Neutral Citation: [2024] UKFTT 00276 (TC)

Case Number: TC09122

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2023/07908

INCOME TAX – High Income Child Benefit Charge – whether reasonable excuse – yes – penalties cancelled and all but one of the assessments set aside as out of time – overall sum payable reduced from £19,525 to £2,501 – HMRC enforcing collection of the full amount before the hearing – appellant being required to sell the family home at a discount to pay HMRC – whether ESC A19 applies in relation to the remaining £2,501 – jurisdiction of the Tribunal – appeal allowed in part

Heard on 11 March 2024
Judgment date: 27 March 2024

Before

TRIBUNAL JUDGE ANNE REDSTON
MR SIMON BIRD

Between

BENJAMIN ERRIDGE

Appellant

and

THE COMMISSIONERS FOR
HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Keith Alden of MCO Accountants Ltd

For the Respondents: Ms Maria Spalding, Litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. On 10 November 2022 Mr Erridge was assessed to the High Income Child Benefit Charge ("HICBC"), in relation to the tax years 2012-13 through to 2018-19 ("the relevant years"). The assessments totalled £15,374.

2. On 30 November 2022, he was issued with penalties totalling £4,150.98 for his failure to notify his liability to the HICBC. The overall total was thus £19,524.98.

3. Before the hearing, HMRC agreed with Mr Alden, Mr Erridge's representative, that the penalties were too high, and they were reduced to £3,074.80; HMRC subsequently also cancelled the 2012-13 assessment and the related penalty. The amount under appeal at the hearing was thus £17,923.20, of which £14,936 was HICBC and the balance was penalties.

4. We found that Mr Erridge had a reasonable excuse for not notifying his liability to the HICBC, and we cancelled the penalties. As a result of that reasonable excuse, he was deemed not to have failed to notify his liability, and we therefore cancelled the assessments for all years other than 2018-19, as they were out of time. The total owed by Mr Erridge thus reduces to £2,501.

5. Before Mr Erridge's appeal was heard, HMRC took debt recovery action to enforce collection of the full amount said to be due. Mr Erridge asked HMRC for "time to pay" by spreading the amounts over a period but was told he "didn't earn enough"; HMRC then transferred his case to a debt collection company. Mr Erridge was placed under pressure to raise the full sum as soon as possible. He put the family home on the market at a discounted price; a sale was agreed within two weeks and HMRC were paid.

6. It is contrary to HMRC's published guidance to pursue and enforce penalties which are under appeal, while collection of the HICBC assessments could have been postponed pending the outcome of the hearing. However, as we explain at §62ff. the Tribunal has no jurisdiction (broadly speaking, that means "no power") over HMRC's debt management or collection proceedings and this issue would need to be separately pursued.

7. The Tribunal also does not have the jurisdiction to rule on whether the remaining tax should be cancelled under Extra Statutory Concession A19 ("ESC A19"), as we explain at §71ff. Mr Erridge and/or Mr Alden would need to raise this separately with HMRC.

THE LEGISLATION

8. The HICBC was imposed by s 681B of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA"). It applies where (a) a person's Adjusted Net Income ("ANI") exceeds £50,000, and (b) one or both of Conditions A and B are met. The section reads:

> "(1) A person ("P") is liable to a charge to income tax for a tax year if
>
> (a) P's adjusted net income for the year exceeds 50,000, and
>
> (b) one or both of conditions A and B are met.
>
> (2) The charge is to be known as a "high income child benefit charge".
>
> (3) Condition A is that
>
> (a) P is entitled to an amount in respect of child benefit for a week in the tax year, and
>
> (b) there is no other person who is a partner of P throughout the week and has an adjusted net income for the year which exceeds that of P.
>
> (4) Condition B is that

> (a) a person ("Q") other than P is entitled to an amount in respect of child benefit for a week in the tax year,
>
> (b) Q is a partner of P throughout the week, and
>
> (c) P has an adjusted net income for the year which exceeds that of Q."

9. The meaning of "net income" – the first step in calculating ANI – is given by the Income Tax Act 2007 ("ITA"), s 23, read with sections 24 and 25. In summary, a person's net income is calculated as:

(1) the sum of all the income chargeable to tax in the tax year (such as trading profits, employment earnings, rental income); less

(2) certain reliefs, including pension contributions made by the person and trading losses.

