[2020] UKFTT 420 (TC)

TC07897

Appeal number: TC/2017/07573

INCOME TAX - High income child benefit charge (HICBC) - discovery assessment under s 29 of TMA - penalty for failure to notify liability - Schedule 41 to Finance Act 2008 - appellant unaware of the obligation to notify - whether reasonable excuse - on the facts - no - appeal refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

JOHN CRAFT **Appellant**

- and -

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

TRIBUNAL: JUDGE: MICHAEL CONNELL
SUSAN STOTT

Sitting in public at Darlington Magistrates Court, Parkgate, Darlington DL1 1RU on 20 January 2020

The Appellant in person

Mr Harry Robinson Officer of HMRC, for the Respondents

DECISION

The Appeal

1. This is an appeal by Mr John Craft ('the appellant') against penalties totalling £584.50 charged under Schedule 41 to the Finance Act 2008 ('Sch 41'), raised for the tax years 2012-13, 2013-14, 2014-15 and 2015-16, for failure to notify his liability to tax as a result of his being liable to the Higher Income Child Benefit Charge ('HICBC').

2. The assessments to income tax raised by HMRC under s 29 of the Taxes Management Act 1970 ('TMA') are not under appeal.

Background

3. 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.

4. 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.

5. 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.

6. Prior to the years under appeal the appellant was not within the Self-Assessment regime.

7. In this case it is the appellant that has an adjusted net income exceeding £50,000, and it is the appellant's spouse who has received payments of Child Benefit for each tax year from 2012-13 to 2015-16 (inclusive).

8. Records show that the appellant's spouse has been in receipt of Child Benefit ('CB') since approximately October 2009 and therefore in receipt of CB before the introduction of HICBC.

9. The respondents sent letter SA252 to the appellant on 17 August 2013. This letter advised of the HICBC liability where a taxpayer is earning over £50,000 and the deadline of 5 October 2013 for notifying HMRC. The appellant says that he did not receive letter SA252. HMRC, in the generic bundle, provided a copy of a standard blank pro forma SA252 letter. HMRC were unable to produce a copy of the letter which they say was sent to the appellant.

10. On 14 August 2017, the respondents issued an opening letter to the appellant alerting him to the fact that he had not notified his liability to the HICBC.

11. The appellant rang HMRC on 13 September 2017 in response to the opening letter. The HICBC charge was not disputed but an online complaint was submitted following this call.

12. On 14 September 2017, the respondents issued assessments based on the amounts shown in the table below:

Tax year	**Adjusted net income**	**Child Benefit received**	**HICBC due**
2012-13	£59,635.00	£263.00	£253.00
2013-14	£60,619.00	£1,055.00	£1,055.00
2014-15	£69,947.00	£1,066.00	£1,066.00
2015-16	£63,347.00	£1,097.00	£1,097.00
		TOTAL	£3,471.00

13. HMRC also issued penalty notices to the appellant as a result of his failure to notify the above chargeability. The maximum reduction was given in all cases, due to the quality of the appellant's disclosure. The penalties are in the amounts shown in the following table:

Tax Year	Tax liability	Penalty criteria	Penalty range	Percentage charged	Penalty
2012-13	£253.00	Non-deliberate and prompted	20% - 30%	20%	£50.60
2013-14	£1055.00	Non-deliberate and prompted	20% - 30%	20%	£211.00
2014-15	£1066.00	Non-deliberate and prompted	20% - 30%	20%	£213.20
2015-16	£1097.00	Non-deliberate and prompted	*10%-30%	10%	£109.70
				Total	£584.50

**The minimum penalty is reduced to a percentage not below 10% for prompted disclosures where the failure was disclosed within 12 months of the tax becoming due under Sch.41, paragraph 13(6)(a), or not below 20% under paragraph 13(6)(b).*

14. On 15 September 2017 HMRC wrote to the appellant about the complaint, responding on the basis that it was an appeal against the penalty assessment. This letter outlined HMRC's view of the matter, the appellant's right to ask for a statutory review and how to refer the appeal to the Tribunal.

