Neutral Citation: [2024] UKFTT 00375 (TC)

Case Number: TC09160

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2023/08165

INCOME TAX – High Income Child Benefit Charge – liability to the charge – assessments valid – Brown and Tooth considered – appeal against charge dismissed – penalties – reasonable excuse – no – special circumstances – no - penalty appeal dismissed

Heard on: 24 April 2024
Judgment date: 9 May 2024

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MR JULIAN SIMS

Between

DAVID THOMPSON

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: In person

For the Respondents: Miss Sophia Taj litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This appeal concerns the High Income Child Benefit Charge ("**HICBC**"). The appellant has been assessed ("**the assessments**") to HICBC for the tax years 2016/2017 to 2019/2020 together with penalties ("**the penalties**") for failing to notify chargeability under section 7 Taxes Management Act 1970 ("**TMA**"). The penalties have been assessed ("**the penalty assessments**") pursuant to Schedule 41 Finance Act 2008 ("**Schedule 41**"). The assessments amount in total to £5,202. The penalty assessments are for £902.80.

THE LAW

2. There was no dispute between the parties as to the relevant legislation which we summarise below.

3. 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 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.

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

4. The assessments have been raised pursuant to HMRC's discovery assessment powers as provided in section 29 TMA. Accordingly, HMRC bear the burden of establishing that they have discovered that an amount of income which ought to have been assessed to income tax has not been so assessed. In the case of *HMRC v Jason Wilkes* [2020] UKUT 0150 (TCC) ("***Wilkes***") the UT determined that HMRC had no power to make a discovery assessment in respect of the HICBC on the basis that the child benefit was not an amount of income which should have been assessed to income tax. The HICBC is a free-standing charge to tax.

5. Following the decision in *Wilkes* the provisions of section 97 Finance Act 2022 ("**Section 97"**) were enacted such that section 29 TMA was amended providing for a discovery assessment to be issued where "an amount of income tax … ought to have been assessed but has not been assessed" thereby providing for HICBC to be assessed by way of discovery assessment. Whilst the provision is generally only prospective Section 97 also provides that where a discovery assessment has been made to collect HICBC prior to tax year 2021/22 the provision is retrospective unless 1) pursuant to Section 97(5) a notice of appeal was given to HMRC in respect of the assessment prior to 30 June 2021 and the *Wilkes* basis of challenge was asserted in that appeal on a date prior to 30 June 2021; or 2) pursuant to Section 97(6) a notice of appeal was given to HMRC in respect of the assessment prior to 30 June 2021, the appeal was the subject of a temporary pause which occurred prior to 27 October 2021 and "it is reasonable to conclude that the temporary pausing of the appeal occurred (wholly or partly) on the basis that [the *Wilkes* issue] is, or might be, relevant to the determination of the appeal". The appeals which are subject to the retrospective statutory amendment are defined as "protected appeals". In this regard the protection offered is to HMRC and not the taxpayer.

6. By virtue of section 34(1) TMA, HMRC may raise a HICBC discovery assessment at any time within 4 years of the end of the tax year to which it relates. They also have the power, in consequence of section 36(1A) TMA, to raise the assessment within a period of 20 years of the year of assessment where the loss of tax arises because of a failure to notify liability to a charge to tax under section 7 TMA. That section provides that if a person is chargeable to income tax, they must notify HMRC of that fact within 6 months after the end of the tax year. But if their income consists of PAYE income and they have no chargeable gains they are not required to notify their chargeability to income tax unless they are liable to the HICBC. In consequence of the provisions of section 118(2) TMA, the 20-year assessment provisions do not apply where the taxpayer establishes a reasonable excuse for the failure to notify their liability under section 7. However, HMRC will always have a period of 4 years in which to make a discovery assessment for a protected assessment.

7. 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.

8. 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. Paragraph 6 Schedule 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 paragraphs 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.

9. 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.

THE EVIDENCE AND THE FACTS

10. We were provided with a bundle of documents. Officer Laura Mellish and Officer Richard Lambert had submitted witness statements which were taken as read. The appellant gave oral evidence on his own behalf. From this evidence we find as follows:

(1) Throughout the tax years in question, the appellant was an employee and enjoyed the benefit of a company car and fuel allowance.
(2) Prior to the tax years in question, the appellant had been registered into the self-assessment regime in July 2008 but left it in 2012.
(3) The appellant's spouse has been in receipt of child benefit for their first child on and from 4 November 2013, and in respect of their second child, on and from 29 February 2016.
(4) The appellant's adjusted net income for the years under assessment as evidenced by his PAYE records exceeded £50,000 in each of those years. The main reason for this, over and above his headline salary, arose as a result of the taxable car benefits. In addition the appellant had made pension contributions under a net pay arrangement.

