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Monthly Digital Publication by Abogados Sierra

June 15, 2017
year 12 | No. 02

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immigration duties:
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be paid by the carrier?
by Misael Arellano

MAYO 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.

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The updating of immigration duties: an increase that shall be paid by the carrier?

by Misael Arellano

In this edition, this author will make the analysis of the eternal issue caused by the updating of the immigration duties every year, when the carrier is required to pay for the discrepancy on the collected tariff at the moment of the purchase of the ticket against the applicable tariff at the date on which the passenger is actually transported. Is the carrier obliged to pay for the discrepancy caused by the updating of a duty which was properly collected at the time of the ticket sale? Does the immigration authority have the authority to require for the payment of such discrepancy to the carrier, considering that the obligation is addressed to the passenger to whom the immigration services¹ are provided? Is it legal to require the payment of an unknown amount at the moment of the ticket sale?

In Mexico, the Federal Law of Duties “*Ley Federal de Derechos*” (herein after as LFD) addresses the obligation of the payment for immigration services to the carrier², giving to it the status of retainer of duties caused by the immigration services provided to the actual tax payer: the passenger. In that sense, and in observance to the Federal Tax Code “*Código Fiscal de la Federación*”³ the carrier is jointly responsible up to the amount of duties caused by the immigration services provided to the passenger.

“Such amount must include taxes, commissions, interest, insurances, and any other additional cost, charge, expense, or disbursement that must be covered pursuant to the respective purchase or contracting...”

For the observance of these obligations of the carrier acting as the retainer of the immigration duties caused by the passenger, the Secretariat of Finance and Public Credit “*Secretaría de Hacienda y Crédito Público*” (herein after as SHCP) published the General Rules “*Reglas de Carácter General*” of the Miscellaneous Tax Resolution for 2017 “*Resolución Miscelánea Fiscal para 2017*”⁴ stating that all companies providing international air transport services of passengers, must make the payment of duties caused by the immigration services referred in articles 8, section I (DNR); and 12, second to last and last paragraphs (DSM) of the Federal Law of Duties, no later than the 17th day of the next calendar month to the moment on which such duties must be collected in terms of the LFD.

Considering the above, we may determine that most of the process is clear for the proper observance of the carrier’s obligations except to the reference to “the moment on which such duties must be collected in terms of the LFD”, which is referred in General Rule 7.7. of the Miscellaneous Tax Resolution for 2017, because the LFD does not expressly state the moment on which such duties must be collected by the carrier. By the aforesaid, and in accordance to international practices and rules stated in international public and private regulations, the carrier collects all applicable taxes, duties, and fees at the moment of the ticket’s sale; and at

1.- Duty caused by the granting of the immigrant status of visitor without permit to conduct remunerated activities to passengers arriving to Mexico (DNR); and of duty caused by the provision of immigration services to international passengers departing from Mexico (DSM).

2.- Article 8, last paragraph; and article 12, second to last and last paragraphs, of the Federal Law of Duties.

3.- Article 26, section I of the Federal Tax Code.

4.- General Rule 7.7. of the Miscellaneous Tax Resolution for 2017.

the amounts known and valid at that moment.

Article 7 of the Consumer Protection Federal Law (herein after as LFPC) states that any supplier of services must inform and respect of prices, tariffs, guarantees, quantities, qualities, measures, interests, charges, terms, dates, ways, reservations and any offered or agreed condition with the consumer; moreover, article 7 Bis of the LFPC states:

Article 7 Bis.- The supplier is obliged to show in a notorious and visible way the total amount to be paid for the goods, products or services offered to the consumer.

Such amount must include taxes, commissions, interest, insurances, and any other additional cost, charge, expense, or disbursement that must be covered pursuant to the respective purchase or contracting, no matter if it is in credit or cash.

Through the observance of these last regulations, it is confirmed that the immigration duty must be collected by the carrier within the ticket price; and, under this scenario, the carrier is obliged to collect the immigration duty at the tariff valid at that moment, not at the moment on which the passenger will be transported. In addition to the foregoing, it is evident that it is not possible for the carrier to know the applicable tariff of immigration duties for the next calendar year; and, even when the new tariff has been published during the last days of the year when the ticket sale occurs, such new tariff would not be valid and effective until the first day of the next year so it would be illegal to apply a different tariff to the one in force at the moment of the ticket sale.

