Neutral Citation: [2024] UKFTT 00046 (TC)

Case Number: TC09027

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2022/11845

INCOME TAX – High Income Child Benefit Charge – liability for the charge – yes for two periods no for one – appeal against charges for earliest period allowed - penalties for failure to notify – appeal against penalties allowed

Heard on: 30 November 2023
Judgment date: 8 December 2023

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MR CHRISTOPHER JENKINS

Between

JONATHAN HARWOOD

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: In person

For the Respondents: Miss Anika Aziz 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 2018/2019 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 £5,752. The penalty assessments are for £1,150.40.

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 which was specific to this appeal as well as a substantial generic bundle which contained much information about the "advertising campaign" conducted by HMRC in relation to the HICBC. Oral evidence on behalf of HMRC was given by Officer Steven Thomas and Officer Elizabeth Butler. The appellant gave oral evidence on his behalf. From this evidence we find as follows:

(1) The appellant's wife has claimed child benefit in respect of their three children, in April 2010 for their first child, and in November 2014 for the second and third child ("**the twins**").

(2) When making her claim for the twins, the form which she would have completed to make her claim would have included information about the HICBC and that if she or her partner had an individual income of more than £50,000 a year, then the partner with a higher income would have to pay the charge on some or all of the benefit. It also referred her to a gov.uk website for more information. Much of this information is reiterated later (at section 4) of the claim form.

(3) However, examining this form and the notes to it, the reference appears to be to "income", and there is no mention of "benefits" which appears on the nudge letter (see later) and we have no indication of what information would have been available had the appellant's wife navigated to the aforesaid website.

(4) In November 2014 and up to and including the tax year 2018/2019, the appellant was an employee and was not required to, nor did he, complete a self-assessment tax return. He received no notices to do so. Furthermore, in November 2014 neither the appellant nor his wife were in receipt of adjusted net income of more than £50,000. The appellant's adjusted net income only exceeded £50,000, for the first time, in the tax year 2016/2017.

(5) In 2012, prior to the introduction of the HICBC, HMRC issued several press releases which detailed the introduction of the charge and advised High Income Child Benefit parents to register for self-assessment. Similar press releases came out in 2014. In 2018 and 2019 HMRC, in response to misgivings raised in connection with reasonable excuse defences issued a further round of press releases dealing with that issue. There is considerable information about the charge on HMRC's website.

(6) 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 was not only because of his headline salary, but also because of the taxable car benefits he received from using demonstrator cars in his capacity as a car salesman.

(7) On 7 October 2019, HMRC issued a "nudge" letter ("**the nudge letter**"). That letter was addressed to the appellant at his home address as 34 Station Road. The appellant's evidence is that he did not receive that letter. It was not, however, returned to HMRC as undelivered.

(8) The nudge letter explained that HMRC wanted to help the taxpayer to understand whether he needed to pay the HICBC. It explained the financial circumstances in which a taxpayer might be liable to pay the charge, what to do next, and that if a taxpayer is not sure if he or she needed to pay the charge, the taxpayer should phone HMRC for assistance.

(9) On 5 November 2019, HMRC issued a "final reminder" letter to the appellant reminding him to check whether he was liable to the charge. This letter, too, was addressed to 34 Station Road. It was the appellant's evidence that he did not receive it. However, it was not returned to HMRC as undelivered.

(10) Officer Butler, who gave evidence for HMRC, was not the assessing officer. That was Officer Dennis who, at the time of the hearing, had left HMRC. Officer Butler described herself as an "alternative officer". However, she had reviewed the work done by Officer Dennis in making his discovery and from her evidence we find as follows. On 22 April 2021 Officer Dennis selected the appellant for an in-depth review as to whether he had failed to notify HMRC of his liability to HICBC. He interrogated data provided by the Child Benefit Office. He checked HMRC's PAYE records. He checked the self-assessment system. He calculated the appellant's adjusted net income for the tax years in question and confirmed that it exceeded £50,000. He authorised the issue of an opening letter. We find as a fact that on that date Officer Dennis discovered that there was a loss of tax in tax years 2016/2017 to 2018/2019.

