



**TC07876**

**Appeal number: TC/2020/02067**

*INCOME TAX – high income child benefit charge – failure to notify –  
whether reasonable excuse – no – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**DANIEL STEWART**

**Appellant**

**- and -**

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

**TRIBUNAL: JUDGE ANNE FAIRPO**

**The Tribunal determined the appeal on 30 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 Notice of Appeal dated 18 June 2020 (with enclosures), HMRC's Statement of Case (with enclosures) dated 24 June 2020 and the Appellant's Reply dated 18 August 2020.**

## DECISION

### Introduction

1. This is an appeal against interest and a penalty of £337.90 for the tax years 2015/16 and 2016/17, issued under Schedule 41 Finance Act 2008 on 4 February 2020, for failure to notify HMRC of liability to the High Income Child Benefit Charge (HICBC).

### Background

2. The appellant had been registered under the self-assessment tax regime since 13 May 2009 and had submitted self-assessment tax returns for the 2013/14 and 2014/15 tax years.

3. The appellant's spouse applied for child benefit in March 2011 and has been in receipt of the benefit ever since. A further claim for child benefit in respect of a second child was made in November 2013.

4. On 9 October 2019, HMRC wrote to the appellant advising him to check whether he was liable to HICBC and to contact HMRC if so. A second advisory letter was sent by HMRC to the appellant on 8 November 2019.

5. On 15 January 2020, the appellant telephoned HMRC and made a voluntary disclosure to HMRC of liability to HICBC for the tax years 2015/16 to 2017/18 (inclusive).

6. Following the issue of the penalties, the appellant appealed to HMRC on 7 May 2020. HMRC responded on 10 June 2020. The appellant appealed to this Tribunal on 18 June 2020.

7. The following are not in dispute:

- (1) That the appellant's adjusted net income was in excess of £50,000 for each of the relevant tax years;
- (2) The amounts of child benefit received in each relevant year;
- (3) That a notice to file a self-assessment return was issued to the appellant in any of the relevant tax years;
- (4) That the appellant did not notify his liability to HMRC within the time limit required by statute (s7 Taxes Management Act (TMA) 1970).

8. The appellant accepted that he was liable to pay the HICBC itself, and disputes only the penalties and interest.

### Discussion

9. The issues for this Tribunal are whether:

- (1) The penalty was correctly calculated and assessed; and
- (2) Whether the appellant has a reasonable excuse for failing to notify his liability.

*Whether the penalty was correctly calculated and assessed*

10. The appellant did not appeal the amount of the penalty, but the burden of proof is on HMRC to show that the penalty was correctly calculated and assessed.

11. As the HICBC itself was not appealed and the appellant does not dispute that he notified HMRC after the statutory deadline, there is a prima facie case that the requirements for the penalty to be imposed have been met.

12. Paragraph 5, Schedule 41, Finance Act 2008 sets out the amounts that may be charged as a penalty, based on the behaviour of the relevant taxpayer. In this case, HMRC categorised the behaviour as ‘non-deliberate’ and ‘unprompted’ and allow the maximum mitigation, reducing the penalty to the minimum permitted by statute of 10% of the potential lost revenue for 2015/16 and 2016/17. The penalty for 2017/18 was reduced to 0% as the appellant had notified HMRC within 12 months of the statutory deadline for that year.

13. The potential lost revenue is the amount of income tax to which the appellant was liable in respect of the relevant tax years which was unpaid on 31 January following the end of each such tax years (*Robertson* [2019] UKUT 0202).

14. As it was not disputed that the appellant was liable to the HICBC and that he had not notified HMRC within the statutory time limit, I find that the penalty was correctly assessed and calculated.

*Whether the appellant has a reasonable excuse*

15. The appellant’s grounds of appeal are that:

- (1) He was unaware that the tax existed until he received the letter from HMRC in October 2019;
- (2) His wife received the child benefit and was also unaware that the tax existed;
- (3) The interest and penalty charges are unfair.

16. In correspondence, the appellant also stated that:

- (1) When his wife applied for child benefit, for the first child in 2011 and the second in November 2013, his income was below the HICBC threshold and so it was not a consideration that time. His income did not exceed the threshold until November 2015, two years after the second application;
- (2) His wife had properly researched the application conditions in March 2011, but there was no paperwork for the second application as it was made online;

(3) It was unreasonable that HMRC should expect him to be aware of a tax for which he became liable more than two years after his wife's last interaction with HMRC.

