

Territoriality and Tax Morality

A Central American view



Central America

Macro Economic Statistics 2013

- Combined Economies had an average 3.8% growth
- Foreign Direct Investment (FDI) increased 19.7%
- Remittances received in Central America had a raise of 6.3%
- 39% of all remittances were received in Guatemala
- Average Inflation increase +5.6%

Central America

MacroEconomic Statistics 2013

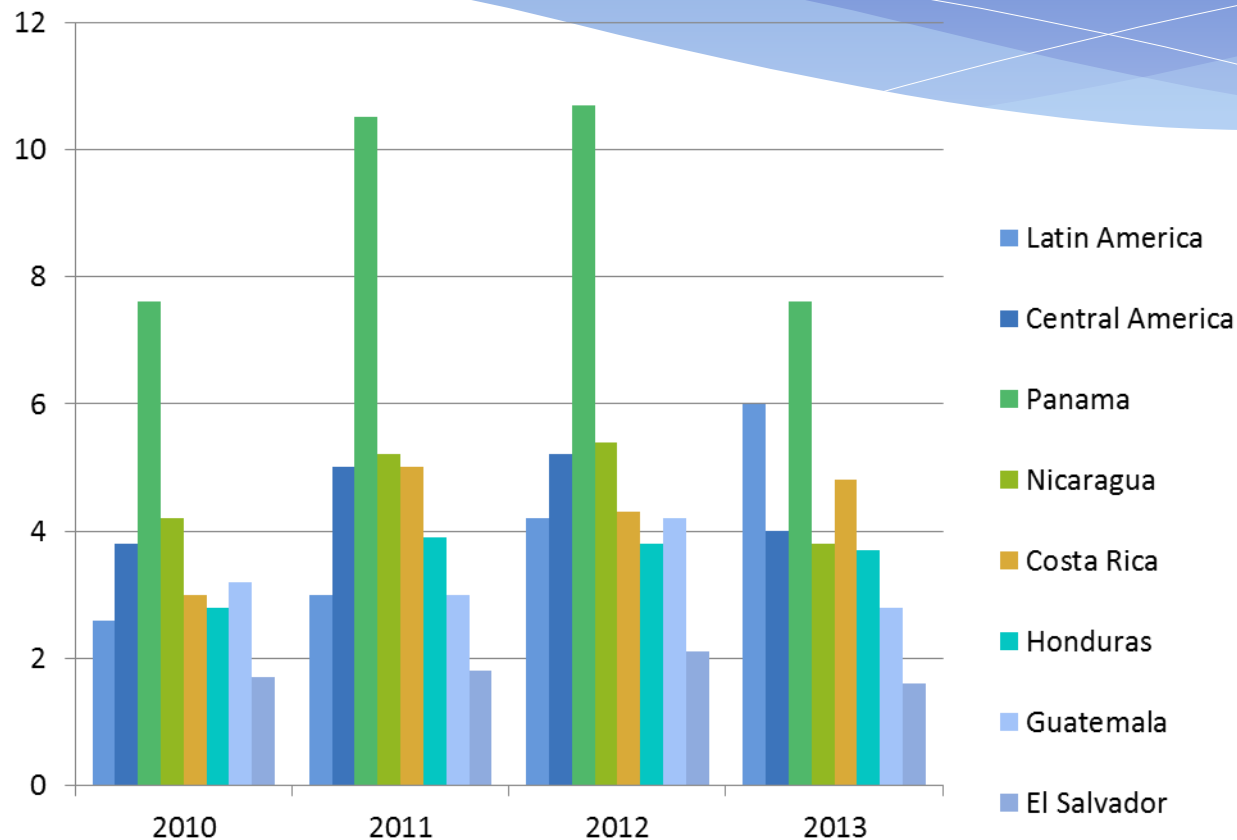
- Panama and Costa Rica w/60% of the total FDI in Central América
- Tax collection decreased 0.3%
- Average Unemployment rate 6%

