

coelum.

Monthly Digital Publication by Abogados Sierra

April 15, 2018
year 12 | No. 12

The sale of passengers air transport services in advance to the operation: An extra cost that immigration authority and airports require to the carriers in Mexico.

by Misael Arellano

MARCH AND APRIL NEWS on
Mexican Aviation

boarding pass

Date 22 FEB 10
Boarding Time 1340
Conf # J8LP
\$SR(s) 1420
D COY N

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.

sierra

The sale of passengers air transport services in advance to the operation: An extra cost that immigration authority and airports require to the carriers in Mexico.

by Misael Arellano.

In this edition we will make the analysis of a very relevant issue faced by international carriers operating to and from Mexican airports because the updating of immigration duties and Tariff by the Airport Use "TUA", both charges collected by the carriers at the moment of the ticket sale, but caused or generated until the moment in which the passenger is effectively transported.

Basic Principles.

The passenger is the obliged party to the payment of immigration services provided by granting the immigration status (DNR) at its arrival and those provided on departures (DSM); however, the Federal Law of Duties (FLD) transfer the obligation to collect duties caused by the passengers transported to/from México and as well as the obligation to transfer the collected duties to the immigration authority, to the carrier, as the provider of the transport services.

Under a same criteria, the TUA is caused by the passengers using the airport facilities on departures; however, as the TUA is not a duty but a fee charged by use of the airport as any other service, such fee must be paid by the carrier under the commercial relationship existing in addition to all other airport services contracted or requested to the airport, for the operation of international flights.

Everything looks easily manageable so far; however, what happen with the updating of rates and its enforceability and/or the availability to be properly charged by the airline at the time of the purchase of the ticket? International good practices allow the sale of tickets up to one year prior to the date of flight; what about with the discrepancy on the amount of the duty collected to the passenger one year prior to the effective date on which the flight will be operated?

The updating of duties collected from the passenger and the transfer/payment process.

Article 1 of the Federal Law of Duties states the complete process and formula under which all duties, including the immigration duties, are updated based on the National Price Index of the nearest and distant periods, always in a calendar yearly basis which is effective as from January 1st. The same article also states that the Tax Administration Services (SAT) must publish the applicable updating factor in the Federal Gazette, and such publication occurs normally occurs in the second half of December.

On the other hand, and based on the Regulation of the Airports Law, the TUA can be updated by the airports and enter in full force by the obtaining of the required authorization from the Secretariat of Communications and Transport and just after its publication in the Federal Gazette. Like the federal duties, the updating of TUA is based on the National Price Index but also on the airport development plan, investment, volume of the operations and any relevant issue that the airport concessionaries holders may argue for the increasing of the tariff.

As it was pointed out previously, Article 8 of the Federal Law of Duties states that the companies providing the international air transport services must collect the immigration duties from the passengers. In consequence of the afore said, carriers are considered as retainers of the contribution and as jointly responsible (up to the amount of the collected contribution) under the stated in the Federal Tax Code. In that sense, carriers must follow the payment process established by the tax authority in the applicable Tax Miscellaneous Resolution, which is published every year, and which also states that immigration duties referred in Article 8 section I (DNR) and Article 12 of the Federal Law of Duties must be transferred or paid to the National Immigration Institute in a monthly basis within the following 17 days to the end of each period.

Unlike the immigration duties, the TUA is subject to the commercial agreements entered with the airports, in that sense,

its payment process will be subject to the terms agreed between the airport and the carrier.

The problem.

Everything looks easily manageable so far; however, what happens with the updating of rates and its enforceability and/or the availability to be properly charged by the airline at the time of the purchase of the ticket? International good practices allow the sale of tickets up to one year prior to the date of flight; what about with the discrepancy on the amount of the duty collected to the passenger by the carrier, in observance to its obligation stated in the FLD, one year prior to the effective date on which the flight will be operated? Is at that time when the problem arises: a discrepancy on the tariff valid collected at the moment of the ticket purchase vs the tariff valid on the date in which the passenger is transported.

“Most of the foreign international carriers in Mexico do not even think about this issue because a lack of awareness or an incorrect interpretation of the local legislation.”

In the same way on which the payment of TUA is required to the carrier, the National Immigration Institute does not accept the payment or transferring the amount collected to the passenger but requires the payment of valid tariffs at the date in which the passenger is transported. The immigration authority argues that immigration services are effectively provided on the date on which the international flights are operated so there is no doubt, under its criteria, about the applicable rate that must be paid by the carrier.