It is also important to mention that among the approved amendments to the Civil Aviation Law (LAC) by the Federal Congress on April 28, 2017, it is included the definition of ticket by the insertion of the section IV Bis to the article 2, which states that any reference made to the ticket in the law, must consider the total amount including fees, taxes, commissions and any other charges covered by the passenger; this will reinforce the argument about the moment on which the carrier must collect the immigration duties.

After the analysis of the moment in which the immigration duties must be collected to the passenger; the carrier must face the issue of the obligation stated in General Rule 7.7., of the Miscellaneous Tax Resolution for 2017 because, as described before; such rule states that the companies providing international air transport services of passengers, must make the payment of duties caused by the immigration services referred in articles 8, section I (DNR); and 12, second to last and last paragraphs (DSM) of the Federal Law of Duties, no later than the 17th day of the next calendar month following to the date on which the immigration services were actually provided. Therefore, it seems that there is not a connection between these two moments in time, being materially impossible to observe both requirements. The purchase of a ticket for international air transportation can be made by the passenger up to one year prior to the flight date, generally; and the calculation and payment of immigration duties must be based on the number of passengers effectively transported, not on the tickets sold.

After this analysis, we have more tools to answer the questions referred in the preamble of this article: Is the carrier obliged to pay for the discrepancy caused by the updating of a duty which was properly collected at the time of the ticket sale? Does the immigration authority have the authority to require for the payment of such discrepancy to the carrier, considering that the obligation is addressed to the passenger to whom the immigration services are provided? It is legal to require the payment of an unknown amount at the moment of the ticket sale?

EASA proposes new ground-breaking drone laws.

The European Aviation Safety Agency recommended new drone rules that would harmonize the regulation of unmanned aerial systems across Europe. The proposed amendment includes new rules ensuring that drones are remotely identifiable and include pre-built operational restrictions to guarantee that drones will not fly into protected or banned airspace. The drones weighing less than 150 kilograms is currently regulated by each member state, this proposal would give the EU the power to regulate every drone regardless their weight. https://gettingthedealthrough.com/article/5575/easa-proposes-new-ground-breaking-drone-laws?utm_source=Law%20Business%20Research&utm_medium=email&utm_campaign=8303540_GTDT%20Aviation%20Law%20News%2018%2F05%2F2017&utm_content=highlight_3&dm_i=1KSF,4XZ1W,OWNUJL,IRVOU,1 May 11, 2017.

IATA Urges Restraint on Possible New Electronics Ban.

In a letter to EC commissioner for transport Violeta Bulc and U.S. Homeland Security secretary John Kelly, the International Air Transport Association (IATA) general director Alexandre de Juniac advised the adoption of several short-term measures as an alternative to the current ban on large electronic devices such as laptops from several airports from the Middle East and North Africa. The current U.S. ban affects 350 flights per week and the extension to Europe would affect more than 2,500. This expansion would generate a \$1.1 billion of annual cost to passengers alone and extra costs for the airlines for handling of cargo hold baggage. Therefore, the general director of IATA, questioned the effectiveness and reasoning behind the current US and UK bans. <http://www.ainonline.com/aviation-news/air-transport/2017-05-17/iata-urges-restraint-possible-new-electronics-ban> May 17, 2017.

SolarStratos Makes Successful First Flight.

The Swiss two-seat electric aircraft uses electricity harnessed from the solar panels spread across its entire 82-foot wingspan to power the 32 kW electric motor and spin a 7.21 foot four-blade propeller at 2,200 rpm. SolarStratos engineers estimate the aircraft will be 90 percent efficient. <http://www.flyingmag.com/solarstratos-makes-successful-first-flight> May 19, 2017.

Aerion Teams with GE for Supersonic Propulsion.

Aerion's supersonic jet project is beginning to pick up speed as the company is completing its evaluation of engine makers for its 12-passenger AS2 jet. After assessing more than a dozen military and civilian engine makers for the past two years, Aerion has teamed with GE to define and evaluate the final configuration for the three engines that will power the sleek speedster. The AS2 is expected to fly passengers around the world at speeds as fast as Mach 1.5 where supersonic speeds are allowed. <http://www.flyingmag.com/solarstratos-makes-successful-first-flight> May 19, 2017.

Risk threaten airline profits.

The good news for the airline industry is that the immediate financial outlook remains positive. The bad news, however, is the growing evidence of longer-term warning signs, according to influential industry observers. Airlines achieved a record collective profit in 2016. But the International Air Transport Association predicts there will be more pressure on profits this year, as costs increase and yields decline. http://aviationweek.com/commercial-aviation/risks-threaten-airline-profit-cycle?NL=AW-05&Issue=AW-05_20170601_AW05_886&sfvc4enews=42&cl=article_6_4&utm_rid=CPEN1000001735251&utm_campaign=10254&utm_medium=email&elq2=321665a817824a4595bb69d89c156baf May 26, 2017.

