

COELUM.

And the challenge continues;; transfer of title and vat exceptions.
by Viridiana Barquín.



APRIL NEWS on Mexican Aviation

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.

And the challenge continues; transfer of title and vat exceptions.

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It has been already addressed in past editions of Coelum the tax implications related to aircraft and engine transactions¹; and as if the 2020-2021 period had not been challenging enough, very important amendments to the relevant tax laws in Mexico have been issued² which, if not reviewed carefully, could cause a misinterpretation of the exceptions for the applicability of VAT in a transfer of title.

"...the transfer of title of assets does not have tax consequences in Mexico; to the extent that the sale and purchase is conducted between two foreign entities; and the asset involved is imported into Mexico under a special importation program, or under a similar regime pursuant the Mexican Customs Law."

As explained in such previous editions of Coelum³, Article 9 of the Value Added Tax Law ("VATL")⁴ states the exceptions where the sale and purchase of goods does not entail the obligation of payment of VAT for not being considered conducted in Mexican territory. Particularly sub-section IX provides that the transfer of title of assets does not have tax consequences in Mexico; to the extent that the sale and purchase is conducted between two foreign entities; and the asset involved is imported into Mexico under a special importation program, or under a similar regime pursuant the Mexican Customs Law.

Under Article 9 (IX) of the VATL then, 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, which is also subject to the condition that the asset be subject of a temporary importation regime (in compliance with Article 106 (V)(b) of the Customs Law ("Ley Aduanera"))⁵.

In respect to aircraft in particular, the temporary import regime, permits the importation of an aircraft/engine dedicated to public air transportation services for a period of up to 10 years. This regime is available only when the party conducting the importation of the aircraft/engine is authorized, by means of a concession or permit, to provide public air transportation services (airline or air taxi), so the party that conducts the importation must maintain possession of the aircraft/engine in the same condition as when it was imported (i.e., as an aircraft or engine, and not in parts) throughout the duration of the temporary importation. Otherwise, when importing an aircraft in Mexico under a definitive importation VAT at the 16%⁶ rate together with import duties based on the value of the aircraft would be applicable when the aircraft is imported.

Now, the new tax bill enacted for 2021⁷ "trying to clarify", the meaning of similar temporary importation regime, states in section 4.2.6 that a similar regime means the operations conducted by companies that have a foreign trade program duly authorized by the Ministry of Economy. And here is where a wrong interpretation related to the exception of applicability

1.- See Coelum September 2014 <https://www.asyv.com/images/coelum/2014/sep14.pdf> and December 2014 <https://www.asyv.com/images/coelum/2014/dec14.pdf>, both by Viridiana Barquín: "Transfer of Title of Aircraft by means of Lease Assignment vs Lease Novation" and "Tax Consequences of the Transfer of Ownership of Aircraft" respectively.

2.- See Coelum March 2021 https://www.asyv.com/images/coelum/2016/COELUM_MARCH_2021.pdf by Jessi Saba.

3.- <https://www.asyv.com/images/coelum/2014/dec14.pdf>

4.- "Ley del Impuesto al Valor Agregado" http://www.diputados.gob.mx/LeyesBiblio/pdf/77_081220.pdf, last amendment published in the Federal Official Gazette on December 31, 2020.

5.- http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Ley_Aduanera.pdf last amendment published in the Federal Official Gazette on December 31, 2020.

6.- Article 1 VATL

7.- "Miscelanea Fiscal" published in the in the Federal Official Gazette on December 31, 2020. https://www.dof.gob.mx/nota_to_imagen_fs.php?codnota=5609047&fecha=29/12/2020&cod_diario=290162

of the VAT may arise, if it is to be considered that such clarifying rule of section 4.2.6 of the new tax bill defines the temporary import regime, solely as the one that is carried out pursuant to a foreign trade program authorized by the Ministry of Economy, which is not the case we would no longer be able to consider the sale of aircraft under temporary importation regimes to qualify for the exception contained in the referred paragraph IX of Article 9 of the VATL. In that respect however, we should consider that this new rule does not appear to attempt to limit the scope of a similar temporary importation regime, merely to such conducted under a foreign trade program authorized by the Ministry of Economy, but rather to include this type of programs within the similar temporary importation regime category. In that sense, we should interpret that not all the similar temporary importation regimes must relate to foreign trade programs but that this is only one of them rather, meaning also that this rule should also not be interpreted as if the temporary importation of the aircraft/engine in question would need to be previously authorized under the foreign trade program. This interpretation should be assisted by the fact that, as a matter of principle, under no circumstances should a tax reform limit the rights of taxpayers, and much less impose additional obligations. This clarification, then, should not be considered to restrict or limit the temporary importation regime or the already established exceptions to the applicability of the VAT within a transfer of title of an aircraft or engine. Unfortunately however, in the end, "clarifications" like such contained in the referred section 4.2.6 result far from achieving the goal of facilitating the straightforward interpretation of Article 9 (IX) of the VATL, which used to be clearer in the past before these additional conditions were included.