Nevertheless, and opposed to what is required by the immigration authority or the involved airport; the Federal Law of Consumer Protection states, among others, two relevant obligations related to the sale of air transport services: i) to include all taxes, commissions, interest, insurances and any other additional cost or charge to be covered by the passenger by the purchasing of a ticket ; and ii) to always obey the price agreed with the passenger at the moment of the purchase of the ticket.

There is no legal way to require for the payment of any additional cost or updated charge to the passenger, generating a contradiction between different laws and governmental entities.

Most of the foreign international carriers in Mexico do not even think about this issue because a lack of awareness or an incorrect interpretation of the local legislation.

Let's see through a real example the impact of doing nothing each time that the immigration duties and TUA rates are updated:

For 2016, the applicable rate of the DNR was for \$390.00 MXP, in consequence all tickets sold by a carrier from January 1st to December 31st in 2016 included such amount as the DNR duty. The carrier charged the rate known and valid for 2016 but most of the tickets sold in the last months were for the transportation as from January 1st, 2017. In 2017 the rate of the DNR was updated to \$500.00 MXP which means that the National Immigration Institute required to all carriers for the payment of \$110.00 MXP in excess to the amount effectively charged to passenger; \$6.5 USD (approximately) paid by the carrier for each passenger with a ticket purchased on 2016.

An international air carrier operating ten frequencies per week with aircraft B762 of 320 seats configuration could paid up to \$83,200 USD (approximately) from its pocket, and just for DNR duties, for the passengers transported during January 2017.

Based on this example; It is correct that an air carrier pays more than \$80K USD that were not collected to the passenger, for one period, just because it was not aware about the correct way to conduct the payment of duties effectively charged at the moment of the ticket sale?

Enactment of Emergency Official Mexican Norm NOM-EM-121-SCT3-2017 (Emergency NOM).

On 8 March 2018 the Ministry of Communications and Transport enacted the Emergency NOM which sets the minimum terms that all carriers operating in Mexico must include within their Contract of Carriage and Baggage Check, as well as the general guidelines for the carriage of emotional support and domestic animals. The issuance of Emergency NOM comes as a matter of compliance by the DGAC which pursuant to the amendments to the Civil Aviation Law, had a specific term for the issuance of such guidelines in accordance to the provision set in the recently amended article 47 Bis of the Civil Aviation Law. In order to comply with such term, they issued Emergency NOM as an emergency measure. Being so, Emergency NOM will only be valid for 6 months while the DGAC drafts and issues a final version of the required guidelines. <https://a21.com.mx/normatividad/2018/03/08/emite-sct-norma-temporal-para-regular-contratos-de-vuelo> March 08, 2018.

Fang Liu reappointed Secretary General of ICAO for a second term.

The Council of the International Civil Aviation Organization (ICAO) has reappointed Dr. Fang Liu of China by acclamation today as Secretary General of the UN Specialized Agency for a second three-year term, beginning 1 August 2018. <https://www.icao.int/Newsroom/Pages/Fang-Liu-reappointed-Secretary-General-of-ICAO-for-a-second-term.aspx> March 08, 2018.

ACI on international slot allocations mechanisms.

Angela Gittens, Director General of Airports Council International (ACI) World, addressed aviation leaders at the CIIASA conference in Mexico City. With the current global industry focus on airport capacity, Gittens spoke of the increasing level of congestion of airports and called for a wider discussion on alternative methods of allocating slots and urging that airports, airlines and airport coordinators play an equal role in the efficient allocation of slots. <http://www.aci.aero/News/Releases/Most-Recent/2018/03/16/Angela-Gittens-addresses-aviation-leaders-at-CIIASA-Conferencias-Magistrales-sobre-Seguridad-de-la-Aviación-Civil--ACI-World-calls-for-the-Slot-allocation-system-to-be-reformed-by-the-aviation-community-on-an-equal-basis> March 08, 2018.

IATA Innovates Dangerous Goods Handling.

The International Air Transport Association (IATA) has launched an innovative new solution for the air cargo industry: Dangerous Goods AutoCheck (DG AutoCheck) that will enhance safety and improve efficiency in the transport of dangerous goods by air and support the industry's goal of a fully digitized supply chain. <http://www.iata.org/pressroom/pr/Pages/2018-03-14-01.aspx> March 14, 2018.

COFECE recommends SCT eliminate the exclusivity of ASA to supply airports with jet fuel.

