

# Taxation Minimisation Options for Airline Personnel

Adriaan Struijk discusses tax planning options for airline personnel



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Pilots and other airline crew have a distinct advantage over more 'grounded' people. I am not just referring here to the opportunity to travel all over the world, but rather to the possibility to reduce their taxes.

Airline crew are often well-positioned to minimise or eliminate taxation of their employment income due to two factors:

1. They are often in a position to choose their country of residence, due to their international mobility, unlike most people working at a fixed location.
2. The remuneration derived in respect of work carried out on board an aircraft is under tax treaties often treated differently than regular employment income.

Factors that are relevant in determining the tax treatment of airline crew employment income are dependent on the following:

1. The country of residence of the employee
2. The country of residence of the employing entity
3. Whether a tax treaty exists between these two countries and, if so, how the taxing rights are allocated between them

The country in which an individual resides normally determines which country has the primary taxing rights. For instance, an individual who is considered a resident of the Netherlands, under its domestic laws, will be taxable on his worldwide income. This is subject to credits being given for taxes paid abroad or the foreign income being exempted under the terms of a tax treaty. Most countries follow this system of taxation of worldwide income.

Taxation of worldwide income can be avoided by several means. One option is to become a nonresident of the original country of residence ('the home country'). This always entails avoiding spending substantial time in the home country, but often it is also necessary to ensure the centre of economic and social life is not located in the home country any longer. This can be difficult to achieve in certain circumstances, for instance, if the family remains there.

Another option is to take up residence in a country with which the home country has concluded a tax treaty. The tax treaty then determines in which country the individual will be considered resident.

Using a tax treaty makes it easier to lose one's original residency status. Ensuring that there is a home available in the new country and not one in the home country is often sufficient. The idea here, of course, would be that the tax treatment in the new country is more favourable than in the home country. The UAE would be an ideal place in which to establish residency, but if this is not feasible there are other countries that might be attractive too, because either foreign source income is exempt or it can be exempted provided certain conditions are met. The UK, Cyprus, Hong Kong, Singapore and Malta are examples of such countries.

If nonresidency can be established or, alternatively, residency can be established in a country with a more attractive tax regime, then the next step is to ensure that the country where the employer is a tax resident doesn't tax the employee's income. Luckily, through proper planning, this can often be achieved. The tax residence

of the employer is normally determined by the place of effective management. If a crew member is employed by a UAE airline, no further planning is required because, happily, there is no income tax here, but if an airline will tax the crew member on his employment income because of the country where it (the airline) is resident, an intermediary company could be used to employ the crew member. The employer should be resident in a country that doesn't tax on employment income. Normally this will only be the case if the employee is not simultaneously also a resident of that country. So, for instance, someone who is not resident anywhere or is a resident of a country that doesn't tax foreign source income could set up a company in Cyprus and employed by it and use that company to invoice the airline and receive untaxed employment income from the Cypriot company. Again, using the UAE as jurisdiction of choice would be the most straightforward because – in this case – the employment company and the employee can both be resident in the UAE. Using a RAK FTZ company for this purpose would be ideal.

Finally, even if the crew member remains a resident of a country that taxes worldwide income, it is sometimes possible to avoid or reduce those taxes. In this case, it is essential that the employee's country of residence exempts foreign income under a tax treaty with the employer's country of residence (due to the fact that the taxing rights have been assigned to the latter country) and that the latter country doesn't tax the income under its domestic legislation or that it subjects it to a lower rate of tax than the employee's country of residence does. The OECD has set up a model tax treaty, which is often largely followed when concluding tax treaties. Article 15.3 of the model treaty states that employment income may be taxed by the employer's country of residence. It may also be taxed in the employee's country of residence, but this country then either has to give a credit for taxes paid or exempt the employment income. If only a tax credit is given, nothing is gained, but if the income is exempted this is attractive, provided it is subject to lower taxation in the employer's country.

Exemption for foreign employment income is relatively rare, but the Netherlands, for instance, does use a system of exemption (however the foreign income is included to determine the applicable marginal tax rate). Model article 15.3 is often modified in tax treaties to the effect that the country of residence of the employee gets the full taxing rights. If this is the case, no tax is saved if the individual is a resident of a country that taxes worldwide income. If, on the other hand, the employee lives in a country like the UAE or a country that exempts foreign source income, this is perfect.

It is always important to check your exact circumstances and the terms of the tax treaty applicable, if any. In the EU and elsewhere employment income is also subject to social security taxes; these often operate in a different way than income taxes on wages. Minimisation of these taxes will therefore impact a tax minimisation plan as well. Finally, note that airlines might have internal policies which limit the planning options available.

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