15. The appellant did not take up HMRC's offer of a statutory review.

16. An in-time appeal against the penalties was lodged with the Tribunal on 11 October 2017.

Matters in dispute

17. Whether HMRC have correctly calculated and applied the penalties resulting from the appellant's failure to notify chargeability.

18. Whether the appellant has a reasonable excuse for failing to notify his liability to the HICBC**.**

Matters not in dispute

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

- ANI received in the amounts detailed in the table at paragraph 13.
- Child benefit received in the amounts detailed in the table at paragraph 13.
- The appellant was not issued with a notice to file a Self-Assessment return under s 8 TMA 1970 for any of the years under appeal.
- The appellant did not file a Self-Assessment return under s 7 TMA 1970, and therefore did not notify his liability to the HICBC for any of the years under appeal.

The Onus and Standard of proof

20. The onus is on HMRC to show that the penalties have been charged correctly. Once demonstrated, the onus reverts to the appellant to demonstrate that he has a reasonable excuse for his failure to notify chargeability as defined in paragraph 20 of Schedule 41 FA 2008.

21. The standard of proof is the ordinary civil standard, on the balance of probabilities

Relevant legislation

22. Paragraph 1 of Schedule 41 Finance Act 2008 specifies that a penalty is payable where a taxpayer does not comply with the obligation to notify under s 7 TMA 1970 as amended. The relevant sub-paragraphs of section 7 read:

> "7. Notice of liability to income tax and capital gains tax
> (1) Every person who-
> (a) is chargeable to income tax or capital gains tax for any year of assessment, and
> (b) has not received a notice under section 8 of this Act requiring a return for that year of his total income and chargeable gains,
> shall, subject to subsection (3) below, within six months from the end of that year, give notice to an officer of the Board that he is so chargeable.
>
> (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 subsections (4) to (7) below,

(b) the person has no chargeable gains, and
(c) the person is not liable to a high-income child benefit charge."

23. Section 8 of the Finance Act 2012 introduced the High-Income Child Benefit Charge.

24. The High-Income Child Benefit Charge ('HICBC') arises under s 681B of the Income Tax (Earnings and Pensions) Act 2003 ('ITEPA 2003').

25. Section 681B, inserted by the Finance Act 2012, s 8 and Schedule 1, para. 1, is given effect for the tax year 2012-13 and subsequent tax years but, in the case of 2012-13, only in respect of amounts of child benefit to which a person is entitled for weeks beginning on or after Monday, January 7 2013.

26. Schedule 41 to the Finance Act 2008 determines the penalties for failure to notify liability.

Appellant's Case

27. The appellant accepts liability for the HICBC charge but not for the associated penalties and interest. The appellant's grounds of appeal are that:

i. He was not made aware of the existence of HICBC until 2017. He did not receive letter SA252 as HMRC allege. Had he received such a letter, he would have acted upon it promptly, as he did when he received HMRC's letter of 14 August 2017 notifying him of the HICBC.

ii. He has been a PAYE taxpayer since 2002 so could not have anticipated the need to file a tax return.

iii. He has never intended to avoid paying tax

iv. HMRC have a duty of care to tax payers and this issue could have been resolved in 2013 when the legislation was first introduced. In particular, it is not acceptable that HMRC does not warn or notify individuals that penalties and interest charges are accruing, especially after the passage of four years, and then seeks to apply penalties and interest retrospectively for those years.

HMRC's Case

28. The HICBC came into force from 7 January 2013 under s 8 of the Finance Act 2012. The respondents are not legally obliged to notify changes in legislation to each and every individual.

29. Leading up to the introduction of the HICBC, there was an extensive publicity campaign to raise awareness. Furthermore, the HICBC was considered by Parliament in several debates, and the measures were announced by the Chancellor in the 2012 budget.

30. On its website HMRC provide full details of the Child Benefit Helpline and is available to answer queries on whether the HICBC applies or not. There is no evidence of the appellant seeking advice from this, or any other HMRC helpline.

