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# High Income Individuals' Restriction

## Carry forward of excess relief for married couples and civil partners

### Part 15-02A-07

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## 1. Executive Summary

When an individual who is a spouse or civil partner has been subject to the High-Income Individuals' Restriction (HIIR) and has excess relief to be carried forward under section 485F Taxes Consolidation Act 1997 (TCA), under joint assessment, a deduction from total income for that amount is available against the income of her/his spouse / civil partner in future years.

## 2. HIIR in Joint Assessment Cases

### 2.1. Joint assessment

Under joint assessment, the income of the non-assessable spouse / civil partner shall be charged and assessed to tax as income of the assessable spouse / civil partner (see section 1017 TCA). The income of the two spouses / civil partners will be joined at the total income stage, which means deductions from total income are usually allowable against the income of both spouses / civil partners.

### 2.2. Calculating HIIR in joint assessment cases

When determining whether the HIIR applies to a jointly assessed couple, each spouse / civil partner must be looked at separately. Section 485FA TCA requires that the joint assessment provisions be construed as if certain phrases were replaced with other phrases. Appendix I to this manual shows how the joint assessment legislation should be read for most jointly assessed couples subject to the HIIR.

Section 485FA(vi) provides that items which are deductions from total income - those listed in Part 1 of the Table to section 458 TCA - and would ordinarily be available as a deduction from the joint total income of a couple, should be first offset against the total income of the spouse / civil partner to whom the deduction 'belongs' and then any excess offset against the other spouse / civil partner. Appendix II to this manual lists the sections included in Part 1 of the Table to section 458 TCA.

### 2.3. Excess relief carried forward in joint assessment cases

Section 485F TCA provides that an individual who was subject to the HIIR shall, in the next tax year, be entitled to a deduction from her or his total income for the excess relief.

As section 485F provides that the excess relief carried forward is a deduction from total income, and as it is listed in the table to section 458, it is therefore covered by the provisions of section 485FA(vi). This means that, as with other deductions from total income, relief can be claimed by either or both spouses / civil partners.

Where a spouse or civil partner claims an amount for excess relief carried forward as deductible from his or her total income, that amount is deductible from the total income of both spouses / civil partners. Any unused relief from

the spouse / civil partner who was subject to the HIR will be transferred to her or his spouse / civil partner.

## Appendix I

### How joint assessment legislation should be read in the light of section 485FA TCA for the purposes of Part 15 Chapter 2A TCA

**NB – These versions of the provisions are for illustrative purposes only**

**In the versions below:**

- any text deleted from the standard version of the section is shown as struck through,
- text which has been inserted by section 485FA is shown in bold, and
- the paragraph/subparagraph of section 485FA which provides for the substitution is shown in square brackets and italics.

#### Section 3(1) TCA

“chargeable tax”, in relation to an individual for a year of assessment, means the amount of income tax to which that individual is chargeable for that year of assessment under section 15 in respect of his or her ~~total income~~ **taxable income** for that year including, in the case of an individual assessed to tax in accordance with the provisions of section 1017 or 1031C, the ~~total income~~ **taxable income**, if any, of the individual’s spouse or civil partner, as the case may be; *[substitution by section 485FA (c)(i)]*

#### Section 1017 TCA

- (1) Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment –
  - (a) the husband shall be assessed and charged to income tax, not only in respect of his ~~total income~~ **taxable income** (if any) for that year, but also in respect of his wife’s ~~total income~~ **taxable income** (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income, *[section 485FA(c)(ii)]*
  - (b) the question whether there is any income of the wife chargeable to tax for any year of assessment and, if so, what is to be taken to be the amount of that income for tax purposes shall not be affected by this section, and
  - (c) any tax to be assessed in respect of any income which under this section is deemed to be income of a woman’s husband shall, instead of being assessed on her, or on her trustees, guardian or committee, or on her

executors or administrators, be assessable on him or, in the appropriate cases, on his executors or administrators.

