

Share fishermen and women

Clarification of the tax implications for boat owners, skippers and share fishermen and women arising out of the High Court judgements of 2nd October 2001

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Introduction

This Tax and Duty Manual sets out an overview of the tax implications for boat owners, skippers and share fishermen following the High Court decisions of 2 October 2001 in the cases of **Francis Griffin v The Minister for Social, Community and Family Affairs**, and **Wm. Deasy v The Minister for Social, Community and Family Affairs**.

The Department of Social Protection has issued a separate fact sheet giving clarification of the judgement for social insurance purposes. See [Operational Guidelines scope insurability of employment "A Guide to PRSI for Share Fishermen/women"](#).

If necessary, further clarification can be provided by the Revenue Commissioners and/or the Department of Social Protection through circulars or through meetings with representatives of the share fishing sector.

1 Consideration of the High Court judgements relating to tax issues

It is difficult, and can be misleading, to give a synopsis of a court decision. This article is a brief outline of the implications of the judgements. From contacts with tax offices it appears that the implications of the judgements and of the earlier **McLoughlin** and **Griffiths** judgments are not fully appreciated.

In the course of the **Griffin** and **Deasy** hearings Ms Justice Carroll indicated that the 1986 tax case of the **DPP v Martin McLoughlin** and the 1992 Social Welfare case of **The Minister for Social Welfare v John Griffiths** "represented Irish Law applicable to sharefishermen in similar circumstances".

The decisions in the four cases are similar in that their effect is to state that share fishermen were not employees of the boat owner but in **partnership** with him.

The four cases were similar in most respects. There were generally five crewmembers on the **McLoughlin** and **Griffin** boats. It is not clear how many were on the **Deasy** or the **Griffiths** boats but it would appear that the number of crewmembers and the sizes of the boats were similar.

In the course of the **Griffin** and **Deasy** hearings evidence was introduced on the working relationship between the owner and the crewmembers.

Essentially, Ms Justice Carroll laid emphasis on the fact that the considerations and findings of Mr Justice Costello in the earlier **McLoughlin** case should have been matched against the circumstances of both cases in coming to a conclusion.

In his decision in the **McLoughlin** case Mr Justice Costello considered some indicators of the existence of employment and partnership relationships. He ultimately came down in favour of partnership status for the boat owner and crewmembers in the specific circumstances of this case for the following reasons:

- “It is true that the defendant [the owner] exercised a large measure of control over the manner in which each member of the crew performed his work but the right to do so arose as much from the nature of the operations being carried on as from the contractual relationship which existed and is a factor which is consistent both with the existence of a contract of service and an agreement of partnership.
- It is also true that the defendant engaged the other members of the crew for each voyage but, again, this is consistent both with an employer/employee relationship and an agreement in the nature of a partnership, that is one in which the defendant agreed to provide the vessel and its equipment for the voyage whilst each crew member agreed to provide his labour and skills.
- The strongest elements of the case in support of the DPP’s submissions are that the proceeds of the sale of the catch were paid directly to the defendant and that he dispersed them even making in some instances payments to members of the crew of what were termed ‘subs’ when no profit was made and the crew bore no losses.

He continued, “But these factors seem to me to be outweighed by the cumulative effect of three others:

- Each weekly voyage was a separate venture and no crewmember had a contract which entitled him to take part in any subsequent voyages.
- When he participated in an expedition he was not paid any wages but became entitled to a share in the net profits (if any).
- And, most importantly, although he engaged each crew member the defendant did not himself determine what the rate of remuneration would be; this was determined partly by custom (namely 50% of the profits being allotted to the boat) and partly by agreement between the crew themselves in consultation with the defendant”.

He went on to say: “These factors, it seems to me, strongly suggest that the skipper and his crew were partners in a joint adventure.”

2 Implications arising from the judgements

2.1 General

Whether a partnership exists on a boat is a question of fact. Consequently, in order to establish the factual position on a boat it is necessary to compare the situation with the above extracts and circumstances of the *McLoughlin* case.

A number of boats should be operating in what has been decided by the Courts to be a **partnership**. Where this is the case Partnership Law, including the **Partnership Act of 1890**, will govern the relationship between owner/skipper and crew.

For Corporation Tax, Income Tax and PRSI, the rules of self-assessment will apply. The partnership may also need to register for VAT and for PAYE/ PRSI where it has employees.

2.2 PAYE

For boats on which an employer/employee relationship exists, tax and PRSI will continue to be collected from crew members through the PAYE system and remitted monthly to the Collector-General by the employer.

There are boats on which persons are employed who are not remunerated on the same basis as the partners. Their tax/PRSI status will need to be considered by Revenue and the Department of Social Protection.

