



**Irish Tax
Institute**

Leaders in Tax

Note for TaxFax – 26 July 2013

Interaction of “Property Reliefs’ Surcharge” and High Earners’ Restriction – Revenue Position

Finance Act 2012 introduced Section 531AAE TCA 1997 which imposes an additional 5% USC charge on an individual with aggregate income of €100,000 or more where the individual uses certain property or area based incentive reliefs. The legislation provides that this 5% “property reliefs’ surcharge” applies to the amount of reliefs used in respect of a tax year. Section 531AAE(2) notes that the reference to relief being used in respect of a tax year.. *“shall be a reference to that part of that specified relief to which full effect has been given for that tax year”*. It came to the Institute’s attention that practitioners were taking a different technical interpretation to Revenue on the application of the surcharge in cases where the High Earners’ Restriction (HER) applies, i.e. practitioners considered that the surcharge applies to income sheltered after taking account of the HER.

We were asked to raise this matter with Revenue at TALC to obtain their view. Revenue’s view is that the “property reliefs’ surcharge” does not take account of any restriction imposed by the HER. Revenue stated that the restriction under Chapter 2A of Part 15 TCA 1997 (the HER) does not reduce the amount of any of the specified reliefs claimed by a taxpayer but rather restricts the taxpayer’s ability to reduce their taxable income below a certain amount. This is done by increasing the taxable income rather than by adjusting the amount of reliefs claimed. Therefore, in Revenue’s view the application of the HER does not affect the amount of reliefs to which ‘full effect’ has been given – “full effect” has been given to a property relief if there is sufficient income to absorb the claim. Revenue noted that the wording “full effect” is not unique to section 531AAE. It has also been used, for example, in section 304 TCA 1997 and in Schedule 25B.

Where a taxpayer has claimed reliefs which have been subject to the HER, then the restricted reliefs carried forward to future years will not be subject to the 5% surcharge in future years.

Practitioners will need to take their own views on this issue and consider its implications