Central America

MacroEconomic Statistics 2014

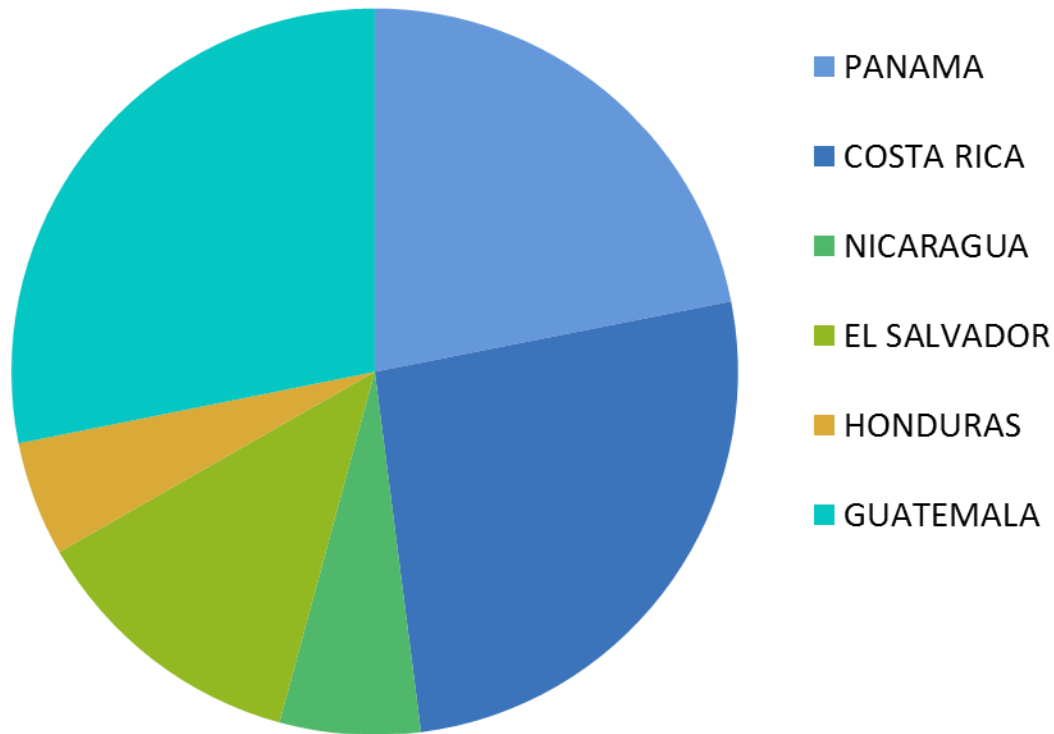
- Gross Domestic Product (GDP) expected to have a 3.8% increase
- Estimated 2014 Central American GDP US\$ 212.1 Billion
- 1.9% of GDP invested in security and state judicial entities