In this month extract was prepared by M. Ruelas, C. Espinosa, L. Salas, J. Madero, D. Aguilera, L. Caballero and M. Valencia.

Highest Aviation Alert Issued After Alaskan Volcano Eruption.

On Sunday afternoon, the “tiny and tempestuous” Bogoslof Volcano erupted for approximately 45 minutes, shooting ash as high as 35,000 feet into the air, according to reports. In response, the Alaska Volcano Observatory temporarily elevated the Aviation Color Code to red, the highest such alert. The code was eventually lowered to orange again, as ash emissions had ceased and seismicity remained low. <http://www.flyingmag.com/highest-aviation-alert-issued-after-alaskan-volcano-eruption> May 30, 2017.

Brazil confirms Montreal Convention supremacy.

Brazil’s Supreme Federal Court has confirmed that international aviation treaties take primacy over conflicting provisions in the country’s consumer code, in a decision that will cap lost baggage compensation and tighten statutory limitations governing when passengers can bring delay claims. The Supreme Federal Court’s decision will encourage investment in Brazil’s airline industry, Kuznietz at Demarest Advogados said, now that carriers and other investors know that court decisions will be grounded on principles of reasonability and proportionality, safeguarding the interests of passengers and carriers. https://gettingthedealthrough.com/article/5631/brazil-confirms-montreal-convention-supremacy?utm_source=Law%20Business%20Research&utm_medium=email&utm_campaign=8349181_GTDT%20Aviation%20Law%20News%2001%2F06%2F2017&utm_content=headline_1&dm_i=1KSF,4YY9P,OWNUJL,IWMK8,1 June 01, 2017.

FAA targets United over safety failures.

The US Federal Aviation Administration has announced a proposed \$435,000 fine against United Airlines for flying an aeroplane that was not in appropriate “airworthy” condition. The US agency accused United Airlines of falling foul of air safety regulations by operating a Boeing 787 aeroplane on nearly two dozen passenger flights without first performing required repair work inspections. It said United had asked for a meeting to discuss the case, likely to negotiate a potential settlement. https://gettingthedealthrough.com/article/5632/faa-targets-united-safety-failures?utm_source=Law%20Business%20Research&utm_medium=email&utm_campaign=8349181_GTDT%20Aviation%20Law%20News%2001%2F06%2F2017&utm_content=headline_3&dm_i=1KSF,4YY9P,OWNUJL,IWMK8,1 June 01, 2017.

Exim Replacement?

Exim replacement officially launched by Marsh Marsh has today announced the launch of Aircraft Finance Insurance Consortium (AFIC), the non-payment insurance product designed for banks and capital market investors that are funding new aircraft purchases from Boeing. The structure has already been used by Korean Air to refinance a new 747-8i in April, which wrapped a 10-year €143mn loan from ING. Marsh states only that the structure has been used “by a major international airline to support its financing of new Boeing 747 and 787 aircraft”. [www.aviationnews-online.com](http://aviationnews-online.com) <<http://aviationnews-online.us2.list-manage1.com/track/click?u=356c914b9a104034e28f6e624&id=6acae84cc4&e=43ff971ad1> June 01, 2017.

Qatar tensions and Qatar Airways’ future.

Emirates Airline, Etihad Airways, Saudia, Gulf Air, flydubai and Air Arabia were among the airlines that ceased flights to Qatar, effective June 5, after Middle East states surrounding Qatar severed diplomatic links with the country and closed neighboring airspace. Doha-based Qatar Airways suspended flights to Saudi Arabia. Early Monday, Saudi Arabia, Bahrain, the United Arab Emirates (UAE) and Egypt announced they were breaking diplomatic relations with Qatar and instructed their nationals to leave the emirate within 14 days. The announcement coincided with Monday’s opening of the IATA AGM in Cancun, where the world’s airline CEOs and senior executives are gathered. Qatar Airways CEO Akbar al Baker was among those attending the event and he was seen at the AGM’s opening reception Sunday evening chatting with fellow guests and seemingly not aware of the imminent crisis. <http://atwonline.com/government-affairs/qatar-airways-ceo-departs-iata-agm-gulf-row-escalates> June 05, 2017.

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