

## PILOT EMPLOYMENT

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Leasing flightcrew, or employing them on short contracts, is not a new phenomenon, but it is growing globally. In Europe, there has been recent controversy over the practice for a variety of reasons, just one being the unresolved question as to whether this is simply a smart way to avoid paying taxes or social security levies, especially for low-cost, short-haul carriers such as EasyJet or Ryanair, which have bases and employees in many different European states.

The variety of applicable national laws and competing jurisdictions has led to claims by states such as Italy and Germany of tax avoidance by airlines and individual pilots. It has also raised the risk that some pilots may be targeted for income tax both by the state in which their airline is headquartered and the country in which their operational base is situated.

In a recent Ryanair tax controversy, Italian authorities did not like the fact that contracted pilots at the airline's Italian bases were paying no tax or social security in the country, and demanded they pay up. This prompted a characteristically defiant reaction from Ryanair, which claimed the airline and its employees comply completely with their obligations: "All Ryanair pilots and cabin crew operate on Irish-registered aircraft and fully comply with EU tax payments and rules. They are paid in Ireland, and pay their taxes and social taxes in Ireland."

### HOME IS WHERE THE TAX IS PAID

Ryanair claims the crew's place of work is not Italy but on Irish-registered aircraft which come under Irish territory. However, the airline concedes: "Under new [EU] rules introduced in June 2012, new Ryanair recruits will pay their social taxes in the country where they start and end their working day, and accordingly will no longer pay their social taxes in Ireland. Existing employees will continue, under grandfather rules, to correctly pay their taxes and social taxes in Ireland, which fully complies with EU legislation."

Those grandfather rules will continue for 10 years. Ryanair adds: "Similar actions against Ryanair in Belgium, Germany and Spain have all been unsuccessful, with the courts ruling that Irish jurisdiction applied to Ryanair and its crews."

Meanwhile, around the world as a whole, different airlines lease crews for different reasons. For example, new Asian airlines



# IS IT WORKING?

The growing internationalisation of the airline industry is creating grey areas when it comes to taxation and pilot employment contracts

growing fast from a low base have no choice but to hire expatriates because of their instant need for large numbers of experienced pilots – mainly captains, trainers and examiners – while the airline usually chooses to train its own nationals as first officers to develop its crew base for the future.

The task of finding expatriate pilots, screening them to determine suitability, and helping successful applicants to cope with the multifarious problems associated with moving their families to an unfamiliar country, would take considerable airline resources, so using specialist recruitment agencies for this task makes sense.

Dallas, Texas-based Flight Crew International (FCI) says this situation is likely to continue in Asia for the foreseeable future, and is expected to increase markedly in Africa during the next decade. FCI managing director Aasiya Shaikh says her company can provide

recruitment alone or recruitment plus resettlement – after which the pilot becomes an airline employee – or the agency can become the pilot's permanent employer while he/she works for the contracting airline.

Finally, as they always have been, crew leasing agents are the custodians of a pool of pilots who can provide airlines with the flexibility to lease in extra crew at peak times and send them back when traffic drops.

Montreal, Canada-based AeroPersonnel Global offers this advice to pilots considering a contract position: "The life of the contract pilot is certainly different than the one led by pilots on permanent employment with the same employer for many years. It can be a life of adventure, visiting new parts of the world, discovering new cultures, making new friends while being well remunerated to do so. But, it is also a life of being away from family and friends for months at a time, of adapting to different



Bob Fentress

socio-cultural environments, of working under different rules. There is also a certain degree of uncertainty when a contract has been completed. Where will the next one take you?”

So much for the description of the contract job from the pilot's point of view. But in addition to the much-vaunted seasonal flexibility, what are the advantages for the airline? If a company does not see its human resources (HR) department as a core business activity, why not contract it out? Or at least contract out the part of HR that deals with pilots and cabin crew. This is particularly true if an airline has many crew bases in different countries, which entails dealing with different employment laws, pension issues, taxes and social security requirements in many jurisdictions.

