15.2A.05 High Income Individuals' Restriction

Tax Year 2010 onwards

Contents

1. Background

The 2006 and 2007 Finance Acts introduced, with effect from 1 January 2007, measures to limit the use of certain tax reliefs and exemptions (known as Specified Reliefs) by high-income individuals. Changes introduced by the 2010 Finance Act extended the restriction, with effect from the tax year 2010, to ensure that individuals who are fully subject to the restriction pay an effective rate of income tax of approximately 30 per cent.

This part of the manual provides guidance in relation to the application of the restriction for the tax year 2010 and subsequent years following Finance (No. 2) Act 2013.

2. How Does the Restriction Work?

The measure works by limiting the total amount of specified reliefs that can be used by a high-income individual to a maximum amount each year. The maximum amount is set by reference to a specific figure or to a maximum percentage of income for the year.

Relief that is disallowed for a tax year is added-back to the individual's taxable income for the year to give a ***recalculated taxable income*** figure. The recalculated taxable income amount is then taxed in accordance with normal income tax rates and the individual is entitled to normal tax credits against the tax due. ***Section 5*** explains how the restriction is calculated while ***Section 6*** explains how the restriction applies to married couples / civil partners. ***Section 8*** outlines how the restriction works in situations involving exempt income.

3. To Whom Does the Restriction Apply?

For the tax year 2010 and subsequent years, the restriction applies to an individual where **all** of the following 3 criteria apply:

- the Adjusted Income of an individual for the tax year is equal to or greater than an Income Threshold Amount which is, in general, ***€125,000*** but is less if the individual had ring-fenced income (e.g. deposit interest),
- the aggregate of specified reliefs that are used by the individual for the tax year is equal to or greater than a Relief Threshold Amount which is set at ***€80,000***, and
- the aggregate of specified reliefs used by an individual for the tax year is greater than **20 per cent** of the individual's adjusted income.

Appendix 1 explains how "Adjusted Income" and "Income Threshold Amount" are calculated.

Appendix 2 contains information in relation to the term "ring-fenced income".

In addition to the high-income individual's restriction, there is a USC property relief surcharge which may apply to individuals affected by the high-income individual's restriction and this is dealt with in ***manual 18D-00-01***. The USC property relief surcharge applies to reliefs used **before** the application of the high-income individual's restriction.

4. What Specified Reliefs are covered by the Restriction?

Reliefs that are covered by the restriction are known as Specified Reliefs and include:

- The various sectoral and area-based property tax incentives e.g. accelerated capital allowances for nursing homes/private hospitals, industrial/commercial buildings in Urban, Rural and Town Renewal areas and "section 23" type relief in relation to rented residential accommodation located in such areas,
- Certain exemptions e.g. relating to artists' income[1], patent royalties[2] etc.,
- Certain investment incentive reliefs such as BES relief, EII relief where the investment was made on or before 15 October 2013 or will be made on or after 1 January 2017 (but not Seed Capital Scheme relief) and Film relief,
- Relief for interest paid on loans used to acquire an interest in a company[3] or in a partnership.

A full list of the reliefs and exemptions covered by the restriction is shown in ***Appendix 3***.

Normal business-related expenses, deductions for capital allowances on plant and machinery (other than those claimed by passive traders on plant and machinery that they lease to manufacturing trades since 15 October 2013), genuine business-related trading losses, and genuine losses from a rental activity that do not arise from the use of specified reliefs are **not** affected by the restriction. In addition, personal tax credits are **not** affected.

5. How is the Restriction Calculated?

The restriction is calculated by using the formula **T + (S – Y)** in order to determine the amount of recalculated taxable income which must be subjected to income tax. This amount is then taxed in accordance with normal income tax rates and the individual is entitled to normal tax credits against the tax due.

[1] An upper limit of €40,000 was applied to the artists' exemption with effect from the tax year 2011.
[2] The exemption in relation to patent royalties and related distributions was abolished with effect from 24 November 2010.
[3] Relief for interest paid on a loan to acquire an interest in a company is being phased out – see section 11 Finance Act 2011.

For the tax year 2010 and subsequent years, the elements of the formula are as follows:

T = is the individual's taxable income (before the restriction),
S = is the aggregate amount of specified reliefs **used** in the year, and
Y = is either €80,000 (the Relief Threshold Amount) or, if greater, 20 per cent of the individual's adjusted income for the year.

Examples are given in ***Appendix 4***.

6. How is the Restriction applied to jointly assessed couples?

In the case of a married couple / civil partners where joint assessment applies, the question of the application of the restriction is considered separately for each spouse / civil partner. Therefore, the restriction will apply to each individual spouse / civil partner only where the three criteria listed in ***Section 3*** apply to the spouse / civil partner.

Following determination of the recalculated taxable income of a spouse / civil partner to whom the restriction applies, that amount is then amalgamated with the taxable income of the other spouse / civil partner (or the recalculated taxable income of the other spouse / civil partner where the restriction applies to the other spouse / civil partner). The combined amount is then taxed in accordance with normal income tax rates and the couple is entitled to normal tax credits against the tax due.

Examples are given in ***Appendix 5*****.**

7. Treatment of Excess Relief arising because of the Restriction

The total amount of reliefs that are not allowed in a particular year because of the restriction is known as "**excess relief**".

Section 485F provides that the amount of the excess relief can be carried forward to the following year (or years) and used as a deduction from the individual's total income in arriving at his or her taxable income for that year(s). However, any other relief to which the individual is entitled, including other specified reliefs for the particular year, is given in priority to the excess relief carried forward.

