

# COELUM

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COELUM Pronunciation: 'che-l&m, is Latin for airspace or sky. The Romans began questioning the rights they had in the space above the land they owned and to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.

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# Cancellation of use of Federation's Public Property and Services Provided by the State. Seneam and Immigration's Matter.

by *Misael Arellano*.

In previous publications<sup>1</sup> this author has discussed the process of calculation and payment of applicable duties caused by the operation of air transport services in Mexico. In this edition, bearing in mind the recent actions conducted by the Ministry of Communications and Transport (SCT) against carriers; we will analyze: i) the cancellation procedure for use of Federation's public property and services provided by the state, described in Article 3 of the Federal Law of Duties (FLD), ii) the applicable Miscellaneous Tax Resolution for 2012 (MTR); and iii) the procedures and applicable rules for the modification of the cost of duties based on the National Consumer Prices Index (NCPI).

## **The Federal Law of Duties (FLD).**

The FDL was published in the Official Gazette of the Federation on December 31, 2001 and states duties that must be paid for the use of the Federation's public property and services provided by the state within its duties under public law. The FLD has 292 articles in eighteen chapters divided into two principal titles. First Title: Covering duties for the provision of services, which is subdivided into twenty chapters related to each specific Ministry of the State; and Second Title: Relating to duties payable for the use of public property, which is subdivided in twenty two chapters which are related to commercial activities in respect to specific public property.

The analysis of this publication will be referred to: i) Immigration duties regulated in the First Section: Migratory Services, of Chapter I: Of the Ministry of Government, from Title First: Of duties by the provision of services; and ii) Chapter XVII: Duties by the use of Mexican airspace, from Title Second: Of duties by the use of public property.

## **Article 3 of the FLD.**

Article 3 of the FLD, amended by the Ministry of Finance (SHCP) on December 12, 2011, states the general rules and applicable procedure for the payment of duties. In respect with duties caused by the operation of air transport services in Mexico, the FLD describes applicable procedure of payment of those duties that must be paid periodically or after the provision of service or use of Federation's property; that is the case of SENEAM and immigration duties.

1.- Coelum. November, 2008; Coelum. February, 2009; and Coelum. March, 2009

For payments of SENEAM duties, carrier must provide evidence of the payment to the SENEAM offices within the 17 days of the end of the month that duties were incurred. In case of immigration duties, the FLD does not state a specific term for the filing of evidence of payment but grant faculties to the National Immigration Institute (NII) to decide and require to carriers applicable terms, that must be notified in official requirements of payments issued for each specific period and type of duty addressed to the contributor that must pay them.

If carrier does not file required evidence of payment or if SENEAM/NII observes that such payment was not made in proper way, these dependences must conduct the following procedure:<sup>2</sup>

I. Will require to carrier to provide, within the following 10 days, payment's evidence or, if case, conducts the proper clarification of noticed discrepancies.

II. Once the 10 days term has been expired, if carrier did not provide required evidence of payment, or in case that it has been filed but discrepancies subsist; the SENEAM or the NII will proceed with the calculation of unpaid duties and will send it to the Tax Authority (SAT) in order that the latter conducts the notification and requirement of payment addressed to the carrier.

III. Must cancel the use of Mexican airspace, in case of SENEAM; or cancel the immigration services provided to international passengers transported by the carrier, in case of the NII.

Article 3 of the FLD also states that any officer from SENEAM or NII that fails with the application of related procedure will be sanctioned under applicable penalties declared in the Federal Law of Administrative Duties of Public Officers.

“The most relevant issue on the cancellation procedure for services provided by the state and use of Federation's public property is the moment on which such cancellation is notified to the carrier and takes effect.”

### **The Notification of Cancellation.**

The most relevant issue on the cancellation procedure for services provided by the state and use of Federation's public property is the moment on which such cancellation is notified to the

2.- Article 3, Sections I, II and III of the Federal Law of Duties.

carrier and takes effect. A notification of cancellation must be issued by the state's ministry in charge of the administration of Federation's or property, SCT in case of SENEAM duties; or service's providing, Ministry of the Interior (SEGOB) in case of immigration duties. Taking in account that the SCT and SEGOB has a directory of carriers provided by the entities in direct contact with contributors, as are the SENEAM and the NII, most of notifications of cancellation are conducted personally.

Therefore, based on stated in Article 38 of the Federal Law of Administrative Procedure (FLAP) personal notifications takes effect just at the same date on which are conducted. For our matter, the aforesaid means that just from the same moment (date and time) that the carrier receives the notification of cancellation of immigration services or the use of Mexican airspace; any passenger transported by such carrier will be denied for its entrance/exit to/from Mexico; or that any carrier's aircraft will not authorized to arrive or depart from Mexico. Services will continue just to flights in course at the moment on which the notification takes effect.

“...the SHCP must conduct the updating factor described in Article 1 of the same FLD, that indicates that quotes of related duties must be updated when the increase of NCPI's accumulated percentage from last updating exceeds 10%.”

