



TC07866

High Income Child Benefit Charge penalty

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2020/01556

BETWEEN

GARY BORG

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE SARAH ALLATT

The Tribunal determined the appeal on 28 September 2020 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the bundle of documents provided on 15 September 2020.

DECISION

THE APPEAL

1. This is an appeal against penalties amounting to £523.40, 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 19 December 2019.
3. The failure to notify penalties are the only matter under appeal.

BACKGROUND

4. 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.
5. 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.
6. 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.
7. In this case it is the Appellant that has an ANI exceeding £50,000, and the Appellant's spouse who has received Child Benefit for each of the years under appeal.
8. Child Benefit has been received by the Appellant's spouse since September 2000.
9. The Appellant's income was not higher than £50,000 prior to the years under appeal.
10. HMRC sent out a letter on 14 October 2012 outlining the HICBC. The Appellant says he did not receive this letter.
11. HMRC sent out a further letter on 17 August 2013 which the taxpayer says he did not receive, alerting him to the HICBC.
12. On 11 November 2019, 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.
13. The Appellant responded promptly on 20 November confirming his liability.
14. On 12 December 2019 HMRC issued assessments to the Appellant.
15. On 19 December HMRC issued a penalty notice to the Appellant.
16. The maximum discount allowed was given in all the years under appeal, reducing the penalties to 10% of the amount of tax due.
17. On 3 January 2020 the Appellant appealed to HMRC.
18. On 12 and 13 January 2020 the Appellant requested a review of the decision, and this was issued on 27 March 2020, upholding the decision.
19. The Appellant appealed to the Tribunal on 20 March 2020.
20. 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 is in the process of paying all the tax due.

GROUND OF APPEAL

21. The Appellant's grounds of Appeal are as follows:
22. He was unaware of the requirement to pay the charge.
23. He did not receive the letters dated 14 October 2012 and 17 August 2013.
24. He is disappointed HMRC did not send any further letters.
25. He is aware that the tax is due but he feels the interest and penalties are unfair.

THE LAW

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

DISCUSSION

27. We note that there is no disagreement that the penalties have been correctly calculated. The Appellant has not mentioned the amounts in his grounds of appeal. From the evidence available to the Tribunal, the amounts have been correctly calculated.
28. We note that HMRC have applied the maximum discounts available to the penalties within the legislation.
29. It is very important for the Appellant to understand the limits of the jurisdiction of this Tribunal in these matters.
30. The Tribunal has jurisdiction only to consider whether HMRC has correctly applied the law in this case.
31. The Tribunal does not have jurisdiction to consider a wider concept of fairness, nor the behaviour of HMRC, nor the conception and communication of the law.
32. Interest has been charged as set out within the legislation and this Tribunal cannot set this aside.
33. We note that the behaviour of the Appellant in this case has been beyond reproach, with prompt communication with HMRC. We note also that HMRC have given the maximum discount allowed for that.
34. We consider therefore that the grounds of appeal that the Tribunal can consider can be summarised as 'do the circumstances of the Appellant give rise to a reasonable excuse for failure to notify the obligation to file a return'.
35. These circumstances are:
36. The Appellant was not within the charge until 2013/14.
37. Therefore at the time of the media campaign the Appellant was not within the charge.
38. The Appellant says he did not receive the letters sent by HMRC in 2012 and 2013.

39. The Appellant was unaware of the new legislation.
40. Turning first to the awareness of the new legislation, and the sending of the letter.
41. 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.
42. Whilst we agree with the Appellant that it would have been useful for HMRC to repeat the sending of the letters annually, we agree with HMRC that whether the letters were sent, or received, HMRC was not obligated to send them.
43. Therefore we need to consider whether the fact that the Appellant was unaware of the law amounts to a reasonable excuse.
44. 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.
45. The burden of proof is on the Appellant to show that his excuse is reasonable. We note that HMRC sent two letters and the Appellant says he received neither.
46. There is no obvious reason for the non-receipt such as a change of address.
47. We consider the possibility of two letters being sent and neither being received is low.
48. When added to the fact that there was a media campaign in relation to these issues, I do not consider that the Appellant has shown that he had a reasonable excuse.
49. Accordingly, this appeal is dismissed.

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.

**SARAH ALLATT
TRIBUNAL JUDGE**

RELEASE DATE: 06 OCTOBER 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 week in 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' categorised 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.

(2) For the purposes of sub-paragraph (1) –

(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.