



Neutral Citation: [2023] UKFTT 00658 (TC)

Case Number: TC08879

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2022/11763

*Higher income child benefit charge – failure to notify penalty – whether reasonable excuse -
no*

Heard on: 22 May 2023

Judgment date: 28 July 2023

Before

**TRIBUNAL JUDGE MCGREGOR
JAMES ROBERTSON**

Between

MR BENJAMIN REDGRAVES

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Redgraves

For the Respondents: Mr Miah, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video) via Tribunal video hearing system. A face-to-face hearing was not held because a remote hearing was expedient. The documents to which we were referred are a bundle of 98 pages, a generic bundle of 808 pages and HMRC's Statement of Case of 26 pages.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

INTRODUCTION

3. This appeal concerned penalties for failure to notify liability to income tax in the form of the higher income child benefit charge ("HICBC") under Schedule 41 to Finance Act 2008 in respect of tax years 2015/16 through to 2019/20.

Relevant background and law

4. The HICBC came into effect on 7 January 2013 and arises under section 681B of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA 2003").

5. The HICBC imposes a charge to tax equal to the child benefit received for those individuals who have adjusted net income of over £60,000 in the tax year. The tax charge is reduced proportionally where adjusted net income ("ANI") is between £50,000 and £60,000, but the way in which this applies is not in dispute in this case. ANI is defined in ITEPA 2003, s 681H.

6. A person who has an income tax (or capital gains tax) liability (and has not received a notice to file a tax return from HMRC) is obliged, under section 7 of the Taxes Management Act 1970 ("TMA 1970"), to notify his liability to tax by the 31 October after the end of the tax year in question. This is subject to some exceptions, but the exceptions do not apply if the person is subject to the HICBC.

7. A person who fails to comply with the obligation to notify liability to tax in accordance with TMA 1970, s 7 is liable to a penalty under paragraph 1 of Schedule 41 to Finance Act 2008.

8. The penalty is determined as a percentage of the potential lost revenue under paragraph 6 of Schedule 41 to Finance Act 2008. Where the failure or act is not deliberate, the percentage rate is 30%.

9. Under paragraphs 12 and 13 of Schedule 41 to Finance Act 2008, the penalty percentage can be reduced as a result of the taxpayer's cooperation with and disclosure to HMRC. Where the disclosure is prompted, this can reduce the penalty to:

(1) 10% if HMRC become aware of the failure less than 12 months after the time when tax first becomes unpaid; and

(2) 20% in any other case.

10. Under paragraph 14 of Schedule 41 to Finance Act 2008, HMRC may reduce the penalty if there are special circumstances.

11. Under paragraph 20 of Schedule 41 to Finance Act 2008, liability to the penalty does not arise where the taxpayer has a reasonable excuse for the failure.

FACTS

12. We find the following facts based on the evidence given and bundle of documents before us.
13. Prior to 2015/16 Mr Redgraves was not required to notify his liability to tax to HMRC or to complete a self-assessment return (“SATR”).
14. Mr Redgraves’s partner received child benefit in each of the tax years in question, having claimed child benefit for the first child in June 2015 and for the second in September 2018.
15. In respect of each of the tax years in question, Mr Redgraves:
 - (1) was not issued with a notice to file a tax return;
 - (2) did not notify his liability to HICBC to HMRC; and
 - (3) did not file a SATR.
16. On 17 May 2021, HMRC sent a letter to Mr Redgraves explaining that they considered that he was liable to HICBC in 2015/16 through to 2019/20. This letter included a calculation of the amount of the HICBC and the risk of penalties, including a failure to notify penalty. It gave a deadline of 16 June 2021 to respond to the letter.
17. On 20 May 2021, Mr Redgraves called HMRC and agreed the figures set out in the letter from 17 May 2021.
18. HMRC issued an assessment on 21 May 2021 for £4,032 for the HICBC charges.
19. HMRC raised penalty assessments on 24 May 2021. The amount was set at £698.80, made up of 20% penalties for the first 4 tax years and 10% for 2019/20.
20. An appeal against the penalty was submitted to HMRC on 7 June 2021.
21. HMRC issued a view of the matter letter on 17 June 2022, which upheld the penalty. The letter offered a review or an appeal to the Tribunal if Mr Redgraves disagreed.
22. Mr Redgraves appealed to the Tribunal, which was received at the Tribunal on 5 July 2022, well within the 30 day window for the appeal.

