

# COELUM

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New Rules and Quotes for  
the Payment of SENEAM and  
Immigration duties.

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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.

# New Rules and Quotes for the Payment of SENEAM and Immigration duties.

by *Misael Arellano*.

In this edition this author will make an analysis of the relevant modifications to the Federal Law of Duties (FLD) and the applicability of the Miscellaneous Tax Resolution for 2014 and its annex 19 *“RESOLUCIÓN Miscelánea Fiscal para 2014 y su anexo 19”* published by the Secretariat of Finance *“Secretaría de Hacienda y Crédito Público”* in the Official Journal on December 11 and 30 in 2013, respectively.

The most relevant modifications to the FLD applicable to SENEAM and immigration duties are stated in articles 1, 8 and 291; and are related to the updating of applicable quotes and to the procedure for calculation, payment and verification of the payment of duties.

## **Article 1 of the FLD.**

Up to December 31 2013, the article 1 of the FLD established that all referred duties must be updated when the accumulated percentage of Consumer Prices National Index (CPNI), from its last updating exceeds 10% and such updating would enter in force from January 1st of the following tax year.

From 2014 article 1 of the FLD states that all quotes of related duties must be updated yearly on the 1st day in January each year, based on the fluctuation of the CPNI from the thirteen previous months to the last prior month on which the updating is conducted. This means that all quotes will be updated on a yearly basis, no matter the amount and without a minimum increasing percentage of the CPNI.

## **Article 8 section I of the FLD. DNR duties.**

The modification to the FLD derogated the last paragraph of the article 8, which established that payment of duties caused by issuance of the immigration condition for visitors without permit to conduct remunerated activities (DNR) must be made at the moment of departure for foreign passengers arrived to Mexico by air. The aforesaid, results on the application of the rule stated in the second paragraph of article 3 of the FLD, which states that: *“The payment of duties established in this Law must be made by the contributor previously to the rendering of services or previous to the use of the Federation goods, except the cases of which expressly states that such payments must be after”*.

The modification to the article 8 of the FLD generates a huge problem to international carriers because it is almost impossible to observe the rule described in the second paragraph of its article 3; because under this scenario, the carrier must define, previous to the arrival of each flight, how many passengers are subject of the payment of DNR, and conduct the payment at the same date of each operation.

The updated quote applicable for 2014, published in the Annex 19 to the Miscellaneous Tax Resolution for 2014, is for \$306 MxP per passenger.

## **Article 12 of the FLD. DSM duties.**

Immigration services provided to all passengers transported on international flights from Mexico are referred as DSM by the acronym of *“Derecho de Servicios Migratorios”* in Spanish language. This duty has been always calculated and paid by the outbound passengers and the updated quote for 2014, published in the Annex 19 to the Miscellaneous Tax Resolution for 2014, is for \$61 MxP per passenger.

**Article 291 of the FLD. SENEAM duties.**

The modification to the FLD derogated the third paragraph of section I of this article, which established that *“...The Secretariat of Communications and Transport through SENEAM, will check the information provided by the user and in the event of any discrepancy on the payment of duties, will request for the clarification of the corresponding discrepancies within the following 15 days after the filing of the payment declaration before SENEAM. The users will have 3 days to prepare and file the clarification following such request. If discrepancies persist, SENEAM will inform to the user about it, and this last must conduct the required payment within the 3 days following to the notification, providing evidence of payment plus the surcharges and penalties that could be generated. The Secretariat of Communications and Transport through SENEAM will inform to the Tax Administration Service, which will require the payment of the corresponding duty...”*.

Trough the derogation of referred SENEAM’s obligation to verify, require the clarification of discrepancies, and, if case, determine the specific amounts of discrepancies on the calculation and payment of duties caused by the use of Mexican airspace; the SENEAM has the faculty to directly communicate to the Tax Administration Service (SAT) about the unpaid duties or discrepancies noticed by SENEAM without any previous notice to the carrier about it; and the Secretariat of Communications and Transport (SCT) through its General Direction of Legal Affairs will communicate to the carrier about suspension of the use of Mexican air space, as the stated in the general procedure described in the article 3 of the FLD.

Finally, from January 1st 2014 the last paragraph of section I of the article 291 of the FLD states that the contributors without Mexican tax ID *“Cédula de Registro Federal de Contribuyentes”*, tax address in Mexico or legal representative in Mexico will not be able to choose the payment method described in section I of the article 289<sup>1</sup> of the FLD; and must conduct the payment in cash to Aeropuertos y Servicios Auxiliares or to the authorized concessionaire to provide fueling services, each time that the aircraft is supplied with fuel in observance with the mechanism stated in sections II and III of the article 289 of the FLD.