### **Miscellaneous Tax Resolution for 2012 (MTR).**

The MTR was published by the Ministry of Finance (SHCP) on December 28, 2011 in compliance with article 33, section I, subsection g) of the Federal Fiscal Code (FFC) which states that resolutions regarding general regulations issued by fiscal authorities in tax matters must be published yearly, grouping it to facilitate the contributors' acknowledge.

On December 29, 2011 the SHCP published the Annex 19 of MTR in which were stated the list of specific updated quotes for duties related to the FLD. For the calculation of updated quotes of duties, the SHCP must conduct the updating factor described in Article 1 of the same FLD, that indicates that quotes of related duties must be updated when the increase of NCPI's accumulated percentage from last updating exceeds 10%. This updating will enter in to force from January 1st of following tax year.

**Seneam Duties.**

The Navigation Services in Mexican Air Space (SENEAM) are paid as a self-determinable duty for the provision of air navigation services while in Mexican air space. The FLD details the applicable procedure for calculation and payment of SENEAM duties and as described in November's 2008 edition of Coelum, the FLD states two suitable systems to calculate the amounts incurred by this duty<sup>3</sup>.

The FLD states the applicable amounts to be paid (based on the official aircraft wingspan) per each kilometer flown, or alternatively the quote determined to each time that aircraft is supplied with fuel<sup>4</sup>. For 2012 these amounts have been modified as are shown below:

AIRCRAFT	WINGSPAN	Quote per each kilometer flown*	
		2009 - 2011	2012
<b>LARGE</b>	With more than 38.0 meters	<b>\$6.22</b>	<b>\$6.97</b>
<b>MEDIUM</b>	With more than 25 meters to 38.0 meters	<b>\$4.15</b>	<b>\$4.65</b>
<b>SMALL TYPE B</b>	With 16.7 meters to 25.0 meters	<b>\$1.44</b>	<b>\$1.61</b>
<b>SMALL TYPE A</b>	With up to 16.7 meters and helicopters	<b>\$0.18</b>	<b>\$0.20</b>

AIRCRAFT	WINGSPAN	Single quote for each time that aircraft is supplied with fuel *	
		2009 - 2011	2012
<b>LARGE</b>	With more than 38.0 meters	<b>\$14,294.14</b>	<b>\$16,025.16</b>
<b>MEDIUM</b>	With more than 25 meters to 38.0 meters	<b>\$9,537.71</b>	<b>\$10,692.73</b>
<b>SMALL TYPE B</b>	With 16.7 meters to 25.0 meters	<b>\$3,287.65</b>	<b>\$3,685.78</b>
<b>SMALL TYPE A</b>	With up to 10 meters and helicopters	<b>\$82.78</b>	<b>\$92.80</b>
	With more than 10.0 to 11.1 meters	<b>\$118.26</b>	<b>\$132.58</b>
	With more than 11.1 meters to 16.7 meters	<b>\$177.39</b>	<b>\$198.87</b>

\* Quotes are in Mexican Pesos.

3- Article 289 of the Federal Law of Duties.

4- Article 289, Sections I,II and III of the of the Federal Law of Duties.

No change was made to applicable quotes for operations conducted out of the airports' official operation time as: i) extended air traffic control services (ETCS); and ii) extended flight information services (EFIS).

**Immigration Duties.**

In respect to services provided by the National Immigration Institute (NII) there are three principal duties caused by services provided by the NII to carriers that operate international passenger services: i) those caused by the granting of the non-immigrant status to foreign passengers transported to their entry point into Mexico on international flights (DNI); ii) duties caused by the immigration services provided to all passengers transported on international flights from Mexico (DSM); and iii) extraordinary immigration services provided on holidays, out of working hours or services provided in places different to immigration offices (DSME). For 2012 the quotes for these duties have been modified as follows:

DNI per passenger		DSM per passenger*	
2009 - 2011	2012	2009 - 2011	2012
\$261.89	\$295	\$52.44	\$58.79

DSME per each revision of passengers' documents on charter flights*	
2009 - 2011	2012
\$1,409.21	\$1,521.10

\* Quotes are in Mexican Pesos.

“Incorrect payments and unpaid duties (SENEAM or DNI) more over that cause the cancellation of services , becomes a fiscal credits that the tax authority can recover through its authority to seize carrier’s assets or bank accounts.”

## **Relevant Issues.**

Even when Article 3 of the FLD always has stated the faculty to SENEAM or NII to cancel its services, and Article 291, section I of the FLD also states the specific procedure in case of SENEAM duties; before referred amendment, the procedure for the cancellation of the use of the Federation's public property and services provided by the state was not clear on steps that must be conducted by the authority, and normally this action was performed just in cases that carriers had accumulated significant amounts of debt which interfere with its functions and also the cancellation procedure became into an discretionary action for SENEAM or the NII. Now it is completely mandatory and must be applicable to any carrier for any unpaid duty.

