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## Aircraft and Engine Transfers in Mexico: A Guide to Structuring Without Unnecessary Risk

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### ORIGIN:

'che-l&in, is Latin for all space or sky. The Romans began questioning the rights they had in the space above the land they owned and how high above them those rights would extend. They decided on, Ad coelum et ad inferos, meaning that their property rights would extend as high up as the heavens and all the way down to hell.

# Aircraft and Engine Transfers in Mexico: A Guide to Structuring Without Unnecessary Risk

By Natalia Deschamps and Gerardo Reyes

In cross-border aviation transactions involving Mexican operators, discussions around transfer taxes often begin with geography. Should the aircraft be flown outside territorial waters? Is 12 nautical miles enough? Would a more conservative approach require positioning beyond that?

These questions, although common in practice, are rarely the correct starting point.

Effective structuring does not begin with distance from the coastline. It begins with a precise understanding of what is being transferred, how ownership is changing, and whether the documentation accurately reflects the economic reality of the transaction.

When those elements are aligned, risk is reduced. When they are not, repositioning alone will not cure structural weaknesses.

## Step One: Identify the Type of Transfer

Not all transactions involving aircraft change ownership in the same way. Treating them as if they do can lead to unnecessary measures.

A full metal transfer in which the legal title to the aircraft (airframe and engines) passes from one lessor to another) is a true conveyance of the asset. A bill of sale is executed and ownership changes. If the aircraft is registered in Mexico, registry updates follow. In this scenario, some parties elect to reposition the aircraft outside Mexican territory prior to closing as a conservative risk-management measure.

From a civil law perspective, however, the validity of the transfer does not depend on the aircraft's physical location at the time of execution. Ownership may validly pass while the aircraft is in Mexico<sup>1</sup>. The practical concern lies not in civil validity, but in the potential VAT consequences and the availability of statutory relief, matters that will be examined in the following section of this article.

A transfer of a beneficial interest is structurally different. In many leasing structures, a trustee holds legal title to the aircraft, while the economic interest belongs to the beneficiary of the trust. When that beneficiary transfers its interest, the trustee remains the legal owner. The aircraft itself is not conveyed. There is no bill of sale of the asset and no new delivery of the aircraft as property.

In this scenario, what changes is the economic position within the ownership chain, not the aircraft's legal ownership. Structuring this type of transaction as if it were a metal transfer may introduce unnecessary steps, including physical repositioning that does not correspond to the legal substance of the transaction.

Engine-only transfers require separate analysis. Engines are independent movable assets and may be owned separately from the airframe. When an engine owner sells its interest, there is a genuine transfer of that specific asset. The complexity arises when the engine is installed on an aircraft operating in Mexico under temporary importation, or when it is located at a maintenance facility within Mexico.

The structuring exercise must begin by clearly identifying whether the asset being conveyed is the aircraft itself, an economic interest in a trust, or an individual engine. Each configuration carries different risk considerations.

## Step Two: Align Delivery Mechanics with the Transaction Narrative

In many sale and lease transfers, the aircraft does not physically change possession at closing. It remains continuously

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1. Federal Civil Code - Article 2014. In transfers of specific and determined assets, ownership is transferred between the contracting parties by the mere effect of the agreement, without the need for delivery, whether physical or symbolic; subject, however, to the applicable provisions concerning the Public Registry.

in the hands of the airline lessee. Under Mexican civil law principles, ownership may transfer without material handover of the asset. The law recognizes juridical delivery, where title passes even though physical possession does not<sup>2</sup>.

This distinction is important from a structuring perspective. If the aircraft remains in possession of the lessee without interruptions, the transaction should not be documented as though a physical redelivery occurred when it did not. The delivery language in the sale agreement must be consistent with the operational facts.

Similarly, in engine transfers, the documentation must accurately describe whether the engine is installed, removed, stored, or under maintenance at the time of transfer. The closer the documentation mirrors reality, the lower the exposure.

### **Step Three: Ensure Consistency with Customs Status**

If aircraft or engines are operating in Mexico under a temporary importation regime<sup>3</sup>, that status forms part of the transaction's factual framework. The customs position should be verified and reflected in the transaction documents. Confirmations of import regime, evidence of validity, and alignment between customs status and ownership transfer mechanics are essential.

Attempting to solve a structural issue through a brief repositioning flight, without considering the import framework under which the asset continues to operate, may create inconsistencies rather than eliminate risk. A transaction must be coherent not only under civil law, but also within the broader regulatory context in which the aircraft operates.