Reliefs carried forward as excess relief lose their character in that they are pooled together in a single amount. The pooled amount is then treated as a separate tax relief in its own right. As it is deducted from total income in the year in which it is used, it reduces the amount of taxable income in that year before the calculation of any restriction that might apply. However, it is treated as a specified relief in the year in which it is used in deciding whether the restriction applies in that year.

8. Exempt Income and the Restriction

Prior to 2007, certain income such as artists' income and patent royalties was not chargeable to tax because of various exempting provisions. However, following the introduction of the high-income individuals' restriction, the amount of the exemption used each year (subject to the limitation on the artists' exemption introduced from the tax year 2011 and the abolition of the patent royalty exemption from 24 November 2010) must be taken into account in deciding whether the restriction applies.

Therefore, an individual whose only income is exempt income is subject to the restriction for the year 2010 where the amount of the exempt income is **€125,000** or more. While the Relief Threshold Amount is €80,000, the restriction does not apply unless Adjusted Income is €125,000 or more.

Where an individual has income other than exempt income and his or her Adjusted Income is **€125,000** or more, the restriction will generally apply where the aggregate of the exempt income and any other specified reliefs used is €80,000 or more. However, where the aggregate of the exempt income and any other specified reliefs used does not exceed 20 per cent of the individual's adjusted income for the year, the restriction will not apply.

Examples are shown in ***Appendix 6*** in respect of the tax year 2010. ***Appendix 7*** includes examples for the tax year 2011.

Relief carried forward as excess relief (see ***Section 7***) may arise because of the application of the restriction in an exempt income situation e.g. where artists' exemption is claimed. In such a situation, it will only be possible to use the excess relief if the individual has non-exempt income which is taxable in the year to which the excess relief is carried forward. If the taxpayer only has exempt income in the year, no relief is possible and the excess relief can only be carried forward. In particular, it should be noted that excess relief cannot be set against recalculated taxable income.

9. Double tax relief

Finance (No. 2) Act 2013 amended how double tax relief is calculated for individuals who are subject to the high-income individual's restriction. Prior to the passing of the Act, the Irish effective tax rate used for determining the amount of foreign tax which was to be relieved by credit was calculated before the application of the high-income individual's restriction. In some cases, this meant that the tax relief given for foreign tax was not in line with the tax relief provided for by the double tax treaty.

For any tax return submitted after the passing of the Act, the Irish effective rate for individuals affected by the high-income individual's restriction should be calculated using the formula:

$$\frac{\text{Irish tax}}{\text{Adjusted income}}\quad \begin{array}{l}\textit{(after application of the high-income individual's restriction)}\\ \textit{(as determined for the high-income individual's restriction calculation)}\end{array}$$

Where an individual submitted a tax return on or after 1 January 2008 and would be entitled to a greater tax credit for double taxation suffered under this provision than under the pre Finance (No. 2) Act 2013 provisions, then repayment may be made on foot of a claim for repayment, supported by calculations, for any relevant years.

An example of how this new formula is applied is set out in ***Appendix 8***

10. PRSI, Health Contribution, Income Levy and Universal Social Charge

The focus of the restriction is on the recalculation of taxable income and does not affect the calculation of PRSI, health contributions and income levy for the tax year 2010 or the calculation of PRSI and Universal Social Charge for the tax year 2011 and later years. In the year that a restriction applies, these calculations are based on the original income assessable. Where excess relief is carried forward to 2010 or a later year for deduction from total income in that year, the excess relief is not deductible in calculating (as applicable) PRSI, health contributions, income levy or the Universal Social Charge for that year.

11. Tax Returns Required

Where an individual is subject to the restriction, he or she is required to submit a self-assessment tax return (Form 11) by the return filing date for the tax year involved. Additionally, a Form RR1 setting out details of the calculation of the restriction must be submitted with the Form 11. Any return filed on or after 1 June 2011 must be filed electronically[4].

Details required on the Form RR1 include the aggregate of specified reliefs used by the individual for the particular year, the amount of the individual's taxable income before the application of the restriction and the amount of the individual's recalculated taxable income after the application of the restriction.

In the case of a married couple / civil partners where joint assessment applies, a single Form RR1 should be completed giving details of the application of the restriction to each spouse / civil partner (as applicable).

[4] Further details on mandatory e-filing

12. Preliminary Tax Payments for 2011

High Income Individuals, when making preliminary tax payments for the tax year 2011, ought to have taken account of the changes that were made to the restriction by Finance Act 2010. In particular, the changes mean that an individual who is fully subject to the restriction for the tax year 2011 is liable to pay an effective rate of approximately 30 per cent of his or her income in income tax rather than the approximate 20 per cent effective rate that applied for the tax years 2007, 2008 and 2009.

Therefore, as a result of the Finance Act 2010 changes, significant increases will have occurred in the tax liability of individuals:

(i) who are subject to the restriction for the first time in the tax year 2011, or
(ii) whose effective rate of tax is increasing from 20 per cent to 30 per cent.

In order to avoid the possibility of interest charges arising, preliminary tax payments for the tax year 2011 would have needed to equal or exceed the lower of—

- 90% of the income tax payable by the individual for the tax year 2011 (including any additional tax due as a result of the application of the high income individuals' restriction),
- 100% of the income tax payable by the individual for the tax year 2010 (including any additional tax due as a result of the application of the high income individuals' restriction), and
- 105% of the income tax payable by the individual for the tax year 2009 (including any additional tax due as a result of the application of the high income individuals' restriction), where the individual has made arrangements with Revenue to pay preliminary tax by direct debit.