2.3 Boat owner/skipper: partnership and personal tax returns

Where a partnership relationship exists the owner/skipper, whether a company or an individual, is the precedent acting partner of the partnership 'firm'. Consequently there are obligations imposed on him by the Tax Acts. The precedent acting partner is obliged, under the rules of self-assessment, to submit an annual account of the activities of the partnership. The precedent acting partner will be obliged to identify the partners and include details of the division of the profits/losses and of capital allowances.

2.4 Commencement/cessation

There are special commencement and cessation rules, which require an adjustment of the profit or loss assessable on new partners and partners leaving a partnership. These rules would also apply to a boat owner, previously a sole trader employing his crew, who opts to enter a partnership with the crew.

In addition to the above obligations, the owner is obliged to file his personal tax return and to calculate and pay his or her tax under the new Pay and File provisions.

Similar provisions apply for corporation tax purposes under the rules of self-assessment where the boat owner is a Limited Company.

There are significant charges for non-compliance – see references below to crewmembers.

2.5 Capital allowances

Where an employer/employee relationship exists the boat owner/employer is entitled to claim the full capital allowances on the boat and equipment for tax purposes. Crewmembers who are employees have no entitlement to claim a share of the capital allowances for personal tax purposes.

Where a partnership exists, the capital allowances relating to the boat and equipment become the capital allowances of the partnership, and not of the boat owner, because the boat is used in the joint enterprise with the other crewmember partners. The capital allowances must be apportioned between the individual partners for personal taxation and PRSI purposes in the same way as for any other partnership, that is in the same ratio as the net profits/losses from the partnership to which each member of the partnership is entitled.

The following example illustrates the effect of the apportionment of capital allowances between the partners. The figures used in the example are for illustrative purposes only. The actual position will depend on individual circumstances and agreements, etc.

Example:

A boat owner is skipper with three other crewmembers. Proceeds of the catch, after meeting the cost of fuel food etc. are divided 60% to the boat and 40% to the crew.

Proceeds of sale of fish	€1,100,000
Less, Fuel, food etc.	<u>€100,000</u>
Profit for distribution	€1,000,000
Divided:	
Boat	€600,000
Crew	€400,000

Owner's Account:	
Gross income	€600,000
Less Interest, repairs, etc.	<u>€300,000</u>
Owner's net profit	€300,000

The total net profit is: Crew €400,000; Owner €300,000; total €700,000.

Let us assume that annual capital allowances due on the boat and equipment are €140,000. Capital allowances are due as follows:

Crew:

$$\begin{array}{rclcl} \text{€400,000} & \times & \frac{\text{€140,000}}{\text{€700,000}} & = & \text{€80,000} \end{array}$$

Owner:

$$\begin{array}{rclcl} \text{€300,000} & \times & \frac{\text{€140,000}}{\text{€700,000}} & = & \text{€60,000} \end{array}$$

2.6 Crew members: personal tax returns

The onus is on a crewmember under the Taxes Acts to file annual tax returns under the rules of self-assessment. There are also obligations to make appropriate preliminary tax payments and pay the balance of any tax due.

There are specific time limits for return filing, significant interest charges, surcharges and penalties for late payments, late filing and non-filing of returns.

The crew member/partner is also entitled to the appropriate share of the capital allowances due on the boat and other equipment, which should be shown on his or her tax return.

It may be necessary to cease tax deductions under the PAYE system unless the owner wishes to continue to operate the PAYE system voluntarily. PRSI class A will cease to apply to be replaced by PRSI class S. Should any partner wish to contribute to class P, such payments should be made directly to the Department of Social Protection. If a partnership is using this voluntary form of PAYE, capital allowances can be claimed at the year-end on filing a Return of Income.

3 Partnership law

Where a partnership exists the **Partnership Act of 1890** will govern that relationship.

Among other matters provided for in the Act are:

- Individual and collective responsibility for the debts and obligations of the partnership.
- Sharing of capital and profits and contributions towards losses in equal measure subject to any agreement.
- Rules relating to partnership property.
- Dissolution of partnerships.

It would be advisable for boat owners/skippers and crewmembers and their advisors to familiarise themselves with their responsibilities under the Act.

4 Conclusion

This article deals with the main aspects of the High Court decisions and their tax implications for boat owners and fishermen. The issues are complex. The article gives only a brief outline of the issues arising, which hopefully will help to dispel some of the confusion that has arisen. It should lead to further exploration of the issues arising by all interested stakeholders.

For boat owners and crewmembers trying to establish their own position, it should be borne in mind that the implications may be significant individually and collectively under tax and partnership law.