It summary, it should be safe to conclude that in any transaction where the ownership rights over the aircraft/engine are being transferred between foreign entities which are not considered to be Mexican residents for tax purposes; as long as it is evidenced that the possession of the aircraft remains and will remain at all times with the importing party while the Aircraft is in Mexico subject to a temporary importation regime, VAT would not be

applicable neither under the VATL nor in terms of the new tax bill enacted for 2021 and the clarification rule of section 4.2.6 in respect to the "similar regime" referred in Article 9 of VATL.

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We see in conclusion that while the new tax reforms do not contribute or facilitate the smooth development of the aircraft transactions, they do not affect in any way the rights of aircraft owners to transfer title to aircraft without any tax exposure in Mexico. While we will continue with the analysis of this subject in depth, we do not consider necessary to suggest any special changes in the form in which this type of transaction is usually conducted in relation to aircraft transfers.

Air cargo in Mexico starts 2021 with an increase of 9.1%.

Air cargo movement in the country experienced an annual rate increase of 9.1% during the first month of 2021, as 88,197 tons were transported, 7,368 tons more than in the same period of 2020, according to data from the Federal Civil Aviation Agency (AFAC). Among the top 5 airports for cargo movement, Toluca registered an increase of 59.9% as it went from 2,993 tons to 4,786 tons year-on-year, Queretaro rose 32.5% by mobilizing 4,794 tons from 3,616 tons in January 2020, Monterrey handled 4,841 tons, 916 tons more which meant a 23.3% increase. www.t21.com.mx/aereo/2021/03/03/carga-aerea-mexico-inicia-2021-aumento-91 March 03, 2021.

Mexico and Russia reach an agreement to simplify the validation of Russian aircraft.

Mexico and Russia reached an agreement to achieve the certification of Russian manufactured and designed aircraft. The agreement aims to facilitate and simplify future validations of Russian civil aviation equipment exported to Mexico. As part of the agreement, helicopters will be introduced, which can be used for cargo and passenger transport, surveillance, search and rescue, firefighting and emergency medical assistance with the advantage of having access to high-speed internet access during its flights. www.infodefensa.com/latam/2021/03/03/noticia-convenio-puerta-mexico-aeronavegabilidad-aeronaves-fabricacion-diseno.html March 03, 2021.

Industry needs a better understanding of the Santa Lucia project.

The National Air Transport Chamber (CANAERO) stated that although the pandemic crisis slowed down the dynamics of collaboration between the airline industry and the Secretary of National Defense (SEDENA), both are making an effort to understand the needs of the airlines, as well as to communicate their priorities regarding the construction of the Felipe Angeles International Airport (AIFA), at the Santa Lucia Military Base. In fact, since the beginning of the airport's construction, IATA has requested that the Federal Government consider the industry's needs, among the most important of which is that the safety of the Airport. www.a21.com.mx/aeronautica/2021/03/16/requiere-industria-entender-mejor-proyecto-de-santa-lucia March 16, 2021.

ACI publishes new guide for airport recovery.

International Airport Council has issued a new guidance to help airports prepare for the resumption of operations and boost the recovery from the COVID-19 pandemic. Through ACI World's Aviation Operations during COVID-19, the agency provides guidance on best practices for airports to adopt management and optimization to initiate a long-term recovery. In fact, the guiding principles of the ACI document includes the application of COVID-19 testing, focus on risk management, quarantines based on country circumstances, coordination between governments, and the need for clear channels of communication to the traveling public. www.a21.com.mx/aeropuertos/2021/03/17/publica-aci-nueva-guia-para-recuperacion-de-aeropuertos March 17, 2021.

Aviation is a very unstable industry in Mexico.

