

COELUM

Monthly Digital Publication by
ABOGADOS SIERRA Y VAZQUEZ

December 15, 2014 year 09 | No. 08

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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.

Tax Consequences of the Transfer of Ownership of Aircraft.

by Viridiana Barquín.

This article will draw the tax consequences related to the transfer of ownership of an aircraft. Initially the transfer of ownership of an aircraft and the diversion of rent payments would not have any tax consequences in Mexico unless the country of residence of the new lessor would be Mexico or unless the place where the payment obligations of the lessee under the existing lease would now be required to be complied within Mexican territory. Nevertheless, in order to prevent tax exposure, these steps should be taken in the following stages:

a. During the transfer of title.

Under Article 9 of the Value Added Tax (“VAT”) Law (*“Ley del Impuesto al Valor Agregado”*), the transfer of title between two foreign entities is not considered to be conducted within Mexican territory and it is not taxable with VAT even if the aircraft is located in Mexico at the time when the transfer occurs. Two additional conditions need to be met at the time of the transfer to prevent the transaction from being considered to have taken place within Mexican territory: (i) that the aircraft is subject to a temporary importation regime (in compliance with Article 106 (V)(b) of the Customs Law (*“Ley Aduanera”*)), and (ii) that no physical delivery (“material delivery” is the specific term is referred to in the VAT law) of the aircraft is conducted as between seller and buyer when the aircraft is located in Mexican territory, which it is ensured by avoiding the execution of any certificate of acceptance of the aircraft at the time of transfer. The purchase documents for that matter should contain an acknowledgement made by the parties stating that the aircraft is, and will continue to be in the uninterrupted possession of the lessee since the date of the original delivery under the lease. In lieu of the acceptance certificate, an effective time certificate should be executed which would make the transfer of title effective upon compliance of the obligations of the parties under the sale and purchase agreement at the time that the transfer takes place.

Prior to 2014, the VAT law was clear to state that the transfer of title between two foreign residents was not considered to be conducted within Mexico for tax purposes, to the extent that no “material delivery of the asset” was conducted between seller and buyer within Mexican territory. The law stated no other conditions or requirements to that effect. Starting 2014 however, the Article 9 of the VAT Law, was amended and it now states that the transfer of title between two foreign entities is not considered to have occurred within Mexican territory, again to the extent that no envoy or material delivery takes place, but also only to the extent that the asset involved is imported in Mexico under a special importation program or under a temporary importation regime.

In that sense what has changed is that the temporary importation regime must now be effective and valid at the time of the transfer in order for this transaction not to cause VAT. Under such regime, any loss of possession of the aircraft by Lessee would be regarded as a violation, and hence termination of such temporary importation. Considering this, stating that the aircraft will be physically delivered by the seller and accepted by buyer upon transfer thereof can lead to the implication that the Lessee

has lost possession of the aircraft and that the temporary importation, that is now a condition for VAT not to apply, was consequently no longer in effect.

Thus, prior to 2014, it was considered safe to transmit possession of the aircraft between two foreign entities, when (a) no material delivery was involved while the aircraft was in Mexico, or (b) when such delivery was involved, when the aircraft was located outside of Mexican territory. After the change of Article 9, regardless of where the aircraft is physically located, the transfer of title thereof must be conducted while the temporary importation regime is in effect.

b. During the assignment of rights under the lease.

In accordance with Article 21 of Mexican VAT law, the transfer of the use and enjoyment of an asset would be considered to be conducted within Mexican territory when the shipment or material delivery of such asset by the lessor to the lessee occurs within Mexican territory. Considering this, it is appropriate to not refer to a novation but instead as an assignment of the rights of lessor under the existing lease. A novation as explained in previous deliveries¹, would involve the interpretation that the existing lease has been terminated and replaced with a new lease which would assume a new delivery under the new lease that, if conducted while the aircraft is located in Mexican territory would cause VAT applicable on rental payments at a rate of 16%. If the existing lease is continuing however as it would under an assignment, no material delivery would take place, the lessee would continue in possession of the aircraft from the date it took delivery under the continuing lease and only the replacement of the existing lessor for a new lessor would be accomplished and registered under the assignment.

Other scenario to consider is the change of the beneficial owner, where the relevant considerations are not related to the applicability of VAT, but rather to the rate of withholding, that could be applicable to the rental payments. The applicable withholding rate for the leasing of aircraft dedicated to public international air transportation services in accordance with Article 158 of the Income Tax Law ("Ley del Impuesto Sobre la Renta") is 5%. This rate is further deducted pursuant to the decree published in 2006², which provides airlines a discount of 80% of the 5% rate, which results in final withholding obligation of lessee of 1% only.

"...under Mexican law, any loss of possession of the aircraft by the lessee would constitute a violation of the temporary importation regime."