- (2) Any relief from income tax authorised by any provision of the Income Tax Acts to be granted to a husband by reference to the income or profits or gains or losses of his wife or by reference to any payment made by her shall be granted to a husband for a year of assessment only if he is assessed to tax for that year in accordance with this section.
- (3) Subject to subsection (4), for a year of assessment prior to the current year of assessment in which this section applies as a consequence of-
  - (a) an election made (including an election deemed to have been duly made) under section 1018,
  - (b) an election made under section 1019(2)(a)(ii), or
  - (c) section 1019(4)(a), a husband or a wife who is not assessed under this section may elect to be so assessed and such election shall apply in place of any earlier election or deemed election for that year of assessment.
- (4) Subsection (3) shall not apply where the husband or the wife is a chargeable person (within the meaning of section 959A).

### **Section 1019 TCA**

- (1) In this section –

“the basis year”, in relation to a husband and wife, means the year of marriage or, if earlier, the latest year of assessment preceding that year of marriage for which details of the total incomes of both the husband and the wife are available to the inspector at the time they first elect, or are first deemed to have duly elected, to be assessed to tax in accordance with section 1017;

“year of marriage”, in relation to a husband and wife, means the year of assessment in which their marriage took place.
- (2) Subsection (3) shall apply for a year of assessment where, in the case of a husband and wife who are living together –
  - (a) (i) an election (including an election deemed to have been duly made) by the husband and wife to be assessed to income tax in accordance with section 1017 has effect in relation to the year of assessment, and
  - (ii) the husband and the wife by notice in writing jointly given to the inspector before 1 April in the year of assessment elect that the wife should be assessed to income tax in accordance with section 1017,or
  - (b) (i) the year of marriage is the year 1993-94 or a subsequent year of assessment,

- (ii) not having made an election under section 1018(1) to be assessed to income tax in accordance with section 1017, the husband and wife have been deemed for that year of assessment, in accordance with section 1018(4), to have duly made such an election, but have not made an election in accordance with paragraph (a)(ii) for that year, and
  - (iii) the inspector, to the best of his or her knowledge and belief, considers that the total income of the wife for the basis year exceeded the total income of her husband for that basis year.
- (3) Where this subsection applies for a year of assessment, the wife shall be assessed to income tax in accordance with section 1017 for that year, and accordingly references in section 1017 or in any other provision of the Income Tax Acts, however expressed –
- (a) to a husband being assessed, assessed and charged or chargeable to income tax for a year of assessment in respect of his own ~~total income~~ **taxable income** (if any) and his wife's ~~total income~~ **taxable income** (if any), and
  - (b) to income of a wife being deemed for income tax purposes to be that of her husband,
- shall, subject to this section and the modifications set out in subsection (6) and any other necessary modifications, be construed respectively for that year of assessment as references –
- (i) to a wife being assessed, assessed and charged or chargeable to income tax in respect of her own ~~total income~~ **taxable income** (if any) and her husband's ~~total income~~ **taxable income** (if any), and
  - (ii) to the income of a husband being deemed for income tax purposes to be that of his wife. *[section 485FA(c)(iii)(I)]*
- (4) (a) Where in accordance with subsection (3) a wife is by virtue of subsection (2)(b) to be assessed and charged to income tax in respect of her ~~total income~~ **taxable income** (if any) and her husband's ~~total income~~ **taxable income** (if any) for a year of assessment *[section 485FA(c)(iii)(II)]* –
- (i) in the absence of a notice given in accordance with subsection (1) or (4)(a) of section 1018 or an application made under section 1023, the wife shall be ~~so assessed and charged for each subsequent year of assessment~~
    - (I) assessed and charged in respect of her taxable income (if any) and the taxable income (if any) of her husband for each subsequent year of assessment, where this Chapter applies for a tax year to either or both spouses, and**
    - (II) assessed and charged in respect of her total income (if any) and the total income (if any) of her husband for each subsequent year of assessment in any other case; *[section 485FA(c)(iv)]***