(11) That opening letter was dated 23 April 2021, and addressed to the same address as the nudge letter. 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 £5,752 for the tax years in question. It also explained why late payment penalties and interest might be due.

(12) On 7 May 2021, the appellant phoned HMRC advising that he did not agree with the figures in the letter of 23 April 2021 and advised he would check his income figures and benefits. Having done so, on 21 May 2021, the appellant telephoned HMRC confirming that he agreed with their figures. The issues of penalties and interest were also discussed.

(13) On 24 May 2021 HMRC issued the assessments. They were addressed to 3 Station Road. The following day, on 25 May 2021 HMRC issued the penalty assessments which were also sent to 3 Station Road.

(14) The appellant's evidence, which we accept as does HMRC, is that he has never lived at 3 Station Road.

(15) The appellant appealed against the penalty assessments on 22 June 2021. That letter states that "I am writing to dispute the notice of penalty assessment.".

(16) On 10 September 2021, the appellant telephoned HMRC asking for a response to his appeal. He was told about the temporary pause arising from a UTT decision and that his appeal would be "worked" once the temporary pause had been lifted.

(17) The appellant followed this up in a letter dated 14 September 2021 in which he told HMRC that they were sending letters to the wrong address, that the charge was controversial and unfair, that he thought that he was being treated unfairly and the matter was causing considerable distress. He felt that he was being bullied by HMRC.

(18) In a letter dated 22 September 2021, HMRC; acknowledged the penalty appeal; explained the impact that *Wilkes* was having on their HICBC cases; told the appellant that failure to notify penalties are unaffected by *Wilkes* and that they would contact the appellant once they had more information.

(19) On 4 November 2021, by way of letter, the appellant again advised HMRC that they were sending correspondence to the wrong address and made an appeal against the assessments. On 22 September 2022 the appellant lodged an out of time appeal with the tribunal to which HMRC do not object.

(20) The appellant's oral evidence was that he had not received the nudge letter nor the final reminder letter of 5 November 2019. He thought this might be because of a postal error. St Andrews Terrace runs off Station Road and 34 St Andrews Terrace opens on to Station Road and has the number 34 displayed on the Station Road side. In the past Morrisons and Amazon deliveries, for example, intended for the appellant have been delivered, initially, to 34 St Andrews Terrace. It was the appellant's view that these letters were likely to have been delivered to that address rather than his correct address. The assessments and penalty assessments, which were delivered to the wrong address, had been brought to his attention by a neighbour who gave those letters to him. The appellant then explained that he had told the local postman about these delivery problems, and the postman then looked out for his name on envelopes rather than the address in order to enable them to be delivered correctly.

(21) The appellant stated that his wife did not discuss the HICBC with him when she had made a for claim child benefit in November 2014. There would be no need for her to do so. At that time, he was earning less than £50,000, something she knew about since they had a joint bank account into which all income was deposited. We find as a fact that she did not tell the appellant of the HICBC information set out in the claim form.

(22) The appellant thought that the HICBC was unfair. Furthermore, it was not fair that he had to pay interest on any outstanding liability. He had been confused and angered by HMRC's correspondence (he accepted that latterly HMRC's attitude towards him had improved). He had not realised that the taxable value of his company car would have been taken into account when calculating his earnings for HICBC purposes and HMRC had never made him aware of

this. His car was primarily for business use. Had he realised in 2016 that the charge would be payable because of the company car, he would have left the scheme.

(23) His evidence, too, was that had he received the nudge letter and the final reminder letter, he would have reacted to them as he had towards the letter of 23 April 2021, when, shortly following receipt, he telephoned HMRC. His evidence was that had he received the letters, "I would have phoned the tax office because that is what you do".

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.

12. The appellant submitted that the charge operated unfairly and in a capricious manner. A couple, one of whom was claiming child benefit, who each earned £49,000, would not be subject to the charge, whereas a couple, one of whom earned £50,001, would be subject to it. This is not fair and equitable legislation.