CENTRAL AMERICA GDP % GROWTH 2010-2013



CENTRAL AMERICA ESTIMATED GDP 2014

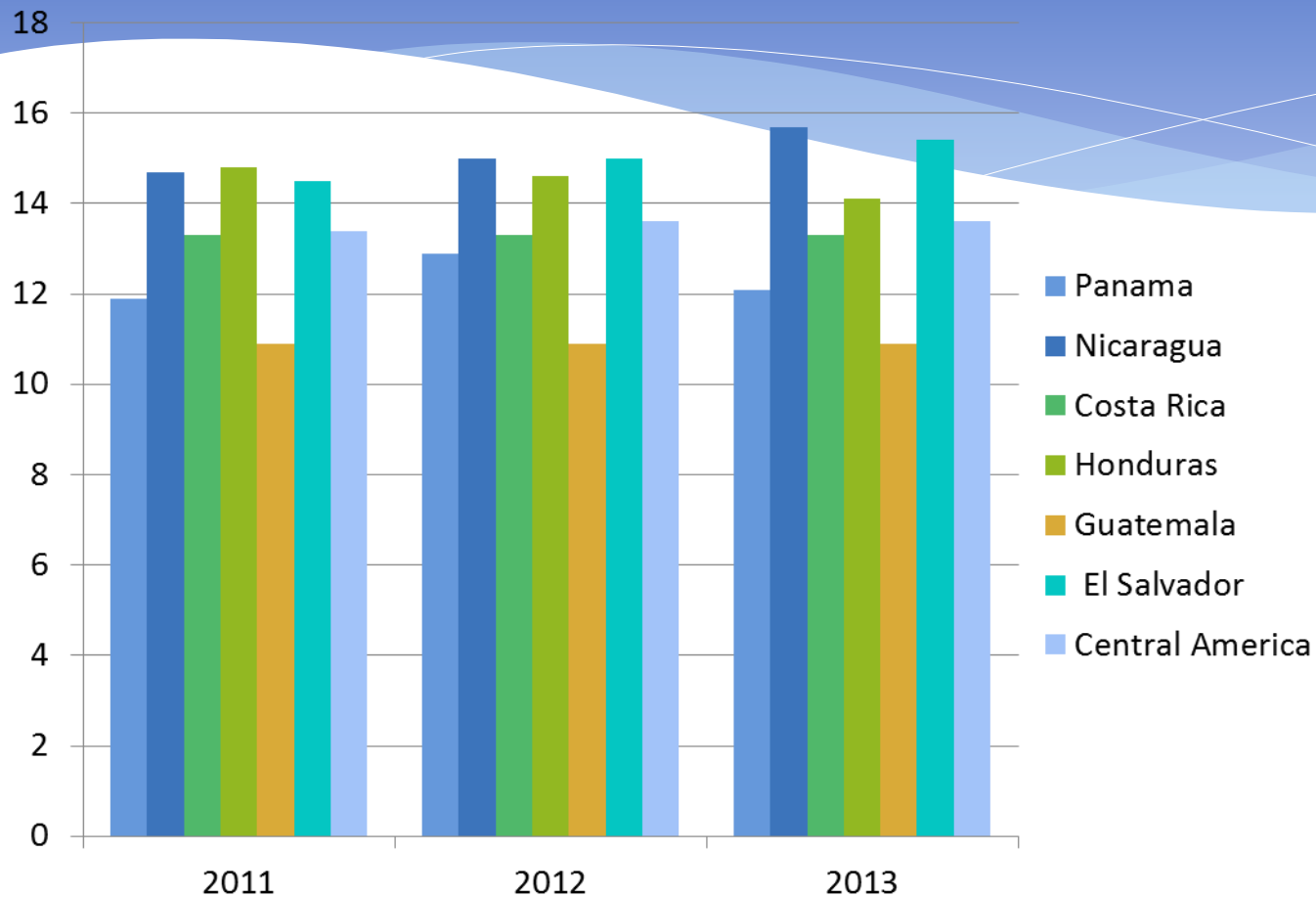
CENTRAL AMERICA 2014 GDP



CENTRAL AMERICA GENERAL TAX INFORMATION

COUNTRY	PERCENTAGE OF TAX COLLECTED BY TAX ADMINISTRATION OVER THE TOTAL AMOUNT OF TAX COLLECTED	TAX ADMINISTRATION TAX MANAGE		BANK'S SECRECY	TAX ADMINISTRATION COSTS		TAX EVASION PERCENTAGE			
		INTERNAL TAX	CUSTOM FEES COLLECTION		AS A PERCENTAGE OF TAX COLLECTION	AS A PERCENTAGE OF THE GDP	VALUE ADDED TAX	INCOME TAX		
									2006-2010	
									2006-2010	
COSTA RICA	47.0	X		NO	1.40	0.14	28.7	--		
EL SALVADOR	52.6	X		YES	0.89	0.08	27.8	45.3		
GUATEMALA	86.8	X	X	NO	2.30	0.27	37.5	63.7		
HONDURAS	80.3	X	X	NO	1.14	0.17	--	--		
NICARAGUA	46.2	X		NO	1.90	0.22	38.1	--		
PANAMA	47.5	X		YES	0.50	0.04	33.8	--		
CENTRAL AMERICA	60.1				1.36	0.15	33.2	54.5		

CENTRAL AMERICA TAX BURDEN (% GDP) 2011-2013



GUATEMALA 2013 (1)

