



PRSI Cover for Spouses Working on Farms

Social Insurance in Ireland – the Problem for Spouses Working on Farms.

Persons aged between 16 and 66 are required to pay social insurance (PRSI) contributions if they are (i) an employee, full-time or part-time, or (ii) self-employed with an annual income from all sources of €3,174 or more. In return they are covered for contributory non-means tested pensions and other social insurance benefits.

Under the rules of social insurance, a person who is employed by his/her spouse, or is assisting his/her spouse but is not a partner in the business, is excluded from social insurance cover. Such a person does not have a contributory pension or other social insurance benefits in their own right.

For example, a wife assisting on the family farm, where the husband has PRSI cover, is treated for PRSI pension purposes as a “qualifying adult”. She qualifies for “an increase for a qualified adult”, or IQA, as part of her husband’s pension. However, the IQA is a means-tested pension, based on her income and/or assets.

Spouses Operating the Farm Business in Partnership Together

Spouses who operate a business, such as a farm business, in partnership with each other and sharing the profits, are each eligible to make PRSI contributions as self-employed contributors (class S), provided each has a reckonable income of at least €3,174 per year from all sources.

When making their annual tax returns under the Revenue self-assessment system, the tax returns must show the partnership income of each spouse. Each spouse must make their PRSI contributions based on his/her share of the partnership income.

In addition to the benefit in terms of giving both spouses PRSI cover, the partnership route can also provide an advantage under the income tax code, as the couple are treated as having two incomes. (The standard rate band for a married couple with two incomes is €65,600 in 2012, compared to €41,800 for a married couple where only one has an income).

Recent Developments as regards Spouses’ Partnerships

In the framework of the current Social Partnership agreement “Towards 2016” negotiated in 2006, IFA has successfully concluded negotiations with the Department of Social and Family Affairs, and Revenue, on two key issues. First, the criteria used by the DSFA and Revenue in determining the existence of a partnership is clear and documented for the first time. Second, spouses who were effectively working in partnership in previous years, but who did not claim so when making their annual tax returns, will have the opportunity to claim for a spouses’ partnership status retrospectively. These major improvements are set out in detail in the following sections.

Criteria used by the Department of Social and Family Affairs and Revenue for determining whether a Partnership exists

A partnership normally exists if some of the following factors apply:

- there is a written partnership agreement (Note: there is no legal obligation/requirement to have a written agreement);
- each partner writes cheques on the business accounts in his/her own right;
- there is a joint business account;
- it is apparent to those doing business with the partnership that a partnership exists;
- business accounts/activities are in joint names of the partners;
- each partner makes a significant contribution to the running of the business;
- the business is owned jointly by the partnership, (note: the farm does not have to be jointly owned, although it is a positive factor where it is jointly owned);
- the profits and losses of the partnership are shared by each partner. (Note: they do not have to be shared on a 50:50 basis; it is up to the partnership to decide, but clearly each must have an income of €3,174 at least).

Spouses who may have misclassified their Partnership Status in Previous Years

There are likely to be cases of farm families where one spouse has been classified as being a sole trader and the other spouse has been deemed not to be in the farm business. However, based on the facts of the case and having regard to the criteria set out above, the reality may be that both spouses have been running the farm business in partnership with each other. These spouses can now apply to the Department of Social & Family Affairs to have a partnership recognised retrospectively.

In such cases, following an investigation of the claim, a Department of Social and Family Affairs' Deciding Officer may decide that a partnership was actually in existence for some years previously, and both spouses would be insurable at Class S provided each spouse in the partnership had an income of €3,174 or more each year (IR£2,500 prior to 2002).

However, if, following a review of partnership status, the income of either or both spouses from the partnership was less than €3,174 in any year then either or both spouses will not be insurable for that year.

Any PRSI underpayments arising as a result of a retrospective partnership decision must be paid to the Department of Social and Family Affairs before any entitlement to Social Welfare benefits and pensions is considered.

Procedures for Entering a Partnership

Spouses who wish to enter a partnership should register with the local Revenue office by completing TR1 registration form. They must pay tax, PRSI contributions and Health contributions and file a return of income by 31 October each year under the Revenue Self-assessment system.

Entering a spouse's partnership may have implications other than for PRSI and income tax. Thus spouses should obtain advice from their Solicitor and from their Tax Advisor before entering a spouse's partnership, and they may need to consider drawing up a partnership agreement.

Further Information

Full details of the new arrangements will be available in an information leaflet from the Department of Social and Family Affairs on “the Social Welfare Implications of Spouses Working Together”. Clearly, before applying for retrospective partnership status, spouses should ensure that they have sufficient supporting evidence for the years in question to meet some of the criteria set out above.

If, having received professional advice, you are still in doubt as to whether you have or have not been in a partnership you should contact the Scope Section of the Department of Social and Family Affairs at Oisín House, Pearse Street, Dublin, 2 Telephone: (01) 6732585. Fax (01) 6732460 Email: scope@welfare.ie or your local Revenue Office for assistance. In cases of any continuing doubt a Scope Section Deciding Officer or your Revenue Office will look at the facts of your case and advise you on your status.

Appeals

Appeals against decisions made by either a Department of Social and Family Affairs Scope Section Deciding Officer or Revenue may be made, as appropriate, to either:

- (a) The Social Welfare Appeals Office, which is an independent body, that deals with appeals on Social Welfare issues, or
- (b) The Office of the Appeal Commissioners, which is an independent body that hears tax appeals.