#### GROWING TREND

The fact more and more airlines are looking into pilot leasing – rather than putting them on payroll – obviously interests pilot associations, which are suspicious of it. It is no coincidence that the subject of contracting pilots from third-party organisations was a major theme at this year's International Federation of Air Line Pilots' Associations (IFALPA) con-

ference in late April in Dublin. Meanwhile, a recruiting announcement by EasyJet in early 2013, and a change in recruiting practice by Norwegian Air Shuttle during the past couple of years, have also sparked a sudden wave of anxiety among pilot associations that these carriers might be going down the contracting route – one which Ryanair has followed for many years.

Ryanair employs only about 28% of its pilots directly, the rest are on contract, most of them via UK-based agency Brookfield. Ryanair chief executive Michael O'Leary tells *Flight International's* sister magazine *Airline Business* that 50% of its captains are on the airline's direct payroll, but about 80% of its “effos” (first officers) are on contracts, although the Irish Air Line Pilots' Association puts those respective figures nearer to 60% of captains (on Ryanair payroll) and about 95% of co-pilots (on contract).

The Ryanair contract model has also developed over the past few years. Before 2009, Brookfield would carry out the recruiting and contract pilots to the airline. Since then, Brookfield has developed a model that requires the pilots to be self-employed and then,

with the agency acting as a management go-between, sign a contract bonding them to fly exclusively for Ryanair.

The airline pays for scheduled block duty at a rate of €140 (\$180) per hour. But these pilots have to pay for all their own expenses, including uniforms, identity cards, transport and hotel accommodation, and claim these against tax. If they are told to move base, they have to pay for the relocation, although positioning seats can be allocated on Ryanair flights if there are any available.

The contracted pilots have no pension scheme or insurance unless they set one up themselves. Their income tax is paid in Ireland, but if they are based overseas, O'Leary says they are entitled to claim back the Irish tax and then pay tax in their base country, but that, he says, is up to them to arrange.

This relieves Ryanair of certain HR responsibilities, which are dealt with by Brookfield and the pilots themselves as directors of their own companies. However, when asked what really appeals to him about the arrangement, O'Leary says first that it makes it impossible for the pilot unions to have any influence over the Ryanair contract pilots, and second, that it gives Ryanair far more workforce flexibility than a settled, unionised labour force would ever allow in practice. The contract the pilots sign with Ryanair via Brookfield is non-negotiable and binds them exclusively to fly for Ryanair unless they get advance permission to do otherwise, and it requires that they will, if requested, relocate to another base for part of each year to cope with seasonal variations in demand, or adjust to changed or new market decisions by the airline.

#### CREW FLEXIBILITY

An example of quick-reaction market flexibility emerged in a conversation about contracting with O'Leary. Ryanair's biggest single base, London Stansted airport, had just announced a 6% rise in its user charges. The airline argued this was unjustifiable, so it is withdrawing three aircraft and redeploying them and appropriate numbers of crew to other bases in Spain, Germany and Italy.

That level of crew flexibility is available under the contract arrangements, O'Leary says, adding the proviso that he “does not mess them around too much or they leave”. Rosters are published 30 days in advance and adhere to European flight-time limitations, and O'Leary claims that those required to shift base seasonally for part of the year are

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EasyJet and Ryanair have very different policies towards contracting their flightcrew

» normally notified well in advance, so there is at least a degree of predictability about the contract pilots' working lives. IFALPA claims that in reality, life for some pilots entails rather more sudden requirements to move, which the Brookfield contract permits.

Meanwhile, choosing to leave or being dismissed requires three months' notice by the appropriate party, but there is an interesting factor built into the contracts which could make the arrangement rather one-sided if it were to be exercised. If the airline wanted to get rid of a contract pilot, Brookfield could issue the three-month notice of termination. But when the pilot checked his roster, he could theoretically find he had been allocated no hours, because there is no stipulation in the contract that specifies a guaranteed minimum number of hours. This is a powerful incentive for pilots to stay in line. Brookfield was approached repeatedly to talk about the contract pilot industry, but continually failed to respond to requests for an interview.

