

COELUM

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A New Rule for the
Calculation and Payment of
Immigration Duties.

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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.

A New Rule for the Calculation and Payment of Immigration Duties.

by Misael Arellano.

On the March edition of COELUM this author made the analysis of some 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 regards to the updating of applicable quotes and to the procedure for calculation, payment and verification of the payment of SENEAM and immigration duties.

Just after the official publication of the relevant modifications to the procedure for calculation and payment of immigration duties, occurred on December 11, 2013, some international carriers of passengers represented by our firm which operates regular flights from/to Cancún, San José del Cabo and Toluca started several negotiations and discussions with the National Immigration Institute to argue the incapability of carriers to properly observe the published modifications to the procedures in respect to the calculation and payment of immigration duties entering in full force from January 1st 2014.

The arguments were quite simple: any carrier, neither Mexican nor foreign has the infrastructure to observe the new procedures for the payment of immigration duties as stated in the modifications to the Federal Law of Duties; on which i) duties caused by the immigration condition granted by the National Immigration Institute to foreign passengers without permit to conduct remunerated activities, (DNR), 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 flight operation; and ii) duties caused by the immigration services provided to all passengers transported on international flights from Mexico (DSM), must be calculated and paid by the carrier at the moment (same date) of each departure flight.

Article 6 of the Federal Tax Code.

After several discussions and meetings with the involved authorities on this matter, the National Immigration Institute confirmed the application of Article 6 Section I of the Federal Tax Code (FTC). Article 6 of the FTC describes the moment on which federal contributions are caused; and the general procedure applicable for the calculation and payment that must be observed by the contributor. In that sense, section I of the article 6 of the FTC states that in case of contributions collected by third parties (as occurred with DNR and DSM) the person obliged to do so must pay such duties no latter that the 17th day of the following calendar month.

“...the publication of an specific rule stating the legal basis for the calculation and payment of immigration duties on a monthly basis for scheduled carriers...”

Considering the wording of the second paragraph of the article 6 of the FTC, the National Immigration Institute and the tax authority agreed on the publication of an specific rule stating the legal basis for the calculation and payment of immigration duties on a monthly basis for scheduled carriers, with a 17 days term for its calculation and payment after the end of the previous period.

"...to make retroactively the new specific rule for the calculation and payment of immigration duties from January 1st 2014."

Moreover it is important to mention that the most important rule is not based on the faculty of the publication of the specific rules applicable; but on the specific wording stating that "...such contributions will be determined based on the regulations in force at the moment that they are generated, but proceeding rules issued afterwards will apply...". In that sense the National Immigration Institute and tax authority will use this legal basis, to make retroactively the new specific rule for the calculation and payment of immigration duties from January 1st 2014.

By means of the afore described, the National Immigration Institute and tax authority will publish in the next days the specific rules for the calculation and payment of immigration duties retroactively from 2014. The procedure now is easier and simpler than it was up to December 31st 2013 because DNR and DSM duties must be paid on a monthly basis by any scheduled carrier, different to the required biweekly payments for DNR duties prior to January, 2014; or any other period applicable to members of the National Air Transport Chamber that was cancelled from this year.

One World Alliance interested in Mexico.

One World Alliance, whose members are among the world's biggest airlines, is interested in adding a Mexican airline to their members, given the economic importance of Mexico. Their CEO Bruce Ashby commented that the alliance seeks to unite the best airlines in the world and as a consequence to be present in the best performing economies, in which Mexico is a part. The only Mexican airline which has been a member of this alliance was Mexicana de Aviación, but since it stopped flying and with its complicated situation, it stopped being a member of the alliance. The benefit of being a member of one of these alliances is the opportunity to offer more destinations to their clients, given the infrastructure of their partners which spread worldwide. *Notimex. April 01, 2014.*

Senators want airlines to 'pay' passengers for delays.

A group of Senators from the Institutional Revolutionary Party (PRI) and the Special Mobility Commission presented an initiative to reform the Civil Aviation Law which wants airlines to reimburse their passengers a percentage of the cost of the ticket, in case of delays. The reimbursement would be 10% of the cost of the ticket for every hour of delay, except when the ticket is being given free for free or with reduced fares not available to the public. The purpose of the initiative is to oblige airlines to compensate their users when they are affected by faults in service. *El Punto Crítico. April 02, 2014.*

EU backs compromise on aircraft CO2 emissions.

The European Parliament has decided that the EU will not levy carbon emission taxes on airlines when their planes are outside European airspace. This exemption will apply until 2017, hoping that the International Civil Aviation Organization (ICAO) will reach a global agreement beforehand to limit aviation emissions. An EU tax will still apply for flight inside the EU. *BBC. April 03, 2014.*

News Brief: Industry to Gather for First IATA Cabin Operations Safety Conference.