The updated quotes applicable for 2014, published in the Annex 19 to the Miscellaneous Tax Resolution for 2014, in respect to the method of payment stated in section I of article 289 of the LFD are as follows:

<b>Aircraft classification</b>	<b>Quote per each kilometer flown:</b>
<b>LARGE</b>	<b>\$7.22 MxP</b>
<b>MEDIUM</b>	<b>\$4.82 MxP</b>
<b>SMALL TYPE B</b>	<b>\$1.67 MxP</b>
<b>SMALL TYPE A</b>	<b>\$0.21 MxP</b>

By means of this method, carriers must calculate the ortodromic distances for each flight as follows:

For domestic flights the calculation must be made by the orthodromic distance covered from departure airport to the destination airport. For international flights the calculation must be made by the orthodromic distance covered from the entrance or departure point of the Flight Information Region (hereinafter FIR) to the destination/departure Mexican airport. The international overflights must be calculated by the orthodromic distance covered from the entrance FIR point to the departure FIR point.

1.- Method for the calculation and payment of duties caused by the use of Mexican airspace based on the official aircraft wingspan, per each kilometer flown.

The orthodromic distance in the case of local flights returning to the departure airport must be calculated by the application of 5 kilometers per each minute flown.

In respect to the method of payment stated in sections II and III of article 289 of the LFD, the updated quotes, published in the Annex 19 to the Miscellaneous Tax Resolution for 2014, and applicable from January 1st 2014 are as follows:

Single quote of duties to be paid in case of aircraft with up to 16.7 meters of wingspan: a) \$96.15 MxP in case of aircraft with up to 10 meters of wingspan and helicopters; b) \$137.37 MxP in case of aircraft with more than 10 and up to 11.1 meters of wingspan; and c) \$206.05 MxP in case of aircraft with more than 11.1 and up to 16.7 meters of wingspan.<sup>2</sup>

Single quote of duties in case of aircraft classified as Small Type B, Medium and Large: i) \$3,818.84 in case of aircraft classified as Small Type B; ii) \$11,078.74 in case aircraft classified as Medium; and iii) \$16,603.67 in case of aircraft classified as Large.<sup>3</sup>

To such effects, article 290 of the LFD states the official aircraft classification based on wingspan as described in the chart below:

Small		Medium	Large
Type A	Type B		
With up to 16.7 meters and helicopters.	From 16.7 to 25.0 meters.	With more than 25 meters and up to 38.0 meters.	With more than 38.0 meters.

Finally is very important to make a mention the official document number INM/DGA/5195/2013 issued by the NII in regards to the Modification to the Federal Law of Duties published by the Secretariat of Finance in the Official Journal on December 11 2013. Through the referred document, the immigration authority informs to international carriers about the modifications made to the FLD in regards to the immigration duties; nevertheless it does not state an specific declaration in respect to the interpretation and faculties of the NII to determine and require the payment of immigration duties under the specific terms and rules stated for the proper observance of the obligations stated in the FLD just as has been conducted up to December 31, 2013.

Taking into account that applicable legislation address the obligation of the calculation and payment of these duties to the carrier; it is very important to observe all requirements, rules and procedures involved with the payment of SENEAM and immigration duties. Any failure to any requirement could cause several and relevant problems to the international carriers: fines, cancellation of services and administrative procedures, which could generate the cancellation of the use of Mexican airspace and/or immigration services. Our firm, since its establishment and its conduction as legal representative of international carriers before SENEAM and the NII, has always conducted a perfect handling of these procedures to several carriers, guarantying the proper operation of the air transport services in Mexico; at any time and under any condition.

2.- Section II of the Article 289 of the LFD.

3.- Section III of the article 289 of the LFD.

