Neutral Citation: [2023] UKFTT 00369 (TC)

Case Number: TC08791

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2022/01026

INCOME TAX – High Income Child Benefit Charge – Failure to notify liability – Assessment not under appeal - Schedule 55 late filing and Schedule 56 late payment penalties – Whether appellant in default of an obligation imposed by statute – yes – Whether reasonable excuse established – no – Appeal dismissed

Heard on: 16 December 2022
Judgment date: 11 April 2023

Before

JUDGE NATSAI MANYARARA
CHRIS JENKINS

Between

BENJAMIN SIMON ALAN COOKE

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Benjamin Cooke, litigant-in-Person

For the Respondents: Ms Vicki Anne Wood, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The Appellant (Mr Benjamin Simon Alan Cooke) is appealing against penalties that HMRC have imposed under Schedule 55 of the Finance Act 2009 ("Schedule 55") for a failure to submit annual self-assessment tax returns on time. The Appellant is also appealing against penalties that HMRC have imposed under Schedule 56 of the Finance Act 2009 ("Schedule 56") for the late payment of tax. The penalties relate to the Appellant's liability to the High-Income Child Benefit Charge (hereinafter referred to as 'the HICBC').

2. The penalties charged on the Appellant arose as follows:

Tax Year	**Date of Penalty**	**Legislation**	**Description**	**Amount**
2017	3 December 2019	Schedule 56	30-day late payment penalty	£82
2018	7 May 2019	Schedule 55	Late filing penalty	£100
2018	5 November 2019	Schedule 55	Six-month late filing penalty	£300
2018	25 August 2020	Schedule 55	12-month late filing penalty	£300
2018	19 January 2021	Schedule 56	30-day late payment penalty	£124
2018	19 January 2021	Schedule 56	six-month late payment penalty	£124
2018	19 January 2021	Schedule 56	12-month late payment penalty	£124
2019	12 February 2020	Schedule 55	Late filing penalty	£100
2019	3 November 2020	Schedule 55	Daily penalty	£900
			Total	**£2,154.00**

3. The daily penalties for the year ending 5 April 2018 (in the sum of £900) were cancelled by HMRC and are not relevant to this decision. HMRC's Statement of Reasons wrongly records the total sum under appeal as being £2,454.00. This sum was said to have been following the deduction of the daily penalties for 2017-18. Having excluded the daily penalties for 2017-18 in the schedule above, we are left with a total of £2,154.00 (and not the £2,454.00 stated by HMRC).

4. The Appellant cannot appeal against interest and balancing charges therefore these amounts are also not included in this total.

BACKGROUND FACTS

5. On 19 September 2014 and 9 January 2019, HMRC issued letters to the Appellant in relation to the HICBC. The Appellant and his wife were in receipt of Child Benefit. The Appellant's salary exceeded the £50,000.00 threshold (in relation to the HICBC). The letters on 19 September 2014 and 9 January 2019 were followed by an assessment on 8 February 2019, in relation to the 2017 tax year. The assessment was raised under s. 29 of the Taxes Management Act 1970 ('TMA'), in the sum of £1,651.00. The assessment was not appealed by the Appellant, and it became final on 10 March 2019. The Appellant's wife subsequently stopped the Child Benefit claim on 26 March 2019.

6. As the Appellant's income exceeded the threshold, notices to file were issued to the Appellant for the 2018 and 2019 tax years. The Appellant did not file his tax returns by the statutory deadline(s) and late filing penalties were issued by HMRC, pursuant to Schedule 55. The Appellant further did not pay the outstanding tax due by the statutory deadline(s) and he was issued with late payment penalties, pursuant to Schedule 56. The Appellant now appeals against those penalties.

THE PARTIES' RESPECTIVE POSITIONS

HMRC's Statement of Reasons

7. HMRC's case can be summarised as follows:

(1) The Appellant did not appeal against the assessment raised on 8 February 2019, in respect of 2016-17. The due date for payment of an assessment is established by s. 59B (6) TMA. Tax is due on the day following the end of a period of 30 days, beginning with the day on which the notice of assessment is given.

(2) The Appellant was required to file a tax return for 2017-18. The notice to file for 2017-18 was issued to the Appellant on 23 January 2019. The 'filing date' (for 2017-18) is determined by s. 8(1G) TMA. The filing date for the tax return was 30 April 2019. The Appellant's tax return was not submitted by the filing date. The Appellant's tax return was received on 18 January 2021. It was submitted 628 days late. The Appellant is, therefore, liable to pay a penalty.

(3) In respect of 2018-19, the 'filing date' is determined by s. 8(1D) TMA, which states that for the year ending 5 April 2019, a paper return must be filed by 31 October 2019 and an electronic return must be filed by 31 January 2020. The Appellant's tax return for 2018-19 was received on 17 January 2021. It was 351 days late. As the Appellant did not submit a tax return by the filing date, he became liable to a penalty. The notice of penalty assessment serves as a warning about daily penalties.

(4) The Appellant registered to receive electronic communications on 10 April 2019. The notices to file for the relevant years were issued before this date and were, therefore, issued in paper format. Although there appeared to be problems online, the

Appellant had been sent a paper self-assessment tax return for 2017-18 on 23 January 2019.

(5) In relation to payment of tax, the due date for payment is established by s. 59B TMA. The 'penalty date' is defined at para. 1(4) of Schedule 56.

(6) HMRC only undertake to advise taxpayers who file paper returns by 31 October of the amount of tax that they are due to pay by the payment deadline.

Appellant's Grounds of Appeal

8. The Appellant's grounds for appealing against the penalties can be summarised as follows:

(1) He was not familiar with the process of completing self-assessment tax returns.

(2) The requirement for him to complete a tax return was only due to Child Benefit.

(3) He paid back the sum of £2,054.85 due to this error and he cancelled his family allowance. He assumed that his tax affairs would then return back to normal.