### **Step Four: Documentation as Risk Control**

When the parties elect to rely on the physical location of the aircraft or engine at closing, the evidentiary record must support that position. Flight logs, tracking data, pilot confirmations, and precise closing timestamps become critical. A geographic strategy that isn't backed up by documentation increases exposure rather than reducing it.

Even when a domestic closing is commercially justified, documentation must be carefully structured. Confirmations of foreign residency, consistency between sale agreements and lease documentation, and clear explanation of delivery mechanics help ensure that the transaction resists scrutiny.

In full metal transfers, repositioning may still be chosen as a conservative approach depending on how much risk the parties are willing to take. That is a commercial decision, not a legal requirement that happened automatically. In beneficial interest transfers, repositioning is generally unnecessary because the aircraft itself is not being conveyed. In engine-only transfers, the appropriate approach depends on installation status, location, and ownership configuration.

### **Structural Definition Before Tax Analysis**

In aircraft and engine transfers involving Mexico, the most important part of structuring is to clearly define what is being transferred and how that transfer is legally characterized. Whether the transaction involves a full conveyance of the aircraft, a transfer of beneficial interest within a holding structure, or the sale of a standalone engine, each configuration carries different implications from a property and documentation standpoint.

Equally important is ensuring that the delivery mechanics, possession status, and customs framework under which the asset operates are accurately reflected in the transaction documents.

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*2.- Federal Civil Code - Article 2284. Delivery may be real, legal, or constructive.*

*Real delivery consists of the physical delivery of the thing sold, or the delivery of the instrument of title if what is being transferred is a right.*

*Legal delivery exists when, even though the thing has not been physically delivered, the law deems it received by the buyer.*

*From the moment the buyer agrees that the thing sold shall be placed at the buyer's disposal, it shall be deemed constructively received, and the seller who keeps it in the seller's possession shall have only the rights and obligations of a depository for deposit.*

*3.- Customs Law - Article 106. A temporary importation regime is understood as the entry into the country of goods intended to remain in Mexico for a limited period of time and for a specific purpose, provided that they are returned abroad in the same condition, within the following time limits: (...)*

*VI. Up to ten years, in the following cases:*

*(a) Airplanes, small aircraft and helicopters intended to be used by airlines holding a concession or permit to operate in the country, as well as those used for public passenger transportation, provided that, in the latter case, the operator submits, in February of each year and by electronic means, the information required by the Tax Administration Service through applicable rules.*

It is only possible to determine whether the transaction is subject to Mexican VAT and, if so, whether any statutory relief or exemption may apply once the legal structure and factual configuration of the transfer are clearly established. We need to look at the tax effects of these structures, such as how delivery concepts are interpreted and how they work with temporary import regimes, in light of the legal and factual framework of the transaction.

The transactional framework described above defines the legal and factual context within which the VAT consequences must be evaluated.

## Tax Analysis

Building upon the transactional structures described above, the VAT consequences of aircraft and engine transfers must be analyzed within the framework of the Mexican Value Added Tax Law. The decisive inquiry is whether the transaction qualifies as a taxable disposition of goods within Mexican territory, a grant of temporary use or enjoyment, or another taxable event recognized under the statute.

Where the legal characterization of the act, the residency of the parties, and the applicable import regime are coherently aligned, the VAT analysis becomes structurally grounded. Absent such alignment, geographic repositioning of the asset is unlikely to alter the substantive tax exposure.

### **I. Beneficial interest transfers in trust structures: why, as a starting premise, they should not trigger VAT**

1. The core distinction: an economic right is transferred, not the aircraft asset.

In common trust-based holding structures, legal title to the aircraft or engine remains vested in the trustee (often a regulated financial institution), while the beneficiary holds the economic interest in the trust estate. Within that architecture, an assignment of the beneficial interest is, in substance, a change in economic position within the holding chain, without any transfer of legal title to the aircraft or engine. The aircraft or the relevant engine remains legally owned by the trustee.

2. Tax consequence: no “disposition” of the aircraft and no other typical VAT trigger.

Where the legal act is confined to the assignment of the beneficial interest, the transaction is best analyzed as a transfer of an economic position rather than a supply of the aircraft as movable property. There is no transfer of title to the airframe or engines, and the aircraft typically remains in the continuous possession and operational control of the airline lessee<sup>4</sup>. For the same reason, the assignment, standing alone, is not ordinarily the grant by the assignor to the assignee of the temporary use or enjoyment of the aircraft. On a functional view of VAT as a consumption tax, the event does not map neatly onto the paradigmatic taxable acts associated with supplying goods or rendering services.