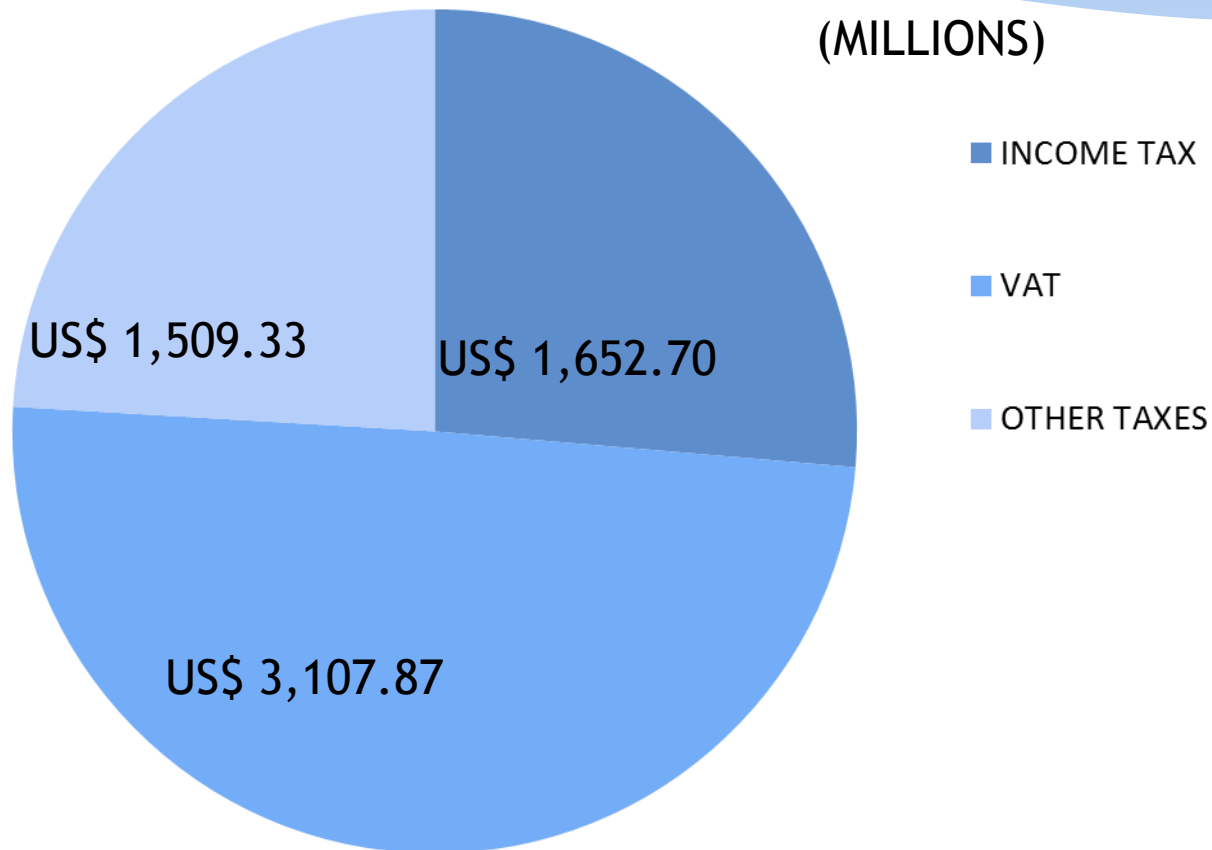
2013 TAX COLLECTION (MILLIONS DOLLARS)

TOTAL TAX COLLECTION	INCOME TAX TOTAL COLLECTION	NON RESIDENTS INCOME TAX TOTAL COLLECTION (WITHHOLDING AND DIRECTLY PAID)	INCOME TAX PAID DIRECTLY BY NON RESIDENTS
US\$ 6,269.9	US\$ 1,652.70	US\$ 194.33	US\$ 5.70

GUATEMALA 2013 (2)

GUATEMALA 2013 TAX COLLECTION

(MILLIONS)

