TC07793

INCOME TAX – High Income Benefit Charge – penalty assessment – reasonable excuse based on ignorance of the law – observations on HMRC's extracts from Perrin and Nicholson v Morris - appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2020/01482

BETWEEN

LEIGH JACQUES **Appellant**

-and-

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

TRIBUNAL: JUDGE NIGEL POPPLEWELL

The Tribunal determined the appeal on 25 July 2020 without a hearing with the consent of both parties under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 12 April 2020, HMRC's statement of case dated 11 June 2020, and a case specific bundle and a generic bundle of documents provided by HMRC.

DECISION

INTRODUCTION

1. This appeal concerns the High Income Child Benefit Charge ("**HICBC**"). The appellant has been assessed to HICBC for two tax years (2016-2017 and 2017-2018), together with a penalty (the "**penalty**") for failing to notify chargeability under section 7 Taxes Management Act 1970 ("**TMA**"). The penalty has been assessed pursuant to Schedule 41 Finance Act 2008 ("**Schedule 41**"). The tax assessments for the two years amount to £5,002.10. The penalty was issued in respect only of the tax year 2016-2017 and amounts to £250.10. No penalty was issued for the tax year 2017-2018.

2. The appellant has accepted the tax assessments and paid them. However he has appealed against the penalty.

THE LAW

3. There was no dispute between the parties as to the relevant legislation which I summarise below.

4. By section 681B Income Tax (Earnings and Pensions) Act 2003 (which was inserted by Finance Act 2012 with effect for child benefit payments made after 7 January 2013) a person is liable to a charge to income tax, the HICBC, for a tax year if:

(1) His adjusted net income 3 for the year is greater than £50,000;

(2) His partner's ("partner" is defined in section 681G) adjusted net income is less than his, and

(3) He or his partner are entitled to child benefit.

5. Section 7 TMA provides that if a person is chargeable to income tax he must notify HMRC of that fact within 6 months after the end of the tax year. But if his income consists of PAYE income and he has no chargeable gains he is not required to notify his chargeability to income tax unless he is liable to the HICBC.

6. Paragraph 1 Schedule 41 provides that a person who has not been sent a tax return is liable to a penalty if he fails to comply with section 7 TMA. Para 6 Sch 41 provides that in the case of a "domestic matter" (which this is) where the failure was neither deliberate or concealed (as HMRC accept), the penalty is 30% of the "potential lost revenue" ; but paras 12 and 13 provide for a reduction in that percentage in the case of prompted disclosure where a taxpayer gives HMRC help in quantifying the unpaid tax, but subject to a minimum penalty rate of 10% if HMRC became aware of the failure less than 12 months after the tax "first becomes unpaid by reason of the failure" (paragraph 13(3)(a)) and 20% otherwise.

7. Paragraph 14 Schedule 41 provides that HMRC may reduce a penalty because of special circumstances (and by paragraph 19 the tribunal may do so where HMRC's decision in this regard is flawed). Paragraph 20 provides that liability to a penalty does not arise if the taxpayer satisfies HMRC or the tribunal on an appeal that he had a reasonable excuse for the failure.

EVIDENCE AND FACTS

8. I was provided with a court bundle, which included the appellant's notice of appeal. The respondents' statement of case contains useful background to the appeal. I was also provided with a substantial generic bundle which contained much information about the "advertising campaign" conducted by HMRC in relation to the HICBC. On the basis of this information I make the following findings of fact:

(1) The appellant's spouse had been in receipt of Child Benefit from 25 July 2005. HMRC's records show this.

(2) In 2012, prior to the introduction of the HICBC, HMRC issued a number of press releases which detailed the introduction of the charge and advised high income Child Benefit parents to register for self-assessment. Similar press releases came out in 2014. In 2018 and 2019 HMRC, in response to misgivings raised in connection with reasonable excuse defences issued a further round of press releases dealing with that issue. There is considerable information about the charge on HMRC's website.

(3) The appellant was aware of none of these press releases, nor of this information. He was sent no letter advising him that he might be liable to the HICBC until November 2019.

