TC07669

High Income Child Benefit Charge penalty

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/03586

BETWEEN

GAURAV MEHTA **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE SARAH ALLATT
MS SUSAN STOTT

Sitting in public at Taylor House on 6 February 2020

The Appellant did not appear and was not represented

Mr O'Grady, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

THE APPEAL

1. This is an appeal against penalties amounting to £535.40, raised for the tax years 2013/14, 2014/15, 2015/16 & 2016/17 charged under Schedule 41 to the Finance Act 2008 (FA08).

2. The penalties were charged as a result of the Appellant's failure to notify liability to the High Income Child Benefit Charge (HICBC). The penalties were raised and notified to the Appellant on 25 February 2019.

3. The failure to notify penalties are the only matter under appeal.

4. The Appellant did not appear at the hearing. We are satisfied he was given notice of the date of the appeal. Having made attempts to contact him on his mobile phone, we decided to proceed in his absence.

BACKGROUND

5. From 7 January 2013 changes came into effect as to how the receipt of Child Benefit affected households where an individual's 'Adjusted Net Income' (ANI) exceeds £50,000 (within a tax year). For each £100 in excess of £50,000 a 1% tax liability arises calculated on the amount of Child Benefit received.

6. Consequently, where an individual's ANI reaches £60,000 the effect is that 100% of the Child Benefit received becomes liable to a tax charge – the HICBC.

7. Anyone liable to the HICBC who chooses to carry on receiving Child Benefit payments has a legal obligation to declare the amount of Child Benefit they or their spouse/partner receive, by registering for Self-Assessment (if they are not already registered) and filling in a tax return each year.

8. In this case it is the Appellant that has an ANI exceeding £50,000, and has received payments of Child Benefit since May 2011 for their first child, and for two children since 2018 when their second child was born.

9. The evidence shows that the Appellant has been in receipt of Child Benefit for all of the years under appeal – 2013/14, 2014/15, 2015/16 & 2016/17.

10. On 01 October 2018, the Respondents issued a letter to the Appellant at his last known address him about the recent changes to Child Benefit for people on higher incomes and that HICBC may apply to him.

11. The Appellant did not respond.

12. 16 January 2019, the Respondents issued a letter notifying the Appellant that he may be liable for HICBC and could be charged.

13. 22 January 2019, the Appellant responded via telephone agreeing with the assessment figures.

14. On 25 February 2019, the Respondents issued assessments

15. The same date, Respondents issued a penalty notice to the Appellant as a result of his failure to notify the above chargeability. The maximum reduction was given in all cases, due to 'telling, helping and giving'. The penalties are in the amounts –2013/14 - £29.40, 2014/15 - £179.00, 2015/16- £219.40, 2016/17- £107.60.

16. The following facts are not disputed for each of the years under appeal: -

    (1) The amount of ANI

(2) The amount of child benefit received

(3) The Appellant was not issued with a notice to file a Self-Assessment return under section 8 TMA 1970.

(4) The Appellant did not file a Self-Assessment return under section 7 TMA 1970, and therefore did not notify his liability to the HICBC,

(5) The Appellant accepts the assessments and has made steps to make payment of them.

GROUNDS OF APPEAL

17. The Appellant's grounds of Appeal are as follows:

18. He had been claiming child benefit since 2012 and was not aware of the change in legislation.

19. He did not receive the post HMRC said they had sent him regarding the legislation change. He puts forward two reasons for this – firstly he moved house in October 2013 around the time HMRC say they sent an information letter, and secondly that his post often goes astray due to the fact he lives on a street with two houses with the same house number and postcode (one being a separate development which also has an additional street name).

20. His financial situation is such that the fines (in addition to the payment of the tax and interest) are a significant burden.

21. HMRC submit that they are not obliged to inform taxpayers of a change in the law. They say there was a national campaign of information, but this was not something they were obliged to do.

22. Therefore HMRC further submit that the fact that the Appellant may not have received information notices that they sent to him is not relevant in this situation.

THE LAW

23. The law is set out in the appendix to this decision.

DISCUSSION

24. We note that there is no disagreement that the penalties have been correctly calculated. In his Notice of Appeal the Appellant was unsure whether the amount at issue was £1647.90 or £535.40 but HMRC confirmed in the hearing that £535.40 was the correct figure and matches the calculations we have been shown.

25. We note that HMRC have applied the maximum discounts available to the penalties within the legislation.

26. We agree with Judge Poon in Johnstone v HMRC[2018] UKFTT 689 (TC) where she addresses the question of whether HMRC were obliged to inform taxpayers of the change in legislation. She states (para 49):

> (1) HMRC do not have a statutory duty to notify all taxpayers potentially affected by HICBC. By statutory duty, we mean a duty that is provided by Parliament and laid down by statute. For example, HMRC have a statutory 25 duty to issue a notice of assessment for any tax liability to be enforceable.
>
> (2) What initiatives or measures HMRC had taken to raise awareness of HICBC were matters of internal policy decisions, over which this Tribunal has no jurisdiction.