and

- (ii) any such charge shall apply and continue to apply notwithstanding that her husband's total income for the basis year may have exceeded her total income for that year. *[reference to total income in this subparagraph not changed – section 485FA(c)(iii)(II)]*
- (b) Where a notice under section 1018(4)(a) or an application under section 1023 is withdrawn and, but for the giving of such a notice or the making of such an application in the first instance, a wife would have been assessed to income tax in respect of her own ~~total income~~ **taxable income** (if any) and the ~~total income~~ **taxable income** (if any) of her husband for the year of assessment in which the notice was given or the application was made, as may be appropriate, then, in the absence of an election made in accordance with section 1018(1) (not being such an election deemed to have been duly made in accordance with section 1018(4)), the wife shall be ~~so assessed to income tax as for the year of assessment in which that notice or application is withdrawn and for each subsequent year of assessment.~~ *[section 485FA(c)(iii)(III)]*
  - (I) **assessed and charged in respect of her taxable income (if any) and the taxable income (if any) of her husband for each subsequent year of assessment, where [Chapter 2A of Part 15] applies for a tax year to either or both spouses, and.**
  - (II) **assessed and charged in respect of her total income (if any) and the total income (if any) of her husband for each subsequent year of assessment, in any other case.** *[section 485FA(c)(v)]*
- (5) Where an election is made in accordance with subsection (2)(a)(ii) for a year of assessment, the election shall have effect for that year and each subsequent year of assessment unless it is withdrawn by further notice in writing given jointly by the husband and the wife to the inspector before 1 April in a year of assessment and the election shall not then have effect for the year for which the further notice is given or for any subsequent year of assessment.

### Section 1031C

- (1) Where an election under section 1031D to be assessed to tax in accordance with this section has effect for a year of assessment—
  - (a) the nominated civil partner shall be assessed and charged to income tax, not only in respect of his or her ~~total income~~ **taxable income** (if any) for that year but also in respect of the other civil partner's ~~total income~~ **taxable income** (if any) for any part of that year of assessment during which they are living together, and for those purposes and for the purposes of the Income Tax Acts, that last-mentioned income shall be deemed to be the income of the nominated civil partner, *[section 485FA(c)(iia)]*
  - (b) the question whether there is any income of the other civil partner chargeable to tax for any year of assessment and, if so, what is to be

taken to be the amount of that income for tax purposes shall not be affected by this section, and

- (c) any tax to be assessed in respect of any income which under this section is deemed to be income of the nominated civil partner shall, instead of being assessed on the other civil partner, or on his or her trustees, guardian or committee, or on his or her executors or administrators, be assessable on the nominated civil partner or, in the appropriate cases, on his or her executors or administrators.
- (2) Any relief from income tax authorised by any provision of the Income Tax Acts to be granted to the nominated civil partner by reference to the income or profits or gains or losses of the other civil partner or by reference to any payment made by the other civil partner shall be granted to the nominated civil partner for a year of assessment only if the nominated civil partner is assessed to tax for that year in accordance with this section.
- (3) Subject to subsection (4), for a year of assessment prior to the current year of assessment in which this section applies as a consequence of an election made (including an election deemed to have been duly made) under section 1031D, a civil partner who is not assessed under this section may elect to be so assessed and such election shall apply in place of any earlier election or deemed election for that year of assessment.
- (4) Subsection (3) shall not apply where either civil partner is a chargeable person (within the meaning of section 959A).



## Appendix II

### **Deductions from “total income” specified in Part 1 of the Table to section 458 TCA (All references are to the TCA)**

As provided in section 485FA(vi) TCA, where the High-Income Individuals’ Restriction applies, the items listed below, which would ordinarily be available as a deduction from the joint total income of a couple, should be first offset against the total income of the spouse / civil partner to whom the deduction ‘belongs’ and then any excess offset against the total income of the other spouse / civil partner.

- Section 372AR (Relief for owner-occupiers for Part 11 Chapter 11 TCA)
- Section 372AAB (Residential accommodation: allowance to owner-occupiers in respect of qualifying expenditure incurred on the conversion and refurbishment of Georgian houses under the Living City Initiative – Part 11 Chapter 11 TCA)
- Section 467 (Employed person taking care of incapacitated individual)
- Section 469 (Relief for health expenses)
- Section 471 (Relief for contributions to permanent health benefit schemes)
- Section 472A (Relief for the long term unemployed)
- Section 472B (Seafarer allowance, etc.)
- Section 479 (Relief for new shares purchased on issue by employees)
- Section 481 (Relief for investment in films)
- Section 485F (Carry forward of excess relief)
- Section 489 (Income tax Relief for Investment in Corporate Trades)
- Section 493 (Seed capital relief)
- Paragraphs 12 and 20 of Schedule 32 (Transitional provisions relating to the Urban Renewal Scheme 1986 and Income tax: relief for expenditure on certain buildings in certain areas)