(4) For both the 2016-2017 and 2017-2018 tax years, the appellant was an employee.

(5) For the tax year 2016-2017 his adjusted net income was £60,001.16. For 2017-2018, it was £61,594.51.

(6) The appellant had not been required to submit a self-assessment tax return for either of the years in question or for any previous tax year.

(7) On 6 November 2019 HMRC issued a "nudge" letter to the appellant advising him to check whether he was liable to the charge.

(8) On 13 January 2020 HMRC issued a reminder letter to the appellant.

(9) Following receipt of that reminder letter, on 17 January 2020, the appellant telephoned HMRC. He explained that he was a high earner and asked what steps he should take to rectify the situation. He was told that he would need to complete a self-assessment return for all the previous years since 2013 in which he had earned over £50,000. The HMRC representative completed his 2017-2018 tax return and told him that there would be no penalty for that tax year as he had voluntarily contacted HMRC. She told him that he would have to wait for a unique tax reference number in order to complete further self-assessment tax returns. He was not told at that stage that there might be a penalty for failure to notify for the tax year 2016-2017 (or indeed for any other tax year).

(10) On 29 January 2020 HMRC issued tax assessments for the charge for the tax years 2016-2017 and 2017-2018.

(11) On 29 January 2020 HMRC issued a notice of penalty assessment to the appellant for failing to notify chargeability. No penalty was charged for the 2017-2018 tax year but the penalty was charged for the 2016-2017 tax year. The penalty was calculated at 10%

of the amount of the HICBC for that tax year, on the basis of non-deliberate and unprompted behaviour. The penalty range for that behaviour is 10%-30%.

(12) As soon as the appellant realised that he and his spouse were no longer entitled to Child Benefit, his spouse cancelled their claim.

(13) HMRC received an appeal from the appellant on 4 March 2020 which was rejected following which, on 12 April 2020 the appellant lodged his appeal with the tribunal.

BURDEN OF PROOF

9. The burden of establishing that it has made a valid in time assessment for the penalty in the correct amount lies with HMRC. The standard of proof is the balance of probabilities.

10. If they can establish this then the burden of proving that he has a reasonable excuse, or that there are special circumstances, lies with the appellant. The standard of proof is the same namely the balance of probabilities.

SUBMISSIONS

11. HMRC submit that the appellant has not challenged the tax assessments and has paid them. Nor is there any dispute regarding the adjusted net income for the relevant tax years; the fact that the appellant received Child Benefit during those tax years; that the appellant was not issued with a notice to file a self-assessment tax return for the tax years in question; nor that the appellant failed to notify HMRC of his liability to the HICBC for those tax years. They do not consider that the appellant has a reasonable excuse for failing to notify chargeability. They accept that the appellant was not aware of the change in legislation but HMRC is not obliged to notify every person of every change to legislation that might affect them. Individuals need to take steps to understand the law and how it applies in their circumstances. They do not consider that ignorance of the law nor the fact that the appellant was not personally notified of the requirement to complete a self-assessment return comprises a reasonable excuse. They cite a variety of extracts from case law to justify this, including paragraph [81] from the Upper Tribunal decision in *Christine Perrin v HMRC* [2018] UKUT 156 ("***Perrin***") (although, interestingly, and disappointingly, they do not mention paragraph [82] of that decision which is set out below). Although they did not consider special circumstances when assessing the penalty in January 2020, it is HMRC's view that there is nothing unusual or exceptional in the appellant's circumstances to comprise special circumstances or to render the penalties unfair.

12. The appellant submits that he was unaware of his liability for the HICBC until he received the chasing letter on 13 January 2020. Following that he immediately contacted HMRC by telephone and discussed the position with them; he completed his self-assessment tax returns; his wife cancelled their claim for Child Benefit; he has paid the charge having taken out a loan to do so; no mention of a penalty for 2016-2017 was made by HMRC's agent and he spoke to her over the telephone in January 2020; there are no differences in the circumstances relating to 2016-2017 compared to 2017-2018 in which HMRC are not charging him a penalty; it is not fair to penalise him; he cannot afford to pay the penalty; HMRC did not tell him about the new rules relating to the HICBC until 2020 despite the fact that it was introduced in 2013.