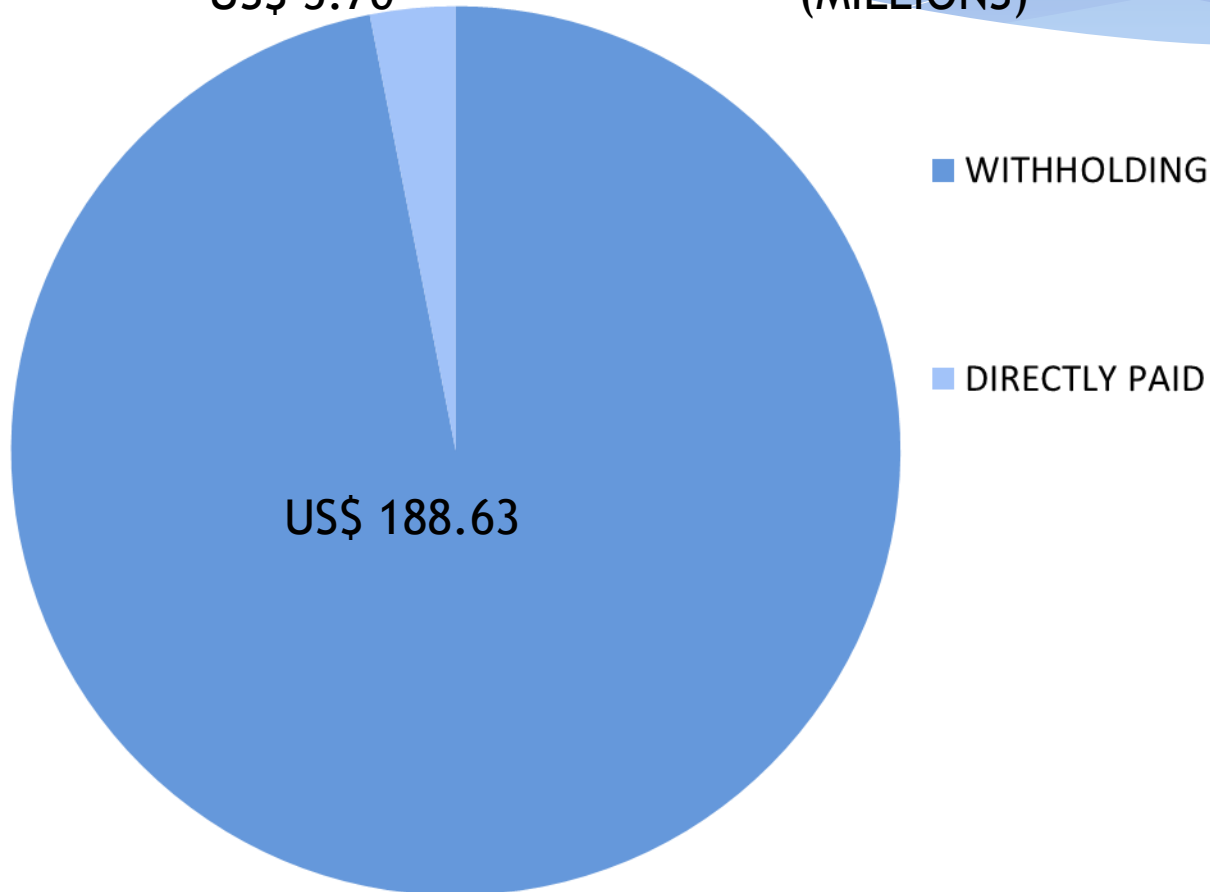


GUATEMALA – 2013 (3)