17. In his reply to the Tribunal, the appellant states that:

(1) As it was a 'niche tax' affecting only a small number of taxpayers, HMRC should have notified relevant taxpayers when they became liable;

(2) HMRC had his contact details and failed to notify him of his liability until October 2019, four years after he became liable for the tax;

(3) It was unrealistic to expect that he would remember any publicity campaign about the tax more than two years after it was introduced and that in any case he disputed that the publicity campaign was particularly extensive;

(4) If HMRC are not legally obliged to notify legislation changes to individuals, then he could not be legally obliged to seek out legislative changes.

18. HMRC argued that, in summary:

(1) HMRC are not legally obliged to notify changes in legislation to each individual;

(2) When the HICBC was introduced in January 2013, there was an extensive publicity campaign to raise awareness. The HICBC was considered in several Parliamentary debates. HMRC's website provided details of the child benefit helpline, for queries as to the HICBC, and also a calculator for taxpayers to determine whether they have any liability to the HICBC.

(3) The application for the second child in November 2013 cannot have been made online as the only method of application at the time was by paper claim form. The child benefit claim form in November 2013 contained information on the first page about the HICBC, clearly stating that a charge could arise if the household income exceeded £50,000.

(4) The law places the onus of notifying a liability on the taxpayer and not on HMRC, so there is no statutory duty on HMRC to notify an individual taxpayer.

(5) The responsibility is on the taxpayer to be aware of the conditions for benefit claims.

19. The Upper Tribunal decision in *Perrin* [2018] UKUT 0156 (TCC) sets out a four stage approach to be taken when considering whether a person has a reasonable excuse (§81):

“(1) 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).

(2) Second, decide which of those facts are proven.

(3) 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?”

(4) 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.

20. The appellant’s basis for his reasonable excuse defence is that he was not aware that the law had changed and that it was not reasonable to expect him to be aware that the law had changed. He also considers that HMRC should have notified him of his liability.

21. However, firstly, it is clear that the application form used by the appellant’s wife in November 2013 clearly stated that the law had changed and so it is not unreasonable to expect the appellant should have been aware that the law had changed.

22. Secondly, I consider that ignorance of the law alone cannot be a reasonable excuse for failing to comply with the law, as this would prejudice those who do check their obligations in order to comply with the law. The statutory obligation is on the taxpayer to be aware of the law: HMRC are under no obligation to inform individual taxpayers. The appellant has provided no evidence or indication that he made any attempt to check whether the law had changed since his wife originally researched the benefit in 2011: he argues only that HMRC did not tell him and that it was not reasonable to expect him to check for himself.

23. In all these circumstances, ignorance of the law simply cannot amount to an objectively reasonable excuse.

#### *Special reduction*

24. Paragraph 14 of Schedule 41 allows HMRC to reduce the penalty below the statutory minimum if they think it right to do so because of special circumstances. Case law has established ignorance of the law does not amount to special circumstances (*Hesketh* [2017] UKFTT 871 (TC)).

25. The Tribunal’s jurisdiction in this context is limited to circumstances where it considers HMRC’s decision in respect of special circumstances was flawed when considered in the light of the principles applicable in judicial review proceedings. HMRC have considered whether to apply a special reduction and have found nothing

that is exceptional, abnormal or unusual to justify such a reduction. Applying the judicial review standards I see no reason to overturn HMRC's decision.

*Interest*

26. The appellant appealed against the interest charged by HMRC on the grounds that it was punitive and unfair. It has been established by the Upper Tribunal that this Tribunal has no power to determine that interest should not be payable (*Gretton* [2012] UKUT 261 (TCC)).

*Whether penalty is unfair*

27. The appellant also argued that the penalties were punitive and unfair. The Tribunal's powers in this case do not include any general power to reduce a penalty on the grounds that it is disproportionate. Moreover, Parliament has, in paragraph 19(3) of Schedule 41, specifically limited the Tribunal's power to reduce penalties because of the presence of "special circumstances" and, as set out above in this decision, I have considered the question of "special circumstances". Therefore, for reasons similar to those set out in *Hok* [2012] UKUT 363 (TCC), I do not consider that I have a separate power to consider the proportionality or otherwise of the penalties.

**Decision**

28. For the reasons given above, the appeal is dismissed.

29. 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.

**ANNE FAIRPO**

**TRIBUNAL JUDGE**

**RELEASE DATE: 10 OCTOBER 2020**