DISCUSSION

13. I find that the penalty assessment dated 29 January 2020 has been properly and accurately calculated in accordance with the correct legal principles and was served on the appellant.

14. So the pendulum now swings to the appellant to establish that he has a reasonable excuse or that there are special circumstances which warrant a reduction in the penalty.

15. The legal principles which I must consider when an appellant submits that he has a reasonable excuse are set out in *Perrin*. The relevant extract is set out below:

> "81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:
>
> First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).
>
> (1) Second, decide which of those facts are proven.
>
> (2) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"
>
> (3) Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.
>
> 82. One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long. The Clean Car Co itself provides an example of such a situation."

16. The test I adopt in determining whether the appellant has an objectively reasonable excuse is that set out in *The Clean Car Co Ltd v C&E Commissioners* [1991] VATTR 234, in which Judge Medd QC said:

> "The test of whether or not there is a reasonable excuse is an objective one. In my judgment it is an objective test in this sense. One must ask oneself: was what the taxpayer

did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?"

17. It is clear from the foregoing extract from *Perrin* that ignorance of the law can, in certain circumstances, comprise a reasonable excuse (notwithstanding HMRC's submission to the contrary). It is a matter of judgment for me as to whether it is objectively reasonable for the appellant in the circumstances of this case to have been ignorant of the requirement to complete a self-assessment tax return in light of his liability to the HICBC.

18. It is equally clear from the evidence that prior to the introduction of the HICBC, HMRC launched an extensive information campaign to make the general public aware of the introduction of the charge.

19. What is not so clear from the evidence adduced in this case, but which I am aware of because of other HICBC cases which I have read and on which I have sat, is that in November 2012 HMRC issued a briefing to over a million higher rate taxpayers about the charge. And in September 2013 self-assessment letters known as "SA 252" letters were sent to a number of higher rate taxpayers. A pro forma SA252 letter is in the generic bundle which HMRC have provided for this appeal.

20. HMRC have not submitted that an SA 252 letter was sent to this appellant nor indeed that he was one of the million or so higher rate taxpayers notified about the introduction of the charge in 2012. I do not know why this was, but I suspect that he may well have not been a higher rate taxpayer at that time. So no specific communication regarding the HICBC was sent to this appellant.

21. I have found as a fact that notwithstanding HMRC's advertising campaign, this appellant was not aware of the HICBC until January 2020.

22. The appellant submits that he should have been made specifically aware of the charge. HMRC should have notified him of his liability. HMRC say that there is no such obligation on them. I agree with them on this point. But I would point out that it is not unreasonable for this appellant to make the point that HMRC have known since 2005 that his spouse was claiming Child Benefit, and it would have been open to HMRC to have specifically notified him or his spouse in 2012 either directly or via the Child Benefit Agency, about the introduction of HICBC given this knowledge even if the appellant had not been a high earner at that time. Indeed, given that she was an ongoing claimant, and known to be such by HMRC, it would have been open to HMRC to have sent his spouse or himself some form of communication between 2013 and 2020, along the lines of an SA252, suggesting that the recipient might test whether they could be liable to the HICBC. However I do not believe that that gives rise to any legitimate expectation on the part of this appellant that he could justifiably expect HMRC to specifically notify him of the change in law. So a lack of any such specific notification cannot be a reasonable excuse.

23. But I do think that it is objectively reasonable for the appellant in the circumstances of this case to have been ignorant of the requirement to complete a self-assessment tax return in light of his liability to the HICBC.

24. The reason I have come to this conclusion is largely because the appellant was not within the self assessment regime up to and including the two tax years in question, and during those

tax years he was an employee. There was nothing that put him on notice that the HICBC had been introduced, and that he was affected by it. Whilst I have already said that I did not expect HMRC to specifically notify this particular taxpayer of the changes in law, nor indeed to alert him to the fact that he might be affected by these changes, there seems equally no reason why this appellant should have thought that there was any change to the Child Benefit regime since his spouse had signed up to it and claimed it since 2005. In the generic bundle, HMRC have included copies of the documents which a Child Benefit claimant would have completed both before and after the introduction of the HICBC. It is clear from those documents that a claimant making a Child Benefit claim after the introduction of the charge would have clearly been put on notice of the charge. However HMRC have not submitted that this appellant or his spouse had been sent those documents, nor that, as an ongoing claimant, his spouse would have seen them in order to make her ongoing claims. HMRC have simply included them in the bundle but have not referred to their relevance regarding the knowledge of this taxpayer and his spouse in their detailed and specific submissions.

