



[2021] UKFTT 0336 (TC)

TC08270

INCOME TAX - High Income Child Benefit Charge - Penalties for failure to notify chargeability - Whether a reasonable excuse? - No, Appeal dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal Number: TC/2021/00784

TOBIAS NUTT

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE CHRISTOPHER MCNALL

The Tribunal determined this Appeal on 10 September 2021, without a hearing, and under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the document bundle.

DECISION

1. By way of his Notice of Appeal dated 9 March 2021, Mr Nutt challenges a series of penalties imposed on him by HMRC, pursuant to Schedule 41 of the Finance Act 2008, under a Notice of Penalty Assessment dated 9 February 2021. The penalties were imposed as a result of his failure, in relation to several tax years, to notify HMRC, as required by section 7 of the Taxes Management Act 1970, of his chargeability to pay the High Income Child Benefit Charge ('HICBC').

2. The penalties in dispute in this appeal, amounting to £872.60, are as follows:

- | | | | |
|----|-----|---------|---------|
| 10 | (1) | 2012/13 | £69.20 |
| | (2) | 2013/14 | £267.40 |
| | (3) | 2014/15 | £213.20 |
| | (4) | 2017/18 | £215.20 |
| | (5) | 2018/19 | £107.60 |

15 3. The series of years is not continuous. There are no penalties for 2015/16, or 2016/17. Mr Nutt was in the self-assessment regime for those years. In the years in dispute, he was in the PAYE regime.

4. The penalties are all calculated on the footing that Mr Nutt's 'behaviour' (being the technical expression) in not notifying chargeability was neither deliberate nor concealed, was prompted, and that (with the exception of 2018/19) he made HMRC aware of the deficiency more than 12 months after the end of the year of assessment. The penalty ranges for all years (with the exception of 2018/19) are 20% to 30% of the amount of HICBC. For 2018/19, the penalty range is 10% to 30%. For each year, HMRC have imposed the lowest penalty, giving the maximum deductions for 'telling', 'helping', and 'giving'.

5. There is no allegation that Mr Nutt has behaved in any way dishonestly or so as to seek not to fully comply with his tax obligations.

6. Mr Nutt was also notified by HMRC of liability to repay the child benefit received. Assessments (some of which were discovery assessments) were issued on 8 February 2021. Those assessments were paid promptly and in full. Mr Nutt has not appealed those assessments. Therefore, none of the issues dealt with by the Upper Tribunal in *Jason Wilkes v HMRC* [2021] UKUT 150 (TCC) arise.

7. Mr Nutt has appealed only the penalties and interest.

8. In summary, in his Notice of Appeal, Mr Nutt says:

- 35 (1) He did not receive any notification from HMRC about HICBC until February 2021;
- (2) He did not receive 2 letters said to have been sent to him by HMRC in 2019, and HMRC could not demonstrate that those letters had been sent or that he

received them. Therefore, he had not been afforded the same opportunity as others to meet the deadline;

(3) He paid the sum owing in full within a month of first being made aware of the charge despite no contact from HMRC for over 7 years about this issue.

5 9. In his accompanying letter, dated 16 February 2021, he says, in summary:

(1) He was completely unaware that he was receiving child benefit since 2012; and unaware that any tax was due as a result;

(2) At no point until 2019 did HMRC attempt to make him aware of the liability;

10 (3) He did not receive the letters allegedly sent by HMRC;

(4) He contacted HMRC immediately he was made aware of the issue, on 1 February 2021, and attempted to resolve the situation;

(5) A request to complete a self-assessment return for 2019/20 was not sent to him until February 2021 after the submission deadline.

15 10. The Tribunal was provided with a court bundle, which included the Notice of Appeal. HMRC's Statement of Case contains useful background to the appeal. There was also a very substantial generic bundle which contained much information about the "advertising campaign" conducted by HMRC in relation to the HICBC.

20 11. It is not in dispute that Mr Nutt was in receipt of child benefit (although the claimant is identified in the child benefit record which I have seen as Mrs Nutt), nor that Mr Nutt was properly liable to pay the HICBC for each of the years in dispute.

25 12. There is no dispute as to the relevant legislation. Under section 681B of the 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/her adjusted net income 3 for the year is greater than £50,000;

(2) His/her partner's ("partner" is defined in section 681G) adjusted net income is less than his/hers; and

(3) He/her or his/her partner are entitled to child benefit.

30 13. 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.

14. Paragraph 1 of 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.

35 15. Paragraph 14 of 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 she had "a reasonable excuse" for the failure.

