

# High Income Individuals' Restriction: Interaction with Clawback of "Section 23 Type" Relief in Death Cases

## Part 15-02A-04

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Tax and Duty Manual (TDM) Part 04-08-13 deals with offsets between spouses and civil partners of Case V losses and excess capital allowances. It also sets out Revenue's practice on the imposition of a clawback of rented residential "section 23 type" relief on the death of a spouse or civil partner and in other limited circumstances. This Tax and Duty Manual outlines the interaction between the high-income individuals' restriction and clawbacks of "section 23 type" relief in death cases.

Rented residential relief under various property incentive schemes is a "specified relief" for the purposes of the restriction of reliefs for high income individuals, contained in Chapter 2A of Part 15 of the Taxes Consolidation Act 1997 (TCA). 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. This rule equally applies where an individual dies in a tax year in which s/he is subject to the restriction.

Tax and Duty Manual Part 04-08-13 states that, where a rented residential "section 23 type" property passes to a surviving spouse and a clawback of the "section 23 type" relief applies to the deceased spouse, Revenue will allow a set-off of the "section 23 type" deduction due to the surviving spouse against the amount assessable on the deceased in the year of death for the property involved. The maximum set-off allowed is equivalent to the amount of the rent deemed to have been received by the deceased as a result of the clawback. (More details are available in [Part 04-08-13](#).)

Therefore, where a surviving spouse or civil partner elects to set some of the relief to which s/he is entitled against rental income on which a deceased spouse or civil partner 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", for the purpose of the high-income individual's restriction used by the **deceased spouse or civil partner**. It will not be used to calculate the amount of specified reliefs used by the surviving spouse or civil partner.

Revenue also allows a "further option" in cases of potential clawback of relief for a deceased spouse, whereby a surviving spouse can make an election that no clawback of "section 23 type" relief will be applied in the case of the deceased spouse, and any unused balance of "section 23 type" relief will transfer to the surviving spouse, where such relief has not been used in full by the deceased spouse in relation to rental income received up to date of death. (Further details can be found in TDM 04-08-13.)

Where an election is made in accordance with the "further option", the rented residential relief, if any, used by the deceased spouse or civil partner in the year of death will be taken into account when calculating specified reliefs used by the deceased spouse or civil partner in that year. Likewise, rented residential relief, if any, used by the surviving spouse or civil partner in the year her or his spouse or civil partner dies, and in later years, should be taken into account in calculating specified reliefs used by the surviving spouse or civil partner in each such year.

Where a restriction of reliefs applies to a deceased spouse or civil partner in the year of her or his death, any excess relief (as defined in section 485C TCA) 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 or civil partner.