(4) He had issues logging on to his online account.

(5) He does not have any savings and he would have to make sacrifices to pay the penalties due.

APPEAL HEARING

Preliminary matters

9. At the commencement of the appeal hearing, we confirmed that we had all of the documents that had been submitted in support of the appeal. These included the:

(1) Court Bundle consisting of 219 pages;

(2) Legislation and Authorities Bundle consisting of 171 pages; and

(3) HMRC's Statement of Reasons dated 29 March 2022 (which was included in the unpaginated correspondence bundle).

10. Both parties confirmed that they had the same bundles.

11. Ms Wood confirmed that the assessment raised on 8 February 2019 had not been appealed against, and that the only matters before the Tribunal were the late filing penalties (2018 and 2019) and the late payment penalties (2017, 2018 and 2019). She further submitted that the Appellant's appeal had included interest, which was not appealable. If the Appellant's appeal were successful, any interest would fall away.

Evidence and Submissions

12. Ms Wood opened HMRC's case, as set out in the Statement of Reasons (which I will not repeat here). We then heard oral evidence from the Appellant.

13. In his oral evidence, the Appellant said this:

(1) He had an awareness that he needed to complete tax returns but he had tried to complete the returns. He never received any guidance on how to complete tax returns. It is clear from the calls he made to HMRC that he was a novice in this respect. The volume of calls that he made was because he genuinely did not know what to do, and he could not access any information.

(2) He accepts that he received all email notifications, but it is not as simple as clicking on the notification to see the email. There are quite a number of security processes. He had to have his password reset. The codes to reset passwords have to be used within 30 days.

(3) He has had to complete things within certain timeframes but HMRC did not adhere to any timeframes in the handling of his appeal.

(4) He decided to stop claiming Child Benefit in 2019. He had been placed in a situation of having to file and submit his own self-assessment tax returns and has paid back the amounts received. His error was not deliberate.

(5) He has paid money back for the error in his ways and he does not feel that he should have to pay more money back to HMRC.

14. Following completion of the oral evidence, we heard closing submissions from Ms Wood and the Appellant was given the final word, by way of a reply.

15. At the conclusion of the appeal hearing, we reserved our decision and issued a Summary Decision thereafter. We now give our Full Findings of Fact and reasons for the Decision.

APPLICABLE LAW

16. The relevant law, so far as is material to the issues in this appeal, is as follows:

*"**Taxes Management Act 1970***

Section 7 - Notice of liability to income tax and capital gains tax

(1) Every person who—

(a) is chargeable to income tax or capital gains tax for any year of assessment, and

(b) has not received a notice under section 8 of this Act requiring a return for that year of his total income and chargeable gains, shall, subject to subsection (3) below, within six months from the end of that year, give notice to an officer of the Board that he is so chargeable.

(2) In the case of [persons who are] chargeable as mentioned in subsection (1) above as [the relevant trustees] of a settlement, that subsection shall have effect as if the reference to a notice under section 8 of this Act were a reference to a notice under section 8A of this Act.

...

8 Personal return

(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, [and the amount payable by him by way of income tax for that year,]5 he may be required by a notice given to him by an officer of the Board-

(a) to make and deliver to the officer, a return containing such information as may reasonably be required in pursuance of the notice, and

(b) to deliver with the return such accounts, statements and documents, relating to information contained in the return, as may reasonably be so required.

...

[(1D) A return under this section for a year of assessment (Year 1) must be delivered-

(a) in the case of a non-electronic return, on or before 31st October in Year 2, and (b) in the case of an electronic return, on or before 31st January in Year 2.

...

(1G) Exception 2 is that if a notice in respect of Year 1 is given after 31st October in Year 2, a return (whether electronic or not) must be delivered during the period of 3 months beginning with the date of the notice.

...

Finance Act 2009

Schedule 55

Paragraph 3

P is liable to a penalty under this paragraph of £100.

Paragraph 4

(1) P is liable to a penalty under this paragraph if (and only if)-

(a) P's failure continues after the end of the period of 3 months beginning with the penalty date,

(b) HMRC decide that such a penalty should be payable, and

(c) HMRC give notice to P specifying the date from which the penalty is payable.

(2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).

(3) The date specified in the notice under sub-paragraph (1)(c)-

(a) may be earlier than the date on which the notice is given, but

(b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

Paragraph 5

(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this paragraph is the greater of-

(a) 5% of any liability to tax which would have been shown in the return in question, and (b) £300.

Paragraph 6

(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P [deliberately] withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of-

(a) [the relevant percentage] of any liability to tax which would have been shown in the return in question, and

(b) £300.

...

Paragraph 16 Special reduction

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include-

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to- (a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

...

Schedule 56

Paragraph 3

(1) This paragraph applies in the case of—

(a) a payment of tax falling within any of items 1, 3[, 3B] [, 3C] and 7 to 24 in the Table,

(b) a payment of tax falling within item 2 or 4 which relates to a period of 6 months or more, and

(c) a payment of tax falling within item 2 which is payable under regulations under section 688A of ITEPA 2003 (recovery from other persons of amounts due from managed service companies).

(2) P is liable to a penalty of 5% of the unpaid tax.

(3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

(4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

Paragraph 9 Special reduction

(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

DISCUSSION

17. This is an appeal by the Appellant against the imposition of late filing penalties. The penalties were imposed in respect of the late filing of self-assessment tax returns. The Appellant is also appealing against penalties that were imposed in relation to the late payment of tax.

18. We have derived considerable benefit from hearing the evidence and the submissions. Having considered all of the evidence and the submissions, cumulatively, we make the following findings of fact and give our reasons for the decision.