13. Regrettably for the appellant, we have no jurisdiction to consider the fairness, or otherwise, of primary legislation. Our role is to interpret the legislation as applied to the facts of this case. Nor, too, does HMRC have any jurisdiction to consider the fairness or otherwise of primary legislation. Their role is to collect tax in accordance with the law as enacted.

14. We have found that Officer Dennis made a discovery of an insufficiency of tax on 23 April 2021 and issued the assessments on 24 May 2021 We also find, and the appellant does not dispute this, that his adjusted net income for the tax years in question was greater than £50,000. Since the appeal to HMRC was not made before 30 June 2021 it is subject to the retrospective legislation in Section 97. It is a protected appeal.

15. We have considered whether the appellant's appeal of 22 June 2021, which predates 30 June 2021 (and so has the possibility of being safe harboured from the retrospective legislation in Section 97), can be treated as an appeal against the assessments. We do not think it can be. It is clearly an appeal against the penalty assessments and not the assessments themselves. The two regimes (the assessment regime charging the HICBC, and the assessment regime charging the penalties) are separate and distinct (although obviously linked). The appeal against the penalty assessments cannot be treated as an appeal against the assessments to the charge.

16. 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.

17. We therefore turn to whether the appellant has a reasonable excuse in the context of the penalty, and if we find that he has, we will proceed to consider the implications for the assessments.

18. 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.

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

20. 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".

21. 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?"

22. 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"***).

23. 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.

24. 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".

25. 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.

26. In this case it is HMRC's position that the appellant was on notice that he might be liable to HICBC as long ago as 2014 when his wife claimed child benefit for the twins and more recently when he was sent the nudge letter in October 2019. So he has never been ignorant of the law by dint of his wife's claim for benefits in November 2014, but if he was, he has not been ignorant of the law since he received the nudge letter in October 2019. Any reasonable excuse he had, therefore, ceased a reasonable time after that date and certainly had ceased by 7 May 2021 as he had not acted promptly to engage with HMRC to resolve the HICBC issues.

27. It is the appellant's position that he did not receive either the nudge letter nor the final reminder letter, and the first time that he was put on notice of his liability to HICBC was the letter of 23 April 2021 to which he responded on 7 May 2021.

28. As far as the claim made by his wife for child benefit in November 2014 is concerned, at that time he was not earning more than £50,000, something which his wife knew as their income went into a joint bank account. There was no need, therefore, for her to ask him whether the HICBC might apply, even though she had read the guidance notes, since she knew that his earnings were below that figure. In the domestic rough-and-tumble which is the inevitable consequence of bringing up children and working hard, it never occurred to either his wife, nor to the appellant, that there might be a liability to the charge once his adjusted net income went above £50,000, and because he did not realise the car benefit was taken into account, it was not as simple as taking the headline salary.

29. We agree with HMRC and that if the appellant received either the nudge letter or the final reminder letter then any ignorance of the law defence would have expired by the time of the subsequent engagement with HMRC in May 2021 and June 2022.

30. So, the issue is whether we believe the appellant when he says that he received neither.

31. 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".

32. Clearly neither the nudge letter nor the 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.

33. 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.

34. So, we now turn to receipt, and whether the appellant has established that he received neither letter. We are satisfied on the balance of probabilities that he received neither. The appellant gave oral evidence and did so in a way which convinces us that he is a reliable witness. We believe him when he says that he did not receive the letters. This is supported by two pieces of evidence. The first is his evidence regarding 34 St Andrews Terrace, and the fact that deliveries intended for the appellant at 34 Station Rd, had initially been delivered to the St

Andrews Terrace address. The second is that on receipt of the letter of 23 April 2021, the appellant telephoned HMRC to discuss that correspondence. This bears out his oral testimony that had he received the earlier letters, he would have engaged with HMRC in the same way. He would have telephoned. The fact that he did not strongly suggests that he had not received those letters.

35. HMRC submitted that there is evidence that 99.7% of post sent by HMRC is received by the recipient. That may well be the case, but in the case of this appellant we have the benefit of his evidence. And we must find the facts in light of that evidence.