3. Control points: when a beneficial interest transfer becomes contestable.

The non-taxability conclusion depends on the transaction being clean, internally consistent, and implemented in a manner that matches the stated legal characterization. Risk increases materially where the documentation or execution allows a recharacterization argument that the assignment is a disguised sale of the aircraft or the engine.

This is most likely to occur when parties issue instruments that resemble asset conveyance documentation, such as a bill of sale for the aircraft or engines, notwithstanding the premise that the trustee remains the titleholder. Similar tension arises when the agreements speak in terms of “delivery” or “redelivery” as if possession changed hands, even though the aircraft or the engine remained continuously with the lessee. The same concern applies where mandates, side letters, or closing mechanics effectively produce an automatic asset transfer in practice, even if the headline characterization is

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4- LIVA. Article 1. Individuals and legal entities (legal persons) are required to pay the Value Added Tax (VAT) established under this Law when, within the territory of Mexico, they carry out any of the following taxable transactions:

I. The sale or other transfer of ownership of goods;

II. The provision of independent services;

III. The granting of the temporary use or enjoyment of goods (including leases);

IV. The importation of goods or services.

a beneficiary change. The guiding principle is documentary coherence. The paper trail should support a beneficiary change and nothing more.

## **II. Full metal and engine-only transfers: asset dispositions and sensitivity to territoriality, delivery concepts, and customs framework**

This section addresses transactions in which there is typically a disposition of a specific movable asset: full metal transfers, involving the transfer of legal title to the aircraft (airframe and engines), and engine-only transfers, involving the sale of engines as separate, identifiable assets. Once the transaction is properly characterized as an asset conveyance, the tax analysis becomes fact-sensitive and turns on territoriality, delivery mechanics, and consistency with the customs and operational framework.

As mentioned, A full metal transfer is, by definition, an asset conveyance<sup>5</sup>. The parties execute a transfer instrument and the buyer becomes the legal owner, whether directly or through a title-holding vehicle.

For VAT risk-mapping, the recurring practical questions are whether the disposition could be treated as occurring in Mexico under location and delivery concepts, and whether, even if the parties attempt to structure delivery outside Mexico, the transaction remains meaningfully connected to Mexico because the aircraft or the engine continues operating in-country, particularly where it remains under a temporary importation framework.

Furthermore, because engines may be owned separately from the airframe, an engine sale is typically a genuine disposition of the engine asset. The VAT analysis is often even more sensitive to the operational facts, including whether the engine is installed on an aircraft operating in Mexico, removed and stored in Mexico at a warehouse or MRO facility, or physically outside Mexico at closing.

In particular, where an engine is physically located in Mexico, whether installed or undergoing maintenance, an extraterritorial disposition position is materially harder to defend without carefully designed delivery language, robust evidence of the relevant facts at closing, and a customs-consistent implementation that does not conflict with the regime under which the engine continues to be used.

Tax planning practice may nonetheless use an offshore closing as a conservative step intended to support the proposition that juridical delivery and the title transfer occurred outside Mexican territory. The critical point, however, is that geography does not operate in isolation. If the aircraft returns immediately to operate in Mexico, or if the customs framework requires alignment among the importer-of-record position, the holding structure, and the actual use, a repositioning flight alone may be insufficient and may even create inconsistencies that complicate the audit narrative.

In summary, merely carrying out the transaction outside the national territory is not sufficient to establish that Value Added Tax (VAT) was not incurred. On the other hand, there are alternative interpretations of Mexican tax legislation under which it may be argued that an exemption to the foregoing could apply, which will be discussed in the following paragraphs.

Some planning approaches have argued that, derived from an interpretation of Mexican tax legislation, Specifically, Section IX of Article 9 of the Value Added Tax Law<sup>6</sup>, where the disposition occurs between non-Mexican residents and the assets remain operating under a temporary importation regime, an exemption-based position may be defensible on the theory that the asset is not introduced into Mexico for domestic consumption and that the transaction should not be treated as a domestic supply; accordingly, under such reasoning, Mexican Value Added Tax (VAT) would not be triggered.