Findings of fact

19. On 19 September 2014, HMRC issued a letter to the Appellant explaining the HICBC. The letter was issued to the address at 6 Whitmore Road. On 9 January 2019, HMRC issued a further letter to the Appellant, in relation to the HICBC. The letter was issued to the Branksome address. Assessments were subsequently raised for 2015 and 2016.

2016-17

20. On 8 February 2019, HMRC raised an assessment, under s. 29 TMA, in the amount of £1,651.00. The assessment was raised as the Appellant had not notified his liability to the HICBC. The assessment was issued to the address that HMRC had on file for the Appellant. The Appellant did not appeal against the assessment and it became final on 10 March 2019. The due date for payment was 30 days following the date of the assessment. On 3 December 2019, a late payment penalty, amounting to 5% of the outstanding tax liability, was issued to the Appellant.

2017-18

21. On 23 January 2019, HMRC issued a full paper tax return to the Appellant, for the year ending 5 April 2018. The notice to file was issued to the address at 1 Branksome, which is the address that HMRC had on file for the Appellant. The filing date for the 2018 tax return was 30 April 2019 (for a paper return or an electronic return). During a call with HMRC on 6 March 2019, an adviser pointed out to the Appellant that a tax return is required for 2017-18. The call log shows that the Appellant understood what was being required from him.

22. On 10 April 2019, the Appellant signed up to receive paperless communication.

23. As the 2018 tax return had not been received by the filing date, HMRC issued a notice of penalty assessment on 7 May 2019, for the £100 late filing penalty. The penalty was issued to the Appellant's address at 1 Branksome. A further call on 13 July 2019 shows that the Appellant was sent instructions on how to complete an online return. Another call log, on 7 August 2019, shows that the Appellant was informed that he would require a code to submit the tax return.

24. As the return had still not been received six months after the penalty date, HMRC issued a notice of penalty assessment on 5 November 2019, in the amount of £300. The notice of penalty assessment was issued to the secure mailbox in the Appellant's personal tax account and an email alert was sent to his verified email address.

25. Another phone call on 10 December 2019 shows that the adviser referred to the penalties on record for the late tax return for 2018. There was then a discussion about why the Appellant needed to complete tax returns for 2018 and 2019 (as his income was over the threshold thereby bringing him into self-assessment). During the last call, the adviser talked the Appellant through the process of completing a tax return. The Gateway and password were also discussed.

26. A further notice of penalty assessment was issued on 25 August 2020, as the Appellant's tax return had still not been received 12-months after the filing date. This was issued to the secure mailbox in the Appellant's personal tax account, with an email alert being sent to his verified email address.

27. There were no further phone calls from the Appellant until 18 November 2020.

28. The Appellant's 2018 tax return was received on 18 January 2021. The Appellant's tax liability was £2,484.80. On 19 January 2021, HMRC issued notices of penalty assessment under paras. 3(2), 3(3) and 3(4) of Schedule 56, in relation to the late payment of tax. The amount of each penalty assessment was £124, which represented 5% of the outstanding tax liability.

2018-19

29. On 6 April 2019, HMRC issued a notice to file for the year ending 5 April 2019 (prior to the Appellant signing up to receive paperless communication). The notice to file was issued to the address at 1 Branksome, which is the address that HMRC had on file for the Appellant. The filing date for the 2019 tax return was 31 October 2019 (for a paper return) or 31 January 2020 (for an electronic return).

30. As the tax return had not been received by the filing date, HMRC issued a notice of penalty assessment, on 12 February 2020, for the £100 late filing penalty. HMRC also issued a notice of penalty assessment on 12 February 2020, in the amount of £300 (as the return had still not been received six months after the penalty date). The notice of penalty assessment was issued to the secure mailbox in the Appellant's personal tax account and an email alert was sent to his verified email address. A further notice of penalty assessment was issued on 3 November 2020, as the Appellant's tax return had still not been received 12-months after the filing date. This was also issued to the secure mailbox in the Appellant's personal tax account, with an email alert being sent to his verified email address.

31. The Appellant's 2019 tax return was received on 17 January 2021

32. The Appellant stopped claiming Child Benefit in 2019.

33. On 19 January 2021, the Appellant appealed against the penalties. Following further exchanges of correspondence, HMRC carried out a review and issued their review conclusion on 29 November 2021. The outcome of the review was that HMRC's decision should be upheld. On 31 December 2021, the Appellant notified his appeal to the Tribunal.

Consideration

34. It is trite law that no penalty can arise in any case where the taxpayer is not in default of an obligation imposed by statute.

35. In *Perrin v R & C Commrs* [2018] BTC 513 ('*Perrin*'), at [69], the Upper Tribunal explained the shifting burden of proof as follows:

> "Before any question of reasonable excuse comes into play, it is important to remember that the initial burden lies on HMRC to establish that events have occurred as a result of which a penalty is, prima facie, due. A mere assertion of the occurrence of the relevant events in a statement of case is not sufficient. Evidence is required and unless sufficient evidence is provided to prove the relevant facts on a balance of probabilities, the penalty must be cancelled without any question of "reasonable excuse" becoming relevant."

36. The factual prerequisite is, therefore, that HMRC have the initial burden of proof: see also *Burgess & Brimheath v HMRC* [2015] UKUT 578 (TCC), in the context of a discovery assessment.

37. The standard of proof is the civil standard; that of a balance of probabilities.

38. The issues under appeal are firstly, whether HMRC were correct to issue the penalties in accordance with legislation and, secondly, whether or not the Appellant has established a reasonable excuse for the defaults which have occurred. In this regard, HMRC bear the initial burden of demonstrating that the penalties are due. Once this is discharged, the burden of proof is upon the Appellant to demonstrate that there is a reasonable excuse.

39. Two further questions arise in determining this appeal. They are: if the Appellant is in default of an obligation imposed by statute: (a) what was the period of default? and (b) did the Appellant have a reasonable excuse throughout the period?