10. The meaning of ANI is given by ITA s 58, and subsection (1) provides as follows:

> "… an individual's adjusted net income for a tax year is calculated as follows.
>
> *Step 1* Take the amount of the individual's net income for the tax year.
>
> *Step 2* If in the tax year the individual makes, or is treated under section 426 as making, a gift that is a qualifying donation for the purposes of Chapter 2 of Part 8 (gift aid) deduct the grossed up amount of the gift.
>
> *Step 3* If the individual is given relief in accordance with section 192 of FA 2004 (relief at source) in respect of any contribution paid in the tax year under a pension scheme, deduct the gross amount of the contribution.
>
> *Step 4* Add back any relief under section 457 or 458 (payments to trade unions or police organisations) that was deducted in calculating the individual's net income for the tax year.
>
> The result is the individual's adjusted net income for the tax year."

THE EVIDENCE

11. Mr Erridge gave oral evidence, was cross-examined by Ms Spalding and answered questions from the Tribunal. We found him to be a transparently honest and credible witness.

12. Ms Rebecca Allison, the HMRC Officer who issued the assessments, provided a witness statement, was cross-examined by Mr Alden and answered questions from the Tribunal. We found her also to be entirely honest and credible.

13. The Tribunal was additionally provided with a witness statement from Mr Stephen Thomas, a senior HMRC Officer whose role is to provide technical support to HMRC's "Campaigns and Projects" team, including those relating to HICBC. He attended the hearing and was tendered for cross-examination, but Mr Alden declined, because Mr Thomas's evidence about the general approach taken in HICBC cases was unchallenged. We accept his evidence.

14. In addition, the Tribunal was provided with a document bundle of 306 pages and a further "generic" bundle of 865 pages, which included legislation, case law, press releases, sample letters and child benefit claim forms.

FINDINGS OF FACT

15. On the basis of the evidence set out above, we make the following findings of fact.

Mr Erridge

16. Mr Erridge is dyslexic. He does not read books because he cannot recognise and retain the material on the page so as to follow a story. His spelling is extremely poor. He left school

at 16 and took up work in the ready mixed concrete industry. His father worked in the same industry, and so Mr Erridge grew up knowing the necessary practical skills.

17. Mr Erridge later married, and Mr and Mrs Erridge's first child was born in 2002, their second in 2008 and their third in April 2013. Mrs Erridge claimed child benefit for the children. At all relevant times, Mr Erridge's ANI exceeded that of Mrs Erridge.

18. Until 2020, Mr Erridge was a PAYE employee. He received a fixed monthly salary, plus benefits including a company car and fuel; in some years he had medical insurance. In addition he was eligible for a bonus. Initially this depended on his own work, and amounted to around one-third of his salary. In later years, the bonus depended on the performance of the group of employees with whom he worked, and the amount of bonus decreased. The bonuses were always paid in April after the end of the tax year.

19. In 2012 Mr Erridge's National Insurance Number ("NINO") was confused with that of another person, and this caused difficulties. HMRC required Mr Erridge to complete a self-assessment ("SA") form for 2012-13, although his ANI for that year was around £36,000. In relation to the HICBC, the relevant part of the return said, "only fill in this section if your income was over £50,000". The return was accompanied by guidance notes which ran to over 30 pages of closely typed text.

20. The NINO problem was sorted out by HMRC working with Mr Erridge's employer. At some point Mr Erridge was taken out of SA, but he registered again on 13 September 2016, so he could monitor and if necessary change his PAYE codes; these codes were amended frequently by HMRC because of the bonus payments and benefits, and those amendments caused unpredictable fluctuations in his take-home pay. Although Mr Erridge was registered for SA for most of the relevant years, he was not sent a Notice to File for any of those years.

The introduction of HICBC

21. The HICBC was introduced with effect from 7 January 2013. In the period leading up to that change in the law, HMRC ran a publicity campaign in the press and broadcast media. Mr Erridge vaguely remembered the campaign, but as his ANI was well below the applicable threshold and he had no expectation of being a higher rate taxpayer, it was not relevant to him.

22. HMRC's records show that Mr Erridge was sent a "SA252" awareness letter on 17 August 2013. This letter required anyone in receipt of child benefit whose income was above £50,000 to register for self-assessment. Mr Erridge had no recollection of receiving the SA252. We found Mr Erridge to be an honest and conscientious taxpayer and find on the balance of probabilities that the letter was not received. In any event, his earnings were still below the threshold and he was already registered for SA.