PARTIES ARGUMENTS

Appellant’s contentions

23. The appellant contended that the penalty should be waived because:
 - (1) he did not know that he needed to include his company car in the calculations for child benefit and so his wife had claimed the benefit on the misunderstanding that they were entitled to it;
 - (2) he has paid the full amount of the HICBC back to HMRC but disputes the penalties;
 - (3) HMRC should have made him aware of the problem well before 5 years of child benefit had been claimed and, if he had been made so aware, he would have stopped claiming the benefit;
 - (4) HMRC should have better systems in place to ensure that only those entitled to the benefit are able to claim it;
 - (5) banks ensure that those applying for loans have been checked before money is provided to them and if the loan is repaid, then no penalties arise. HMRC should be no different;

- (6) the amount of the penalty is too high for a non-deliberate mistake; and
- (7) he did not receive the nudge letters that HMRC stated were sent to him in November and December 2019.

HMRC's contentions

24. HMRC submits that:

- (1) 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;
- (2) the Appellant did not make such a notification;
- (3) the penalties were validly assessed in accordance with paragraph 16(1) of Schedule 41 to Finance Act 2008;
- (4) the potential lost revenue on which the penalties must be assessed is the amount of the HICBC to which Mr Redgraves was liable in respect of the tax years in question by reason of his failure to notify, in accordance with the decisions in *Robertson v HMRC* [2019] UKUT 0202 and *Lau v HMRC* [2018] UKFTT 230;
- (5) the amount of HICBC to which Mr Redgraves was liable is not in dispute in this case;
- (6) the behaviour of the Appellant is determined as 'non-deliberate' and 'prompted', allowing for a penalty up to 30% of the PLR. The failure to notify penalty has been charged at a rate of 20% for the first four tax years and 10% for the 2019/20 year on the basis that this came to HMRC's attention within 12 months of the tax becoming due. This represents full mitigation for the Appellant's quality of disclosure, when prompted;
- (7) the disclosure was prompted by the letter of 17 May 2021;
- (8) the assessment of penalties does not depend on the existence or validity of an assessment, but rather on the liability for tax, as confirmed by the Upper Tribunal in *Robertson*.
- (9) the reasons set out by the Appellant do not constitute a reasonable excuse for this failure to notify in accordance with the four-step test set out in *Perrin*; and in particular:
 - (a) the Appellant has not adduced any evidence that shows that the lack of knowledge of the HICBC charge was objectively reasonable by reference to specific factors that acted on him specifically;
 - (b) as per *Lau*, *Johnstone* [2018] UKFTT 689, and *Nonyane* [2017] UKFTT 11, the Appellant's failure to notify cannot be attributed to a failure by HMRC to inform the Appellant that the liability was due; and
 - (c) the Appellant's ignorance of the change in the law does not excuse the failure;
- (10) the forms that Mr Redgraves and his wife completed in order to claim child benefit had been updated, by the time the claims were made in 2015 and 2018, to refer to the HICBC and the £50,000 threshold, therefore Mr Redgraves was on notice that it was likely to apply to him.

(11) the car benefit took Mr Redgraves over the threshold in 2015-16 and 2016-17, but by 2017-18, his income alone was over the £50,000 threshold. Therefore, at the very least, from that date, he would have been aware that HICBC applied to him; and

(12) the Appellant has not provided any special circumstances that could be considered by HMRC to reduce the penalty under paragraph 19(3) of Schedule 41 to FA 2008.

DISCUSSION

25. With regards to the validity of the penalty assessment, having reviewed the documents and the arguments of both parties, we find as follows:

(1) The penalty assessments were validly raised and notified in accordance with the requirements of paragraph 16(1) of Schedule 41 to Finance Act 2008;

(2) The amount of PLR is not in dispute in this case;

(3) In determining the amount of the penalties the percentages were correctly applied to the PLR in respect of a non-deliberate, prompted disclosure.