(5) On 30 October 2019 HMRC issued a "nudge" letter ("the nudge letter"). That letter was addressed to the appellant at his home address. It was not returned undelivered. The nudge letter set out the circumstances in which the appellant would have to pay the charge and advised him to check whether he needed to pay the charge. A link to a website was given where he would find more information. When cross examined, the appellant's initial answer to the question of whether he received this letter was that "I would say that I probably did". Having reconsidered the position, he then said that he didn't recall getting it.
(6) HMRC's contact history summary shows that the appellant telephoned HMRC on 26 October 2020 to advise HMRC that he had cancelled his fuel allowance. The appellant's oral evidence was that he had done this because, as a result of Covid, he was using his car far less than had been the case before lockdown when he was driving 30-40,000 miles a year, and so he was not benefiting from the fuel allowance yet was paying a lot of tax for it.
(7) On 28 November 2019 HMRC issued a further letter to the appellant which was described as a "final reminder" letter which again set out the conditions under which the appellant might be liable for the charge and suggested that he should check whether he had to pay it. To work out the amount payable, he could access an online calculator. It also advised him that he might have to pay penalties should he be liable to pay the charge. The appellant's oral evidence was that he did not recall receiving this letter. It was not returned to HMRC undelivered.
(8) The child benefit records show that the appellant or his wife opted out of the child benefit allowance on 13 January 2020.
(9) It was the appellant's evidence that his wife stopped claiming child benefit on that date because he realised that because of the company car, he was over the adjusted net income threshold. This realisation came from HMRC telling him that he was over the limit and had nothing to do with the letter of 28 November 2019. He told us that colleagues at work had been discussing the charge as a number of them had received letters from HMRC and it may have been that which caused him to check and then decide to stop claiming benefit.
(10) On 17 May 2021 Officer Mellish selected the appellant for a compliance check. She reviewed his file and saw that the nudge letter and the final reminder letter had been sent to his home address. She identified that his wife was claiming child benefit. She reviewed his PAYE records, and taxable benefits declared by his employer. She calculated the appellant's adjusted net income for the tax years ending 5 April 2014 to 5 April 2020 inclusive. She then used the HMRC online calculator for each of these years to see whether HICBC was due from the appellant. She identified that the appellant was due to pay an additional charge of £5,614 for the tax years in question. She then authorised the issue of an opening letter. We find as a fact that it was Officer Mellish who made the discovery of the tax loss for the tax years in question and that she made that discovery on 17 May 2021.
(11) That opening letter was dated 18 May 2021 and was sent to the appellant's home address. In it, HMRC explained that their records showed that the appellant was liable to the HICBC and that they considered that he was liable to a charge of £5,614 for the tax years in question. It also explained why late payment penalties and interest might be due.
(12) On 24 May 2021 the appellant called HMRC to discuss his liability. He was advised that he should go away and work out how much he thought that he should be paying by use of the online calculator.
(13) On 22 June 2021 HMRC received evidence from the appellant of his adjusted net income including payslips and P11D documents. On 23 June 2021 HMRC, in a letter to the appellant, explained why pension contributions could only be deducted from the appellant's adjusted net income if they had not been paid from his net pay. They asked the appellant to provide evidence that this was the case.
(14) Not much then appears to have happened until 11 July 2022 when HMRC sent two letters to the appellant. The first was that the standard Wilkes letter explaining that because

of that case, all HICBC cases had been delayed. The second was to tell him that the information that he had provided regarding his pension contributions was insufficient to allow them to be deducted from his adjusted net income. However, HMRC had recalculated the amount of his liability, and the revised amount was £5,202.

(15) The appellant responded to this by telephoning HMRC on 26 July 2022 in which he explained that he had asked for further evidence from his pension provider regarding his pension contributions.

(16) In a further call of 26 August 2022, the appellant was asked to provide that additional information. This was not immediately forthcoming so in a letter dated 6 September 2022, HMRC explained to the appellant that as they had not received that information they were planning to issue assessments for the tax years in question and they were also going to assess the appellant to penalties.