23. In October 2013, the child benefit claim forms were amended to include information about the HICBC, but there was no similar information on the version of that form used previously.

24. In January 2014, HMRC issued a press release about HICBC, but the Tribunal had no evidence as to how that press release was disseminated or otherwise published and we could make no related findings of fact.

25. In 2013-14 and 2014-15, Mr Erridge's earnings were slightly above the £50,000 threshold, the addition of benefits meant that his ANI exceeded £60,000. His earnings increased in subsequent years, as did the value of his benefits. In 2018-19 his earnings reached £64,649, to which were added car, fuel and medical benefits; pension contributions then reduced the total ANI. Mr Erridge did not notify his liability to the HICBC.

26. In 2020, Mr Erridge became self-employed. He knew he would need help with the tax system because of his dyslexia, and he appointed MCO Accountants Ltd ("MCO") as his agent.

The correspondence and the assessments

27. On 7 January 2021, HMRC sent a letter to Mr Erridge asking him to check whether he was liable to the HICBC. HMRC call this type of letter a "nudge letter". It does not tell the recipient that they have a tax liability but is intended to "nudge" them into taking action.

28. Mr Erridge replied. His letter is handwritten on lined paper and began:

> "I am requesting P60 and P11D as these have been requested to check High Income Child Benefit. Unfortunately I do not have my own records as lost."

29. Mr Erridge then listed the same years as in those set out in the nudge letter, added his full name, date of birth, NINO and his previous address, and ended by saying "thank you for your help in this matter". HMRC received that letter, but for whatever reason, never replied.

30. When Mr Erridge did not receive a response, he tried to work out what his HICBC position was. He was able to access some of his earlier employment earnings from an online portal, but only for the most recent years; he also found his original contract of employment which gave his starting salary. He did his best to complete the figures for each year based on that research, and sent them to HMRC. That letter was not in the bundle but there was no dispute that it was sent.

31. On 24 June 2021, HMRC issued a further letter to Mr Erridge. It began:

> "Our records show that the changes to Child Benefit for people on higher incomes may apply to you. However, you did not register to receive a Self Assessment tax return for the tax years ended 5 April 2013, 2014, 2015, 2016, 2017, 2018 and 2019."

32. The second page of the letter set out the amounts Mr Erridge was "due to pay" based on HMRC's estimate of his ANI for each of the relevant years; that estimate totalled £15,374. Mr Erridge called HMRC immediately on receipt, asking what he had to do. He was told HMRC had suspended work on all HICBC cases, and he would be contacted in due course.

33. On 10 November 2022, over a year later, HMRC wrote to Mr Erridge, saying that his case had been on hold as the result of an Upper Tribunal ("UT") judgment to the effect that HMRC did not have the power to issue discovery assessments in HICBC cases. That case was *HMRC v Wilkes* [2021] UKUT 150 (TCC) ("*Wilkes*"). HMRC's letter went on to say that "the government has amended the legislation" and Mr Erridge would now be issued with assessments.

34. A second letter of the same date enclosed seven HICBC assessments for the years 2012-13 to 2018-19; these totalled £15,374, the same figure as that in the letter of 24 June 2021. Each of those assessments included these paragraphs on the second page:

> "If you choose to appeal to HM Courts and Tribunal Service you'll need to attach a copy of this notice with your appeal...If you appeal, you can ask for payment of all or part of the tax in dispute to be postponed until the matter is resolved.
>
> If you want to apply for postponement, please tell us the amount of tax that you think we're overcharging and the reasons why you think you should not have to pay this. We'll continue to charge interest on any tax we postpone. Once the dispute is settled, you will have to pay the interest if the tax is due."

35. On 30 November 2022, MCO wrote to HMRC appealing the assessments on behalf of Mr Erridge, and adding "these are quite large sums and our client cannot afford to pay in one

go and would therefore like to arrange a repayment plan". Coincidentally, on the same day, HMRC issued Mr Erridge with penalties totalling £4,150.98 for his failure to notify his HICBC liability.

36. On 23 December 2022, HMRC wrote again to Mr Erridge. They said they had received notification from Mr Erridge's agent, MCO, that he was also appealing the penalties, but went on to refuse all the appeals. They also said:

> "This means you will need to pay the tax and penalties we told you about in in our letters dated 30 November 2022. We understand that individuals may face problems making a payment in full when we make our assessments. If you are unable to make a payment in full, please contact our payment helpline…
>
> You can also ask us to postpone the amount of tax you think we have overcharged you. We will not collect this until the appeal is settled. You can ask for postponement by writing to us at the address at the top of this letter."