26. There was one point of contentious fact. HMRC assert that they sent nudge letters in November and December 2019 that were designed to alert Mr Redgraves to the possibility of a charge to HICBC.

27. HMRC has extracted a copy of the letters from its internal systems which were dated 14 November and 13 December 2019 and which were addressed to Mr Redgraves at the address held on HMRC's records (and which has remained consistent throughout).

28. Mr Redgraves' evidence was that he did not receive these letters. He also submits that if he had received them, he would have responded promptly, as he has to all other correspondence.

29. On the balance of probabilities, we find that the letters were sent, but not received by Mr Redgraves. We will return to whether that helps Mr Redgraves as we discuss reasonable excuse.

30. Given the validity of the penalty assessment, Mr Redgraves' case therefore turns on whether he can show that he had a reasonable excuse for failing to notify his liability to HICBC.

31. As set out in Upper Tribunal, in *Christine Perrin v HMRC [2018] UKUT 0156*, we must take a four-step approach to considering whether Mr Redgraves had a reasonable excuse:

(1) first, establish what facts the taxpayer asserts give rise to a reasonable excuse;

(2) second, decide which of those facts are proven;

(3) third, decide whether, viewed objectively, those proven facts do amount to an objectively reasonable excuse for the default, e.g. by asking the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"; and

(4) fourth, if such a reasonable excuse existed, consider whether, when the excuse ceased, the failure was remedied without delay.

32. As noted above, we have found that Mr Redgraves did not receive the November and December 2019 letters.

33. In his evidence, Mr Redgraves accepted that he was aware of the HICBC as a concept and aware that there was a threshold at which a charge could arise. His lack of knowledge was about exactly what that threshold was and how his income and other benefits were taken into account in reaching that threshold.

34. In assessing whether these facts can amount to an objective reasonable excuse, we also considered the cases to which HMRC referred on the relevance of ignorance of the law. We find that these cases support the conclusion that ignorance of the law should not, of itself, represent a reasonable excuse, because:

(1) to allow it would be to favour taxpayers who choose to remain ignorant of the law over those who try to find out the law in order to follow it; and

(2) HMRC's failure to inform the taxpayers sufficiently of the law cannot make ignorance a reasonable excuse, since HMRC is not under a statutory duty to inform all taxpayers of changes to tax rules and HMRC's decision not to inform did not cause the ignorance of the law, but rather failed to alter the taxpayer's state of ignorance.

35. Although he had not received the nudge letters, we find that other factors, such as the information on the HICBC forms and the basic level of awareness that Mr Redgraves had of the existence of a threshold mean that the lack of action from Mr Redgraves was not objectively reasonable in those circumstances.

36. We note Mr Redgraves' comments about the way that other commercial organisations operate, ensuring that eligibility is checked at the time of application. However, we do not find that this is a compelling argument in the context of tax law. The tax system, like this Tribunal, is a creature of statute. The law sets out that eligibility to child benefit is universal, but that the tax system will step in and recoup some of those funds from higher earning households through the mechanism of HICBC. The law and the tax system are not commercial organisations and the payment of tax due is not a voluntary arrangement between taxpayers and HMRC. Therefore we do not find the analogy an instructive one.

37. There is nothing exceptional in Mr Redgraves' circumstances that would give rise to the application of reduction for special circumstances in accordance with paragraph 19 of Schedule 41 to Finance Act 2008.

38. For completeness, we note:

(1) we do not have jurisdiction to consider the fairness of the penalties, in accordance with the decision in *Hok v HMRC* [2012] UKUT 363; and

(2) issues on, for example, HMRC's approach to sending reminder letters, are not matters which are within the jurisdiction of this Tribunal, but rather for HMRC administration, Parliament or, possibly, for judicial review.

DECISION

39. For the reasons given above, we uphold the penalty and dismiss Mr Redgraves' appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

40. 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.

**ABIGAIL MCGREGOR
TRIBUNAL JUDGE**

Release date: 28 July 2023