25. There is an important difference between the circumstances of someone who is within the self assessment regime and someone who is not. This difference is twofold. Firstly, a taxpayer who submits a self-assessment tax return makes a declaration that the information given in the return is correct and complete to the best of the taxpayer's knowledge and belief. It is implicit in making that declaration that the taxpayer will have undertaken some form of analysis concerning his tax position, and it would be reasonable to assume that such a taxpayer would have considered HMRC's website and might therefore have come across the HICBC information. Secondly, and equally if not more importantly, the tax return guide which explains to a taxpayer how to complete a return, contains detailed information (on page TRG 22) about the charge and the criteria which a taxpayer completing the return needs to consider. To my mind it would be very difficult for a taxpayer who completes a tax return after 7 January 2013 to allege that he or she was not on notice about the charge. But of course an employee who does not complete a self-assessment tax return makes no such declaration, nor are the notes in the guide something of which he or she will be aware.

26. It is clear to me that the appellant is a conscientious taxpayer, and that had anything prompted him to enquire into the charge, he would have done so promptly and, I strongly suspect, that had he realised that he was likely to be charged to tax under the HICBC regime, he would have ceased to claim (or rather his spouse would have ceased to claim) Child Benefit.

27. But there was nothing which prompted the appellant to access the information which is available about the charge on HMRC's website. HMRC cite an extract from a case with which I deal in more detail below, which according to them indicates that it is not reasonable for HMRC to trawl through their records for information and notify a taxpayer of a liability based on that information. This extract is taken out of context since it relates to the provision of information required to gainsay an HMRC tax assessment. But equally it seems to me unreasonable for HMRC to expect taxpayers to trawl through HMRC's website and the prolific number of public notices to see whether they might be affected by a tax change of which they have no knowledge.

28. In my view it is not incumbent on the objectively reasonable taxpayer without notice of a change in tax law to go rummaging through all of HMRC's information on the off chance that there might be something which is hidden away in it which is relevant to his tax position.

29. Is it a reasonable for this taxpayer not to have so rummaged? In my view yes. I can see no reason why he was not entitled to assume that the Child Benefit regime would not continue

unaffected given that he was outside the self-assessment regime, was being paid as an employee, and there was nothing to put him specifically on notice of the changes other than HMRC's information (press releases etc) together with information on their website of which I have found as a fact that this appellant was not aware. HMRC have not indicated the publications in which those press releases featured, and that they had "trickled down" so that it would have been impossible for any individual in this country not to have seen them.

30. In the generic bundle, HMRC have included copies of a number of cases. In their statement of case they have identified a number of these under the heading "relevant case law". They have then referred to some of those cases (but not all of them) in more detail in that statement of case. I have been through those cases. There is nothing in them which causes me to depart from my foregoing view that in the circumstances of this appellant, his ignorance comprises a reasonable excuse for his failure to notify chargeability.

31. The cases identified by HMRC as being relevant are:

(1) Nicholson v Morris [1976] STC 269

(2) HMRC v Hok Ltd [2012] UKUT 363 (TCC)

(3) Christine Perrin v HMRC [2018] UKUT 156 (TC)

(4) Jerome Anderson v HMRC [2018] UKUT 0159 (TCC)

(5) HMRC v Robertson [2019] UKUT 0202 TCC

(6) Nonyane v HMRC [2017] UKFTT 011 (TC)

(7) Hesketh & Anor v HMRC [2017] UKFTT 871 (TC)

(8) Lau v HMRC [2018] UKFTT 0230 (TC)

(9) Johnstone v HMRC [2018] UKFTT 689 (TC)

32. *Lau, Robertson, Johnston* and *Hesketh* are all cited as authority for the proposition that there is no obligation on HMRC to notify, specifically, a taxpayer of new legislation. I take no issue with that proposition and agree with it.