(17) On 8 September 2022 the appellant provided more information about his pension contributions which, in a letter of 16 September 2022, HMRC rejected as providing sufficient evidence to enable them to deduct those contributions from his adjusted net income. Following further information provided by the appellant, which was rejected by HMRC as allowing them to amend his adjusted net income, HMRC issued the assessments on 11 January 2023.

(18) The assessments were not made by Officer Mellish. They were made by Officer Julie Parr. This is clear from HMRC's records where that officer is identified as having raised those assessments on 11 January 2023, and confirmed by the appellant's self-assessment notes.

(19) On 9 March 2023, HMRC issued the penalty assessments.

(20) In a letter received by HMRC on 30 January 2023, the appellant appealed against both the assessments and the penalties. This was accepted by HMRC as an appeal against both (slightly oddly given that the penalty assessments were not issued until over a month later). HMRC provided their view of the matter letter against both appeals on 8 February 2023 and offered the appellant a statutory review which the appellant accepted. On 12 April 2023, HMRC issued their review conclusion letter which upheld the assessments (the review could not deal with the penalty assessments since they had not been issued at the time of the assessments). On 26 April 2023 the appellant notified his appeal to the tribunal.

DISCUSSION

11. There are two matters which we have to decide. The first is whether the HICBC is properly chargeable. The second is whether, if it is so chargeable, the appellant is liable to the penalties. Different considerations apply to these issues.

The assessments

12. We start with the HICBC, and it is for HMRC to show that the assessments are valid in time assessments which have been properly notified to the appellant. HMRC must establish this on the balance of probabilities.

13. If we find that the assessments were valid, then the onus switches to the appellant to show that they overcharge him. He must demonstrate this on the balance of probabilities.

14. We have found as a fact that Officer Mellish discovered a loss of tax on 17 May 2021.

15. But the discovery assessment itself was not raised or issued by that officer. It was raised and issued by Officer Parr, on 11 January 2023.

16. In the first-tier tribunal decision in *Paul Brown* [2024] UKFTT 00245 ("***Brown***"), Judge Aleksander, faced with a situation where it was clear that the officer who made the discovery had not made the assessment, decided, on the basis of the Supreme Court decision in HMRC v Tooth [2021] UKSC 17 ("***Tooth***") that the assessment was invalid. It was his interpretation of *Tooth* that the discovering officer must also make the assessment, and on the evidence in that case the saving provision in section 2(4) Commissioners of Revenue and Customs Act 2005 ("**section 2(4)**") could not apply.

17. Section 2(4) states that "Anything (including anything in relation to legal proceedings) begun by or in relation to one officer of Revenue and Customs may be continued by or in relation to another".

18. *Tooth* is authority for the proposition that section 2(4) would enable one officer to consider a file and then pass it to another officer to complete "the exercise of assessment". In *Brown* this was considered enough to enable a second identified officer to issue the assessment, once the discovery had been made by an earlier officer. In that case however, there was no evidence whatsoever that a second officer had issued the assessment. The only evidence in that case regarding the making of the assessment was the letter notifying the appellant of the assessment which was signed by the "HICBC Team".

19. In the case of this appellant, however, it is clear that the discovery was made by Officer Mellish. This was the beginning of the process of making and issuing a discovery assessment which was continued by Officer Parr who raised and issued the assessments.

20. We find, therefore, that the assessments were validly raised and issued following the discovery.

21. We accept that the general time period for raising an assessment which is attributable to a failure by a person to comply with an obligation to notify is 20 years after the end of the year of assessment to which it relates. But, as set out at [6] above, in consequence of the provisions of section 118 (2) TMA, the 20-year assessment provisions do not apply where the taxpayer establishes a reasonable excuse for a failure to notify, since in these circumstances the taxpayer has, effectively, notified and thus the 20-year assessment period cannot bite. But this only applies where the taxpayer has then acted without unreasonable delay to correct that failure.

22. There is no doubt that the assessments were (subject to what we say below regarding reasonable excuse) made within the 20-year limitation period, and were properly served on (and indeed received by) the appellant.