40. The above matters are to be considered in light of all the circumstances of the case.

Q. Is the Appellant in default of an obligation imposed by statute?

41. The HICBC was considered by Parliament in several debates and the measures were announced by the Chancellor in the 2012 budget. There was an extensive publicity campaign to raise awareness, leading up to the introduction of the HICBC.

42. The HICBC came into effect by virtue of Schedule 1 of the Finance Act 2012, which amended Chapter 8, Part 10 the Income Tax (Earnings and Pensions) Act 2003 ('ITEPA'). From 7 January 2013, if an individual had an Adjusted Net Income ('ANI') in excess of £50,000.00 a year and either that individual, or his/her partner, received any Child Benefit payments, then the partner with the higher income had to pay the HICBC. If a taxpayer chose

to claim Child Benefit, they would have to notify liability to the HICBC. For each £100 in excess of £50,000.00, a 1% tax liability arises, calculated on the amount of Child Benefit received. Where a taxpayer's ANI reaches £60,000.00, the result is that 100% of the Child Benefit received becomes liable to a tax charge. The change in the law meant that taxpayers had a statutory obligation to notify chargeability to tax.

43. HMRC's website further provided full details of the HICBC. HMRC's website also has a calculator on which taxpayers can verify whether they have to pay some, or all, of the Child Benefit as a tax charge if their ANI is over £50,000.00 per annum. A bounty pack was also given to all parents of a new born after 2012-13, containing a flyer about Child Benefit, where the HICBC was explained. To claim Child Benefit, a person would have to fill out the Child Benefit claim form and send it to the Child Benefit Office for processing. The forms include multiple warnings about the HICBC (at p. 2 of the notes accompanying the claim form). It was not until April 2018 that Child Benefit could be claimed by telephone (in certain circumstances).

44. The HICBC arises under s. 681B ITEPA and the obligation to notify liability to the HICBC is provided for under s. 7 TMA. The time-limit for notifying chargeability income is six months from the end of the tax year in which the liability arises. The six-month time-limit ensures that a taxpayer can be sent a tax return in sufficient time to complete the tax return within the normal cycle for the year.

45. A notice to file under s. 8 TMA creates a legal obligation to file a tax return. Ordinarily, the date for filing a paper return is 31 October, and for an electronic return it is 31 January: s. 8(1D) TMA. Pursuant to s. 8(1G) TMA, if a notice to file in respect of Year 1 is given after 31 October in Year 2, a tax return must be delivered during the period of three months, beginning on the date of the notice. HMRC's computer system allows a concessionary period of seven days (in addition).

46. Schedule 55 makes provision for the imposition by HMRC of penalties on taxpayers for the late filing of tax returns. If a person fails to file an income tax return by the "penalty date" (the day after the "filing date" i.e., the date by which a return is required to be made or delivered to HMRC), para. 3 of Schedule 55 provides that he is liable to a penalty of £100. Paragraph 4 of Schedule 55 provides that a person is liable to a penalty under this paragraph if the failure continues after the end of the period of three months, beginning with the penalty date. Paragraph 5 of Schedule 55 provides that a person is liable to a penalty under that paragraph if his failure continues after the end of the period of six months, beginning with the penalty date. Paragraph 6 of Schedule 55 provides that a person is liable to a penalty under that paragraph if his failure continues after the end of the period of 12 months, beginning with the penalty date.

47. The due date for payment of income tax liability is established by s. 59B TMA. The date for making payment is 31 January. Schedule 56 makes provision for the imposition by HMRC of penalties on taxpayers for the late payment of tax. Where a person fails to make

payment on, or before, the penalty date, a penalty may be assessed under para. 3 of Schedule 56. Under para. 3(2) of Schedule 56, a penalty of 5% of the outstanding tax liability is chargeable if a person fails to make payment of tax by the penalty date. Under para. 3(3) of Schedule 56, a penalty of 5% of the outstanding tax liability is charged if a person fails to make payment within five months of the penalty date, and under para. 3(4), a further penalty of 5% of the outstanding tax liability is charged if a person fails to pay tax within eleven months of the penalty date.

48. We have concluded that the tax return for the 2018 tax year was submitted on 18 January 2021. It should have been submitted by 30 April 2019. We have further concluded that the tax return for the 2019 tax year was submitted on 17 January 2021. It should have been submitted by 31 January 2020.

49. The Appellant did not appeal against the assessment in relation to 2016-17 and it became final. The Appellant was due to make payment in relation to 2016-17 (assessment), by 10 March 2019. The late payment penalty in relation to the 2016-17 tax year was applied on 3 December 2019. In relation to 2017-18, the Appellant was liable to pay the tax due by 31 January 2019. This is because despite the tax return being issued to him on 23 January 2019, the Appellant had failed to notify his liability to income tax in respect of the HICBC. Although the Appellant was given three months to file the tax return, the payment date remained unchanged (i.e., 31 January 2019). Finally, in relation to 2018-19, the Appellant was liable to pay the tax due by 31 January 2020. The Appellant did not make payment by the statutory due date. The need to adhere to statutory obligations and deadlines is one that cannot be circumvented or overcome.

50. For all of the foregoing reasons, we hold that the Appellant is in default of an obligation imposed by statute, in relation to the filing of self-assessment tax returns for 2018 and 2019; and the payment of tax in relation to 2017, 2018 and 2019. Subject to considerations of 'reasonable excuse' and 'special circumstances' set out below, the penalties imposed are due and have been calculated correctly.

Q. Has the Appellant established a reasonable excuse for the defaults which have occurred?

51. There is no statutory definition of 'reasonable excuse'. Whether or not a person had a reasonable excuse is an objective test and is a matter to be considered in the light of all of the circumstances of the particular case: *Rowland v R & C Commrs* (2006) Sp C 548 ('*Rowland*'), at [18]. Parliament has addressed the issue of the individual circumstances of the taxpayer by providing, at para. 23 of Schedule 55 (in relation to late filing), that:

> "(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.
>
> (2) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased."