31. On its website, HMRC also have available a calculator with which taxpayers can verify whether they have to pay some or all of the Child Benefit as a tax charge if their ANI was over £50,000 per year.

32. The appellant was liable to the HICBC and was required to give notice of his liability to HICBC within 6 months from the end of the year of the tax year in question. It is not disputed by the appellant that he failed to notify his chargeability to the HICBC, although he says he has a reasonable excuse for the failure.

33. The appellant has accepted the assessments. In the case of *Neil Johnstone v HMRC* [2018] UKFTT 0689, at paragraph 30 the tribunal states:

> "In the absence of a challenge against the s 29 assessments, there is a prima facie case that the requirement under para 1 for the imposition of a Sch. 41 penalty has also been met."

34. Paragraph 5 Sch 41 sets out the degrees of culpability and accordingly, the amounts that may be charged as a penalty based on the culpability identified.

35. The behaviour of the appellant has been determined as 'non-deliberate' and 'prompted', allowing for a penalty up to 30% of the PLR. The failure to notify penalties for tax years 2012-13 to 2014-15 have been charged at a rate of 20%, and 10% for the 2015-16 tax year. This represents full mitigation for the appellant's quality of disclosure, when prompted.

36. Once the failure to notify has been established, a penalty is a matter determined by statute. The wording of the legislation is unambiguous, it prescribes in Sch 41 FA08 (1):

> "A penalty is payable by a person (P) where P fails to comply with an… obligation under section 7 of TMA 1970 (obligation to notify of liability to Income Tax…)."

37. Paragraph 20 FA08 provides for a penalty to be discharged where a taxpayer has a reasonable excuse for their failure to notify.

38. The Upper Tribunal ('UT') case of *Christine Perrin v HMRC* [2018] UKUT 0156 TC ('Perrin'), gives very helpful insight into what constitutes a reasonable excuse for failing to meet one's responsibilities under tax law. The UT stated that ignorance of the law can in some limited circumstances be a reasonable excuse based on the objective reasonableness for the particular customer to have acted as he did in all the circumstances of the case and sets out a four stage approach at paragraph 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."

39. The appellant states that he did not know about the HICBC and therefore could not have been expected to notify HMRC of his liability. He suggests that he expected to be told if a change in the law affected him.

40. In the case of *Lau v HMRC* [2018] UKFTT 230 – TC06463 the First-tier Tribunal considered the HICBC where the grounds of appeal were that the appellant was unaware of the new legislation. Judge Scott at paragraph 33 stated:

> "...HMRC are under no obligation to notify individual taxpayers."
>
> And, at paragraph 37 and 38 stated:
>
> "Parliament cannot have intended ignorance of the law to be a reasonable excuse because Parliament must have enacted the law with the intention that it would be obeyed. In all these circumstances, ignorance of the law simply cannot amount to a reasonable excuse."

41. HMRC contend that it is an individual taxpayer's responsibility to ensure that their tax affairs are correct and that they are aware of legislative changes.

42. In the case of *Hesketh & Anor v HMRC* [2017] UKUT 871 (TC) at paragraph 93 the judge states:

> "...for anything to be a reasonable excuse for a failure, it must cause the failure. Yet HMRC's failure to tell the appellants about the change in the law did not cause their ignorance: it merely failed to change it. Mr and Mrs Hesketh were ignorant of the new filing requirement: HMRC did not write to tell them about it so they remained ignorant of it long after the due dates had passed. The failure to write to them did not cause their ignorance and so it could not in law be an excuse for it."

43. Furthermore, in *Nonyane v HMRC [2017] UKFTT 11 TC – TC05577*, which is a decision solely concerning discovery assessments raised due to a failure to notify liability to HICBC, at paragraph 28, Judge McGregor states:

> "I agree with HMRC's submissions that it is not obliged to notify all customers of changes in the law."

44. Concluding at paragraph 31:

> "I therefore find that the discovery assessment was valid and that the appeal must be dismissed."

45. As per *Lau* and *Hesketh*, the appellant's failure to notify liability cannot be attributed to a failure by HMRC to inform the appellant that the liability was due.