37. A copy of that letter was sent to MCO. The firm entered into correspondence with HMRC about assessment time limits, the penalty amounts and the *Wilkes* case. On 15 February 2023, HMRC reduced the penalties from £4,150.98 to £3,074.80. Correspondence continued on time limits.

The sale of the family home

38. Mr Erridge tried to agree a payment plan for the tax and penalties, so that he could pay the amounts shown as due over a period of time. HMRC told him that he didn't earn enough for them to agree a payment plan with him, and that collection of the total sum assessed, plus accrued interest, would be passed to an external debt recovery agency.

39. Mr Erridge was then told that he had to find a lump sum to pay HMRC and needed to take action urgently. The only significant asset he owned was the family home. He contacted a local estate agent and asked him to put the property on the market at the "sell now price"; this was less than that which could have been obtained had the house been sold at its market value. Mr Erridge received an offer within two weeks, the property was sold and HMRC paid.

The hearing

40. On 17 March 2023, MCO filed a Notice of Appeal with the Tribunal against the assessments and penalties. On 12 September 2023, HMRC informed MCO that they would not be defending the assessment for 2012-13. At the time of the hearing, the position was thus as set out below:

Tax Year	ANI	Child benefit	HICBC	Penalty
2013/14	£62,582	£2,409	£2,409	£481.80
2014/15	£61,040	£2,475	£2,475	£495.00
2015/16	£65,628	£2,549	£2,549	£509.80
2016/17	£70,147	£2,501	£2,501	£500.20
2017/18	£70,278	£2,501	£2,501	£500.20
2018/19	£80,040	£2,501	£2,501	£500.20
Total			**£14,936**	**£2,987.20**

LATE NOTICE OF APPEAL

41. It was common ground that the Notice of Appeal against the HICBC assessments had been filed after the statutory time limit. However, HMRC did not object to permission being given for the appeal to proceed; Ms Spalding acknowledged that Mr Alden and HMRC had been in discussions during the relevant period, and that this had resulted in changes to HMRC's position.

42. We considered the case law, in particular *Martland v HMRC* [2018] UKUT 0178 (TCC) and the cases there cited. Although we gave particular weight to the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected, we found that it was in the interests of justice to give Mr Erridge permission to notify his appeal late.

WHETHER MR ERRIDGE HAD A REASONABLE EXCUSE

43. There was no dispute that Mr Erridge was liable to the HICBC for all relevant years and it was also accepted that he had not notified HMRC of his liability. The penalties for Mr Erridge's failure to notify were imposed under FA 2008, Sch 41. Para 20 of that Schedule provides that liability to a penalty:

> "does not arise in relation to an act or failure…if [the person] satisfies HMRC or (on appeal) the First-tier Tribunal that there is a reasonable excuse for the act or failure."

44. Mr Erridge appealed against the penalties on the basis that he had a reasonable excuse. We first set out the legal principles, and then apply those principles to Mr Erridge.

The law on reasonable excuse

45. In *Perrin v HMRC* [2018] UKUT 156 ("*Perrin*") at [81] the UT set out a recommended process for this Tribunal to use when considering whether a person has a reasonable excuse:

> "(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, the Tribunal 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 Tribunal, 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. In doing so, the Tribunal 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."

46. At [82] of *Perrin* the UT said:

> "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…"

Application of the law to Mr Erridge

47. The first step in *Perrin* is to establish the facts which Mr Erridge considers form his reasonable excuse. Mr Alden and Mr Erridge said that:

(1) In 2012-13 he was not liable to the HICBC.

(2) Mr Erridge only became liable to the HICBC in 2013-14, and it was his large bonus which tipped him over that threshold.

(3) Although Mrs Erridge had claimed child benefit for their third child in April 2013, this was before the claim forms had been updated to include information about the HICBC.

(4) He was unaware of his HICBC liability until he received the nudge letter.

(5) He then contacted HMRC to ask for assistance in relation to the historic figures, but received no response; he then did his best to work out his position and notified HMRC of his estimated figures.

(6) He called HMRC immediately on receipt of the letter dated 24 June 2021.