52. And in relation to the late payment of tax, para. 16 of Schedule 56 provides that:

"16(1) If P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for a failure to make a payment—

(a) liability to a penalty under any paragraph of this Schedule does not arise in relation to that failure, and

(b) the failure does not count as a default for the purposes of paragraphs 6, 8B, 8C, 8G and 8H.

(2) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased."

53. The test we adopt in determining whether the Appellant has a reasonable excuse is that set out in *The Clean Car Co. Ltd. v C&E Commissioners* [1991] VATTR 234 ("*Clean Car*"), in which Judge Medd QC said this:

"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?"

54. Although *Clean Car* was a VAT case, it is generally accepted that the same principles apply to a claim of reasonable excuse in direct tax cases.

55. In *Perrin*, the Upper Tribunal explained that the experience and knowledge of the particular taxpayer should be taken into account in considering whether a reasonable excuse has been established. The Upper Tribunal concluded that for an honestly held belief to constitute a reasonable excuse, it must also be objectively reasonable for that belief to be held. The word '*reasonable*' imports the concept of objectivity, whilst the words '*the*

taxpayer' recognise that the objective test should be applied to the circumstances of the actual (rather than the hypothetical) taxpayer. The standard by which this falls to be judged is that of a prudent and reasonable taxpayer, exercising reasonable foresight and due diligence, in the position of the taxpayer in question and having proper regard for their responsibilities under the Tax Acts: *Collis v HMRC* [2011] UKFTT 588 (TC) ('*Collis*'). The decision depends upon the particular circumstances in which the failure occurred. Where the person had a reasonable excuse for the failure but the excuse ceased, the person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

56. We proceed by determining whether facts exist which, when judged objectively, amount to a reasonable excuse for the defaults which have occurred and, accordingly, give rise to a valid defence. In this regard, we have assessed whether the facts put forward and any belief held by the Appellant are sufficient to amount to a reasonable excuse.

57. In further amplification of his grounds of appeal, the Appellant submits that he was not familiar with the self-assessment process and only needed to complete a tax return in relation to the HICBC. He further submits that the volume of calls that he made to HMRC show that he was a novice at completing tax returns. He adds that he has paid back an amount of money due to the error and assumed that his tax affairs would return to normal. The Appellant also submits that he had issues logging on to his tax account.

58. Having considered these explanations, we find that the Appellant has not established a reasonable excuse. We give our reasons for so finding:

59. Firstly, we are satisfied that awareness letters were issued to the Appellant by HMRC as long ago as 19 September 2014, and also on 9 January 2019, in respect of the HICBC. The letters issued to families affected by the changes to Child Benefit, such as the Appellant's family, explained how the HICBC was to take effect from 7 January 2013; and that the new charge would apply when a taxpayer's (or their partner's) income exceeds £50,000.00. Those affected would then have needed to decide whether to keep receiving Child Benefit and pay the tax due through self-assessment, or to stop receiving Child Benefit and not pay the new charge. We find that the letters sent to the Appellant on 19 September 2014 and 9 January 2019 clearly set out the circumstances in which the HICBC would be applied, and the need to register to receive a tax return. We therefore find that as early as 2014, the Appellant was aware of the HICBC and that it potentially applied to him.

60. The letter issued to the Appellant on 19 September 2014 was set out in the following terms:

> *"Dear Mr Cooke*
>
> ***High Income Child Benefit Charge***

Our records indicate the recent changes to Child Benefit for people on higher incomes may apply to you and you did not register to receive a Self Assessment tax return for the tax year ended 5 April 2013.

Changes to Child Benefit

The new High Income Child Benefit Charge came into effect on 7 January 2013. You have to pay the tax charge if all of the following statements applied to you in the tax year ended 5 April 2013.

- *You have an individual income of over £50,000 a year.*
- *Either you or your partner received any Child Benefit payments after 7 January 2013.*
- *Your income for the tax year is higher than your partner's. The partner with the higher income has to pay the charge if both partners have income over £50,000."*

61. The letter issued to the Appellant on 9 January 2019 was set out in the following terms:

"Dear Mr Cooke

High Income Child Benefit Charge

Our records indicate that the changes to Child Benefit for people on higher incomes may apply to you and you did not register to receive a Self Assessment tax return for the tax years ended 5 April 2015, 2016 and 2017.

Changes to Child Benefit

The new High Income Child Benefit Charge came into effect on 7 January 2013. You have to pay the tax charge if all of the following statements applied to you in the tax year ended 5 April 2013.

- *You have an individual income of over £50,000 a year.*
- *Either you or your partner received any Child Benefit payments after 7 January 2013.*
- *Your income for the tax year is higher than your partner's. The partner with the higher income has to pay the charge if both partners have income over £50,000."*

62. The Appellant does not deny having received the letters issued by HMRC. Whilst the Appellant in the appeal before us does not argue that he did not receive the awareness letters, case law has, in any event, established that the HICBC was a widely publicised initiative. In *HMRC v Robertson* [2019] UKUT 0202 (TCC) ('*Robertson*'), the Upper Tribunal (Judge Poole and Judge Thomas Scott) considered an argument by the appellant (in that appeal) to the effect that the awareness letters had not been received. Judge Scott held, at [98], that:

"[98] As to whether the appellant had a reasonable excuse, while we accept his evidence that neither he nor his wife received any awareness letters or SA 252s in 2012 or 2013, we do not think this is enough to establish a reasonable excuse. Unlike some tax changes this one was very high profile and was widely discussed in all sorts of media…."

