

## [15.2A.4] High Income Individuals' Restriction

### - Clawback of "section 23 type" Relief in Death Cases.

#### 1. Introduction

*Tax Briefing No. 23* set out a Revenue practice relating to the imposition of a clawback of rented residential "section 23 type" relief on the death of a spouse and in other limited circumstances. *Tax Briefing No. 08/2010* reaffirmed the practice previously set out in *Tax Briefing No. 23* and also makes a further option available in the case of the transfer of "section 23 type" properties between spouses on the death of one spouse.

#### 2. Interaction of Revenue practices on rented residential "section 23 type" relief with the Restriction of Reliefs for High Earners

Rented residential relief under various property incentive schemes is a specified relief for the purposes of the restriction of reliefs for high-income individuals, as contained in Chapter 2A of Part 15 of the TCA 1997. The amount of the rented residential relief **actually used** by an individual in a tax year must be taken into account when calculating any restriction that is to apply for the year involved. This rule equally applies where an individual dies in a tax year in which he or she is subject to the restriction.

Therefore, in circumstances where a surviving spouse elects in accordance with *Tax Briefing No. 23* to set some of the relief to which he/she is entitled against rental income on which a deceased spouse is assessable because of a clawback of relief, the amount of relief so set off must be taken into account in calculating the amount of specified reliefs used by the **deceased spouse**. It will not be used to calculate the amount of specified reliefs used by the surviving spouse.

Where an election is made in accordance with the "further option" outlined in *Tax Briefing No. 08/2010*, then the rented residential relief, if any, actually used by the deceased spouse in the year of death will need to be taken into account when calculating specified reliefs used by the deceased spouse in that year. Likewise, rented residential relief, if any, actually used by the surviving spouse in the year his or her spouse dies and in later years should be taken into account in calculating specified reliefs used by the surviving spouse in each such year.

Where a restriction of reliefs applies in the case of a deceased spouse in the year of death, it should be noted that any excess relief (as defined in section 485C TCA 1997) which arises because of the application of the restriction, including any such excess relief which arises because of the restriction of rented residential relief, does **not** transfer to the surviving spouse.