INCOME TAX PAID BY NON RESIDENTS

US\$ 5.70

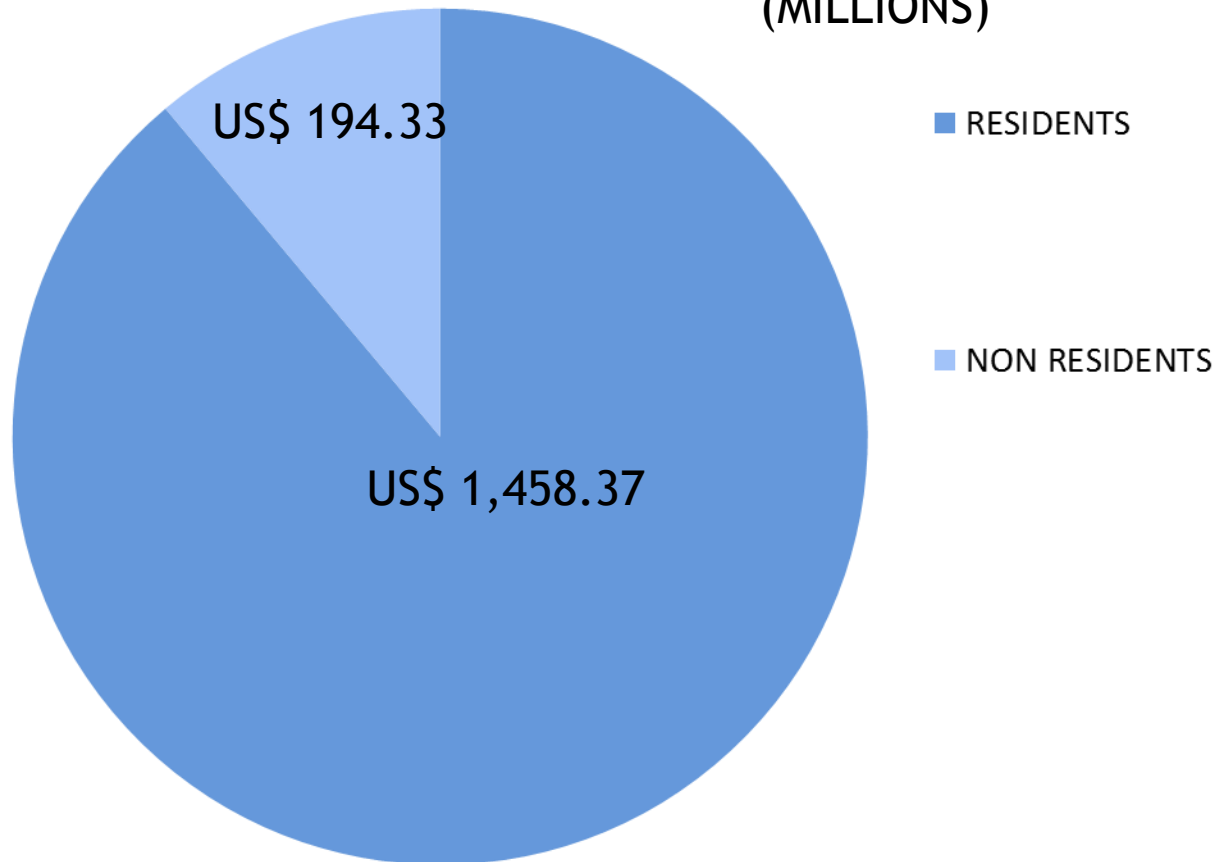
(MILLIONS)



GUATEMALA – 2013 (4)

INCOME TAX

(MILLIONS)



A Case for Tax Morality? (1)

Abusive Tax Structures Vs. Tax Planning

“The schemes are usually complex involving multi-layer transactions for the purpose of concealing the true nature and ownership of the taxable income and/or assets”

IRS “Dirty Dozen” Tax Scams for 2014

A Case for Tax Morality? (2)

- Is relationship between morality as social norm and taxpayer behavior, shaped by the law?
- US Offshore “Voluntary” Disclosure Program (OVDP)

“As we’ve said all along, people need to come in and get right with us before we find you”

IRS Commissioner Doug Shulman

A Case for Tax Morality? (3)

- Manager responsibility to maximize profit – duty for tax efficiency?
- Is tax planning incompatible with Corporate Social Responsibility (CSR)?
- Paying additional taxes is a message of Social Responsibility? - Reputational Value

“CSR is simply subsumed within reputation risk management.”

*Michael Power – The Risk Management of Everything
2004*

Tax Liability for Non-residents

- **Guatemala** - no obligation to withhold by the local taxable entity
- **Panama and Costa Rica** - GAAR rule local entity jointly responsible for indirect local tax
- Anti-avoidance principles as a source of interpretation in Civil Law Countries

Indirect Transfers of Assets

- Taxing “indirect transfers” of local companies and assets
- The Vodafone / Hutchison Essar Limited repercussions
- Sanofi (FR) ShanH (FR) Shanta Biotech Laboratories (IND) case
- Amendment of Section 9 of the ITA “substantial value”

Extraterritorial Reach (1)

Under new Income Tax Law, some situations can be construed as taxable events even for non-resident entities:

- Capital gains from the transfer of shares, notes or other obligations issued by a Guatemalan Entity (Art. 4, 3.e)
- Income originated from shares or participation in a non-resident entity that holds as assets real estate located in Guatemala. (Art. 4, 3.f)

Extraterritorial Reach (2)