*5.- Article 8 of the Value Added Tax Law (LIVA) defines the term "enajenación," understood as the sale or other transfer of ownership or rights in goods, as provided therein.*

*6.- LIVA, Article 9. No tax shall be paid on the transfer of ownership of the following goods:*

*IX. Transfers of goods carried out between non-residents, provided that such goods have been exported from, or introduced into, the national territory under an authorized program pursuant to the Decree for the Promotion of the Manufacturing, Maquiladora and Export Services Industry, published in the Official Gazette of the Federation on November 1, 2006, or under a similar regime in accordance with customs legislation; or where the transfers involve companies of the terminal automotive industry or manufacturers of motor vehicles or auto parts for their introduction into a bonded warehouse (depósito fiscal), and the goods remain under a temporary import regime, a similar regime pursuant to the Customs Law, or in a bonded warehouse.*

Even where that argument may appear technically plausible at a conceptual level, an aggressive reliance on an exemption theory carries substantial practical risk. Exemptions are commonly approached with strict construction and require strong substantiation. Tax authorities may challenge whether the relevant conditions are satisfied under a restrictive reading, and audit focus in cross-border structures often emphasizes economic substance, documentary coherence, and transaction traceability.

In addition, the practical risk is heightened in the current enforcement environment. During both the present and the immediately preceding presidential administrations, the Mexican Federal Government has adopted a markedly assertive and expansive approach to tax enforcement<sup>7</sup>, frequently characterized by strict scrutiny of taxpayer positions and a restrictive interpretation of exemptions and formal requirements. In this context, positions perceived as aggressive or highly technical may face increased challenge, with authorities placing particular emphasis on substance over form and the protection of the tax base, thereby elevating the likelihood of audit adjustments and contentious proceedings.

Accordingly, treating an exemption theory as the principal “closing solution”, absent a robust compliance architecture and a strong evidentiary record, can increase controversy risk rather than reduce it.

### **Conclusion.**

All in all, geography is not the correct starting point. The legally relevant inquiry is not merely where the aircraft or engine is physically located at a given moment, but rather what, as a matter of law, is being transferred and how that transfer is characterized under the applicable legal framework. A rigorous analysis must begin with the precise identification of the legal object of the transaction-legal title, beneficial interest, contractual rights, or the asset itself-and must then be documented in a manner that is fully consistent with the operational and factual reality. In the context of a properly structured beneficial interest transfer, the central position is that no disposition of the aircraft or engine occurs because the trustee retains legal title and only the identity of the beneficiary changes. Under that premise, the transaction should not constitute a typical VAT taxable event, as there is no transfer of ownership of the underlying asset. By contrast, in full “metal” transfers and engine-only transfers, the analysis becomes materially more sensitive, as these structures ordinarily involve a true asset disposition. In such cases, exposure depends on a careful assessment of territoriality rules, delivery mechanics, the strength and coherence of the evidentiary record, and strict alignment with the applicable customs regime.

Furthermore, an exemption-based planning theory for foreign-to-foreign dispositions involving assets operating under a temporary importation regime may appear conceptually attractive and should, from a systematic and purposive reading of the statute, prevail over the alternative constructions discussed herein, as it more accurately reflects the legislative intent to exclude from taxation transactions that do not result in the domestic consumption of goods within Mexican territory.; however, it entails a heightened level of risk in the current audit and enforcement environment. Tax authorities are likely to apply a strict construction to exemptions and to scrutinize whether all statutory conditions are satisfied in substance and in form, particularly in light of prevailing revenue collection policies and a traditionally restrictive approach to the application of exemptions, which could give rise to challenges or disputes notwithstanding the technical merits of the exemption based position. Accordingly, any reliance on such a theory should not be treated as an automatic solution, but rather as one component of an integrated and carefully engineered legal strategy. If pursued, it must be supported by robust contractual drafting, contemporaneous documentary evidence, operational consistency, and internal compliance controls designed to withstand a substance-focused review. Absent such safeguards, the probability of challenge, reassessment, and protracted controversy increases significantly.

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7.- El cronista, “Alerta contribuyentes: el SAT activa su plan maestro más agresivo”, January, 2026. <https://www.cronista.com/mexico/actualidad-mx/alerta-contribuyentes-el-sat-activa-su-plan-maestro-mas-agresivo-cruzara-todos-tus-datos-y-cualquier-error-puede-salir-carisimo/>

# COELUM

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- Attorney at law by Universidad Panamericana.
- Master in Administrative Law by the Universidad Panamericana.
- Diploma in Aviation Law by the Instituto Tecnológico Autonomo de México (ITAM).
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