX AND FINANCIAL REGULATION

- 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

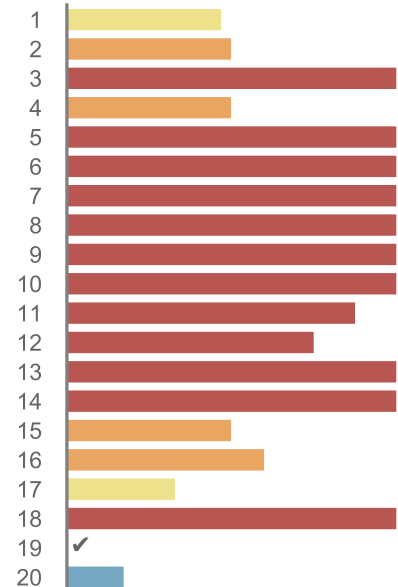
### INTERNATIONAL STANDARDS AND COOPERATION

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

## Secrecy Score



## Key Financial Secrecy Indicators



## Notes and Sources

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

The secrecy score is calculated as an arithmetic average of the 20 Key Financial Secrecy Indicators (KFSI), listed on the right. Each indicator is explained in more detail in the links accessible by clicking on the name of the KFSI.

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

This report draws on data sources that include regulatory reports, legislation, regulation and news available as of 30 September 2019 (or later in some cases).

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

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