In past, bearing in mind the self-determinable nature of the calculation and payment of SENEAM and DNI duties, (unlike the payment of DSM duties which is required by the NII through an official document) if SENEAM and/or DNI duties are not paid in the proper way (using correct quotes), such failure was not immediately notified by the SENEAM or NII, and discrepancies on required amounts generated penalties and surcharges that eventually increased over the total amount of duties generated in such unpaid period; which several times was unknown by carriers, more over when carriers conducted these payments through services agreements executed with third parties.

Remedy stated in the FLAP may be conducted against acts performed by any administrative authority as the SCT and SEGOB are; however it does not suspend the effects of cancellation, so the carrier must to go through an Amparo in order to obtain an immediate suspension to the cancellation until the Amparo has been solved.

Incorrect payments and unpaid duties (SENEAM or DNI) more over that cause the cancellation of services , becomes a fiscal credits that the tax authority can recover through its authority to seize carrier's assets or bank accounts.

# News | January

## Extract of Mexican Aviation News

### Airlines threatened by the recession.

The greatest risk that faces the aviation industry in Mexico is the possible global economy recession, particularly in the United States of America, that represents the 80% of total passengers moving from and overseas, however, in 2012 the Mexican aviation industry will grow 3%, similar to the last year and similar to the expected for the national economy.

*CNN Expansion. 03/January/12.*

### Country's air supply raffles the turbulence.

The year 2011 will be recalled by the Mexican airlines. Despite the complicated international economic situation, the 14 companies that have operations, commercial and cargo summed 28 aircraft between January and September to attend the growing demand. According to the DGAC (Directorate of General Civil Aviation), until August 2010 the total fleet in the country was 287 equipments - 116 were operated by Grupo Mexicana, which ceased operations this month due its difficult financial situation - and late in the third quarter of 2011 were 223. The above mentioned implies that in the past 16 months have added 52 aircraft.

*El Economista. 11/January/12.*

### OMA's Passenger traffic up 7.8%.

North Central Airport Group ("OMA") said that its level of domestic travelers grew 9.9% in December; the number of international travelers fell 1.4% in the same period. OMA, reports that in December 2011 the total passengers at its 13 airports grew 7.8 % over the same month of 2010. The company informed the investing public of the Mexican Stock (BMV), that the level of domestic passengers grew 9.9% and the international passengers decreased by 1.4%.

*El Economista. 13/January/12.*

### GAP and OMA do not overcome the Mexicana Effect.

Although they have been able to continuously increase their revenue, Pacific Airport Group (GAP) and North Central Airport Group (OMA) have not yet recovered the passenger traffic that they had before the exit of Mexicana Airlines in the first annual comparative, with the purpose to measure the effect of Mexicana's exit from September 2010 to September 2011, the number of passengers carried by GAP was 2.4 % lower than was before the exit of the airline, while OMA also saw its passenger affected with a reduction of 0.2 %. *El Economista. 17/January/12.*

### Deficit of flights, heritage of Mexicana.

After 16 months without the operations of Mexicana, only the 24% of the 55 domestic routes were covered by other airlines with the same or major frequency, while the 71% still faces a deficit in the number of flights and 5% of the routes haven't been covered. This was revealed by information of the labor unions of Mexicana. According to the information of the General Directorate of Civil Aviation, in the first semester of 2010, Mexicana Airlines had a participation of 28.7% in the domestic passenger market, after AeroMexico that possessed 32%.

*CNN Expansión. 18/January/12.*

### ASUR would improve 5 air terminals.

Adolfo Castro, CEO of Southeast Airport Group (ASUR), informed that during this year the company will realize an investment up to 100 million dollars to extend the capacity of its five terminals. The executive said that the airports that will increase their infrastructure are Veracruz, Villahermosa, Oaxaca, Huatulco and Mérida. *Milenio. 20/January/12.*

### Private Aviation in urge to fly.

Private Aviation in Mexico is changing, yet the applicable law inhibits its developments. In February 2010 the Mexican Federation of Pilots and Aircraft Owners ("FEMPPA" by its initials in Spanish) held meetings with the Mexican Directorate of Civil Aviation in order to review these laws, but the work has been slow and ineffective. FEMMPA argues that the laws that regulate private aviation where originally created for commercial aviation, so the regulations are ineffective. An advisory committee has been created to review these regulations. *Reforma. 24/January/12.*

### Airlines: 4 years in stand by.

The Aviation industry could go through 4 more years of instability, because of the lack of solid bases. The new aeronautical policy has been in stand by for more than a decade now, and this blocks the possibility of new development projects. Another point against airlines is the cost of fuel, which experts agree is going to increase. The Secretary of Communications and Transports needs to get back to a new aviation policy in order to avoid the industry's collapse. *Excélsior. 25/January/12.*

### Defense aerospace industry will detonate.

With the addition of Mexico to the Wassenaar Agreement, the aviation industry in the country will be able to access the global defense market, which has a value four times bigger than the commercial, according with the Mexican Federation Aerospace Industry. *Reforma. 31/January/12.*

In this month extract was prepared by Jessi Saba and Vera García.

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