16. These are penalty appeals, and so I must first satisfy myself that the conditions for lawful issue of the penalties were satisfied. In that regard, HMRC bears the burden. The standard of proof is the balance of probabilities (or, expressed differently, whether something is likelier nor not).

5 17. I am satisfied, on the basis of the documents in the bundle, that Mr Nutt's income in the relevant years exceeded £50,000; that he was the highest earner; that child benefit was being paid; and that he had not notified chargeability to tax. Therefore, the penalties were issued lawfully.

10 18. The focus therefore now shifts to Mr Nutt. He bears the burden of proving that he has a reasonable excuse for not notifying chargeability, or that there are special circumstances. The standard of proof is again the the balance of probabilities.

NOTIFICATION OF THE HICBC AND NON-RECEIPT OF 'NUDGE' LETTERS

19. Mr Nutt says that he did not know anything about the HICBC until January this year.

15 20. HMRC refer to the Upper Tribunal decision in *Christine Perrin v HMRC* and accept that, in principle, ignorance of the law may represent a reasonable excuse. But the right question to be answered is, if Mr Nutt did lack personal knowledge of the introduction of HICBC, was this lack of awareness “objectively reasonable in all the circumstances.” If it is not, then lack of awareness, even if an excuse, cannot constitute
20 a *reasonable* excuse.

21. HMRC argue that the application of that test is to be determined by applying the decision of the Upper Tribunal in *Gilbert v HMRC*. This means that I should have regard to what a hypothetical person who had in mind the need to comply with whatever statutory obligations might apply to him from time to time would have done. Therefore,
25 establishing the reasons for any alleged lack of knowledge will assist in determining whether the defence of reasonable excuse is made out.

22. I am satisfied that HMRC sent so-called 'nudge' letters to Mr Nutt in November 2019 (page 26 of the bundle) and December 2019 (page 30 of the bundle). The sending of those is recorded in HMRC's internal note at page 105 of the bundle. HMRC had the
30 right address for Mr Nutt (it has been his address since July 2016). There is a rebuttable presumption that post sent in the regular way arrives. Those letters did not make their way back to HMRC as undelivered. The burden thereby shifts to Mr Nutt to show that these two letters were not actually received. I am not satisfied that Mr Nutt has discharged that burden. Therefore, I am satisfied that the two 'nudge' letters were
35 received when sent. The significance of this is that they gave Mr Nutt warning, back at the end of 2019, that he should be notifying HMRC to chargeability in order to avoid the later imposition of any penalties.

23. More generally, I am satisfied that Her Majesty's Government, through HMRC, took steps to make taxpayers generally, as a class, aware of the HICBC. The
40 introduction of the HICBC was not entirely uncontroversial, and it was very widely

publicised in the media and press before the 2012 Budget and thereafter. There were press releases in October and December 2012.

24. Although HMRC was not under any statutory duty to notify Mr Nutt individually, HMRC's records show that on 14 October 2012 they sent him what is known as an 'Awareness letter' t at the address held on file for him at that time.

25. On 17 August 2013, HMRC sent him what is known as an SA252 letter advising him to check if he was liable to the HICBC and to register for self-assessment if he met the relevant criteria.

26. There were further press releases in 2014 reminding higher income parents to register for self-assessment.

27. In 2015/16, Mr Nutt was in the self-assessment regime, rather than PAYE, and filed a self-assessment return, one of the sections of which deals with the HICBC, and asks about the total amount of child benefit received by him or his partner for the year, thereby indicating that HICBC was relevant in determining tax.

28. In 2018 and 2019 HMRC, in response to widespread misgivings raised in connection with the availability of the reasonable excuse defence, issued a further round of press releases dealing with that issue.

29. There is considerable information about HICBC on HMRC's website.

KNOWLEDGE OF RECEIPT OF CHILD BENEFIT

30. In his initial call to HMRC on 1 February 2011, Mr Nutt is recorded as having said that neither he nor his wife had ever been in receipt of child benefit, nor had they ever claimed for it. He said that he had checked his bank accounts and had never received a payment for child benefit, and that he would "leave it with HMRC to investigate". HMRC then sent an email to the child benefit office to confirm the details.

31. Subsequently, in his letter of 16 February 2021, Mr Nutt accepted that, on checking his bank accounts, he discovered that he had received child benefit during this time "without being aware."