Where an individual based his or her preliminary tax payment for 2011 on 90% of the tax payable for 2011 (particularly, an individual who became subject to the restriction for the first time in 2011), the individual needed to ensure that he or she takes account of the increased tax due as a result of the restriction.

Alternatively, if an individual made a preliminary tax payment for the tax year 2011 by reference to either the 100% or 105% rule referred to above, this could have resulted in a significant balance of tax to be paid in October 2012 (when submitting his or her tax return for the tax year 2011) as a result of the application of the restriction in 2011. It should be noted that such payment would coincide with the making of a preliminary tax payment for the tax year 2012.

Appendix 1 –key terms

Adjusted Income
Adjusted Income is calculated by firstly adding the total amount of the specified reliefs **actually used** by an individual for a tax year to his or her taxable income for that year and then deducting any ring-fenced income of the individual for the year. The formula **(T + S) – R** is used **where:**

T = the individual's taxable income (before the restriction)
S = the aggregate amount of specified reliefs used in the year, and
R = the amount of the individual's ring-fenced income for the year

Example 1. Mr. A has taxable income of €100,000 (**T**) in 2010 and uses section 23-type relief in that year amounting to €200,000 (**S**). He has no ring-fenced income (**R**) so his adjusted income **(T + S) – R** is €300,000.

Example 2. Ms. B has taxable income of €90,000 (**T**) in 2010 and uses section 23-type relief in that year amounting to €100,000 (**S**). She has ring-fenced income (bank deposit interest) of €70,000 (**R**), which is included in her taxable income figure of €90,000. Her adjusted income **(T + S) – R** is €120,000.

Income Threshold Amount
In deciding whether the restriction is applicable for the year 2010 and later years, the Income Threshold Amount for the year 2010 and later years is in general, ***€125,000*** but is less if the individual had ring-fenced income (e.g. deposit interest). In that scenario, Income Threshold Amount is calculated by using the formula:

$$\text{€125,000} \times \frac{A}{B}$$

where:

A = is the individual's adjusted income for the year, and
B = is the sum of **T + S** (same meaning as in Adjusted Income above)

Example 3. Using the figures relating to Ms. B in ***Example 2*** above, her Income Threshold Amount for 2010 is as follows:

$$\text{€125,000} \times \frac{120{,}000}{190{,}000} = \text{€78,947}.$$

The restriction applies to Ms. B for the year 2010 as her Adjusted Income (€120,000) is greater than her Income Threshold Amount of €78,947 and her use of Specified Reliefs (€100,000) is greater than €80,000.

Appendix 2 – ring-fenced income

Ring-fenced income is income that is normally liable to tax at a specific rate regardless of the amount received or the marginal rate of tax at which the individual is liable. Ring-fenced income includes the following:

- Irish deposit interest (as referred to in section 261(c)(i)(II) of the TCA 1997) from which DIRT is deducted;
- Irish deposit interest received gross (as referred to in section 261B TCA 1997) by virtue of a declaration made an individual that he or she was either over 65 or was permanently incapacitated;
- Deposit interest received gross (as referred to in section 267M TCA 1997) which arises in an EU Member State other than Ireland and which is liable to tax at a rate equal to the DIRT rate;
- Certain foreign life policy payments liable to tax in accordance with section 730J(a)(i)(I) of the TCA 1997
- Certain foreign life policy payments liable to tax in accordance with section 730J(a)(i)(II)(B) of the TCA 1997
- Certain foreign life policy gains liable to tax in accordance with section 730K(1)(b) of the TCA 1997
- Certain offshore fund payments liable to tax in accordance with section 747D(a)(i)(I)(B) of the TCA 1997
- Certain offshore fund payments liable to tax in accordance with section 747D(a)(i)(II)(B) of the TCA 1997
- Certain offshore fund gains liable to tax in accordance with section 747E(1)(b)(ii) of the TCA 1997

Appendix 3 – list of specified reliefs

List of Specified Reliefs in accordance with Schedule 25B TCA 1997

Ref	Section	Description
1	140	Dividends and distributions out of exempt income from stallion fees, stud greyhound fees and occupation of woodlands
2	141	Dividends and distributions out of exempt patent income *[chargeable since 24 November 2010]*
3	142	Dividends and distributions out of exempted income from certain mining operations
4	143	Dividends and distributions out of relieved income from certain mining operations
5	195	Exemption of certain earnings of writers, composers and artists
6	231	Exempt profits or gains from stallion fees *[chargeable since 1 August 2008]*
7	232	Exempt profits or gains from occupation of woodlands
8	233	Exempt profits or gains from stud greyhound fees *[chargeable since 1 August 2008]*
9	234	Exempt income from a qualifying patent *[chargeable since 24 November 2010]*
10	248	Relief for interest paid on loans used to acquire an interest in a company
11	248/250	Relief for interest paid on loans used to acquire an interest in certain companies
12	253	Relief for interest paid on loans used to acquire an interest in a partnership
13	272	Writing-down allowances in respect of capital expenditure on:
		▪ Hotels written-off at 15% rate (S268(1)(d)) ▪ Nursing homes (Sec. 268(1)(g)) including residential units attached to nursing homes (Sec. 268(1)(g) by virtue of S268(3B)) ▪ Convalescent homes (S268(1)(i)) ▪ Private hospitals (S268(1)(j)) ▪ Sports injury clinics (S268(1)(k)) ▪ Mental health centres (S268(1)(l)) ▪ Specialist palliative care units (S268(1)(m)) ▪ Holiday camps written-off at 15% rate and holiday cottages (S268(3))
14	273	Acceleration of writing-down allowances in respect of certain expenditure on certain industrial buildings or structures
15	274	Balancing allowances in respect of capital expenditure on the buildings listed at Ref. No. 13 above.
15A	304(4)	Income tax: allowances and charges in taxing a trade, etc.
15B	305(1)	Income tax: manner of granting, and effect of, allowances made by means of discharge or repayment of tax
15C	284 (subject to section 485C(1B)	Wear & tear allowances on plant and machinery claimed by a passive trader when leasing the plant and machinery to a manufacturing trade *[since 15 October 2013]*.