23. So, the burden of establishing that the assessments overcharge him, switches to the appellant.

The appellant's submissions

24. As regards the assessments and the penalties, the appellant made the following submissions both orally before us and in his written appeals:

(1) As far as he was concerned, he had never earned more than £50,000 in any of the tax years in question.
(2) He now understands that the car benefits were likely to have taken him over the limit. But HMRC should have told him that this was the case, in which case he would have either

stopped claiming the benefit or have changed his car. This is what he has done now. He now runs an electric car, thus ensuring that his adjusted net income is below the £50,000.
(3) However, he had no idea that this benefit would render him liable to the charge. His real bugbear is that it took HMRC four years to tell him that he owed them money.
(4) Having sent a great deal of paperwork to HMRC, he then heard nothing from them for 14 months. There was no acknowledgement of this paperwork, and the first thing he then heard was that he was going to be liable for a fine. He was then harassed by HMRC which caused him considerable stress.
(5) He was asked by HMRC to resubmit his paperwork. This was on the basis that HMRC had lost it. And it was only when he told them that he had already submitted it and threatened legal action that they suddenly found it. This is not acceptable behaviour.
(6) If he had known about the liability to the assessment and the penalties he could have put money aside to pay it. HMRC's delays meant that he could not do this. He had moved on, thinking that everything was satisfactory.

25. Regrettably for the appellant, none of these submissions amounts to a serious challenge that the assessments have been incorrectly calculated. Indeed, the appellant now appears to accept that they were correctly calculated and that many of his submissions are by way of complaint or aimed at justification as to why he did not submit a return declaring the income and thus has a reasonable excuse defence against the penalties.

26. It is our view therefore, that subject to the impact of any reasonable excuse defence on the assessments, the amounts in the assessments are also valid, and do not overcharge the appellant.

The penalties

27. If the appellant can establish that he had a reasonable excuse for not notifying his liability to the HICBC, then, as well as the implications for the assessments, he can be excused from his liability to the penalties.

28. The onus is on the appellant to show that, on the balance of probabilities, the facts show that he had a reasonable excuse.

29. The legal principles which we must consider when an appellant submits that he has a reasonable excuse are set out in the the Upper Tribunal decision in *Christine Perrin v HMRC* [2018] UKUT 156 ("***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:
>
> (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.

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".

30. The test we 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?"

31. That this is the correct approach has also recently been confirmed by the Court of Appeal in *William Archer v HMRC* [2023] EWCA Civ 626 (***"Archer"***).

32. It is clear from the foregoing extract from *Perrin* that ignorance of the law can, in certain circumstances, comprise a reasonable excuse. It is a matter of judgment for us 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.

33. In her decision in *Naila Hussain* [2023] UKFTT 00545 Judge Brown reviewed a number of HICBC cases and said this:

"37. There are a great many HICBC cases being considered by the Tribunal at present. Many are determined against the taxpayer and a handful have been determined in the taxpayer's favour. Judge Popplewell in particular appears to have determined a number of cases favorably to the taxpayer and it is on these judgments that the Appellant relies (the most recent is *Mark Goodall v HMRC* [2023] UKFTT 18 (TC)) (***"Goodall"***). In that judgment Judge Poppelwell references his prior decision in *Leigh Jacques v HMRC*

[2020] UKFTT 331 (TC) in which he reviewed the extensive case list on which HMRC rely in HICBC cases.

38. In each of the judgments Judge Poppelwell has concluded that a taxpayer is likely to have a reasonable excuse where they were:

(1) not under an obligation to complete a tax return up to the tax years prior to that in which the HICBC applied because, primarily, they were paid through PAYE and had no other income justifying a need to notify;

(2) in receipt of child benefit payments prior to the introduction of HICBC with the consequence that the application itself made no reference to HICBC (the child benefit claim form post the introduction of HICBC clearly sets out when the charge applies);

(3) had not received notification from HMRC directly at any point prior to the contact which led to the issues of the tax assessment; but

(4) acted promptly in ceasing to claim child benefit and engaged actively with resolving the historic tax liabilities as soon as HMRC did make contact.

39. However, in *Goodall* Judge Popplewell also noted that where a taxpayer had received a nudge letter then the taxpayer would have no reasonable excuse but went on to decide that in that case, by reference to the evidence, to determine that no nudge letter had been received. As such, and on the facts the first point at which Mr Goodall became aware of the risk of a HICBC liability he acted without unreasonable delay".

34. We confirm that the foregoing is an accurate reflection of Judge Popplewell's view of when a taxpayer might have a reasonable excuse in HICBC penalty cases.

35. It is HMRC's view that the appellant received both the nudge letter in October 2019 and the final reminder letter in November 2019, but took no action to rectify the situation until, at the earliest, 24 May 2021 when he called HMRC to discuss his liability in response to HMRC's letter of 18 May 2021. So even if the appellant had been ignorant of the law before the nudge letter, he was not ignorant of it thereafter; and any reasonable excuse defence had therefore expired by the time that he engaged with HMRC.