46. Judge Poon summarises her views on this matter in *Johnstone v HMRC*, at paragraph 49:

> "The first proposition is simply not arguable for the following reasons:
>
> (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 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.
>
> (3) The cohort of taxpayers likely to be affected by HICBC is not readily identifiable from the information held by HMRC, especially when the recipient of the child benefit and the taxpayer liable to HICBC are not the same person, as is the case here.
>
> (4) The 'Child Benefit' is not a means-tested benefit, and as such, the Child Benefit Agency does not hold data to enable any identification of the recipients that may be affected by HICBC…"

47. Whilst it is clear that there is no legal obligation to do so, HMRC took considerable steps to raise awareness of the HICBC. Between October and December 2012, HMRC issued numerous high profile press releases. HMRC say that around 1 million letters were sent in November 2012 to recipients of child benefit, explaining that the HICBC was due to take effect on 7 January 2013. The releases specifically drew attention to recipients of child benefit that the HICBC would impact those earning more than £50,000 per annum. A further reminder was issued through another nationwide press release in March 2013. Another advertising campaign ran from 10 – 17 March 2013. By September 2013, 400,000 people with income above £50,000pa had opted out of receiving child benefit payments. Further press releases were issued in December 2013 and January 2014.

48. HMRC records show that on 17 August 2013, a SA 252 letter was issued to the appellant. These letters were intended to encourage taxpayers to check whether they were liable to the HICBC, either through contacting HMRC or using the online resources.

49. HMRC therefore submit that extraordinary measures were taken to raise taxpayers awareness of the HICBC, but that ultimately it is for those affected by the change to notify their liability to HMRC.

50. HMRC do not accept that they failed to notify the appellant, but even if that were the case, it cannot constitute a reasonable excuse as, irrespective of the perceived failure, there is no statutory requirement for HMRC to notify taxpayers of changes to the law.

51. In the case of *HMRC v Hok Ltd* the UT considered whether the jurisdiction of the First-tier Tribunal ('FtT') includes the ability to discharge a penalty on the grounds of unfairness, and concluded that the Tribunal has the power to:

> "... set aside a penalty which has not in fact been incurred, or to correct a penalty which has been incurred but has been imposed in an incorrect amount, but it goes no further. ...

> it is plain that the First-tier Tribunal has no statutory power to discharge or adjust a penalty because of a perception that it is unfair."

52. It is clear then that the FtT can only discharge the penalty if it has been incorrectly charged, but HMRC submit that that is not the case in this appeal and the penalties should therefore be upheld.

53. Turning to part 4 of the test from *Perrin*, HMRC do not believe the appellant has a reasonable excuse for his failure, so there is no reason to consider whether he remedied the failure without unreasonable delay

54. Liability to the HICBC has been established going back to the 2012-13 tax year. There is no indication within HMRC's records that the appellant took steps, prior to HMRC's compliance action, to notify liability, or establish whether the HICBC applied.

55. HMRC submit that the appellant cannot be considered to have remedied his failure without unreasonable delay.

56. Special reduction, in accordance with paragraph 14 of Sch 41, has not been considered by the respondents. However, HMRC submit that there is nothing unusual or exceptional in the appellant's grounds of appeal to render the penalties unfair or contrary to what Parliament intended when enacting the legislation and therefore special reduction cannot be applied.

57. The appellant has not demonstrated that he had a reasonable excuse in accordance with paragraph 20 of Sch 41 for his failure to notify as defined by s 7(1) TMA 1970.

58. HMRC therefore contend that the assessments were correctly made, and the penalties were also issued in the correct amounts.

Discussion

59. HMRC say that they issued an SA252 to the appellant on 17 August 2013. That letter advised him to check his tax code and report any changes required; to check if he was liable to the HICBC; to register for self-assessment if he was liable to the charge. Notwithstanding the fact that they issued this letter, their view is that there is no obligation to notify specific taxpayers of any change to legislation might affect them. Individuals need to take steps to understand the law and how it applies in the circumstances. HMRC do not consider that ignorance of the law comprises a reasonable excuse. They cite extracts from case law to justify this, including paragraph 81 from the UT decision in *Perrin* (although they do not mention paragraph [82] of that decision which is set out below).