Ref	Section	Description
15D	288 (subject to section 485C(1B)	Balancing allowances on plant and machinery claimed by a passive trader when leasing the plant and machinery to a manufacturing trade.
16	323	Customs House Docks Area: capital allowances in relation to the construction of certain commercial premises
17	324	Customs House Docks Area: double rent allowance in respect of rent paid for certain business premises
18	331	Temple Bar Area: accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures
19	332	Temple Bar Area: capital allowances in relation to construction or refurbishment of certain commercial premises
20	333	Temple Bar Area: double rent allowance in respect of rent paid for certain business premises
21	341	Urban Renewal Scheme and Designated Streets Scheme: accelerated capital allowances for construction/refurbishment of certain industrial buildings or structures
22	342	Urban Renewal Scheme and Designated Streets Scheme: capital allowances in relation to construction/refurbishment of certain commercial premises
23	343	Enterprise Areas: capital allowances in relation to construction/refurbishment of certain buildings or structures
24	344	Multi-storey car parks: capital allowances in relation to construction or refurbishment
25	345	Urban Renewal Scheme, Enterprise Areas and Multi-storey car parks: double rent allowance in respect of rent paid for certain business premises
26	352	Qualifying Resort Areas: accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures
27	353	Qualifying Resort Areas: capital allowances in relation to construction or refurbishment of certain commercial premises
28	354	Qualifying Resort Areas: double rent allowance in respect of rent paid for certain business premises
29	372C	Qualifying Areas: accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures
30	372D	Qualifying Areas and Living-Over-the-Shop Scheme: capital allowances in relation to construction or refurbishment of certain commercial premises
31	372M	Qualifying Rural Areas: accelerated capital allowances in relation to construction or refurbishment of certain industrial buildings or structures
32	372N	Qualifying Rural Areas: capital allowances in relation to construction or refurbishment of certain commercial premises
33	372V	Park-and-Ride Facilities: capital allowances in relation to construction or refurbishment
34	372W	Park-and-Ride Scheme: capital allowances in relation to construction or refurbishment of certain commercial premises
35	372AC	Town Renewal Areas: accelerated capital allowances in relation to construction

Ref	Section	Description
		or refurbishment of certain industrial buildings or structures
36	372AD	Town Renewal Areas: capital allowances in relation to construction or refurbishment of certain commercial premises
36A	372AX	Mid-Shannon Corridor Tourism Infrastructure Investment Scheme: accelerated capital allowances in relation to construction/refurbishment of certain registered holiday camps
36B	372AY	Mid-Shannon Corridor Tourism Infrastructure Investment Scheme: capital allowances in relation to construction or refurbishment of certain tourism infrastructure facilities
37	372AP	Relief for Lessors of rented residential property – various schemes
38	372AU(1)	Relief for Lessors of rented residential property: Saver for relief due, and for clawback of relief given, under old schemes
39	381	Right to repayment of tax by reference to losses in so far as it is referable to any double rent relief
40	381	Right to repayment of tax by reference to losses as extended by S392 (option to treat capital allowances as creating or augmenting a loss) in so far as it is referable to any capital allowances that are specified reliefs
41	382	Right to carry forward losses to future years in so far as it is referable to any other specified relief
42	383	Relief under Case IV for losses in so far as it is referable to any other specified relief
43	384	Relief under Case V for losses in so far as it is referable to any other specified relief
44	385	Terminal loss in so far as it is referable to any other specified relief
45	481	Relief for investment in films
46	482	Relief for expenditure on significant buildings and gardens
47	485F	Carry-forward of excess relief
47A	489(2)(a)	Employment and Investment Incentive Scheme where the subscription for eligible shares was made on or before 15 October 2013 or on or after 1 January 2017
48	489(3)	BES relief
48A	823A	Deduction for income earned in certain foreign states
49	843	Capital allowances for buildings used for third level education purposes
50	843A	Capital allowances for buildings used for certain child-care purposes
51	847A	Donations to certain sports bodies
52	848A	Donations to approved bodies
53	Para. 11 of Sch. 32	Urban Renewal Scheme, 1986: capital allowances in relation to certain commercial premises in designated areas other than Customs House Docks Area
54	Para. 13 of Sch. 32	Urban Renewal Scheme, 1986: double rent allowance in relation to certain premises in designated areas other than Customs House Docks Area

Appendix 4 – worked examples

Example 4. Mr. A has taxable income of €100,000 (**T**) in 2010 and uses section 23-type relief in that year amounting to €200,000 (**S**). He has no ring-fenced income, so his adjusted income is €300,000 (*see Example 1 in Appendix 1*).

The restriction applies for 2010 as Mr. A's adjusted income is greater than €125,000 and his use of specified reliefs is greater than €80,000. His recalculated taxable income for 2010, using the formula **T + (S – Y)**, is €220,000 as follows:

T (€100,000) + **S** (€200,000) - **Y** (€80,000 - this is greater than 20 per cent of his adjusted income).

