TC07657

INCOME TAX – High Income Child Benefit Charge – penalty for failure to notify chargeability – whether reasonable excuse – appeal dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2019/03963

BETWEEN

KEVIN RAMSDALE **Appellant**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE JONATHAN CANNAN

Sitting in public in Liverpool on 6 March 2020

Mr Ramsdale appeared in person

Ms V Halfpenny of HM Revenue and Customs appeared for the Respondents

DECISION

INTRODUCTION

1. This is an appeal against penalties imposed on Mr Ramsdale pursuant to Schedule 41 Finance Act 2008 ("FA 2008") for failure to notify liability to the High Income Child Benefit Charge ("HICBC"). The penalties total £333.20 and relate to tax years 2012-13 to 2016-17 inclusive.

2. Liability to the HICBC arises under section 681B Income Tax (Earnings and Pensions) Act 2003. It was introduced in tax year 2012-13 for child benefit paid for the week beginning 7 January 2013 onwards. It arises where certain conditions are satisfied. For present purposes the relevant conditions may be summarised as follows:

   (1) Mr Ramsdale's wife claimed child benefit for their two children in the relevant tax years.

   (2) Mr Ramsdale had an adjusted net income in each tax year which exceeded £50,000 and also exceeded that of his wife.

3. Where liability to HICBC arises in any tax year, the individual who is subject to the charge must notify HMRC of liability to income tax pursuant to section 7 Taxes Management Act 1970 ("TMA 1970"). In this appeal, Mr Ramsdale failed to notify his liability to HICBC and as a result HMRC made assessments and penalties for each of the relevant tax years as follows:

Tax Year	Liability to Tax £	Penalty £
2012-13	297	30
2013-14	841	84
2014-15	371	37
2015-16	1,823	182
2016-17	1,788	-
Total	**5,120**	**333**

4. The assessments to tax were made on 20 February 2019, pursuant to section 29 Taxes Management Act 1970 ("TMA 1970"). There is no appeal against the assessments to tax. The penalties were issued on the same date, pursuant to Schedule 41 FA 2008.

5. The relevant provisions of Schedule 41 FA 2008 for present purposes operate as follows. Paragraph 1 provides for a penalty for failing to notify liability pursuant to section 7 TMA 1970. The amount of the penalty depends on the behaviour of the taxpayer. For present purposes HMRC say that Mr Ramsdale's behaviour was treated as "non-deliberate" which means that the maximum penalty pursuant to paragraph 6 was 30% of the potential lost revenue. For these purposes, the amount of the potential lost revenue is the amount of unpaid HICBC (see *HM Revenue & Customs v Robertson* [2019] UKUT 0202). Paragraphs 12 and 13 make provision for a reduction in the penalty for disclosure. In the case of an "unprompted" disclosure the penalty may be reduced to reflect the quality of the disclosure, but not below 10% of the potential lost revenue. Further, in those circumstances it may be reduced to 0% where HMRC became aware of the taxpayer's failure to notify less than 12 months after the time when the tax first became payable. Paragraph 14 makes provision for HMRC to make a

"special reduction" in the amount of the penalty where there are special circumstances. Finally, paragraph 20 provides that liability to a penalty will not arise in the case of a non-deliberate failure if the taxpayer satisfies HMRC or this Tribunal that there was a reasonable excuse for the failure.

6. The penalties were calculated at 10% of the potential lost revenue for tax years 2012-13 to 2015-16. This was on the basis that Mr Ramsden's behaviour was non-deliberate and he was treated as making an unprompted disclosure to HMRC. He was given full credit for disclosure and the 10% penalty for these years was the minimum penalty that HMRC could impose where they were not satisfied that there were any special circumstances and where they did not consider that Mr Ramsdale had a reasonable excuse for his failure. No penalty was imposed for 2016-17 because full credit was given for disclosure and HMRC became aware of the failure to notify less than 12 months after the time when the tax first became payable.

7. Mr Ramsdale appealed against the penalties to HMRC by email dated 5 March 2019. The penalties were confirmed by HMRC in a letter dated 15 March 2019. It does not appear that Mr Ramsdale received that letter and it was resent on 8 April 2019. By letter dated 25 April 2019 HMRC offered to review their decision and informed Mr Ramsdale that alternatively he could appeal directly to this Tribunal.