While the Ministry of Energy (Secretaría de Energía) has delivered 75 jet fuel import permits, not permit holders have actually commercialized jet fuel as Aeropuertos y Servicios Auxiliares (ASA) has the exclusivity to supply, store and transport jet fuel within Mexico. Accordingly, COFECE has urged the Ministry of Transportation (SCT) to eliminate the monopoly of this group and open the market for new entrants. In response, ASA has stated that it is open to compete in the jet fuel market. <http://www.aerospacemx.com/new-routes-jet-fuel-market-competition-and-record-breaking-aircraft-deliveries-the-weekly-roundup/> March 20, 2018.

In this month extract was prepared by J. Estrada, C. Espinosa, L. Caballero, R. Figueroa and J. Dorantes.

Technology, the key to safer airports and happier travelers.

The saturation of air terminals around the world is one of the greatest challenge for both administrators and airport authorities, who seek to maximize safety standards and at the same time reverse the inconveniences that these processes cause to millions of passengers. As a result of an alliance between ACI and the International Air Transport Association (IATA), the Intelligent Safety Program developed through this partnership aims to ensure that passengers “pass checkpoints with the least inconvenience and that security resources are assigned strategically based on the risks thus insuring that airport facilities are optimized. <http://a21.com.mx/aeropuertos/2018/03/20/tecnologia-la-clave-para-aeropuertos-mas-seguros-y-viajeros-mas-contentos> March 20, 2018.

Mexican Senate approves new Bilateral Air Service Agreement with Israel.

The Asia-Pacific Foreign Relations Commission of the Senate of the Republic unanimously approved the opinion of the Agreement on Air Services between the governments of Mexico and Israel unanimously and without reservation. This agreement is set to adopt a liberalized policy on designations, routes and tariffs between the two states. <http://a21.com.mx/aeronautica/2018/03/21/comision-del-senado-avala-acuerdo-aereo-bilateral-con-israel> March 21, 2018.

Innovation and security, key issues for the future of aviation: IATA.

The Conference on Flight Safety and Operations (SFO) that will take place on 17 to 19 April, 2018 will bring together experts, officials and important stakeholders from the aerospace industry to “explore and influence” the future development of these industries, under the auspices of the International Air Transport Association reported (IATA). <http://a21.com.mx/organismos/2018/03/22/innovacion-y-seguridad-temas-clave-para-el-futuro-de-la-aviacion-iata> March 22, 2018.

Mexican Government Raises \$1.6 Billion in Shares of New Airport Trust.

The Mexican government’s airport company raised around \$1.6 billion to partly finance the construction of the new Mexico City airport. Grupo Aeroportuario de la Ciudad de Mexico, which runs Mexico City’s existing airport and holds the license to develop and operate the new airport, sold shares for 30 billion Mexican pesos in a type of trust known locally as a Fibra E. With the proceeds from the trust, \$6 billion in bonds, a revolving credit line and budget funds, financing so far is approaching \$10 billion. <https://www.wsj.com/articles/mexican-government-raises-1-6-billion-in-shares-of-new-airport-trust-1522102263> March 26, 2018.

Transition plan between AICM and NAICM is on its way.

The Airport Group of Mexico City (GACM) is currently undergoing the preliminary documentary stage associated with the implementation of the ORAT software (Operational Readiness, Activation and Transition), in order to set the operational transition process to close the current airport and open the New Mexico City International Airport (NAICM). This process will require at least two years before the NAICM can begin operations in detriment of the current AICM.. <https://a21.com.mx/aeropuertos/2018/04/01/alistan-proceso-de-transicion-entre-aicm-y-naicm> April 04, 2018.

coelum.

Monthly Digital Publication by Abogados Sierra

MISAE LARELLANO

Attorney at Law: Admitted to practice law in 2006. Mr. Misael Arellano, of Mexican nationality obtained his law degree at Instituto Tecnológico y de Estudios Superiores de Monterrey, Mexico City; attended studies in Social Sciences Program 2003 by Universidad Antonio de Nebrija, Madrid, Spain; and holds the Certificates of International Air Law; Airline Contract Law; Aircraft Acquisition and Financing; and Law of Aviation Insurance by the International Air Transport Association (IATA).

LANGUAGES: Spanish and English.

PRACTICE AREAS: Aviation Law, Aviation Industry Affairs, Repossession of Aircraft, Airport Law and Corporate Law.

e-mail: marellano@asyv.com


sierra

Prol. Reforma No. 1190 25th Floor,
Santa Fe México D.F. 05349

t. (52.55) 52.92.78.14

f. (52.55) 52.92.78.06

www.asyv.com / www.asyv.aero

The articles appearing on this and on all other issues of Terrum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.