[Emphasis added both above and below]

63. Furthermore, in *Johnstone v HMRC* [2018] UKFTT 0689 (TC) ('*Johnstone*'), Judge Poon summarised the judicial position in respect of whether HMRC have a duty to notify all taxpayers potentially affected by the HICBC, at [49]:

> "(1) HMRC do not have a statutory duty to notify all taxpayers potentially affected by HICBC. By statutory duty, we mean a duty that is provided by Parliament and laid down by statute. For example, HMRC have a statutory duty to issue a notice of assessment for any tax liability to be enforceable.
>
> (2) What initiatives or measures HMRC had taken to raise awareness of HICBC were matters of internal policy decisions, over which the Tribunal has no jurisdiction.
>
> (3) The cohort of taxpayers likely to be affected by HICBC is not readily identifiable from the information held by HMRC, especially when the recipient of the child benefit and the taxpayer liable to HICBC are not the same person, as is the case here.
>
> (4) The 'Child Benefit' is not a means-tested benefit, and as such, the Child Benefit Agency does not hold data to enable any identification of the recipients that may be affected by HICBC.
>
> (5) The proposition that the Child Benefit Agency makes para 21 provisions relevant is completely misguided. Paragraph 21 of Sch 41 addresses situations wherein the taxpayer has relied on an agent, such as an accountant, to notify HMRC of a liability to tax…
>
> (6) …Under para 21, the reliance on an agent to notify a liability to HMRC gives rise to a defence for the taxpayer because there is a contractual relationship between the taxpayer and the agent for such a responsibility to be discharged. The CBA has no contractual relationship with Mr Johnstone to undertake to notify HMRC of his liability to HICBC.
>
> (7) Mr Johnston has also suggested that the process whereby taxpayers get sent the awareness letter by HMRC was unfair, as it clearly had left some affected taxpayers out. Such a challenge can only be done by way of a judicial review at the High Court, as this tribunal has no general supervisory jurisdiction by way of judicial review.

64. Similarly, in *Lau v HMRC* [2018] UKFTT 230 (TC) ('*Lau*'), at [33], Judge Anne Scott held that HMRC are under no obligation to notify individual taxpayers.

65. Secondly, s. 7 TMA requires an individual who is liable to income tax, or capital gains tax, for a year of assessment to notify HMRC of that fact within six months of the end of the tax year when the liability arises. Therefore, if a taxpayer is chargeable to income tax and has not received a notice to file a return, there is an obligation upon the taxpayer to notify chargeability, unless there is no liability to the HICBC. The Appellant does not deny that his partner had been in receipt of Child Benefit for the relevant period, or that his income exceeded the threshold for liability to tax. Having received the awareness letters, we find that the Appellant did not notify liability to the HICBC and so the notices to file were validly issued in respect of 2017-18 and 2018-19. We find that any question as to whether the Appellant was liable for the HICBC for the tax years in question is answered in the affirmative. The Appellant only stopped claiming Child Benefit in 2019. The Appellant has not provided any explanation as to why he did not notify his liability to tax in relation to the HICBC.

66. Thirdly, we have found that the Appellant did not file his tax returns by the statutory deadline(s) and failed to pay the resulting tax due by the statutory deadline(s). We have found that the Appellant only signed up for paperless communication on 10 April 2019. In opting for paperless communication, the Appellant needed to complete several processes on screen, and confirm his email address. The Appellant would then need to agree to the terms and conditions before pressing the "Continue" button. The statement "Go paperless with HMRC" would then appear on screen. Any communication prior to this date would have been issued in paper. After this date, communications would go to the Appellant's personal tax account. If emails are not received in a taxpayers account, they bounce back to HMRC.

67. The notice to file for 2018 was issued on 23 January 2019 and the notice to file for 2019 was issued on 6 April 2019. The Appellant's stated problems with his online account do not, therefore, explain the failure to act on the notice(s) to file, which were issued before he signed up for paperless communication. We are satisfied that the notices were sent to the address that HMRC had on file for the Appellant and there is no suggestion that they were returned undelivered. There is no suggestion, on the evidence before us, that there were any difficulties with the postal service at around the time of those deliveries. The Interpretation Act 1978, at s 7 (which relates to service by post), provides that:

> "Where an Act authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, the 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".

68. The notices are therefore deemed to have been delivered, unless the contrary is proved. In any event, the Appellant does not suggest that he did not receive the notices to file.

69. After the Appellant had signed up for paperless communication, the only notice of penalty assessment that was issued to the Appellant's notified address was the late filing penalty in relation to 2018. The remainder of the penalties were issued to the Appellant's personal tax account (with an email alert being sent to his verified email address). The emails were not returned to HMRC undelivered. The Appellant does not argue that there were any defects in the penalty notices, and in the procedure that HMRC followed when issuing them. In any event, such arguments were considered, and rejected, by the Court of Appeal in *Donaldson v The Commissioners for HM Revenue & Customs* [2016] EWCA Civ 761 ('*Donaldson*'). We are bound by that decision.

70. Fourthly, by his own evidence, the Appellant accepts the process that applies when a person signs up for paperless communication and he accepts that he received all email notifications. He states, however, that the process is not as simple as checking email notifications as there are quite a few security processes, and he needed a code to access the Gateway. We have had the benefit of viewing the "Action History" in relation to the Appellant's Self-Assessment ('SA') record. The documents before us include a transcript of a

call received from the Appellant by HMRC on 6 March 2019 (after the notice to file for 2018 had been issued). The transcript includes the following statements:

*"**Date and time of call: 06/03/2019 10:16***

Name of caller: Mr B S Cooke

Contents of call:

3.	*Adviser*	*Can I help you?*
4.	*Caller*	*Hello there, I was calling, in regards, to a Tax Charge I have had, to basically to receiving Child Benefit*
…		
25.	*Adviser*	*Um, let me have a look, right so you got your Tax 17/18, but you have got to the 5th April for that*
26.	*Caller*	*OK*
27.	*Adviser*	***So, make sure that it is completed by 30th April for that***
28.	*Caller*	*OK, that is difficult to do as this is something, I have never done.*
…		
53.	*Adviser*	*One thing is you have been sent the Tax Return with the Child Benefit issue*
54.	*Caller*	*OK, yeah*
55	*Adviser*	*So, each year you receive any Child Benefit during the tax year 17/18*
56.	*Caller*	*Yeah*
57.	*Adviser*	*Right, so there is also a box there*
58.	*Caller*	*OK*
59.	*Adviser*	***Clearly says um, Child Benefit received, along those words, you need to put in that box the amount of Child Benefit you received, and any benefit you received***
60.	*Caller*	*OK*
61.	*Adviser*	*Then apart from whatever you do, that is it. So that information you need to put in*
62.	*Caller*	*OK*
63.	*Adviser*	***The information I have given you, is the information you need to add to your Tax Return. Plus, when you are going through, you might have to tick the boxes here.***
64.	*Caller*	***OK***
65.	*Adviser*	***You have got until the 30th April to get this Tax***

		return to us.
66.	*Caller*	***OK***
67.	*Adviser*	*That is what you do, and then you avoid any penalties and anything else. It may increase your liability, so, what you are at the moment, once want to discuss a payment plan which we can do. Bear in mind.*
68.	*Caller*	*OK*
69.	*Adviser*	*You will need then to give us call um, you may have additional liability, um, if you want that to be included in the payment plan, and then it adjusted, you will then need to give us a call um, and see if you are willing to do. I wouldn't see a problem. It may be a weird payment plan. Now, when you do your Tax Return for 17/18, you need to adjust it slightly to incorporate the additional liability, in which I do not think it will be any problem*
70.	*Caller*	*So, thank you.*
71.	***Adviser***	***So, are you alright with that?***
72.	***Caller***	***Yeah, that is great thank you.***

[sic]

[Emphasis added both above and below]

71. The remainder of the transcript shows that the Appellant was walked through the process of completing his 2018 tax return, having been told of the need to file the tax return by the due date. We find that there is considerable force in HMRC's submission that the Appellant appeared to understand what was being explained to him. It is, therefore, unclear why the Appellant's tax return was not filed by the statutory deadline.

72. The documents before us include a further transcript of a telephone call received from the Appellant on 13 July 2019, in which the Appellant was complaining about the letters that he had been receiving from HMRC. The call on 13 July 2019 was the next call after the Appellant's earlier call on 6 March 2019.

*"**Date and time of call: 13/07/2019 10:16***

Name of caller: Mr B S Cooke

Contents of call:

26.	*Caller*	*Yeah, so I am still waiting though, sorry, when I last spoke to you guys it was about the self-assessment and I have never done one before.* ***I spoke to the lady, who was very nice, and she said she was sure that was the first one, we can agree it will be late submission, and how did you want to do it. I said on-line, um, so she***

		***sent me instructions how to do it and I went on-line**. I applied for a token, or something like that and enables, and I have not received that, and as soon as I put the phone down from the lady. And when I spoke last, I immediately requested the token and I have still haven't received it till today.*
27.	*Adviser*	*OK, if you would like, **what I can do then is give you the direct line for the online system helpdesk so I can figure out this particular problem**, and they will be able to help you more regards the problems registering on-line, so once we can take care of that. I think the reason you have received the letter though it is a clerical thing and has not be put on the system. The other thing is there is a penalty been added basically because you haven't advised the Higher Income Child Benefit charge. If you just bear with me, I be able to advise what the amount is owed will be. That is the only thing that is showing on my system.*

[sic]

73. The transcript shows that during the call, the Appellant mentions that he had not received a code. The transcript shows that the Appellant was given the number for the helpdesk in order to be able to file online. A further transcript of a call on 7 August 2019 (one month later) records that the Appellant was awaiting the code.

74. There is yet another transcript of a telephone call on 10 December 2019:

"Date and time of call: 10/12/2019 10:26

Name of caller: Mr B S Cooke

NINO:

Contents of call:

17.	*Advisor*	*17/18 tax return there is a late filing penalty and a daily penalty. Have you completed the 17/18 and the 18/19 returns*
18.	***Caller***	***I shouldn't have to do a tax return***
19.	***Advisor***	***When did your child benefit stop?***
20.	***Caller***	***This year***
21.	***Advisor***	***Yeah, I mean if you income is over £50,000 you do have to do a tax return***
22.	*Caller*	*Never done one in my life*
23.	***Advisor***	***No, you've had quite a few discussions over this, and these have been issued because once you go***

		over 50,000, it brings you into the criteria of self-assessment
24.	*Caller*	*But I thought that's when im receiving child benefit and now im not*
25.	***Advisor***	***Yeah, but this tax return, the two tax returns 17/18 and 18/19 so you were receiving the child benefit in those years, so you have to fill in an annual tax return which was due in by the 30th April***
26	***Caller***	***Right I thought that this was all sorted out***
…		
35.	***Advisor***	***What I can do in the first instance is I can send you out your government gateway ID and a reset for your password and once you've done that you should get your activation code***
36.	***Caller***	***Right, but I've still never done it before***
..		
39.	***Advisor***	***Once you get your resent through and get your activation code through in the post, give us a ring and we can talk you through it, that's not a problem.***

[sic]

75. This transcript shows that despite earlier being informed, in no uncertain terms, that he had to file a tax return, the Appellant was still of the view that he did not have to file a tax return. Furthermore, we find that it is unclear how the Appellant believed that the situation had been "sorted out" given that he had been issued with notices to file, was made aware of the need to file tax returns as a result of the HICBC, and was yet to file any tax returns. We find that the transcripts of the telephone calls show that the Appellant was not heeding to the advice that he was being given over and over again, simply on the basis that he did not believe that he should have to complete a tax return. In our judgment, this is insufficient.