33. *Robertson* is also authority for the proposition that the potential lost revenue is the income tax to which the appellant is liable in respect of the tax years in question by reason of the failure to notify and the fact that there was no assessment does not affect the liability. I am bound by that proposition, and I have found in this case that the potential lost revenue was correctly calculated.

34. HMRC then cite *Nicholson v Morris* as authority that "it is simply unarguable that the appellant may have been entitled to simply "wait" for the respondents to discover their liability before notify. The High Court in Nicholson v Morris makes it clear that this cannot be a reasonable excuse at [109]

> "…it is idle for any taxpayer to say to the Revenue, 'Hidden somewhere in your vaults are the right answers: go thou and dig them out of the vaults.' That is not a duty on the Revenue. If it were, it would be a very onerous, very costly and very expensive operation, the costs of which would of course fall entirely on the taxpayers as a body. It is the duty

> of every individual taxpayer to make his own return and, if challenged, to support the return he has made, or, if that return cannot be supported, to come completely clean and if he gives no evidence whatsoever he cannot be surprised if he is finally lumbered with more than he has in fact received. It is his own fault that he is so lumbered.*"""*

35. I take considerable issue with HMRC's contention that either the case or this extract from it shows what they claim it to show. This is not a reasonable excuse case, it concerns a barristers clerk who was assessed to an additional amount of income tax on the basis that he had under declared his income. The issue was whether he could displace the estimated assessments made by HMRC to recover that income when he had given no evidence of what his income actually was. It was not a reasonable excuse case, and earlier in the extract set out above, the Judge said:

> "…… That is why, of course, the Taxes Management Act throws upon the taxpayer onus of showing that the assessments are wrong. It is the taxpayer who knows and the taxpayer who is in a position (or, if not in a position, who certainly should be in a position) to provide the right answer and chapter and verse for the right answer……."

36. It is disingenuous for HMRC to include such a self-serving extract in their statement of case and suggest that the issue which it is discussing is reasonable excuse.

37. It seems to me that in any case, in the case of HICBC, HMRC have, to a limited extent, dug into their vaults even though they claim to be under no obligation on the basis of this extract to do so. They had sent to approximately 1 million higher rate taxpayers notification that they considered might be affected by the changes to the Child Benefit regime and followed this up by issuing to a proportion of those an SA252. Presumably they did this on the basis that, as they say in the taxpayer's charter (broadly paraphrased) that one of their aims is to help taxpayers get their tax affairs right. And that of course is a highly commendable aim. And I accept too there is no statutory or other binding obligation on HMRC to notify an individual taxpayer of a change of law. But I ask myself whether HMRC might not have done better to have informed the Child Benefit Agency of the changes (there is no evidence before me whether they did or did not) and then left it to that Agency to notify every single claimant of the law changes. I strongly suspect that that Agency did have the names and addresses of everyone who was claiming Child Benefit, even though HMRC does not. This would have been a proportionate means of promulgating the information about the change of law to the cohort of people who were affected by it.

38. I also think it is unattractive for HMRC to argue that, on the one hand, it has no obligation to dig through its vaults, yet it expects a taxpayer to do so.

39. I have commented on HMRC's failure to include, in its extract from *Perrin*, the crucial paragraph, paragraph [82], of that decision, and I am concerned about that failure since paragraph [82] makes clear that in certain circumstances ignorance of the law can comprise a reasonable excuse. The cases of *Hesketh, Lau* and *Johnston* are all cases decided before the publication of the Upper Tribunal decision in *Perrin,* and all, broadly speaking, state that as a matter of principle, ignorance of the law cannot comprise a reasonable excuse. Furthermore, *Hesketh* is a case which deals with a failure to file NRCGT returns following the disposal of UK property. This is a very different position to an appellant who has failed to notify chargeability to HICBC.