> "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."

60. In determining whether the appellant has an objectively reasonable case, the test is 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?"

61. It is clear from the foregoing extracts from *Perrin* and *Clean Car* that ignorance of the law can, in certain circumstances, comprise a reasonable excuse. It is therefore a matter of judgment as to whether it is objectively reasonable for the appellant in the particular circumstances of a case, to have been ignorant of the requirement to complete a self-assessment return in the context of his liability to HICBC.

62. *Lau, Robertson, Johnston, Nonayne* and *Hesketh* are all cited by HMRC as authority for the proposition that there is no obligation on HMRC to notify, specifically, a taxpayer of new legislation. We agree with that proposition.

63. The cases of *Hesketh, Lau, Nicholson* and *Johnston* which state that as a matter of principle, ignorance of the law cannot comprise a reasonable excuse, were all decided before the publication of the UT decision in *Perrin.* Furthermore, *Hesketh* is a case which deals with a failure to file NRCGT returns following the disposal of UK property; (unknown to many taxpayers, the obligation to file a CGT for a non-resident was significantly accelerated). Several cases determined that some of those who were unaware of changes in the NRCGT law, had a reasonable excuse. See Patsy Ann Saunders v HMRC TC/2017/04999 and *Rachel McGreevy v HMRC* [2017] UKFTT 0690 (TC).

64. HMRC contend that they sent an SA252 to the appellant in August 2013. The appellant contends that he received no such communication. An SA252 explains the changes to the Child Benefit regime and that the HICBC came into effect on 7 January 2013. It tells the taxpayer that they are liable for the charge if they have income of over £50,000 a year, and either the taxpayer or his/her partner received any Child Benefit payments after 7 January 2013, and the taxpayer's income for the tax year is higher than his/her partners. If the charge applies then the recipient must register for self-assessment by 5 October 2013. It sets out clearly the criteria which a taxpayer must meet in order to be liable to the charge and what that taxpayer should do if they fall within those criteria.

65. HMRC accept that they are unable to prove unequivocally that they sent SA252 to the appellant.

66. The UT in the cases of *HMRC v Nigel Rogers and Craig Shaw* [2019] UKUT 0406 ("*Rogers and Shaw*") and in *Barry Edwards v HMRC* [2019] UKUT 131 ("*Edwards*") have provided helpful guidance regarding the evidence required when considering a dispute between HMRC and a taxpayer as to whether HMRC have given a taxpayer a document (in both cases that document was a notice to file a return under s 8 Taxes Management act 1970).

67. In *Rogers and Shaw* the UT said:

> "48 ….. Conscious that the FTT determines large numbers of "default paper" penalty appeals, we give the following guidance to the FTT on how to address any future concerns that it has on the validity of s 8 notices.
>
> 49. Paragraph [101] of *Goldsmith* records HMRC's acceptance (which in our view is correct) that, in order to impose a penalty for late filing of a tax return under Schedule 55, HMRC must prove that a notice under s 8 was in fact served. Before us, HMRC seemed less ready to accept this point, but we consider it follows from the following passage of the judgment of the Upper Tribunal (Judges Herrington and Poole) in *Christine Perrin c HMRC* [2018] UKUT 156 (TC):
>
> > 69. "Before any question of reasonable excuse comes into play, it is important to remember that the initial burden lies on HMRC to establish that events have occurred as a result of which a penalty is, prima facie, due. A mere assertion of the occurrence of the relevant event sin a statement of case is not sufficient. Evidence is required and unless sufficient evidence is provided to prove the relevant facts on a balance of probabilities, the penalty must be cancelled without any question of "reasonable excuse" becoming relevant."
>
> 50. It follows that, if HMRC fail to provide any evidence at all to the effect that a s 8 notice was served, they will have failed to demonstrate a crucial fact on which their entitlement to a penalty hinges and the FTT will necessarily set aside the penalties charged for alleged failure to comply with that notice.
>
> 51. Where HMRC have given some evidence that a s 8 notice was served, it will then be a matter for the FTT to determine whether that evidence is sufficiently strong to discharge HMRC's burden of proof. The FTT's assessment of the evidence should take into account the extent to which the taxpayer is disputing receiving a s 8 notice. Evidence to the effect that HMRC's systems record a s 8 notice as having been sent is, on its own, relatively weak evidence (since it does not itself demonstrate that a s 8 notice was actually sent, and may not itself demonstrate the address to which it was sent."