Considering all of the above, the facts and circumstances surrounding the transfer of title of the aircraft should be such that avoid the transaction from being considered to have been conducted in

1.- See Coelum "Transfer of Title of an Aircraft by means of Lease Assignment vs Lease Novation". September 15, 2014 by Viridiana Barquin.
2.- Pursuant to a Decree published on November 29, 2006 in the Official Journal of the Federation ("Diario Oficial de la Federación"), the Lessee is required to withhold an amount equivalent to 1% (one per cent) on account of taxes from any of the payments that will be made to the Lessor for rent under the Lease, provided that payments are made to Lessor in a country with which the government of the United Mexican States has entered into a treaty to prevent double taxation and that then would be effective in this case.

Mexico, which would trigger the applicability of VAT, and to demonstrate the following facts which are necessary to accomplish this objective:

1. That the transaction is conducted between two foreign residents.
2. That the aircraft will not be subject of physical delivery as between seller and buyer.
3. That the continuing possession of lessee throughout the transfer will not be interrupted.
4. That the temporary importation regime of the aircraft in Mexico be effective and continuing throughout the transfer.

In conclusion, under Mexican law, any loss of possession of the aircraft by the lessee would constitute a violation of the temporary importation regime. Hence, if the seller conducts physical delivery of the aircraft to the buyer and the buyer accepts physical possession thereof, an interpretation could be made that the continuing right of possession of lessee was interrupted by the transfer of title, that the temporary importation was breached and that the physical delivery of the aircraft was conducted, making questionable that the circumstances described in 2, 3 and 4 above are reliable at the effective time.

All the concepts explained above are subject to interpretation and are expressed from a personal perspective. The tax authority has not issued a formal pronouncement, which will be grounds for a second delivery of this article upon release; meanwhile, different positions could be raised.

New Ash cloud unsettle Transatlantic Aviation.

New ash cloud crisis could be imminent scientists say. The warning resulted from the discovery of volcanic ash that travelled from Alaska to Northern Ireland. The situation resulted in overturning previously held assumptions about the distances deposits could drift. This ash cloud crisis may result even worse than the Icelandic eruption in 2010. This suggests the first evidence that ash clouds can travel across the Atlantic Ocean, resulting in new investigations for the air industry. "This is a very large area and is very busy with travel. There could be large-scale disruption" estates Dr. Pyne O'Donnell from Queen's School of Geography, Archeology and Paleoecology. *The Telegraph. November 20, 2014.*

NASA Aeronautics helps to keep flight safe and efficient.

The NASA developed technology that would help airlines to avoid bad weather and to be more efficient, also in recent studies made by this agency from the United States, it was informed that this technology called Dynamic Weather Route not only would help airlines to have more secure flights, but also would make airlines to save money in fuel costs and reduce delays for passengers. *NASA. November 24, 2014.*

SCT of Mexico and its position on bilateral air agreement.

The Secretariat of Communications and Transports of Mexico (SCT) said that after having agreed to make a number of changes in Air Bilateral agreement between México and the United States, there was never any discussion with the issue of open skies and cabotage. In addition, they announced that that those changes would make the possibility to make new air bilateral agreements to strengthen the position of the domestic industry and promote competition in the country. *Hangar Central. November 25, 2014.*

Expand freedoms to airlines of Mexico and the US, reports SCT.

Weeks after reviewing the air agreement between Mexico and the United States, the Secretariat of Communications and Transportation (SCT) revealed that there were other policy changes between these countries to provide more freedoms to airlines that are able to exercise them. *La Jornada. November 26, 2014.*

Union refuses Mexicana Airlines information to retirees.

The union of Mexicana reported that the sale of assets would increase the economic value of the company, the former employees of Mexicana have inconformity in the way that assets of the company are handled. *Hangar Central. November 27, 2014.*

Venezuela government interfere with INAC.

The national government as part of Operation Sky Sovereign decided to intervene the National Institute of Civil Aviation (INAC). As reported by the Vice President Jorge Arreaza, President of Venezuela, Nicolas Maduro ordered the intervention of the state agency. This measure will be taken to the "assessment and remediation" of private aviation by the National Body Against Corruption. *Hangar Central. November 29, 2014.*

The airport of the future in Mexico.

The airport of the future will be less like a huge bus station and close to a wide sustainable park. The number of passengers and aircraft will double by 2033, according to Jack Plunkett, CEO of Plunkett Research, and a company specializing in the travel industry firm. To accommodate a greater number of people, airports are changing and few are giving priority to sustainability as part of the process. *Hangar Central. November 29, 2014.*

The Italian military makes his first flight with Ebola infected.

The past November 25 landed in the Italian base Pratica di Mare one of the Boeing KC-767 from the Italian Military, which was transporting an Italian physician member of an NGO that was infected with Ebola in Sierra Leone. This is the first flight of this kind carried out on Italy. The flight lasted about 6 hours and 30 minutes, during which time the patient traveled in a special isolated stretcher and medical care of about 25 health professionals for the attention of this patient. *Aerotendencias. November 30, 2014.*

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