Therefore, Mr. A's taxable income for 2010 is increased from €100,000 to €220,000. The additional amount taxable (i.e. €120,000) is carried forward as "excess relief" to the year 2011 under section 485F TCA 1997. It will be a specified relief only to the extent that it is used in 2011 (or subsequent years).

Example 5. Ms. B has taxable income of €90,000 (**T**) in 2010 and uses section 23-type relief in that year amounting to €100,000 (**S**). She has ring-fenced income of €70,000, which is included in her taxable income figure of €90,000. Her adjusted income is €120,000 but her Income Threshold Amount is only €78,947 (*see Examples 2 and 3 in Appendix 1*).

The restriction applies for 2010 as Ms. B's adjusted income is greater than her Income Threshold Amount and her use of specified reliefs is greater than €80,000. Her recalculated taxable income for 2010, using the formula **T + (S – Y)**, is €110,000 as follows:

T (€90,000) + **S** (€100,000) - **Y** (80,000 - this is greater than 20 per cent of her adjusted income).

Therefore, Ms. B's taxable income for 2010 is increased from €90,000 to €110,000. The additional amount taxable (i.e. €20,000) is carried forward as "excess relief" to the year 2011 under section 485F TCA 1997. It will be a specified relief only to the extent that it is used in 2011 (or subsequent years).

Appendix 5 – worked examples: joint assessment

Example 6. A married couple, Mr. and Mrs. D are taxed under joint assessment and in 2010 have the following income and deductions:

	Mr. D - €	**Mrs. D - €**
Case I/II	650,000	720,000
Deposit Interest	10,000	10,000
Capital allowances (plant & machinery)	(15,000)	(15,000)
Capital allowances (Town Renewal scheme)	(430,000)	n/a
Rental income	nil	100,000
Film relief	(30,000)	n/a
Capital allowances (rented hotel)	n/a	(320,000)[1]
Passive investor - significant (S482) building		(40,000)[2]
Taxable Income	**185,000**	**683,250**
Joint Taxable Income	**868,250**	

Mr. D: Mr. D's Town Renewal capital allowances are in respect of a commercial property used for his profession and are set against the income from that profession. His taxable income for 2010 is €185,000. His specified reliefs are €460,000 (i.e. town renewal capital allowances and Film relief as above). His adjusted income using the formula **(T + S) – R** is €635,000 (see below).

The restriction applies to Mr. D for 2010. His adjusted income is greater than the Income Threshold Amount of €125,000 and his use of specified reliefs (i.e. €460,000) is greater than the Relief Threshold Amount of €80,000 and also greater than 20% of his adjusted income (i.e. 20% of €635,000 = €127,000). Calculation of the restriction, which results in recalculated taxable income of €518,000, is as follows:

Adjusted Income	**€**	**Recalculated Taxable Income**	**€**
T - Taxable Income	185,000	T - Taxable Income	185,000
S - Specified Reliefs	460,000	S - Specified Reliefs	460,000
R - Ring fenced Income	(10,000)	Y – €80,000 or, if greater, 20% of Adjusted Income	(127,000)
Adjusted Income	635,000		
20% of Adj. Income	*127,000*	**Recalculated Taxable Income**	***518,000***

[1] Only €100,000 of this amount can be used (allowable against rental income only)
[2] Only €31,750 of this amount can be used (passive investor restriction)

Therefore, Mr. D's taxable income for 2010 is increased from €185,000 to €518,000. The additional amount taxable (i.e. €333,000) is carried forward as "excess relief" to the year 2011 under section 485F TCA 1997. It will be a specified relief to the extent that it is used in 2011 (or subsequent years).

Mrs. D: Mrs. D's capital allowances of €320,000 in respect of the hotel are ring-fenced against the rental income of €100,000 with the balance of €220,000 carried forward to 2011 as excess capital allowances. Her allowances as a passive investor in a significant building are restricted to €31,750. Therefore, her taxable income for 2010 is €683,250. Her adjusted income using the formula **(T + S) – R** is €805,000 (see below).

Although Mrs. D has reliefs of €360,000 available in 2010 in relation to her investments, she can use only €131,750 of those reliefs because of other restrictions in the Tax Acts i.e. apart from the high income individuals' restriction.

The restriction does not apply to Mrs. D for 2010. While her adjusted income is greater than the Income Threshold Amount of €125,000 and her use of specified reliefs (i.e. €131,750) is greater than the Relief Threshold Amount of €80,000, her use of specified reliefs is less than 20 per cent of her adjusted income (i.e. 20% of €805,000 = €161,000).

Adjusted Income	**€**	**Recalculated Taxable Income**	**€**
T - Taxable Income	683,250	T - Taxable Income	
S - Specified Reliefs	131,750	S - Specified Reliefs	
R - Ring fenced Income	(10,000)	Y – €80,000 or, if greater, 20% of Adjusted Income	
Adjusted Income	805,000		
20% of Adj. Income	*161,000*	**Recalculated Taxable Income**	no change

Her taxable income for the year remains at €683,250.

Combined position for 2010

The position for Mr. and Mrs. D for 2010 is that their combined taxable income following the application of the restriction is increased from €868,250 to €1,201,250, being a combination of recalculated taxable income of €518,000 for Mr. D and original taxable income of €683,250 for Mrs. D.

Appendix 6 – worked examples: 2010

Example 7. Ms. E's sole income is exempt artist's income of €240,000 in 2010. She has no ring-fenced income and does not avail of other specified reliefs.

