

# Share fishing: the tax implications for boat owners, skippers and share fishermen/women

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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 decision of 2 October 2001 in the cases of **Francis Griffin v The Minister for Social, Community and Family Affairs** and **William Deasy v The Minister for Social, Community and Family Affairs**<sup>1</sup>.

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"](#).

### 1 Consideration of the High Court judgments relating to tax issues

This manual provides a brief outline of the implications of the **Griffin** and **Deasy** judgments as well as the earlier **McLoughlin** and **Griffiths** judgments.

In the course of the **Griffin** and **Deasy** hearings Ms Justice Carroll indicated that the 1986 tax case of the **DPP v Martin McLoughlin**<sup>2</sup> and the 1992 Social Welfare case of **The Minister for Social Welfare v John Griffiths**<sup>3</sup> "represented Irish law applicable to share fishermen 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 decided in favour of partnership status for the boat owner and crewmembers in the specific circumstances of this case for the following reasons:

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<sup>1</sup> [2001] IEHC 143

<sup>2</sup> [1986] 1 IR 355

<sup>3</sup> [1992] ILRM 667

- “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 judgments

### 2.1 General

Whether a partnership exists on a boat is a question of fact. 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 could 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, USC 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

On boats where an employer/employee relationship exists, income tax, USC and PRSI will continue to be collected from crew members through the PAYE system and remitted 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 income tax returns

Where a partnership relationship exists, the owner/skipper, whether a company or an individual, is the precedent partner of the partnership 'firm'. The precedent partner is responsible for completing and filing the Form 1 (Firms) partnership tax return for a relevant year. It is not a requirement of Section 1007 Taxes Consolidation Act 1997 that all partners remain in the partnership for the partnership to be regarded as continuing to trade.

Where the crew of a vessel is reasonably stable from one fishing voyage to the next, the partnership may be considered to cover more than one fishing voyage. Whether one Form 1 (Firms) return can be completed each year in respect of the partnership needs to be considered on a case-by-case basis. Issues that may need to be considered in each case include the rate of turnover of the crew, any agreements in place with the crew regarding future voyages, changes to the split of partnership profits and time gaps between voyages.

The return should list all the partners who participated in the partnership in the relevant period and include details of the division of profits/losses and of capital allowances.

The allocation of profits/losses to each partner should be itemised in the annual return.

Where one Form 1 (Firms) return is not considered suitable, then a return will be required for each separate partnership.

Because of the unique nature of share fishing partnerships, the procedures outlined above regarding the filing of Form 1 (Firms) only apply to share fishing partnerships and should not be applied to partnerships in any other sector.

In addition to the obligations outlined above, where any partner in the partnership is a sole trader, he or she is required to file an income tax return (Form 11/12). Where a partner is a company, a corporation tax return (CT1) must be filed. There are specific time limits for return filing.<sup>4</sup> Late filing of returns will attract a late filing surcharge, interest and penalties. Non filing of returns may result in criminal prosecution.

## 2.4 Commencement/cessation

There are special commencement<sup>5</sup> and cessation<sup>6</sup> rules, which require an adjustment of the profit or loss assessable on new partners and partners leaving a partnership. These rules also apply to a boat owner, previously a sole trader employing his crew, who opts to enter a partnership with the crew.

## 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. Crew members who are employees have no entitlement to claim a share of the capital allowances for personal tax purposes.

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<sup>4</sup> See Tax and Duty Manual [Part 41-00-28 "A Guide to Self-Assessment"](#).

<sup>5</sup> See Tax and Duty [Part 04-03-03 "Trade or Profession - Commencement Rules: Basis of assessment at commencement of trade or profession"](#).

<sup>6</sup> See Tax and Duty Manual [Part 04-03-04 "Cessation of a trade or profession: Basis of Assessment"](#), [Part 04-03-05 "Cessation of a trade or profession or change in accounting date – review of preceding year"](#) and [Part 04-03-01 "Short Lived Businesses"](#).

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 income tax, USC 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.

**Example:**

The boat owner is a 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

Boat 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; Boat 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:				
	€400,000	X	<u>€140,000</u>	=
			€700,000	
				€80,000

Owner:				
	€300,000	X	<u>€140,000</u>	=
			€700,000	
				€60,000

## 2.6 Crew members: personal income tax returns

The onus is on a crewmember under the Tax 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.<sup>7</sup>

There are specific time limits for return filing, interest charges, surcharges and penalties for late payments, late filing, and non-filing of returns.<sup>8</sup>

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 income tax return (Form 11).

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.

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<sup>7</sup> See Tax and Duty Manual [Part 41-00-28 "A Guide to Self-Assessment"](#)

<sup>8</sup> See Tax and Duty Manual [Part 47-06-08 "Surcharge for late submission of income tax, corporation tax and capital gains tax returns"](#) and Tax and Duty Manual [Part 41-00-28 "A Guide to Self-Assessment"](#)