36. And we find as a fact that the appellant received neither the nudge letter nor the final reminder letter.

37. We now consider the impact of the information set out in the child benefit claim form which the appellant's wife would have seen when completing her claim for child benefit in respect of twins. As we have said, there is no clear indication that anything other than earnings is to be taken into account when computing the £50,000, on that form. We can see nothing suggesting that benefits must be taken into account.

38. But more importantly it is clear from the evidence that the appellant's wife knew at that time that the appellant was earning less than £50,000 (as indeed is borne out by HMRC's PAYE information). So, there was no need for her to question him about his earnings, nor to tell him of the criteria for the HICBC. As far as she was concerned, the charge could not apply. His evidence is that she did not discuss it with him in January 2014. We accept this.

39. We need to consider whether ignorance of the law is objectively reasonable in the particular circumstances of this case. We think it is objectively reasonable even though the appellant's wife was told at the time of claiming benefit for the twins that if her or the appellant's income was above £50,000, some of the child benefit which she had claimed would be clawed back. At the time, she did not think this was relevant as she knew the appellant was earning less than £50,000.

40. This makes it entirely reasonable for her not to apprise the appellant of the information on the claim form. There was no need for her to raise it with him since as far as she was concerned, he was earning less than the threshold amount. So far as the conditions which might render the appellant liable to HICBC, we accept his evidence that he did not know about the £50,000 threshold until he received the letter of 23 April 2021.

41. Furthermore, as a couple, we think it is objectively reasonable that they did not put two and two together once they knew that his headline salary was above £50,000 (which was in two of the three years under assessment). We think it is not realistic in the circumstances of this case for the appellant's wife to have spotted that the appellant was earning more than £50,000 and then remembered the "small print" admonition on the claim form which she had completed a number of years before that increase in salary and told the appellant that he ought to check whether that increase had an HICBC consequence. To our mind that is unrealistic situation in the knockabout of domestic life when bringing up small children, holding down a job, and doing one's best to make a success of home and work life.

42. He therefore has a reasonable excuse for failing to notify the HICBC until May 2021 based on ignorance of the law.

THE ASSESSMENTS

43. We now return to the assessments and consider the impact on these of our finding that the appellant had a reasonable excuse for failing to notify. We have found that he had that reasonable excuse until the date of the letter of 23 April 2021. Following that, the appellant telephoned HMRC on 7 May 2021. Shortly thereafter HMRC issued the assessments and the penalty assessments. The appellant appealed against the latter on 22 June 2021, and the former on 4 November 2021. There was then a hiatus until the appellant lodged an out of time appeal with the tribunal on 22 September 2022.

44. The provisions of section 118(2) TMA require that the taxpayer must act without unreasonable delay. What represents unreasonable delay has been considered in *Archer* with the Court of Appeal confirming that the taxpayer is entitled to take a short period to evaluate the position before acting (in particular see paragraphs 87-91).

45. In this case the appellant took about two weeks to respond to the 23 April 2021 letter. It is our view that the appellant acted without undue delay and thus had a reasonable excuse for failing to notify up to and including 23 April 2021.

46. The consequence of this, in terms of the assessments, is that the ordinary time limit of four years applies. An assessment therefore is only valid if it is made not more than four years after the end of the year of assessment to which it relates. The assessments were made on 24 May 2021, so if they relate to any year of assessment which ended before 24 May 2017, they are not valid.

47. The assessments for the tax years 2017/2018 and 2018/2019 were made within that period. The assessment for the tax year 2016/2017, however, which needed to have been made before 5 April 2017, was not.

48. Accordingly, the liability for the HICBC is for only the tax year 2017/2018 in an amount of £2,501, and for 2018/2019 in an amount of £750.

DECISION

49. We dismiss the appeal against the assessments to HICBC for the tax years 2017/2018 and 2018/2019 but we allow his appeal against the assessment of £2,501 for 2016/2017. We also allow the appeal against the penalties of £1,150.40.

50. We understand that the appellant has paid the full amount of the assessments and the penalties, and indeed had to sell the family car to do so. We trust HMRC will repay the amount which the appellant has overpaid in light of this decision, as soon as reasonably practicable.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

51. 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: 08th DECEMBER 2023