8. In the event, Mr Ramsdale appealed against the penalties directly to the Tribunal in a notice of appeal dated 24 May 2019. Mr Ramsdale's case is that he had a reasonable excuse for not notifying HMRC of his liability to the HICBC. In particular, he says that he was unaware of the existence of the HICBC and he was not aware that his wife was receiving child benefit.

FINDINGS OF FACT

9. Mr Ramsdale is an electrical engineer and at all material times he has been an employee taxed under the PAYE system. He has never had cause to make a self-assessment return other than in relation to HICBC. He is married with two children presently aged 14 and 10. During the tax years for which penalties have been imposed I understand that Mrs Ramsdale was a full time mother until 2010-11 and since then has been employed as a school dinner assistant. I am satisfied that Mr Ramsdale gave honest and truthful evidence during the hearing. In relation to some aspects, that evidence was based on the best of his recollection and memories of course are not infallible.

10. In August 2013 HMRC wrote to certain individuals who were taxed under PAYE and did not complete self-assessment returns but who might be affected by the HICBC. The letter described the HICBC and stated that the individual might need to complete a self assessment tax return. In particular, if the individual had an income over £50,000 per year, either received or had a partner who received child benefit and had an income higher than their partner. In those circumstances, the letter advised that the individual must register for self assessment for the 2012-2013 tax year to pay the charge and avoid a penalty. It was pointed out that an option to avoid the charge was to opt out of receiving child benefit.

11. HMRC were unable to produce a copy of any letter of this date addressed to Mr Ramsdale, which I understand is because copies are not kept on their systems. However, their computerised PAYE contact history summary indicated that this letter had been sent on 17 August 2013 and that it was not returned undelivered. The address held for Mr Ramsdale at this time was in Lloyd Close, Liverpool which he confirmed was the correct address and had been since 2011.

12. Mr Ramsdale did not recall receiving this letter. He suggested it may have been sent to an incorrect address. The reason he made that suggestion was because he had changed address

in December 2018 to Town Row, Liverpool. Since then he had received two letters from HMRC in December 2019 and January 2020 with the Town Row address but the Lloyd Close postcode. Further he pointed to errors in other correspondence he had received from HMRC in June 2019 chasing payment of £233.20 which was an incorrect sum, and when he had in any event already paid the penalties in the correct sum of £333.20.

13. Taking all those circumstances into account, Mr Ramsdale submitted that HMRC's computerised record did not categorically prove that he had received the August 2013 letter.

14. In this appeal I do not need to be satisfied "categorically" that facts are proved. I must make my findings of fact based on what is the most likely explanation, in other words on the balance of probabilities. The letter was not returned undelivered and Mr Ramsdale does not say that he did not receive it, but that he has no recollection of receiving it. In my view it is more likely than not that HMRC did send the letter dated 17 August 2013 to the right address and that Mr Ramsdale received it. However, he ignored it because he did not realise that his wife was still claiming child benefit.

15. Quite apart from this letter, between October 2012 and January 2014 HMRC issued various press releases and leaflets and provided information on their website to alert taxpayers to the HICBC. The change was covered widely in newspapers and other media. There was a wealth of publicly available material describing the circumstances in which the HICBC arose and how to notify liability and pay the charge via the self-assessment system. Notwithstanding the availability of this information, I am satisfied that Mr Ramsdale remained ignorant of the HICBC.

16. On 10 August 2018 HMRC sent a letter to Mr Ramsdale headed "Do you have to pay the High Income Benefit Charge?" which explained when it was payable and asking Mr Ramsdale to check whether he needed to pay the charge for 2016-17 or earlier tax years. The letter was addressed to Lloyd Close which was the correct address. Mr Ramsdale had no recollection of receiving this letter.

17. On 22 October 2018 HMRC sent a further letter to Mr Ramsdale headed "Final Reminder: important information about the High Income Child Benefit Charge". It referred to the previous letter and repeated the information in that letter. Mr Ramsdale did receive this letter, and it prompted him to contact HMRC. At that stage he decided he had better check with HMRC to see if it was relevant to him. He emailed HMRC on 24 October 2018 stating as follows:

> "As far as I am aware we have not received child benefits for a long time due to my higher rate earnings. Therefore I don't think this request applies to me."