68. Although HMRC was under no obligation to send SA252 to the appellant, if they claim to have done so, the provisions of s 118 TMA and s 7 Interpretation Act 1978 are relevant to establishing whether SA252 was sent to and received by the appellant. No evidence has been produced apart from a generic pro forma of a SA252.

69. Where a taxpayer disputes receipt of a notice, HMRC need to show corroborating evidence in addition to a blank SA252 which itself includes no date, no taxpayer name and no specified address to discharge their burden of proving that a document was given to the taxpayer.

70. There is no such additional or corroborating evidence in the case of this taxpayer. He disputes receipt of the document and we accept this. There is no evidence that the appellant undertook any form of action in 2013. There is, however, unequivocal evidence, which is not disputed, that following HMRC's letter of 14 August 2017, the appellant promptly contacted HMRC by telephone on 13 September 2017. It is our view that had the appellant received a SA252 or other similar notification in 2013, of his potential liability to HICBC he would have responded promptly. His failure to do so can only be interpreted as evidence that he did not receive an SA252 in 2013 as alleged by HMRC.

71. Given that the appellant's wife was an ongoing claimant of CB and that this fact must have been known to HMRC, the question has to be asked why there was no communication with the appellant between 2013 and 2017. Although the Tribunal cannot consider whether a

penalty might be unfair, [*Hok* 2012 UKUT 363 TC] we have to question why HMRC only discovered the appellant's failure to notify his liability to the HICBC, given the high probability that some taxpayers earning more than £50,000 and in receipt of CB, would not have been aware of the changes in the law.

72. The appellant had not been within the self-assessment regime since 2002. He was an employee and paid tax by PAYE. While it is reasonable to assume that most people in receipt of Child Benefit and receiving more than £50,000 per year should have been alerted to HICBC, it is equally reasonable to assume it unlikely that they would not have acted promptly upon receipt of SA252 and if they did not do so, that it is probable that they had not received the SA252 letter.

73. We entirely accept that the appellant cannot expect HMRC to contact each and every taxpayer about a change in the law, but equally on an objective basis, we have to conclude that the appellant was ignorant of the requirement to complete a self-assessment tax return in the context of his liability to HICBC.

74. In 2017, HMRC recognised that many taxpayers, who had received "failure to notify penalties" had started receiving child benefit before the introduction of the HICBC, and for those where one partner's income had increased to over £50,000 per annum in or after the 2013 – 14 tax year, cancelled and refunded the penalties.

75. For those who rely on ignorance of the law as being a reasonable excuse, and specifically as in this case, for their 'failure to notify', the burden of proof is not the civil 'balance of probabilities', but beyond reasonable doubt which has a much higher threshold.

76. The appellant, in each of the appeal years, earned considerably more than £50,000 per annum. There is a clear probability that he was earning more than that figure at the time of HMRC's press releases in the year 2011-12, and therefore the appellant should have been on notice of his potential liability to HICBC. We accept that he was genuinely unaware of the HICBC, but on the facts, his lack of awareness does not amount to a reasonable excuse.

77. We have considerable sympathy for the appellant but for the above reasons, on the facts, we have to conclude that the appellant has not shown that he had a reasonable excuse for failing to notify HMRC of his liability to pay HICBC for the four tax years under appeal

78. We therefore refuse the appellant's appeal and confirm the penalties.

79. 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.

MICHAEL CONNELL

TRIBUNAL JUDGE

RELEASE DATE: 21 OCTOBER 2020