The restriction applies for 2010. Adjusted income of €240,000 (see below) is greater than the Income Threshold Amount of €125,000. The use of specified reliefs (artist's exemption) is greater than the Relief Threshold Amount of €80,000 and also greater than 20 per cent of the adjusted income. Calculation of the restriction, which results in recalculated taxable income of €160,000, is as follows:

Adjusted Income	**€**	**Recalculated Taxable Income**	**€**
T - Taxable Income	0	T - Taxable Income	0
S - Specified Reliefs	240,000	S - Specified Reliefs	240,000
R - Ring fenced Income	(0,00)	Y – €80,000 or, if greater, 20% of Adjusted Income	(80,000)
Adjusted Income	240,000		
20% of Adj. Income	*48,000*	**Recalculated Taxable Income**	***160,000***

Therefore, Ms. E's taxable income for 2010 is increased from €0 to €160,000. The additional amount taxable (i.e. €160,000) is carried forward as "excess relief" to the year 2011 under section 485F TCA 1997. It will be a specified relief only to the extent that it is used in 2011 (or subsequent years).

Example 8. Mr. F has exempt artist's income of €240,000 in 2010. He also has other income of €325,000 of which €45,000 is ring-fenced income. He uses €25,000 in Film relief in 2010 and has €5,000 excess relief forward from 2009 under section 485F.

Mr. F's taxable income for 2010 is €295,000, as follows:

Exempt Income	**€**	**Calculation of Taxable Income**	**€**
Artists Income	240,000		0
		Other Income	325,000
	Less		
		Film Relief	(25,000)
		Section 485F relief (forward from 2009)	(5,000)
		Taxable Income	295,000

The restriction applies for 2010.

The total specified reliefs used are €270,000 (€240,000 artists exemption + €25,000 Film relief + €5,000 excess relief). Adjusted income is €520,000 (see next page) and is greater than the Income Threshold Amount of €125,000. The use of specified reliefs (€270,000) is greater than the Relief Threshold Amount of €80,000 and also greater than 20 per cent of the adjusted income (i.e. €104,000).

Calculation of the restriction, which results in recalculated taxable income of €461,000 for 2010, is as follows:

Adjusted Income	**€**	**Recalculated Taxable Income**	**€**
T - Taxable Income	295,000	T - Taxable Income	295,000
S - Specified Reliefs	270,000	S - Specified Reliefs	270,000
R - Ring fenced Income	(45,000)	Y – €80,000 or, if greater, 20% of Adjusted Income	(104,000)
Adjusted Income	520,000		
20% of Adj. Income	*104,000*	**Recalculated Taxable Income**	***461,000***

Therefore, Mr. F's taxable income for 2010 is increased from €295,000 to €461,000. The additional amount taxable (i.e. €166,000) is carried forward as "excess relief" to the year 2011 under section 485F TCA 1997. It will be a specified relief only to the extent that it is used in 2011 (or subsequent years).

Example 9. Ms. G has exempt patent income of €100,000 in 2010 (received prior to 24 November 2010). She also has PAYE income of €200,000 and has no ring-fenced income. She uses €25,000 in Film relief in 2010 and has no excess relief forward from 2009.

Ms. G's taxable income for 2010 is €175,000, as follows:

Exempt Income	**€**	**Calculation of Taxable Income**	**€**
Patent Income	100,000		0
		PAYE Income	200,000
	Less		
		Film Relief	(25,000)
		Taxable Income	175,000

The restriction applies for 2010.

The total specified reliefs used are €125,000 (€100,000 patent exemption + €25,000 Film relief). Adjusted income is €300,000 (see below) and is greater than the Income Threshold Amount of €125,000. The use of specified reliefs (€125,000) is greater than the Relief Threshold Amount of €80,000 and also greater than 20 per cent of the adjusted income (i.e. €60,000).

Calculation of the restriction, which results in recalculated taxable income of €220,000 for 2010, is as follows:

Adjusted Income	**€**	**Recalculated Taxable Income**	**€**
T - Taxable Income	175,000	T - Taxable Income	175,000
S - Specified Reliefs	125,000	S - Specified Reliefs	125,000
R - Ring fenced Income	(0.00)	Y – €80,000 or, if greater, 20% of Adjusted Income	(80,000)
Adjusted Income	300,000		
20% of Adj. Income	*60,000*	**Recalculated Taxable Income**	***220,000***

Therefore, Ms. G's taxable income for 2010 is increased from €175,000 to €220,000. The additional amount taxable (i.e. €45,000) is carried forward as "excess relief" to the year 2011 under section 485F TCA 1997. It will be a specified relief only to the extent that it is used in 2011 (or subsequent years).

Appendix 7 – worked examples: 2011

Example 10. Ms. E (see Example 7) has income of €210,000 as an artist in 2011 of which €40,000 is exempt. She has no ring-fenced income and does not avail of specified reliefs other than those relating to her artists income.

Stand-alone basis 2011: If the €40,000 exemption is the only relief used by Ms. E in the tax year 2011, then she is not subject to the restriction as the use of specified reliefs is less than the Relief Threshold amount of €80,000. In that situation her taxable income will be €170,000 (i.e. income of €210,000 less €40,000 exemption). However, as she has excess relief carried forward from 2010 (see Example 7), this relief must be taken into account in calculating the restriction.

Excess relief from 2010: Ms. E has excess relief of €160,000 coming forward from the tax year 2010 (see Example 7). This relief is set against her chargeable income in 2011 and reduces her taxable income.

Ms. E's taxable income for 2011 is €10,000 (see below) after excess relief forward from 2010 is taken into account.