36. We agree with HMRC that if the appellant received either the nudge letter or the final reminder letter any ignorance of the law defence would have expired by the time of the subsequent engagement with HMRC in May and June 2021.

37. So the issue is whether we believe the appellant's revised oral evidence that he received neither.

38. Under section 7 of the Interpretation Act 1978 ("**section 7**"), which applies to service of documents authorised or required by legislation, "service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

39. Clearly neither the nudge letter nor the final reminder letter is a document authorised or required by legislation. But we intend to adopt the same approach towards service set out above. It seems to us common sense. If HMRC are alleging that either or both were sent to

the appellant and thus he was on notice that someone earning more than £50,000 was liable to the HICBC if they or their partner was claiming child benefit, they need to show that they had sent one or both to him. If the appellant then alleges reasonable excuse on the basis that he did not receive it, he needs to establish non-receipt.

40. We have seen copies of the letters which were addressed to the correct address. It is our view, based on the presumption of regularity, that these were actually put into envelopes, and posted to that address. The deeming provision is thus engaged.

41. So, we now turn to receipt, and whether the appellant has established that he received neither letter.

42. There are a number of indications to suggest that he did receive them.

43. Firstly, his original oral testimony that he probably received the nudge letter.

44. Secondly, the fact that the letters were not returned undelivered.

45. Thirdly, on 26 October 2020, the appellant telephoned HMRC to cancel his fuel allowance, following which he was advised that his tax code would be changed but if the employer gave HMRC different figures at the end of the tax year, those employer figures would be used.

46. It was the appellant's evidence that he cancelled his fuel allowance (presumably firstly with his employer which was then reflected in his telephone conversation with HMRC) because he was not using his company car and thus was facing considerable tax disadvantage as a result of this fuel allowance. Yet lockdown took place in March 2020, and we find it surprising therefore that it was not until some seven months later that HMRC were informed of this change.

47. It is clear from this call that the appellant appreciated the tax implications of the fuel allowance. And that call is consistent with the appellant having received both the nudge letter in October 2019 and the final reminder letter in November 2019.

48. Finally, and most persuasively, is the fact that on 13 January 2020, after the nudge letter and final reminder letter but well before the opening letter of 18 May 2021, the appellant (or his spouse) opted out of the child benefit regime. It was his evidence that he did so on a precautionary basis having discussed the matter with colleagues in the office who were receiving letters regarding the possibility of being charged to the HICBC. And the opt out was made on a precautionary basis. But there is no evidence of the appellant then taking any form of action to check whether or not there was a possibility of his being liable to the HICBC.

49. In his oral evidence, the appellant also said that he had stopped child benefit on that day because he realised that the company car had taken him over the financial limit, and this had nothing to do with receipt of any letter. But he then said that the realisation that he was over the limit came from HMRC telling him that that was the case.

50. Whilst there were telephone conversations between the appellant and HMRC in October 2020, and then again in June and July 2022, all of which are reflected in notes on HMRC's contact summary, there are no records of any such conversations between the appellant and HMRC between November 2019 and January 2020.

51. It seems to us, therefore, that the appellant's only source of the realisation that his company car was pushing him over the HICBC threshold were the nudge letter and final reminder letter sent to him in October and November 2019.

52. On balance we find that the appellant had received those letters. He was therefore under a duty to notify HMRC of his chargeability to HICBC within six months, and he failed to do so.

53. Furthermore, on the appellant's own evidence, he was aware by 13 January 2020, that the benefits of his company car, when added to his salary, had taken him over the child benefit limit.

54. And if he knew that in January 2020, then he should have engaged with HMRC and submitted tax returns for the relevant years notifying chargeability. In failing to do so, any reasonable excuse based on ignorance of the law ceased on or around that time, and the appellant took no steps to remedy the position without unreasonable delay.

55. We therefore find that the appellant had no reasonable excuse for failing to notify HMRC of his chargeability to the HICBC.

56. The consequence of this as regards the assessments is that they are valid in time assessments as the 20-year assessment period is not displaced on the grounds of reasonable excuse.

57. Finally we have considered whether there are special circumstances which warrant a special reduction to the penalties and find that there are no such special circumstances as regards this appellant.

DECISION

58. For the foregoing reasons we dismiss the appeals against the assessments and the penalty assessments.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

59. 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: 09th May 2024