## **2014 Marks 100 Years of Commercial Aviation.**

January 1, 2014 marks exactly 100 years since the birth of commercial aviation, the International Air Transport Association (IATA) has said. IATA is therefore inviting everyone with an interest in aviation to join a year-long celebration of the 100th anniversary, and take part in a conversation about what needs to happen to make the next 100 years even more momentous. On January 1, 1914, a team of four visionaries combined efforts in the first scheduled commercial airline flight. Percival Fansler organised the funding for the St. Petersburg-Tampa Airboat Line which provided the first scheduled air service across Tampa Bay, Florida. Thomas Benoist's airboat conducted the first flight, piloted by Tony Jannus and Abram Pheil, then mayor of St. Petersburg, paid US\$400 at auction for the 23-minute flight. IATA said these pioneers could not have envisioned the transformational changes that would follow. *This Day Live. January 03, 2014.*

## **Boeing reports record orders and deliveries for 2013.**

Boeing has revealed record deliveries and orders for 2013, putting it on track to become the world's largest aircraft manufacturer for a second consecutive year. Boeing delivered 648 commercial planes last year and had a backlog of 5,080 unfulfilled orders - both company records. The figures means that it is likely to have beaten rival Airbus, which will reveal its 2013 deliveries on 13 January 2014. *BBC BUSINESS. January 06, 2014.*

## **Mexico airport ends commercial lease.**

Mexico's state-run airport operator has taken over all commercial leases at the country's largest airport as of January 1, 2014. Mexico airport ended its contract with Inmobiliaria Fumisa, a company owned by equity group Advent International. Fumisa was responsible for the commercial activities at Mexico City International Airport, which handles 30 million passengers a year. Fumisa says it will challenge the issue as it has not recouped its investment in the airport. AICM maintains its auditors have stated found that Fumisa's ROI has been higher than 12.8%. *The Latin America Report. January 07, 2014.*

## **Mexico Mandates APIS for Private Aircraft Operators.**

Mexico implemented rules requiring private aircraft operators flying into or out of the country to submit advance passenger information (API) data. This mandate follows previously established API requirements for commercial operations under Mexico's National Institute of Immigration Agency. Required passenger, crew and flight data must be submitted within 30 minutes of departure for flights longer than one hour; or after the aircraft door is closed for flights shorter than one hour. NBAA said the data-reporting requirement for private flights developed "primarily from a need for enhanced security measures in Mexico, as well as a desire for better accounting of taxes paid by arriving and departing passengers." *AInonline Aviation. January 09, 2014.*

*In this month extract was prepared by Emmanuel Jiménez, Patricia González, Mauricio Castillo, José Manuel Muñoz and Miguel Ruelas.*

## **Economy for the skies.**

The improvement of the Mexican economy and the growth of the airlines will cause an increase in market development this year for Aeronautic Pacific Group (GAP) The enterprise that operates the International Airport of Guadalajara, and 12 more terminals, said yesterday to the Mexican Value Market, that this year the Group expects to increase the passenger traffic by 5 percent. GAP stated that in 2013 they handled a total of 23 million passengers against the 21.29 million passengers in 2012. *Periodico A.M. January 13, 2014.*

## **Airport Use Tariff Increased.**

From Thursday January 16, 2014 the International Airport of Mexico City (AICM) Benito Juárez will increase by 74%, the Airport User Fee (TUA) at the International level, which will translate into a 38% increase at the National level. The Secretariat of Finance (SHCP for its initials in Spanish) has authorized this increase, as published in the Federal Official Daily Journal (DOF) on January 2nd. The decree states that from January 16, 2014 to December 31, 2014 the national TUA will move from \$15.91 to \$21.96 dollars; meanwhile the international tax will increase from \$19.59 to \$34.15 dollars. *CNN Expansion. January 16, 2014.*

## **The Growth of AICM is official.**

The Secretary of Communications and Transportation (SCT for its initials in Spanish) has confirmed that the results of the exhaustive study concerning the extension of Mexico City's International Airport (AICM) will be published in the first quarter of this year. "We are researching for the project to be handled by experts, in order to enlarge the existing airport, and in six months we will have the results of how the airport is going to evolve" said Gerardo Ruiz Esparza, head of the SCT. He also reiterated that the federal government has over seven thousand hectares to develop, but that by no means, does this project mean the construction of a new terminal or airport; he restated that this is nothing more than an extension of the AICM as it now stands. *NOTIMEX. January 19, 2014.*

## **TAR Airline starts operations in Querétaro.**

Marcelo López Sánchez, Secretary of Sustainable Development, presented the new airline Regional Air Transport (TAR) in Querétaro. It represents an initial investment of 260 million pesos and the creation of 300 direct new jobs. The airline will start up with flights to Monterrey, Tampico, Los Mochis, Durango, Guadalajara, Puerto Vallarta, Ixtapa, Acapulco and Puebla. According to airline president, Luis Humberto Gómez Terrazas, the plan is to operate a fleet of fourteen aircraft by 2017. The new operations will impact in a positive way the airport's movement and activities. *The Economist. January 22, 2014.*

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