27. Given that we agree that HMRC had no obligation to notify the Appellant of the change in legislation, it follows that the fact that the Appellant may not have received such notifications due to problems with his address is not relevant.

28. We therefore then turn to the question of whether ignorance of the law is a reasonable excuse in this case.

29. There have been a number of cases where Tribunals have decided that ignorance of the law can be a reasonable excuse. It depends on the nature of the law in question and the characteristics of the taxpayer.

30. As the Appellant did not appear in person, we were limited to the evidence we had on paper and what HMRC were able to tell us in court.

31. The Appellant had been claiming child benefit since before the legislation was introduced. His income was variable, always over £50k and sometimes over £60k.

32. HMRC had undertaken a large publicity campaign about the change and the Appellant, had he been aware of the publicity, would have realised that he was one of those immediately affected.

33. The burden of proof is on the Appellant to show that his excuse is reasonable. Based on the information we have, we consider that a reasonable taxpayer who was affected at the time by the changes that were made to the legislation, would have made himself aware of the legislation changes in the relevant budget that affected him. The Appellant was affected from the start of this legislation, and his income through the period rose to be well in excess of the £60k threshold for full clawback.

34. Accordingly, this appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

35. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

SARAH ALLATT

TRIBUNAL JUDGE

RELEASE DATE: 8 APRIL 2020

APPENDIX

Applicable Legislation
Section 681B of ITEPA 2003
The provisions for HICBC is under s 681B of (ITEPA 2003) are as follows:

(1) A person ('P') is liable to a charge to income tax for a tax year if—

(a) P's adjusted net income for the year exceeds £50,000, and

(b) one or both of conditions A and B are met.

(2) The charge is to be known as a 'high income child benefit charge'.

(3) Condition A is that—

(a) P is entitled to an amount in respect of child benefit for a weekin the tax year, and

(b) there is no other person who is a partner of P throughout the week and has an adjusted net income for the year which exceeds that of P.

(4) Condition B is that—

(a) a person ('Q') other than P is entitled to an amount in respect of child benefit for a week in the tax year,

(b) Q is a partner of P throughout the week, and

(c) P has an adjusted net income for the year which exceeds that of Q.

Subsection 58(1) of ITA 2007

'Adjusted net income' is defined under s 681H of ITEPA 2003, by reference to sub-s 58(1) of the Income Tax Act 2007 (ITA 2007), which provides, *inter alia*, that:

For the purposes of Chapters 2 and 3, an individual's adjusted net income for a tax year is calculated as follows.

Step 1 Take the amount of the individual's net income for the tax year.

Step 2 If in the tax year the individual makes, or is treated under section 426 as making, a gift that is a qualifying donation for the purposes of Chapter 2 of Part 8 (gift aid) deduct the grossed up amount of the gift.

Step 3 If the individual is given relief in accordance with section 192 of FA 2004 (relief at source) in respect of any contribution paid in the tax year under a pension scheme, deduct the gross amount of the contribution.

Step 4 Add back any relief under section 457 or 458 (payments to trade unions or police organisations) that was deducted in calculating the individual's net income for the tax year.

The result is the individual's adjusted net income for the tax year.

Section 7 of TMA 1970

If the adjusted net income of an individual in a tax year gives rise to HICBC, then under s 7 of TMA 1970, it is provided:

(1) Every person who –

(a) is chargeable to income tax or capital gains tax for any year of assessment, and

(b)falls within subsection (1A) or (1B),

shall, subject to subsection (3) below, within the notification period, give notice to an officer of the Board that he is so chargeable.

(1A) A person falls within this subsection if the person has not received a notice under section 8 requiring a return for the year of assessment of the person's total income and chargeable gains.

(1B) A person falls within this subsection if the person –

(a) has received a notice under section 8 requiring a return for the year of assessment of the person's total income and chargeable gains, and

(b)has received a notice under section 8B withdrawing the notice under section 8.

[…]

(3) A person shall not be required to give notice under subsection (1) above in respect of a year of assessment if for that year –

(a) the person's total income consists of income from sources falling within subsection (4) to (7) below,

(b) the person has no chargeable gains, and

(c) the person is not liable to higher income child benefit charge.

Section 86 to TMA 1970

Section 86 of TMA provides for the charge of interest on any outstanding tax liability after its due date. Sub-section 1(b) provides as follows:

… any income tax or capital gains tax which becomes due and payable in accordance with section 55 or 59B of this Act, shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the relevant date until payment.

Schedule 41 to FA 2008

Paragraph 1 sets out the condition for the imposition of the penalty as referential to a 'Failure to notify':

(1) A penalty is payable by a person (P) where P fails to comply with an obligation specified in the Table below (a 'relevant obligation').

