



TC08191

*HIGH INCOME CHILD BENEFIT CHARGE – failure to notify – whether reasonable excuse
– no – whether special circumstances – no – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2021/00080

BETWEEN

DIANA CUFFIE

Appellant

-and-

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

Respondents

TRIBUNAL: JUDGE ANNE FAIRPO

The Tribunal determined the appeal on 18 June 2021 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 8 January 2021 (with enclosures), HMRC’s Statement of Case (with enclosures) acknowledged by the Tribunal on 18 February 2021. The Appellant was given the opportunity to submit a Reply but did not do so.

DECISION

Introduction

1. This is an appeal against penalties for failure to notify liability to the High Income Child Benefit Charge (HICBC) for the tax years 2016/17 to 2018/19 (inclusive).
2. The penalties total £531.40.
3. There was no dispute that the appellant was liable to the High Income Child Benefit Charge, nor that she had not notified HMRC of that liability. There was no dispute that the penalties had been issued correctly.
4. The question for the Tribunal was whether the appellant had a reasonable excuse for failing to notify HMRC of the liability (para 20, Schedule 41 Finance Act 2008).

Evidence and submissions

5. The appellant accepts that she was liable to the High Income Child Benefit Charge for the years in question, and that she did not notify that liability to HMRC.
6. She submits that she had a reasonable excuse for the failure for the following reasons:
 - (1) She was not aware of the liability. Her tax returns had been completed by an accountant who did not make her aware of the liability.
 - (2) She had paid tax via PAYE alone for the past five years and was not aware that she was still required to file tax returns.
 - (3) She had advised HMRC in 2015 that she was no longer self-employed and did not recall being advised that she would still need to complete a return despite paying tax via PAYE.
 - (4) She had called HMRC on 24 December 2017 to request details of pay and child benefit at the request of her accountant. She thought that, regardless of her income, she would have to declare her child benefit payments on her tax return.
 - (5) She has not received any support regarding the charge and did not intend to fail to pay her tax liability. She would have paid it had she been aware of the liability.
7. HMRC submitted that, in accordance with the Upper Tribunal decision in *Christine Perrin* [2018] UKUT 156 (TCC), the question for the Tribunal is whether it was objectively reasonable in all the circumstances of the case for the appellant to be unaware of the requirement to notify liability to HMRC.
8. HMRC submitted as follows:
 - (1) The appellant re-registered for Self Assessment in 2013 specifically for the purpose of notifying her liability to the HICBC, according to the notes on the appellant's Self-Assessment record. The appellant did not declare any income from self-employment in 2012/13 and 2013/14, which HMRC say supports the contention that she registered solely to declare her liability to HICBC and therefore must have been aware of the charge;
 - (2) HMRC do not have a statutory duty to notify all taxpayers potentially affected by the HICBC (as per *Johnstone* [2018] UKFTT 0689 (TC)). HMRC contended that, nevertheless, they had taken extensive steps to communicate the HICBC to taxpayers by way of press releases and letters. A letter was sent to the appellant shortly before the HICBC was introduced, explaining the introduction of the charge. A further letter was sent to her on 17 August 2013 advising the appellant to check whether she was liable to the HICBC. HMRC did not retain a copy of these letters, although HMRC records show

that they were sent to the appellant's address and not returned as undelivered. Even if the letters were not received, HMRC submitted that there would be no reasonable excuse given the widespread publicity.

(3) The fact that the appellant's accountant had previously completed her tax returns did not provide her with a reasonable excuse for the failure to notify HMRC, as reliance on another person to do anything is not a reasonable excuse unless the taxpayer took reasonable care to avoid the failure. HMRC would expect a reasonable taxpayer to read their tax returns before they are submitted and, had the appellant done so, she would have been aware of the HICBC. HMRC further submitted that reliance on the accountant to advise that the appellant should continue to file self-assessment returns to report the HICBC liability was not a reasonable excuse as taxpayers are responsible for ensuring that their tax obligations are met. If the appellant believed that her accountant had not done something that they were required to do, HMRC's view was that she should take up the matter with her accountant.

(4) HMRC have no record of the appellant contacting them in 2015 to advise that her self-employment had ended. The appellant submitted an online request to close her self-assessment record in March 2017, and HMRC contended that she should have made sure that she was no longer required to file returns before making this request.

(5) To the extent that the appellant argues that HMRC should have sent earlier correspondence, HMRC submitted that this Tribunal has no jurisdiction to consider such matters and that, in any case, these would not amount to a reasonable excuse (per *Devine* [2020] UKFTT 255 (TC)).

(6) HMRC had considered whether special circumstances applied to reduce the penalty but concluded that no such circumstances had been specified and that none of the appellant's submissions amounted to circumstances which were sufficiently special to merit a reduction.

9. HMRC contended that they had given the maximum reduction permitted in calculating the penalties.

Discussion

10. Considering the submissions made above, it is clear that the appellant was not aware of the HICBC. Following *Perrin*, the question is whether this lack of awareness is objectively reasonable in the circumstances.

11. The appellant submits (in summary) that she was not advised, whether by her accountant or by HMRC, that she was liable to the HICBC and so was not aware of the need to notify HMRC of that liability.

12. However, it is not disputed that the appellant's tax returns for 2012/13-2016/17 included the liability to the HICBC. I consider that a taxpayer who was conscious of their tax obligations would have checked the returns provided to them and would have been aware of this liability and would further have checked whether this needed to be declared to HMRC once they had ceased self-employment.

13. I also consider that a taxpayer who is considering advising HMRC that they are no longer within self-assessment would take steps to ensure that there is no continuing liability which needs to be declared. The appellant makes no clear submission that she made such checks. If she believed that her accountant should have advised her of the continuing liability, it is clear from the legislation that reliance on a third party does not constitute a reasonable excuse in such circumstances. The appellant's submission that she called HMRC in 2015 and was not advised that she needed to continue completing tax returns is not, in my view, sufficient to give

her a reasonable excuse: the appellant does not say that she specifically asked whether she needed to continue completing tax returns, only that a transcript of the call might indicate that HMRC did not so advise her.

14. As such, I find that the appellant's lack of awareness of the HICBC was not objectively reasonable in the circumstances and, as such, does not constitute a reasonable excuse for the failure to notify HMRC of her liability to the HICBC.

15. I agree with the conclusion in *Johnstone* that HMRC had no statutory duty to advise taxpayers of the HICBC and with the conclusion in *Devine* that this Tribunal has no jurisdiction to consider whether HMRC should have sent earlier reminder letters.

16. I have considered HMRC's submissions with regard to special circumstances and do not consider that there is any reason to disturb their conclusion that no such circumstances apply.

Decision

17. The appeal is dismissed and the penalties upheld in full.

Right to apply for permission to appeal

18. 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: 1 July 2021