48. We have already found the points set out to be facts; they are therefore proven.

49. In relation to the third step in *Perrin*, Ms Spalding submitted that the reasonable taxpayer in Mr Erridge's position would have been aware of the HICBC from the publicity HMRC had issued before its introduction. She added that he should also have been aware from the SA252 and from the child benefit claim form.

50. We disagree. In our judgment, it was objectively reasonable for a taxpayer in Mr Erridge's position to be unaware of the HICBC until he received HMRC's nudge letter of 7 January 2021, because

(1) Although he saw the initial publicity about the HICBC. his income was then well below the relevant threshold, and the reasonable taxpayer in his position would not have retained information about a tax change which was not relevant to him.

(2) Although he completed an SA return in 2012-13, he had no HICBC liability to disclose, because his earnings were well below the threshold. No reasonable taxpayer would have read pages of guidance about areas of the tax system which did not apply to him, and a reasonable taxpayer in Mr Erridge's position would also be dyslexic and have great difficulty reading.

(3) Mr Erridge was a PAYE taxpayer and all his income was taxed before receipt.

(4) He did not receive the SA252 form, while the child benefit claim form contained no information about HICBC until October 2013, after Mrs Erridge had made the claim for their third child.

51. In relation to the fourth step in *Perrin,* Ms Spalding submitted that Mr Erridge did not remedy his failure to notify without unreasonable delay after receipt of the nudge letter. We again disagree. Mr Erridge wrote to HMRC asking for help, but HMRC failed to reply. Mr

Erridge then did his best to work out what his position was, and sent the results to HMRC, but again they did not respond. We find that Mr Erridge acted without unreasonable delay.

Conclusion on the penalties

52. For the reasons set out above, Mr Erridge has a reasonable excuse for his failure to notify and so is not liable to the penalties.

THE ASSESSMENTS

53. We first summarise the legislation and then apply it to Mr Erridge's case.

The legislation

54. Taxes Management Act 1970 ("TMA"), s 7 provides that a person who has not received a notice to file an SA return must notify his liability to HMRC by 5 October following the tax year in question. TMA s 29 gives HMRC the power to raise assessments if they discover that a person has not notified his liability as required by TMA s 7.

55. However, HMRC are only able to raise assessments if they do so within the time limits set by Parliament. TMA s 34 provides that the ordinary time limit is four years after the end of the tax year in question. TMA s 36(1) allows HMRC to assess for six years if the taxpayer was "careless". A taxpayer who has a reasonable excuse is not "careless".

56. TMA s 36(1A) gives HMRC a 20 year time limit if a taxpayer has failed to notify a liability (such as to the HICBC). However, TMA s 118(2) reads:

> "For the purposes of this Act,…where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased."

57. A taxpayer who has a reasonable excuse for his failure to notify is therefore deemed (treated as) having met that obligation, in other words he is treated as if he had complied with his obligation to notify.

Application to Mr Erridge

58. For the reasons already set out, we have found that Mr Erridge had a reasonable excuse for his failure to notify his liability to the HICBC. This means that:

(1) he was "deemed" not to have breached the notification requirement at TMA s 7, so the 20 year time limit does not apply; and

(2) he was not careless, so the 6 year time limit does not apply,

59. HMRC can therefore only rely on the ordinary four year time limit; they cannot rely on the longer time limits given by TMA s 36. As a result, the assessments for all years other than 2018-19 were invalid, because they were issued on 10 November 2022, more than four years after the end of those years. The only year which was validly assessed was 2018-19. The earlier assessments are therefore cancelled.

OTHER MATTERS.

60. There were three other matters: HMRC's delay in issuing the assessments; the collection of amounts assessed, and ESC A19.

The delay in issuing the assessments

61. Mr Alden submitted that:

(1) HMRC knew by at least January 2021, when they issued the nudge letter, that Mr Erridge was liable to the HICBC, and they knew the amounts of the liabilities.

(2) Had HMRC issued the HICBC assessments before 30 June 2021, Mr Erridge could have appealed by that date. As a result, he would have been treated in the same way as Mr Wilkes; in other words, the assessments would have been vacated as invalid.

(3) Instead, HMRC deliberately delayed making the assessments for over a year, until the retrospective legislation had been included in Finance Act 2022.

(4) As a result, Mr Erridge's case was "protected" under s 97 of that Act, allowing HMRC to issue discovery assessments.