The International Air Transport Association (IATA) will host the first Cabin Operations Safety Conference, 20-22 May 2014 in Madrid, Spain. "Cabin operations safety is an integral part of our overall commitment to safety of flight. The Cabin Operations Safety Conference provides a forum to address the most important challenges from a global perspective, bringing together key stakeholders from across the aviation value chain," said Tony Tyler, IATA's Director General and CEO. A large number of representatives from airlines, regulatory agencies, manufacturers and suppliers are expected to attend. *IATA. April 08, 2014.*

ICAO announces special meeting on global airline flight tracking.

While the search for flight MH370 is still ongoing, the International Civil Aviation Organization (ICAO) has announced that it is convening a special meeting of State and industry experts on the global tracking of airline flights. The Council President of ICAO, Dr. Olumuyiwa Benard Aliu, noted that ICAO will be using the occasion of the 12-13 May 2014 gathering to try and increase current momentum on deliberations over the specific aircraft and satellite-based capabilities needed to permit global implementation of worldwide flight tracking. In related areas of its work, ICAO has recently established new guidance on underwater locator beacons (ULBs) which will come into force in 2018. Its Flight Recorder Panel is continuing to review new means of expediting the location of accident sites, including deployable flight recorders and the triggered transmission of flight data, and the UN agency will additionally be reviewing any implications on its work relating to aviation security, travel documents and identity management, as well as the requirements for the transport of lithium batteries. *Aviation Safety Network. April 09, 2014.*

In this month extract was prepared by Vera García, Patricia González, José Manuel Muñoz, Miguel Ruelas and Nicole Turner.

New Aeronautical Investigation Center in Mexico.

Mexico's President, Enrique Peña Nieto, along with French President François Hollande have jointly inaugurated the Aeronautical Campus in Queretaro Mexico. Mexico's President stated that the Aeronautical industry in Mexico has grown tremendously over the past year as it is made up of 270 established companies and 11 investigation centers. Queretaro now has a new and ultra modern aeronautical investigation center, as a Mexican-French University. Both heads of state agreed in the co-operation in the aeronautical industry among both nations. *El Informador. April 11, 2014.*

Mexicana de Aviación is declared Bankrupt after more than 3 years of legal battles.

The official bankruptcy of the internationally well-known former Mexican airline, Mexicana de Aviación has been legally announced by Judicial Authorities in Mexico. Riardo del Valle, general secretary of the National Air Stewards Union, confirmed that the 11th court on Civil matters has legally declared Mexicana de Aviación bankrupt. Once official, as Mexican laws suggest, the "Concurso Mercantil" is set to initiate an order to liquidate all the creditors that the now extinguished airline has not yet paid. The Air Stewards Union, have made clear that they regret the court's decision; for now over 8,500 employers are to be terminated completely by the priority the "Concurso Mercantil" grants them. *El Universal. April 14, 2014.*

The Battle for Slots.

Mexicana Airlines' slots in Mexico's City International Airport (AICM) totaled 2,093 scheduled landings and take-offs. Now that the Airline has been officially declared bankrupt, the authorities at the AICM, are waiting for the court's final statement in order to proceed with the partition of such slots that add up in value to over 550 million pesos. The AICM authorities stated that the slots will be granted to those airlines that obtained the provisional slots to cover Mexicana Airlines inactivity since 2010. Meanwhile, the National Transportation, Transformation, Aviation and Similar Services Union, which represents the over 8,000 unemployed former Mexicana Airlines' workers, are petitioning that the assignment of the slots be given to the Union, in order to cover the debts Mexicana Airlines has not paid. *Aeropuertos Mexico. April 20, 2014.*

Boeing raises 2014 profit forecast.

The aerospace firm expects more profit in 2014 due to a tax settlement that will take effect in the second quarter. Boeing left 2014 forecasts for revenue operating cash flow and deliveries unchanged. "Disciplined execution across our production and development programmes produced strong first quarter results," Boeing chief executive Jim McNerney said. The company delivered 161 commercial aeroplanes in the three months to 31 March, a rise of 18% compared with the first quarter last year. However, the increase was flattered by the fact that Boeing delivered just one 787 Dreamliner in the first three months of last year. Deliveries were halted after two incidents in which batteries on the planes burned, prompting regulators to ground the global Dreamliner fleet. While deliveries of commercial planes increased in the first quarter of this year, Boeing's revenues from military aircraft and space systems fell 6% to \$7.3bn. *BBC News. April 23, 2014.*

Saving Mexicana's Brand Name.

The Mexican Federal Government has stated the intention to rescue the brand name "Mexicana de Aviación". As the former airline, now officially declared in bankruptcy and facing a "concurso mercantil" faces a long battle before the Mexican courts to suffice all creditor debts; the federal government has stated that they will try to rescue the name of the brand. Mr. Narvarrete Prida, head of the Work Secretariat said that the brand is too valuable to lose it under the bankruptcy procedure, and if salvaged, it may help indemnify the former workers of the airline. *Notimex. April 23, 2014.*

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