18. HMRC replied on 4 December 2019 to say that information they held showed that either Mr Ramsdale or someone in his household was claiming child benefit. He was asked to provide details of his gross salary and benefits in kind, the number of children he had and the amount of child benefit received. Mr Ramsdale replied on 4 December 2018 with his calculation of the amount of HICBC due. HMRC responded on 24 December 2018 with their calculation of the HICBC due, which was £5,120, and Mr Ramsdale was asked to complete a form answering questions as to the circumstances in which he had failed to notify his liability to HICBC. He returned the form on 29 December 2018, including details of a change of address to Town Row. Thereafter, HMRC issued the assessments and penalties referred to above.

19. Mr Ramsdale's evidence may be summarised as follows:

> (1) Neither he nor his wife were aware that the HICBC had been introduced in 2012-13 and did not becomes aware of it until Mr Ramsdale received HMRC's letter dated 22 October 2018.

(2) He was not aware that his wife was receiving child benefit. The child benefit was not paid into a joint account which he uses to pay bills, but to an account in the name of his wife.

(3) He is taxed under PAYE and has never been asked to complete a self assessment return and did not realise he needed to do so.

(4) As soon as he became aware of the liability he provided details of his income and child benefit received.

(5) In all the circumstances the penalties are unfair.

20. The evidence adduced by HMRC included a print out from the Child Benefit Office, which I understand is part of HMRC. It was a copy of an account for which Mrs Ramsdale was the payee and showed payments going to a bank account which I am satisfied was an account of Mrs Ramsdale. Payments were made in respect of two children, one born in 2005 and one born in 2009. It is difficult to interpret or identify the significance of some of the details on the form but I am satisfied that payments commenced in January 2006 and ceased on 31 October 2018.

21. Mr Ramsdale did not dispute that his wife had received child benefit during that period. However, whilst he was aware that at some stage his wife had claimed child benefit he believed that she had stopped receiving it at some stage. He pointed to the following references on the document:

"HRP START 02.01.06
HRP END 05.04.10"

22. Mr Ramsdale suggested that something had possibly happened in 2010 which made him think that the child benefit payments had been cancelled and his wife was no longer claiming child benefit. Without more, I am not satisfied that is the case. Indeed, Mr Ramsdale accepted that what he might have been thinking of was that they stopped receiving tax credits. In any event, whatever the meaning of that narrative I am satisfied that Mr Ramsdale was not aware that his wife was claiming child benefit during the tax years relevant to this appeal.

DISCUSSION

23. I am satisfied that Mr Ramsdale failed to notify HMRC that he was liable to the HICBC in each tax year from 2012-13 to 2016-17. He therefore became liable to penalties pursuant to Schedule 41 FA 2008 for those years, although for tax year 2016-17 the penalty was reduced to zero. There is no dispute as to the amount of HICBC for which Mr Ramsdale became liable. The sole remaining issue is whether Mr Ramsdale had a reasonable excuse for failing to notify his liability to HICBC.

24. The test for reasonable excuse where a taxpayer has an honest and genuine belief as to a certain state of affairs is that set out by HHJ Medd QC in *The Clean Car Co Ltd v C&E Comrs* [1991] VATTR 234 in the context of VAT default surcharge penalties who said as follows:

> "In reaching a conclusion the first question that arises is, can the fact that the taxpayer honestly and genuinely believed that what he did was in accordance with his duty in relation to claiming input tax, by itself provide him with a reasonable excuse. In my view it can not. It has been said before in cases arising from default surcharges that 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 in at the relevant time, a reasonable thing to do? Put in another way which does not I think alter the sense of the question: was what the taxpayer did not an unreasonable thing for a trader of the sort I have envisaged, in the position the taxpayer found himself, to do?... It seems to me that Parliament in passing this legislation must have intended that the question of whether a particular trader had a reasonable excuse should be judged by the standards of reasonableness which one would expect to be exhibited by a taxpayer who had a responsible attitude to his duties as a taxpayer, but who in other respects shared such attributes of the particular appellant as the tribunal considered relevant to the situation being considered."