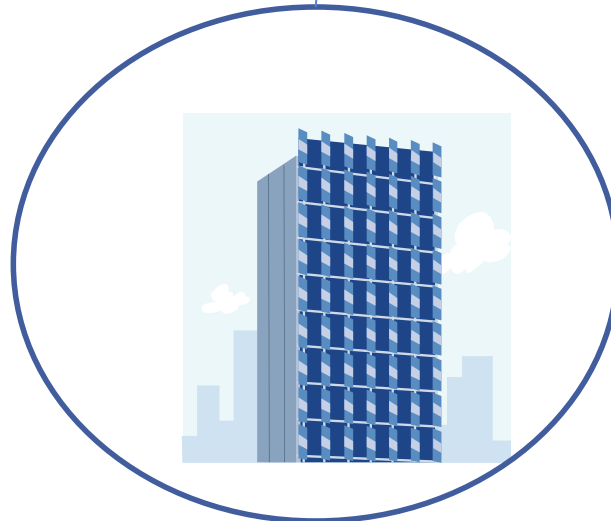
Corporate Bond Sale

Non Domiciled



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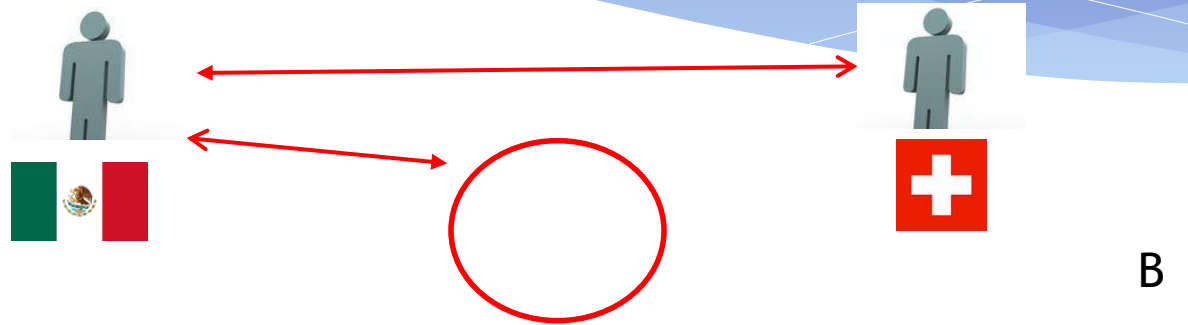
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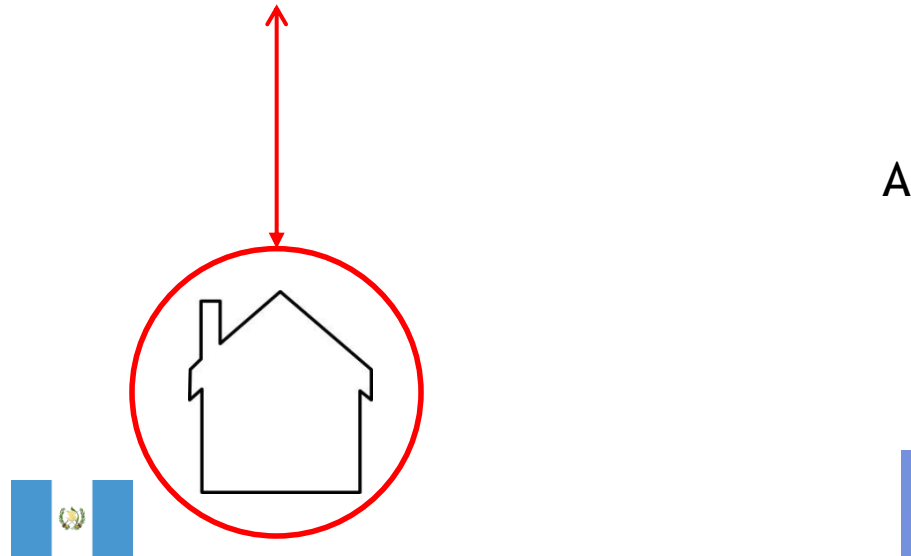
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Extraterritorial Reach (3)