32. Given that the point was raised, and for the sake of completeness, I reject any suggestion that Mr Nutt was not aware of the receipt of child benefit. It was a not insubstantial sum being paid, monthly, for years. Child benefit in relation to the Nutts' eldest child (born in 1997) stopped in September 2013, but payment carried on in relation to their younger child (born in 2005). Payment was being made into what was described as a joint bank account with Mr and Mrs Nutt: see page 88 of the bundle. Mr Nutt had the means of knowledge always available to him to see that child benefit was being paid: all he had to do was look at the joint bank account statements.

PROMPT PAYMENT

33. I accept that, as soon as Mr Nutt was formally notified of the assessments, he paid them. This is to his credit, and shows him to be a person who complies with his tax obligations when he knows about them. This is supportive of his position that he did

not, personally, know of the HICBC, on the footing that, had he known sooner, he would have done something about it sooner.

34. But, because of the steps taken to notify him both individually and as part of the class of all taxpayers, this is not sufficient to establish a reasonable excuse for the failure to notify to chargeability. His lack of individual subjective knowledge of the HICBC, even if genuine and sincere, is not - for the reasons set out in *Perrin and Gilbert* - objectively reasonable and does not therefore, objectively, amount to a reasonable excuse.

2019/20 RETURN

35. There is no need to say much about this because no penalty has been imposed in relation to 2019/20. Although the 2019/20 tax year was over, Mr Nutt still had time, under the extended time limit, to file a self-assessment return.

CONCLUSION ON REASONABLE EXCUSE

36. In my view, I do not consider that Mr Nutt has established a reasonable excuse for his failure to notify chargeability for each of the years in dispute, and the penalties cannot be set aside on that basis.

TIMING OF THE PENALTIES

37. The passage of time - several years - between the years of charge and the assessments and the penalties has doubtless caused some rancour in this case. There is no evidence (and so I do not know, and cannot make any findings) as to why it took HMRC so long to get round to dealing with this situation. Mr Nutt was not unknown to HMRC: he was in the PAYE system, paying tax. HMRC knew all along, at the time, from its PAYE records, exactly how much he had earned, and that this exceeded £50,000.

38. Perhaps this is one of those cases, similar to the one discussed by Judge Amanda Brown QC in *Matthew Francis v HMRC* [2021] UKFTT 263 (TC) where, because the child benefit claimant was named as Mrs Nutt, there was no matching up of Mr Nutt's tax affairs and Mrs Nutt's receipt of child benefit (albeit into a joint account) for several years.

39. In *Francis*, Judge Brown QC said (at Para [26]):

"...the Tribunal agrees that however extensive the campaign of promotion embarked upon by HMRC in 2012 the failure to actively involve the Child Benefit Agency in notifying recipients of child benefit that a spouse or partner may become liable to a tax charge almost beggars belief. However, a long line of Tribunal judges before me have considered the same arguments on which to found a reasonable excuse and have refused it. Unless I consider those judgments to be wrong or that the facts in this appeal to be materially different, I should follow the conclusions reached."

40. I respectfully agree.

41. In *Michael Roberts v HMRC* [2020] UKFTT 122 (TC), another HICBC case, I remarked:

5 "As to the passage of time - which is striking - HMRC pointed to section 36(1A) of the 1970 Act, and submitted that pursuing penalties imposed in relation to HICBC in this way ... was 'the will of Parliament'. This is not an argument which Mr Roberts, appearing on his own behalf, was able to address. Therefore, we did not hear or have the chance to consider adversarial argument on the point. We limit ourselves to observing that we were not taken to any Parliamentary materials (for example, White or Green Papers; debates; or ministerial notes) which demonstrate that, when Parliament was enacting this legislation in 2012, it was indeed the will of Parliament (or, put another way, that Parliament expressly had in mind) that people in the position of Mr Roberts - employed and in the PAYE system, rather than self-employed and in the Self-Assessment system - should, up to 20 years after the end of the tax year (i.e., up to 2033, which is still over a decade away) face penalties of this kind."

SPECIAL CIRCUMSTANCES

42. For the sake of completeness, I should consider whether there are any special circumstances which would justify interference with the penalties. I do not consider that there are.

INTEREST

43. The Tribunal has no jurisdiction over interest on the penalties: see the decision of the Upper Tribunal in *HMRC v Gretton* [2012] UKUT 261. There is no discretion on the part of the Tribunal to do anything other than uphold the interest charge.

OUTCOME

44. The appeal is therefore dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

45. 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.

Dr Christopher McNall

**TRIBUNAL JUDGE
RELEASE DATE: 14 SEPTEMBER 2021**