Income tax … : Obligation under section 7 of TMA 1970 …

The penalty percentage is set with reference to the 'Degrees of culpability' caterogised under para 5 as follows:

5 (1) A failure by P to comply with a relevant obligation is –

(a) 'deliberate but concealed' if the failure is deliberate and P makes arrangements to conceal the situation giving rise to the obligation, and

(b) 'deliberate but not concealed' if the failure is deliberate and P does not make arrangements to conceal the situation giving rise to the obligation.

The standard amount of penalty is provided under para 6 in accordance with the degree of culpability giving rise to the failure.

6 (1) This paragraph sets out the penalty payable under paragraph 1.

(2) If the failure is in category 1, the penalty is –

(a) for a deliberate but concealed failure, 100% of the potential lost revenue,

(b) for a deliberate but not concealed failure, 70% of the potential lost revenue, and

(c) for any other cases, 30% of the potential lost revenue.

(3) If the failure is in category 2, the penalty is –

[*150%, 105% or 45% depending on the degrees of culpability*].

(4) If the failure is in category 3, the penalty is –

[*200%, 140% or 60% depending on the degrees of culpability*].(italics being paraphrasing)

6A [defines category 1, 2, and 3 failures]

The standard amount of penalty can be reduced by taking into account the quality of disclosure. Paragraphs 12 and 13 provide for 'Reductions for disclosure' as follows:

(1) Paragraph 13 provides for reductions in penalties under paragraphs 1 to 4 where P discloses a relevant act or failure

(2) P discloses a relevant act or failure by –

(a) telling HMRC about it,

(b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it, and

(c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid.

(3) Disclosure of a relevant act or failure –

(a) is "unprompted" if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the relevant act or failure, and

(b) otherwise, is "prompted".

(4) In relation to disclosure "quality" includes timing, nature and extent.

(1) If a person who would otherwise be liable to a penalty of a percentage shown in column 1 of the Table (a 'standard percentage') has made disclosure, HMRC must reduce the standard percentage to one that reflects the quality of the disclosure.

(2) But the standard percentage may not be reduced to a percentage that is below the minimum shown for it –

(a) for a prompted disclosure, in column 2 of the Table, and

(b) for an unprompted disclosure, in column 3 of the Table.

(3) Where the Table shows a different minimum of case A and case B–

(a) the case A minimum applies if –

(i) the penalty is one under paragraph 1, and

(ii) HMRC become aware of the failure less than 12 months after the time when the tax first becomes unpaid by reason of the failure, and

(b) otherwise, the case B minimum applies.

Standard %	Minimum % for prompted disclosure	Minimum % for unprompted disclosure
30%	Case A:10% Case B 20%	Case A:0% Case B 10%
45%	Case A:15% Case B 30%	Case A:0% Case B 15%
60%	Case A:20% Case B 40%	Case A:0% Case B 20%
70%	35%	20%

100%	50%	30%
105%	52.5%	30%
140%	70%	40%
150%	75%	45%
200%	100%	60%

After applying any reduction for disclosure, further reduction to the penalty percentage may be made if there are special circumstances:

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any of the paragraphs 1 to 4.

(2) In sub-paragraph (1) 'special circumstances' does not include –

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to –

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

Paragraph 16 provides that HMRC shall 'assess', 'notify' and 'state in the notice in respect of which the penalty is assessed' (sub-para 16(1)). The time limit for raising a penalty assessment is under sub-para 16(4), whereby:

(4) An assessment of a penalty … must be made before the end of the period of 12 months beginning with –

(a) the end of the appeal period for the assessment of tax unpaid by reason of the relevant act or failure in respect of which the penalty is imposed, or

(b) if there is no such assessment, the date on which the amount of tax unpaid by reason of the relevant act or failure is ascertained.

Paragraph 17 provides a right to appeal against a penalty assessment:

17 (1) P may appeal against a decision of HMRC that a penalty is payable by P.

(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

The Tribunal's jurisdiction in relation to an appeal against a penalty assessment is provided under para 19 as follows:

(1) On an appeal under paragraph 17(1) the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 17(2) the tribunal may –

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the First-tier tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 14 –

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point),

or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 14 was flawed.

(4) In sub-paragraph (3)(b) 'flawed' means flawed when considered in the light of the principles applicable in proceedings for judicial review.

Paragraph 20 provides for the 5 defence of 'Reasonable excuse':

> 20 (1) Liability to a penalty under any of the paragraphs 1, 2, 3(1) and 4 does not arise in relation to an act or failure which is not deliberate if P satisfies HMRC or (on appeal notified to the tribunal) the tribunal that there is a reasonable excuse for the act or failure.
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> (2) For the purposes of sub-paragraph (1) –
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> (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,
>
> (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the relevant act or failure, and
>
> (c) where P had a reasonable excuse for the relevant act or failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the relevant act or failure is remedied without unreasonable delay after the excuse ceased.

Paragraph 21 has as its title '**Agency**', and where agency is involved, sub-para 21(1) provides that:

> In paragraph 1 the reference to a failure by P includes a failure by a person who acts on P's behalf; but P is not liable to a penalty in respect of any failure by P's agent where P satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that P took reasonable care to avoid the failure.