### ROAD'S END

There are particular groups of pilots, says O'Leary, for whom the high-hours, highly-paid life of the Ryanair contract pilot is attractive. Many of these are Americans, he notes, and if they fly high hours, they can chalk up the 900h annual maximum allowable under European rules within nine months, earning €126,000 before tax and expenses, then take three months off to do something else.

O'Leary does not deny that he expects most of his pilots to fly the maximum allowable flight time under European regulations, which is 900h in a calendar year. Ryanair's calendar year for rostering purposes starts on 1 April, on which date accumulated flight hours for all pilots are administratively zeroed.

The Irish Airline Pilots Association says it knows of specific cases, however, when pilots have exceeded the 900h limit as calculated on a rolling 12-month basis in up to nine of the months in both of the past two years. Asked about this, the Irish Aviation Authority says

this is permitted providing the 1 April-31 March period records a 900h maximum, and the 12-month total assessed on a rolling basis at any point in the year remains within 1,000h. Ryanair says it complies with this.

EasyJet and Norwegian recently appeared to be preparing to go down a similar road, upsetting pilot unions and unsettling some already confused government labour departments and tax authorities. And now Norwegian has thrown a hand grenade into the middle of this discussion by examining the possibility of contracting Asian cabin crew and possibly pilots for new long-haul routes.

Unions and governments are both viewing this askance on the grounds that aviation could go the way of the merchant marine world, where seaman's jobs are parcelled out to low-wage economies.

Jack Netskar, of the Norwegian Air Line Pilots Association (NALPA), thinks this possibility has been advanced by the airline, and it is currently being reviewed by the country's ministry of labour, which is not pleased about it.

When Norwegian was started up it hired its pilots directly, but two or three years ago,



**"The airline does not mess its pilots around too much or they leave"**

**MICHAEL O'LEARY**  
Chief executive, Ryanair

says NALPA, it started recruiting pilots exclusively through the self-employed Brookfield model.

Pilot union worries over EasyJet were prompted by a recent announcement the airline was recruiting 330 pilots through its ab initio crew supply agreement with CTC and Parc, the partner flightcrew training organisation and crew leasing agency.

EasyJet says that for two years after graduating from training, its candidate pilots are employed by CTC/Parc on a salary, and contracted to EasyJet as junior first officers. This confers some seasonal flexibility on the airline, says EasyJet communications chief Paul Moore. However, Moore says the young pilots are guaranteed some off-season work, even if it is a reduced amount compared with the summer. Following two years gaining experience on the line, Moore explains that "the vast majority" of the pilots will become senior first officers and move on to the airline's payroll, with the prospect, he says, of a salary as high as £146,000 (\$226,500) for a training captain.

However, the British Airline Pilots Association (BALPA) describes the situation differently: "In truth, 330 pilots currently flying on a casual basis for EasyJet are to be offered a permanent contract which, after debt repayments, will leave them bringing home less than they might earn by working in a bar."

### EVOLVING TRENDS

This is an arrangement the company has operated on for some time, says Moore, and the only reason for the announcement of a sudden intake of 330 pilots under the scheme, was that negotiations with BALPA over employment arrangements had taken such a long time a backlog of recruitment demand had built up.

BALPA sent a letter to EasyJet chairman Sir Michael Rake warning him – though pleading with him might be a better description – not to go down the Ryanair contract path. EasyJet has always recognised pilot unions, and Moore says the airline does not intend to change that.

"We are not like Ryanair towards our pilots, and we never will be," he says. The EasyJet policy, he explains, is that it employs the majority of its pilots directly, with a total of about 10% from leasing agencies. And their pilots pay income and social taxes in the country in which they are based.

The global airline marketplace is evolving so fast it is not easy to predict what the new employment trends will be, but the investigation sparked by Norwegian's move to hire crew from low-wage economies may be worth keeping an eye on. ■



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