76. Fifthly, the Appellant submits that he paid back money in relation to Child Benefit. We find that whilst the Appellant may have honestly believed that paying back a certain amount of money would absolve him from having to address the penalties that had arisen in relation to self-assessment, having received notices to file and notices of penalty assessment, in our judgment it was not objectively reasonable for him to have failed to consider the ramifications of the notices. In those circumstances, the initial belief is not objectively reasonable. Whilst the Appellant made calls to HMRC, there was no action on his part between the end of 2019 and November 2020, despite being given assistance (and offers of further assistance) by HMRC. This is against the background of the Appellant having received awareness letters and assessments in the past.

77. Whilst we accept that the Appellant did make contact with HMRC, there were no calls from the Appellant to HMRC between 10 December 2019 and 18 November 2020. We find that following the initial failure to file, the first filing penalty notice was sent to the Appellant on 7 May 2019. Despite the calls on 13 July 2019 and 7 August 2019, we conclude that the notice should have prompted further action on the part of the Appellant (who does not deny receiving the email notifications) and explanations about how to complete his tax return, which would have avoided the subsequent sets of penalties up to 2020. The reason for the penalties was in relation to late filing of tax returns and the late payment of tax, and not dependent on the Appellant's later actions in stopping the Child Benefit claim in 2019.

78. The Appellant was then able to file his tax return(s) in January 2021, without seeking any further assistance.

79. Sixthly, in relation to the sacrifices that the Appellant refers to in relation to the amount of the penalties, in *Muhammed Hafiz Katib v HMRC* [2019] UKUT 189 (TCC) ('*Katib*'), the Upper Tribunal concluded that the lack of experience of the appellant and the hardship that is likely to be suffered was not sufficient to displace the responsibility on the appellant to adhere to time limits. The differences in fact in *Katib* and the appeal before us do not negate the principle established in relation to the need for statutory time limits to be adhered to, and the duty placed upon taxpayers to adhere to statutory duties. Furthermore, insufficiency of funds cannot amount to a reasonable excuse. The amount of the penalties charged is set within the legislation.

80. In relation to the fairness or otherwise of the penalties, we have considered the case of *Hok* [2012] UKUT 363 (TCC). There, the Upper Tribunal held that this Tribunal did not have the power to discharge penalties on the ground that their imposition was unfair. Furthermore, in *Rotberg v R & C Commrs* [2014] UKFTT 657 (TC), it was accepted that the tribunal's jurisdiction went only to determining how much tax was lawfully due and not the question of whether HMRC should, by reason of some act or omission on their part, be prevented from collecting tax otherwise lawfully due. The Tribunal held, at [109], that the First-tier Tribunal has no general supervisory jurisdiction. Applying *Aspin v Estill* [1987] STC 723, the Tribunal further found, at [116], that the jurisdiction of the Tribunal in cases of that nature was limited to considering the application of the tax provisions themselves.

81. In relation to late-filing, in *Edwards v R &C Commrs* [2019] BTC 516, the Upper Tribunal concluded that the penalty regime establishes a fair balance between the public interest in ensuring that taxpayers file their returns on time and the financial burden that a taxpayer who does not comply with the statutory requirement will have to bear.

82. Having considered all of the evidence, we are satisfied that the Appellant has failed to establish a reasonable excuse for the defaults which have occurred.

Q. Have the penalties been correctly applied and do any Special Circumstances apply?

83. Whilst we accept that the Appellant's actions were not deliberate and whilst the Appellant submits that time frames have not been applied to the handling of his appeal, the statutory filing and payment deadlines, and the amount of the penalties charged, are set within the legislation. Even when a taxpayer is unable to establish that he has a reasonable excuse and he remains liable for one or more penalties, HMRC have the discretion to reduce those penalties if they consider that the circumstances are such that reduction would be appropriate. There have been a number of cases on special circumstances, from which we derive the following principles:

(1) While "special circumstances" are not defined, the courts accept that for circumstances to be special they must be "exceptional, abnormal or unusual" (*Crabtree v Hinchcliffe* [1971] 3 All ER 967) or "something out of the ordinary run of events" (*Clarks of Hove Ltd v Bakers Union* [1979] 1 All ER 152).

(2) HMRC's failure to consider special circumstances (or to have reached a flawed decision that special circumstances do not apply to a taxpayer) does not mean the decision to impose the penalty, in the first place, is flawed.

(3) Special circumstances do not have to be considered before the imposition of the penalty. HMRC can consider whether special circumstances apply at any time up to, and during, the hearing of the appeal before the tribunal.

(4) The tribunal may assess whether a special circumstances decision (if any) is flawed if it is considering an appeal against the amount of a penalty assessed on a taxpayer.

84. The special circumstances must apply to the individual and not be general circumstances that apply to many taxpayers: see *Collis*, at [40] and *Bluu Solutions Ltd v Commissioners for Her Majesty's Revenue & Customs* [2015] UKFTT 95.

85. HMRC have considered the Appellant's grounds of appeal found that his circumstances do not amount to special circumstances which would merit a reduction of the penalties. The Tribunal may rely on special reduction only if HMRC's decision was 'flawed' when considered in the light of the principles applicable in proceedings for judicial review'. That is a high test. Having considered the written and oral submissions, we do not consider that HMRC's decision in this case is flawed. Therefore, we have no power to interfere with HMRC's decision not to reduce the penalties imposed upon the Appellant.

86. For all of the foregoing reasons, the appeal is dismissed.

In light of our statement at para. 3 of this decision, the correct amount of the penalties is remitted to HMRC in light of HMRC's own cancellation of the daily penalties for 2017-18.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

87. 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.

NATSAI MANYARARA
TRIBUNAL JUDGE

Release date: 11th APRIL 2023