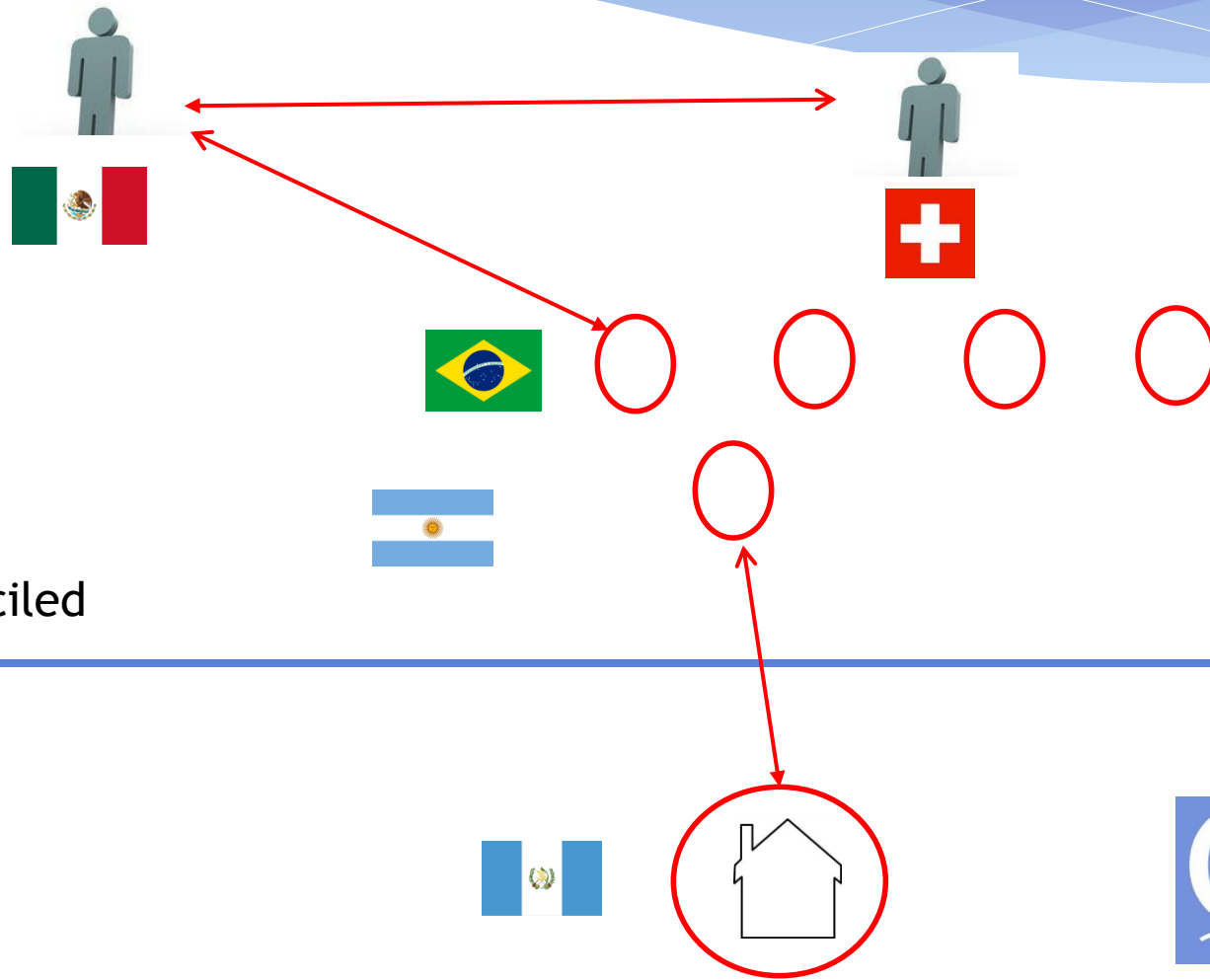
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Extraterritorial Reach (4)



Non Domiciled

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Taxable Parties Contradiction

- Domestic law defines as Taxpayer for capital gains and passive income purposes a Resident Individual or Entity
 - Capital Gains “**generated in Guatemala**” (added-in 2013 amendment) by residents or non residents (art. 4 sec 3)
 - Capital gains from the transfer of shares, notes or other obligations issued by a Guatemalan Entity (Art. 4, 3.e)
 - Taxable income: “Income derived from rights, shares or participations in a **resident or non-resident entity** whose assets are comprised of real estate in Guatemala” (art.4 sec. 3 f))
 - Extraterritorial reach becomes questionable considering the definition of a Taxpayer for these purposes.

2013 Amendments to Guatemala Tax Reform

- Many sections of New Income Tax Law were challenged before the Constitutional Court and led to amendments
- Amendment approved November 2013
 - Transfer Pricing rules suspended until 2015
- No changes regarding Permanent Establishment and Residency are expected in the near future
- 5% Income Tax withholding on dividends remains