Exempt Income	€	Calculation of Taxable Income	€
Artists Income	40,000	Artists Income	170,000
		Other Income	0
	Less		
		Section 485F relief (forward from 2010)	(160,000)
		Taxable Income	10,000

The restriction applies for 2011.

The total amount of specified reliefs used by Ms. E is €200,000 i.e. exemption of €40,000 and excess relief forward of €160,000. Adjusted income of €210,000 (see below) is greater than the Income Threshold Amount of €125,000. The use of specified reliefs (€200,000) is greater than the Relief Threshold Amount of €80,000 and also greater than 20 per cent of the adjusted income (i.e. €42,000).

Calculation of the restriction, which results in recalculated taxable income of €130,000, is as follows:

Adjusted Income	€	Recalculated Taxable Income	€
T - Taxable Income	10,000	T - Taxable Income	10,000
S - Specified Reliefs	200,000	S - Specified Reliefs	200,000
R - Ring fenced Income	(0,00)	Y – €80,000 or, if greater,	(80,000)

Adjusted Income	210,000	20% of Adjusted Income	
20% of Adj. Income	*42,000*	**Recalculated Taxable Income**	***130,000***

Therefore, Ms. E's taxable income for 2011 is increased from €10,000 to €130,000. The additional amount taxable (i.e. €120,000) is carried forward as "excess relief" to the year 2012 under section 485F TCA 1997. It will be a specified relief only to the extent that it is used in 2012 (or subsequent years).

Example 11. Mr. F (see Example 8) has artists' income of €200,000 in 2011 of which €40,000 is exempt. He also has other income of €325,000 of which €45,000 is ring-fenced income. He uses €25,000 in Film relief in 2011.

Stand-alone basis 2011: If the €40,000 exemption and the €25,000 Film relief are the only reliefs used by Mr. F in the tax year 2011, then he is not subject to the restriction as the total of specified reliefs (€65,000) is less than the Relief Threshold Amount of €80,000. In this situation, his taxable income would be €460,000 (i.e. incomes of €200,000 and €325,000 less €40,000 exemption and €25,000 Film relief). However, as he has excess relief carried forward from 2010 (see Example 8), this relief must be taken into account in calculating the restriction.

Excess relief from 2010: Mr. F has excess relief of €166,000 coming forward from the tax year 2010 (see Example 8). This relief is set against his chargeable income in 2011 and reduces his taxable income.

Mr. F's taxable income for 2011 is €294,000 (see below) after excess relief forward from 2010 is taken into account.

Exempt Income	**€**	**Calculation of Taxable Income**	**€**
Artists Income	40,000	Artists Income	160,000
		Other Income	325,000
	Less		
		Film Relief	(25,000)
		Section 485F relief (forward from 2010)	(166,000)
		Taxable Income	294,000

The restriction applies for 2011.

The total amount of specified reliefs used is €231,000 i.e. exemption of €40,000, excess relief forward of €166,000 and Film relief of €25,000. Adjusted income is €480,000 (see below) and is greater than the Income Threshold Amount of €125,000. The use of specified reliefs (€231,000) is greater than the Relief Threshold Amount of €80,000 and also greater than 20 per cent of the adjusted income (i.e. €96,000).

Calculation of the restriction, which results in recalculated taxable income of €429,000 for 2011, is as follows:

Adjusted Income	**€**	**Recalculated Taxable Income**	**€**
T - Taxable Income	294,000	T - Taxable Income	294,000
S - Specified Reliefs	231,000	S - Specified Reliefs	231,000
R - Ring fenced Income	(45,000)	Y – €80,000 or, if greater, 20% of Adjusted Income	(96,000)
Adjusted Income	480,000		
20% of Adj. Income	*96,000*	**Recalculated Taxable Income**	***429,000***

Therefore, Mr. F's taxable income for 2011 is increased from €294,000 to €429,000. The additional amount taxable (i.e. €135,000) is carried forward as "excess relief" to the year 2012 under section 485F TCA 1997. It will be a specified relief to the extent that it is used in 2012 (or subsequent years).

Example 12. Ms. G (see Example 9) has taxable patent income of €90,000 in 2011. She also has PAYE income of €170,000 and has no ring-fenced income. She uses €50,000 in Film relief in 2011.

Stand-alone basis 2011: If the Film relief is the only relief used by Ms. G in the tax year 2011, then she is not subject to the restriction as the use of specified reliefs is less than the Relief Threshold Amount of €80,000. In this situation, her taxable income would be €210,000 (i.e. incomes of €90,000 and €170,000 less €50,000 Film relief). However, as she has excess relief carried forward from 2010(see Example 9), this relief must be taken into account in calculating the restriction.

Excess relief from 2010: Ms. G has excess relief of €45,000 coming forward from the tax year 2010 (see Example 9). This relief is set against her chargeable income in 2011 and reduces her taxable income.

Ms. G's taxable income for 2011 is €165,000 (see below) after excess relief forward from 2010 is taken into account.

Exempt Income	**€**	**Calculation of Taxable Income**	**€**
	0.00	Patent Income	90,000
		PAYE Income	170,000
	Less		
		Film Relief	(50,000)
		Section 485F relief (forward from 2010)	(45,000)
		Taxable Income	165,000

The restriction applies for 2011.

The total specified reliefs used are €95,000 (€45,000 excess relief forward from 2011 + €50,000 Film relief). Adjusted income is €260,000 (see below) and is greater than the Income Threshold Amount of €125,000. The use of specified reliefs (€95,000) is greater than the Relief Threshold Amount of €80,000 and also greater than 20 per cent of the adjusted income (i.e. €52,000).

