

Advice Notes

Employment of a person by a spouse.

The rules concerning the employment of spouses are not entirely straight forward and were introduced many years ago as anti avoidance provisions where the employment of a spouse could otherwise be easily contrived. The original Regulations referred to husbands and wives but were amended to reflect spouses to ensure gender equality. These Regulations broadly follow the pattern of the original 1964 Regulations which were carried over into the 1979 Regulations.

The Classification Regulations preclude a spouse from employing a spouse (on a Class 1 basis) and instead reclassifies such a person as self-employed (Class 2) for such work.

Employment under a contract of service of any person by his spouse is an employment in respect of which a person is to be treated as a self-employed person.

This doesn't mean that a husband and wife can't work for a limited company (as a separate legal entity) that is owned by either the husband or wife.

The Classification Regulations go further to ensure that a spouse will be classified as non-employed (Class 3) unless the work is part of a trade or business.

Employment by the insured person's spouse otherwise than for the purposes of a trade or business whether or not under a contract of service in respect of which a person is to be treated as a non-employed person.

The Regulations also ensure that where a spouse is classified as a self-employed person the person must work at least 24 hours in that employment. If not, the person is classified as a non-employed person.

Employment of a spouse (whether or not under a contract of service) by, or as a partner of, in any similar association with, his spouse in respect of which a person is to be treated as a non-employed person unless that employment is in a trade or business and he is ordinarily engaged therein for not less than twenty four hours in a contribution week.

Summary