25. That test was endorsed by the Upper Tribunal in *Perrin v HM Revenue & Customs* [2018] UKUT 0156 (TCC) which went on to set out the following approach to cases involving reasonable excuse:

> "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."

26. I was referred to a number of Tribunal decisions in relation to HICBC in which taxpayers have been found not to have a reasonable excuse for failure to notify chargeability. I am also aware that there have been recent decisions reported in the media in which certain taxpayers have been found to have a reasonable excuse in circumstances which appear to be similar to Mr Ramsdale. Mr Ramsdale referred me to one such media report. I understand that they are summary decisions which consequently have not been published by the Tribunal. In any event, I must determine whether Mr Ramsdale has a reasonable excuse based on the evidence before me and on my findings of fact in the light of that evidence. Each case must be dealt with on its own merits.

27. I have set out above the factors which Mr Ramsdale says give rise to a reasonable excuse and I have made findings of fact in relation to those matters. I must now consider whether, viewed objectively, Mr Ramsdale has established a reasonable excuse for failing to notify liability to the HICBC.

28. The first part of Mr Ramsdale's case is that he was not aware of the change in the law in 2013 which introduced the HICBC. The Upper Tribunal in Perrin said this about what is often termed "ignorance of the law":

> "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."

29. In my view it was not reasonable for Mr Ramsdale to have been ignorant of the requirement to notify liability to HICBC. I acknowledge that he was an employee and had always accounted for tax and national insurance through the PAYE system. However, I have found that he probably received HMRC's letter sent to him in August 2013. Further, there was an extensive publicity campaign which described the circumstances in which individuals could become liable to HICBC and what to do to make sure that they accounted for the charge.

30. Mr Ramsdale had an honest and genuine belief from 2013 until October 2018 that neither he nor his wife were in receipt of child benefit. However, I am not satisfied that viewed objectively, it was reasonable for Mr Ramsdale to have that belief. In light of the August 2013 letter, the information publicly available between October 2012 and January 2014 and media coverage of the HICBC, viewed objectively, a reasonable taxpayer in the position of Mr Ramsdale would have discussed the matter with his wife. He was aware that she had been claiming child benefit at some stage and he ought to have been aware that if she was receiving child benefit then he would be liable as a higher rate taxpayer for the HICBC. It is not clear why Mr Ramsdale believed that his wife had stopped claiming child benefit. If the reason had been he had asked his wife whether she was claiming child benefit and for some reason she had said no, that would be one matter. If he was confused between entitlement to tax credits and child benefit and mistakenly thought child benefit had stopped then that would be another matter. Without any evidence as to why Mr Ramsdale thought that his wife had stopped receiving child benefit I cannot say that it was reasonable for him not to have the discussion with his wife about the HICBC.

31. It is for Mr Ramsdale to satisfy me that he had a reasonable excuse. In all the circumstances I am not satisfied that Mr Ramsdale had a reasonable excuse for failing to notify liability to HICBC.

32. As mentioned above, HMRC have power to reduce the penalties if they are satisfied that there are special circumstances to justify a special reduction. In broad terms, if the Tribunal considers that HMRC's conclusion that there are no special circumstances is unreasonable, then it may substitute its own decision. I am not satisfied that there are special circumstances in this case. The matters relied on by Mr Ramsdale are relevant to reasonable excuse. The fact that they do not amount to a reasonable excuse is really the end of the matter.

33. Finally, Mr Ramsdale submitted that in the circumstances the penalties were unfair. The Tribunal's jurisdiction to set aside or reduce the penalties arises only if they were not validly imposed, if the taxpayer has a reasonable excuse or if there are special circumstances to justify a special reduction. There is no jurisdiction to set aside or reduce the penalties on the grounds that they are unfair (see *HM Revenue & Customs v HOK Ltd* [2018] UKUT 0156).

CONCLUSION

34. For the reasons given above, whilst I sympathise with Mr Ramsdale I must dismiss this appeal.

35. In his notice of appeal, Mr Ramsdale also says that he wants a payment plan to pay the tax which has been assessed. That is not something which is within the jurisdiction of this Tribunal. Mr Ramsdale should make enquiries in relation to "time to pay" with HMRC.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

36. 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.

JONATHAN CANNAN
TRIBUNAL JUDGE

RELEASE DATE: 30 MARCH 2020