Calculation of the restriction, which results in recalculated taxable income of €180,000 for 2011, is as follows:

Adjusted Income	**€**	**Recalculated Taxable Income**	**€**
T - Taxable Income	165,000	T - Taxable Income	165,000
S - Specified Reliefs	95,000	S - Specified Reliefs	95,000
R - Ring fenced Income	(0.00)	Y – €80,000 or, if greater, 20% of Adjusted Income	(80,000)
Adjusted Income	260,000		
20% of Adj. Income	*52,000*	**Recalculated Taxable Income**	***180,000***

Therefore, Ms. G's taxable income for 2011 is increased from €165,000 to €180,000. The additional amount taxable (i.e. €15,000) is carried forward as "excess relief" to the year 2012 under section 485F TCA 1997. It will be a specified relief only to the extent that it is used in 2012 (or subsequent years).

Appendix 8 – worked example: double tax relief

Example 13. The following example shows how double tax relief is calculated, in accordance with Finance (No. 2) Act 2013, for a jointly assessed couple where one spouse is subject to the high earners restriction and the other is not.

In summary, the relevant information for each spouse is:

Mrs H:

- Foreign investment income of €90,000 which suffered foreign tax of €30,000.
- Deposit interest subject to DIRT €5,000
- Trading profits €200,000
- Specified reliefs carried forward from prior years €200,000

Mr H:

- Foreign investment income of €10,000 which suffered foreign tax of €2,000
- Employment income of €50,000

Step 1 - calculate Irish Effective Rate using the new formula:

Calculate taxable / recalculated taxable income

	Mrs. H	Mr. H	Joint
	€	**€**	**€**
Case III	90,000	10,000	100,000
Case IV	5,000		5,000
Case I	200,000		200,000
Schedule E		50,000	50,000
Total income	**295,000**	**60,000**	**355,000**
S.485F carry forward	(200,000)		(200,000)
Taxable income	**95,000**	**60,000**	**155,000**
Recalculated taxable income Note 1.1	**215,000**	**60,000**	**275,000**

Work out Income Tax Payable

First €41,800 @ 20%	8,360
Additional lower rate band - 23,800 @ 20%	4,760
Deposit Interest @ 41%	2,050
Balance @ 41%	83,804
Total	**98,974**
Less non-refundable tax credits	(3,300)
DIRT	(2,050)
Income tax payable	**93,624**

Work out Irish effective rate of tax

	Mrs. H	Mr. H
Share of tax Note 1.2	77,800	15,824
Irish effective rate of tax Note 1.3	26.83%	26.37%

Note 1.1 High Income Earners Restriction

Adjusted Income	**€**	**Recalculated Taxable Income**	**€**
T - Taxable Income	95,000	T - Taxable Income	95,000
S - Specified Reliefs	200,000	S - Specified Reliefs	200,000
R - Ring fenced Income	(5,000)	Y – €80,000 or, if greater, 20% of Adjusted Income	(80,000)
Adjusted Income	290,000		
20% of Adj. Income	*58,000*	**Recalculated Taxable Income**	***215,000***

Note 1.2
Share of tax is calculated as:

$$\text{Total tax} \times \frac{\text{Share of Total income}}{\text{Total income}}$$

Note 1.3
Irish effective rate for Mrs H is calculated using the new formula of:

$$\frac{\text{Mrs H's Share of tax}}{\text{Adjusted Income}}$$

Irish effective rate of tax for Mr H, who is not subject to the HER, is calculated as:

$$\frac{\text{Mr H's Share of tax}}{\text{Mr H's Total Income}}$$

Step 2 – re-gross foreign income using the new effective rate and calculate tax payable

Calculate taxable / recalculated taxable income

	Mrs. H	Mr. H	Joint
	€	€	€
Case III Note 2.1	81,998	10,000	91,998
Case IV	5,000		5,000
Case I	200,000		200,000
Schedule E	-	50,000	50,000
Total income	**286,998**	**60,000**	**346,998**
S.485F carry forward	(200,000)		(200,000)
Taxable income	**86,998**	**60,000**	**146,998**
Recalculated taxable income Note 2.2	**206,998**	**60,000**	**266,998**

Work out Income Tax Payable

First €41,800 @ 20%			8,360
Additional lower rate band - 23,800 @ 20%			4,760
Deposit Interest @ 41%			2,050
Balance @ 41%			80,523
Total			**95,693**
Less non-refundable tax credits			(3,300)
Less DIRT			(2,050)
Less Foreign tax credit Note 2.1	(21,998)	(2,000)	(23,998)
Income tax payable			**66,345**

Note 2.1 Double Tax Relief

	Mrs. H	Mr. H
Gross foreign income	90,000	10,000
Foreign Tax	30,000	2,000
Irish effective rate (From Step 1)	26.83%	26.37%
Foreign rate	33.33%	20.00%
Lower rate	**26.83%**	**20.00%**
Gross up	81,998	10,000
Credit	21,998	2,000

Note 2.2 High Income Earners Restriction

Adjusted Income	**€**	**Recalculated Taxable Income**	**€**
T - Taxable Income	86,998	T - Taxable Income	86,998
S - Specified Reliefs	200,000	S - Specified Reliefs	200,000
R - Ring fenced Income	(5,000)	Y – €80,000 or, if greater, 20% of Adjusted Income	(80,000)
Adjusted Income	281,998		
20% of Adj. Income	*56,400*	**Recalculated Taxable Income**	***206,998***