40. In their statement of case HMRC suggest that even if the appellant did have a reasonable excuse, it would have to continue for approaching two years in order to cover the entire period

of failure in question which they claim lasted from 7 October 2017 to 17 January 2020 and believe that it is inconceivable that such an excuse could have continued for this length of time.

41. I disagree. The reason I have found that the appellant has a reasonable excuse in the first place is that he did not know about the charge until November 2019. That ignorance was objectively reasonable for this appellant in his particular circumstances. If HMRC consider that it is inconceivable that he could have remained ignorant for that two-year period, then I do not agree with them. It would also be logical to submit it was inconceivable for him to have been ignorant of the charge since its introduction. But I have found that he was not aware of the charge and it was reasonable for him not to have been aware of it.

42. I would also add that I have seen very little evidence of HMRC seeking to publicise the charge to employees even though they have done so, through the self assessment regime, to the self-employed. I asked myself how difficult would it have been for HMRC to have publicised the charge to employers through the panoply of information which they sent to employers (or make available to employers) and told employers that they, in turn, should include with the next wage slip following the introduction of the charge (or perhaps some time before it as they did with the warning letters to the 1 million or so higher rate taxpayers) information about the introduction of the charge. It seems to me that, rather like using the Child Benefit Agency to inform the cohort of individuals who are likely to be affected by the charge, this would have been of considerable assistance to employees who wished to get their tax affairs right.

43. So for the foregoing reasons I find that the appellant has a reasonable excuse for failing to notify HMRC of his liability to pay HICBC for the two tax years in question.

44. HMRC accept in their statement of case that they have not considered special circumstances when assessing the appellant for penalties or when reviewing his position. In HMRC statement of case, they submit there is nothing exceptional or unusual in the appellant's grounds of appeal which renders the penalty is unfair or contrary to what Parliament intended when enacting the legislation.

45. I disagree with HMRC that special circumstances only apply where there are exceptional unusual circumstances. The following extract from the Upper Tribunal decision in *Barry Edwards v HMRC* [2019] UKUT 131, sets out the correct test.

> "73. The FTT then said this at [101] and [102]:
>
> > "101. I appreciate that care must be taken in deriving principles based on cases dealing with different legislation. However, I can see nothing in schedule 55 which evidences any intention that the phrase "special circumstances" should be given a narrow meaning.
> >
> > 102. It is clear that, in enacting paragraph 16 of schedule 55, Parliament intended to give HMRC and, if HMRC's decision is flawed, the Tribunal a wide discretion to reduce a penalty where there are circumstances which, in their view, make it right to do so. The only restriction is that the circumstances must be "special". Whether this is interpreted as being out of the ordinary, uncommon, exceptional, abnormal, unusual, peculiar or distinctive does not really take the debate any further. What matters is whether HMRC (or, where appropriate, the Tribunal) consider that the circumstances are sufficiently special that it is right to reduce the amount of the penalty."

74. We respectfully agree. As the FTT went on to say at [105], special circumstances may or may not operate on the person involved but what is key is whether the circumstance is relevant to the issue under consideration."

46. The definition of special circumstances should not be limited to the exceptional or the unusual. But even adopting this broader definition I, like HMRC, do not think that there are any circumstances which are special for this appellant.

47. I agree too with HMRC that to the extent that this appeal is against a charge to interest, I have no jurisdiction to consider that part of the appeal. Nor do I have jurisdiction to consider the appellant's claim that he has been dealt with unfairly.

DECISION

48. I allow the appellant's appeal.

A FINAL WORD

49. I have made my misgivings about HMRC's reliance on the case of *Nicholson v Morris* earlier in this decision. I am also critical that the extract from *Perrin* which they include in their statement of case (and as they have done in a number of other HICBC cases which I have dealt with) does not include the crucial paragraph [82] which deals with the principle that in certain circumstances ignorance of the law can comprise a reasonable excuse. If HMRC are going to cite *Perrin* and include extracts from that case then it is only fair that they include paragraph [82].

RIGHT TO APPLY FOR PERMISSION TO APPEAL

50. 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.

NIGEL POPPLEWELL

TRIBUNAL JUDGE

RELEASE DATE: 29 JULY 2020