(5) This was unfair and unjust.

62. There is no dispute about points (1) to (4) set out above. However, the Tribunal has no jurisdiction to rule on whether it was unfair and unjust for HMRC to hold back on assessing cases until the change in the law. This sort of challenge can only be made at the High Court by a process called judicial review. However, such an application would have had to be made very soon after the assessments were issued, and it is now too late for Mr Eto take that route. Judicial review is also expensive.

HMRC's collection of the HICBC and the penalties

63. It is also not in dispute that Mr Erridge was put under pressure by HMRC to raise money to pay the assessments and the penalties, and that he had to sell the family home to do so. He has thus suffered financial loss and distress.

64. In relation to penalties, HMRC's Compliance Handbook at paragraph CH14300 reads (where "you" is the HMRC officer in question):

> "We do not require payment of disputed penalties in any regime until the dispute is resolved. If you receive an appeal against a penalty (direct tax) or a request for a review (direct or indirect tax) you must make arrangements to inhibit debt management action."

65. HMRC therefore acted in contravention of their own guidance by failing to inhibit collection of the penalties.

66. In relation to assessments, the law gives the taxpayer the right to apply to HMRC for collection to be "postponed" pending the conclusion of the appeal to the Tribunal, see TMA s 55(3); if HMRC refuses (which in practice is rare), the postponement issue can be referred to the Tribunal.

67. HMRC drew attention to postponement in the assessment letters and in the decision letter of 23 December 2022, see §34 and §36. However, the Bundle did not contain any information about whether MCO had made a postponement application, or whether HMRC had reminded Mr Erridge of this option when he made his many calls to debt management. Had this been an issue in these proceedings, disclosure of those call notes (and possibly of the SA notes) would have been needed.

68. However, the Tribunal has no jurisdiction over HMRC's exercise of its debt management or collection powers, and so cannot resolve this matter. The route for complaining about HMRC's actions is via https://www.gov.uk/complain-about-hmrc including any relevant evidence, and if dissatisfied with the response, the matter can be escalated to the independent Adjudicator (https://www.gov.uk/guidance/contact-the-adjudicators-office).

ESC A19

69. ESC A19 is headed "Giving up tax where there are Revenue delays in using information" and so far as relevant reads:

> "Arrears of income tax or capital gains tax may be given up if they result from HMRC's failure to make proper and timely use of information supplied by:
>
> - a taxpayer about his or her own income, gains or personal circumstances
> - an employer, where the information affects a taxpayer's coding; or
> - the Department for Work and Pensions, about a taxpayer's State retirement, disability or widow's pension.
>
> Tax will normally be given up only where the taxpayer:
>
> - could reasonably have believed that his or her tax affairs were in order, and
> - was notified of the arrears more than 12 months after the end of the tax year in which HMRC received the information indicating that more tax was due…"

70. HMRC say in their Self Assessment Manual at SAM101120 (emphasis added):

> "Formerly known as Official Error, Extra-Statutory Concession A19 (ESC A19) allows us, as long as certain conditions are met, to give up income tax and capital gains tax where HMRC has failed to make proper or timely use of information. **Although the concession does not expressly mention** Class 4 NIC or **the High Income Child Benefit Charge (HICBC), they should be considered for remission in the same way** as the associated income tax. The principles of the concession, Policy intent and the text of the concession are set out in the PAYE Manual at PAYE95000 onwards."

71. The Tribunal has cancelled the assessments for all years other than for 2018-19, but has no jurisdiction to consider whether the HICBC for that year should be "given up" under ESC A19 on the basis that:

(1) HMRC failed to make proper and timely use of (a) its Child Benefit information relating to Mr Erridge and (b) his earnings information, and

(2) there was no good reason why they delayed until 2021 before informing Mr Erridge he was liable to the HICBC.

72. If Mr Erridge asks HMRC to apply ESC A19 so as to cancel the tax due for the remaining year, and HMRC refuse, he can make a complaint as explained at §68 above.

Overall conclusion and appeal rights

73. The Tribunal cancels the penalty assessments in full. We also cancel the HICBC assessments for tax years 2013-14 through to 2017-18. We uphold the HICBC assessment of £2,501 for 2018-19. It is a matter for HMRC whether they "give up" that amount under ESC A19.

74. 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 REDSTON
TRIBUNAL JUDGE
RELEASE DATE: 27th MARCH 2024