# Husband—wife Partnership

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Many more Canadian farm families are talking about husband-wife partnerships than was the case two years ago. This increased interest is due to the fact that family income taxes can often be decreased by about one quarter if farm taxable income is divided for tax purposes between the two spouses.

For centuries husbands and wives have worked together on farms pooling their labour and other resources to earn a living for themselves and their families. They have been partners together in the business of farming in the true sense of the word.

Seldom did they call their business arrangement a partnership. There was no need. There was nothing to be gained or lost by so doing. More often than not all of the business was transacted in the husband's name regardless of how much capital or labour had been contributed by his wife. This was, not necessarily, a sign of chauvinism. The income tax authorities, in most cases, ruled that the family income had to be taxed as if it had been earned by the husband. It must be admitted that this provided a reasonably good argument for any husband who wanted to keep his spouse in an inferior position.

If all farm income is credited to the husband, family income taxes are greater and the wife is not allowed to contribute to the Canada Pension Plan. Also, in the past, assets have been considered the property of the spouse who paid for them which in most cases was the husband. No wonder wives complained about man-made laws, particularly at the time of a marriage breakdown.

During the past year there have been at least two important happenings of interest to small family businesses.

In the late fall of 1977, the Department of National Revenue issued a revised interpretation bulletin concerning husband-wife partnerships (IT231R). This revised bulletin indicates, that where a husband-wife partnership exists, the splitting of taxable income between the two will be allowed if both are deserving of a share and if the division is fair relative to the amount of capital and labour contributed by each.

In 1978 the Ontario government passed The Family Law Reform Act. This provides rules and guidelines regarding the division of family assets when a marriage breaks down. Permission is provided in the legislation for a husband and wife to enter into a marriage contract which can cover matters such as the ownership of assets. A partnership agreement could be a part of a marriage contract.

How does a farm family use these laws to advantage? What is involved in setting up a farm partnership? Can a husband and wife be considered partners even though they do not have a written partnership agreement? Should the farming assets be owned by the partnership or by the individuals? These are some of the questions that must be considered.

Answers to such questions vary from farm to farm depending upon the size of the operation, the number of people involved and the interests and desires of the people. If a marriage is most certainly not going to break down there are fewer concerns when setting up a business structure. But how certain is certain?

There are dozens of different variations of partnerships that may be used by husbands and wives who wish to carry on a business and many of these are equally good. The plan selected should make sense to the person who will be preparing the annual tax returns. Otherwise even the best plan will get all balled up.

"Keep it Simple" is a good first rule and a good last rule.

For a small business involving only one husband and wife, I am inclined to favour a partnership as regards income with all assets owned by the husband and/or the wife and/or by the husband and wife jointly. Under such an arrangement no assets are owned by the partnership. Many find the idea of ownership by the individuals easier to understand than the idea of ownership by a partnership. A one page income sharing agreement could cover such a partnership. Essentially the agreement would state that the parties agree to pool their assets and their labour and to share income. Records as to who owns what, would be kept outside the agreement, perhaps covered by another written or unwritten agreement.

If the partnership includes two or more families a more complex agreement may be better. Those involved may decide that many or most farming assets should be owned by the partnership rather than by the partners.

If a husband and wife jointly pay $5,000 or over in income taxes each year, a farm corporation may be preferable. Some of the disadvantages associated with corporations have disappeared within recent months and the new dividend tax credit gives corporations a tax advantage in cases where taxable income is high.

Farm families have always worked together pooling their resources to earn a living. Family members have really been partners even though in most cases there has been no partnership agreement. Preparing an agreement can help families to clarify their duties, responsibilities, rights, desires, etc., and can help them to save tax dollars as well. The saving of tax dollars is the small benefit; jointly planning for the future is the big one. Writing a business agreement does not ensure complete cooperation between family members but the discussions prior to the writing sometimes help. The success or failure of any partnership is usually dependent upon things that cannot be put into writing—attitudes, trust, willingness to cooperate, diligence, drive and the ability and desire to get the work done.