Going forward, analysts predict that it will be until 2023, if not 2024, when the entire global industry will emerge from the severe economic turbulence in which it has been immersed due to the pandemic since March of last year. In the meantime, they warn that the number of airlines in the country could shrink even more. This is because of the same conditions of low demand and high fixed costs in dollars, mainly associated with aircraft leasing, which in previous decades led to the extinction of other national airlines, are aligning. www.lucesdelsiglo.com/2021/03/17/es-aviacion-una-industria-muy-inestable-en-mexico-local/ March 17, 2021.

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Chihuahua Inaugurates New Innovation Center.

"We have no doubt that nowadays, innovation centers are significant components of an economic strategy not just at a local or regional level. They are a meeting point to link the local to the global economy," said Javier Corral Jurado, Governor of Chihuahua. The State strengthens its bet on the aerospace industry as it will also generate training programs and manage research and innovation projects. Moreover, the center will support local SMEs by giving them access to courses, technology and the opportunity to collaborate with international companies. The innovation center already incorporates over 45 companies that employ 17,000 people and attract over US\$1 billion in local and foreign investment. www.mexicobusiness.news/aerospace/news/chihuahua-inaugurates-new-innovation-center?tag=aerospace March 18, 2021.

First IATA Travel Pass flight successfully completed.

The International Air Transport Association (IATA), successfully tested the IATA Travel Pass application on an international flight arriving at Heathrow Airport, London, UK, from Singapore. Likewise, airline travelers can use the app to create a secure digital version of their passport and have it on their mobile devices; they can also learn the details of their flight and thereby identify possible travel requirements or restrictions. It also provides test results and confirmation of compliance with travel obligations. www.a21.com.mx/aerolineas/2021/03/18/efectuan-con-exito-primer-vuelo-con-iata-travel-pass March 18, 2021.

VIVA incident in Vallarta: material fatigue or human factor?

The incident occurred on March 18th when prior to takeoff of the Airbus 320, from Puerto Vallarta to Monterrey, the nose gear collapsed while making a 180° turn to line up for the takeoff run. A specialist said that the accident could be attributed to material fatigue in the nose gear, as of all the aircraft systems, the most vulnerable is precisely this part. However, human error cannot be ruled out as the cause of the incident, since a high-speed turn or a miscalculation in the radius could have caused the failure. The turning speed in these cases is limited to 12 knots. Now, it is up to the AFAC, VivaAerobus and the airport authorities to conduct a study on all the variables, elements or potential deviations that could have influenced the incident. www.a21.com.mx/aerolineas/2021/03/21/incidente-de-viva-en-vallarta-fatiga-de-materiales-o-factor-humano March 21, 2021.

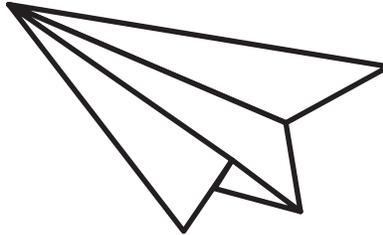
An airport for commercial aviation.

The construction of the Felipe Angeles International Airport (AIFA), which will be located at the Santa Lucia Military Air Base, has not yet been finalized in its proposal for commercial aviation and its interaction with the current Mexico City International Airport is a matter that has not yet been structured. Specialists from the College of Engineers have expressed their concern that in between 5 to 10 years, as soon as the industry resumes its growth pace, both airports will be exceeded in their capacity and another solution will have to be sought. The AIFA requires a transportation infrastructure that allows users to access the place, but the truth is that today getting to Santa Lucia is complicated and for the airport to be a real airport it needs fast, expeditious and cheap access roads. www.eleconomista.com.mx/opinion/Un-aeropuerto-para-la-aviacion-comercial-20210323-0020.html March 21, 2021.

First phase of the redesign of the airspace in the Mexico Valley begins.

The Ministry of Communications and Transportation (SCT), of the Federal Government started the redesign of the air routes of the international airports of Mexico City (AICM) and Toluca, State of Mexico. The changes will not be perceptible to airport users but will help reduce by 16% the flight time of aircraft operating in the metropolitan airspace and increase efficiency in arrivals and departures. The renovation involves Performance Based Navigation (PBN), a system "that allows air navigation to evolve through the current and future use of ground infrastructure, also taking advantage of satellite and digital technology, as well as advanced technological systems in the cockpits, so that aircraft can navigate more precise, direct and efficient routes". www.forbes.com.mx/cdmx-primera-fase-redise-no-espacio-aereo-valle-mexico/ March 25, 2021.

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LANGUAGES: Spanish, English and Catalan.

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