Neutral Citation: [2024] UKFTT 00563 (TC)

Case Number: TC09219

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video

Appeal reference: TC/2023/00182

HIGH INCOME CHILD BENEFIT CHARGE – tax and penalty assessments – whether assessments valid – yes – whether assessments out of time –yes for tax years 2014/15 to 2017/18 – whether reasonable excuse - yes – appeal allowed in part.

Heard on: 5 February 2024
Judgment date: 24 June 2024

Before

TRIBUNAL JUDGE NEWSTEAD TAYLOR

Between

SARAH MANZI

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For Mrs Manzi: Mrs Sarah Manzi

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

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video) using the Tribunal video hearing system. A face to face hearing was not held because it was expedient not to do so. I was provided with a Hearing Bundle of 196 pages and a High Income Child Benefit Charge ("HICBC") Generic Bundle of 846 pages. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

2. Mrs Sarah Manzi ("Mrs Manzi") has been assessed to HICBC for tax years 2014/15 to 2019/20 inclusive. She appeals against the following:

(1) Discovery assessments ("the Assessments") made under Section 29 Taxes Management Act 1970 ("TMA") in the sum of £9,930.00 for the tax years 2014/15 to 2019/20 inclusive.

Tax Year	Adjusted Net Income ("ANI")	Child benefit received	HICBC due
2014/15	£58,541	£1,770	£1,505
2015/16	£67,455	£1,823	£1,823
2016/17	£74,556	£1,788	£1,788
2017/18	£80,582	£1,788	£1,788
2018/19	£79,815	£1,788	£1,788
2019/20	£86,390	£1,238	£1,238
			£9,930.00

(2) Late payment interest of £1,415.95 up to 31 January 2023 and continuing.

(3) Penalties for failure to notify chargeability to HICBC in the sum of £1,862.20 pursuant to Schedule 41 to the Finance Act 2008 ("Sch. 41 FA08") raised for the tax years 2014/15 to 2019/20 inclusive.

Tax Year	Liability to Tax	FTN penalty structure	Penalty range*	Penalty percentage	Penalty charged
2014/15	£1,505	Non-deliberate, prompted	20%-30%	20%	£301.00
2015/16	£1,823	Non-deliberate, prompted	20%-30%	20%	£364.60
2016/17	£1,788	Non-deliberate, prompted	20%-30%	20%	£357.60
2017/18	£1,788	Non-deliberate, prompted	20%-30%	20%	£357.60
2018/19	£1,788	Non-deliberate,	20%-30%	20%	£357.60

		prompted			
2019/20	£1,238	Non-deliberate, prompted	10%-30%	10%[1]	£123.80
					£1,862.20

3. Following the hearing, I noted, whilst considering the evidence and the submissions, that whilst Officer Young's evidence addressed the 'discovery' of Mrs Manzi's liability to HICBC, there was no evidence concerning the making of the assessment. Consequently, I gave HMRC the opportunity to make written submissions on (i) the making of the assessment and (ii) whether an assessment under s.29 (1) TMA can be made by someone other than the person making the 'discovery' ("the Validity Issue"). On 8 May 2024, I received HMRC's written submissions along with eight annexes. This decision takes into account those submissions.

4. In all the circumstances, the issues for determination are:

(1) Whether the Assessments were validly made, correct, competent and in time?

(2) Whether the Penalties were correctly assessed?

(3) Whether Mrs Manzi had a reasonable excuse for failing to notify chargeability to the HICBC?

EVIDENCE

5. As to the Hearing Bundle, it was notable that it did not contain telephone logs of any of the phone calls that were alleged to have taken place between Mrs Manzi and the Respondents. This omission was stark. First, because there was a disagreement between the parties concerning the telephone calls. Second, because Officer Young's witness statement summarised a number of such telephone calls. She informed me that that this evidence came from her review of the Case Management System. Ms Serdari could not explain the omission of the telephone logs. In closing submissions, Ms Serdari suggested that the telephone logs could be provided by way of written submissions. I noted that cross-examination of all witnesses had closed but invited Ms Serdari to make an application to adduce the telephone logs if she wished. No such application was made. The hearing was concluded without sight of the telephone logs.

6. In addition to the Hearing Bundle and the HICBC Generic Bundle, I heard oral evidence from Mrs Manzi, Officer Young and Officer White. Mrs Manzi, who had been informed that she could ask questions of the Respondent's' witnesses, did not cross-examine either Officer Young or Officer White. Officer Young answered a number of my questions. Officer White's witness statement dealt with the Respondents' HICBC intervention process generally. It was not specific to this appeal. Accordingly, I had no questions for Officer White. Mrs Manzi was cross-examined by Ms Serdari and answered my questions. I am entirely satisfied that all of the witnesses were doing their best to assist the Tribunal.

FINDINGS OF FACT

7. On the basis of all of the evidence, I make the following findings of fact on the balance of probabilities.

[1] As a result of the disclosure being made within 12 months of the date that the tax becomes unpaid by reason of the failure, the legislation at section 13(3)(a)(ii) of Schedule 41 allows for a lower minimum penalty range.

8. At all material times, Mrs Manzi was paid PAYE. She was not within the Self-Assessment regime. Mrs Manzi received child benefit from 2005 until 2019. As between herself and her partner, Mrs Manzi was the higher earner.

9. In 2012, the Respondents, in preparation for the introduction of the HICBC, issued a number of press releases detailing the introduction of the HICBC and advising high income Child Benefit parents, being those whose Adjusted Net Income ("ANI") exceeded £50,000, to register for Self-Assessment. Additionally, there was a body of information about the HICBC on the Respondents' website. As Mrs Manzi's earnings were below £50,000.00 at this time, she *"...didn't pay any attention to the new requirements"* as they did not apply to her. Similar press releases were issued in 2014 but did not come to Mrs Manzi's attention.

10. On 7 January 2013, HICBC was introduced. In brief, it is an income tax charge on individuals who receive Child Benefit, or whose partner's received Child Benefit, and whose ANI, or whose partner's ANI, exceeded £50,000.00 within a tax year. Where the recipient of Child Benefit and their partner both had an ANI in excess of £50,000.00, HICBC is charged on the partner with the higher ANI. An income tax charge of 1% of the Child Benefit received arises for every £100 by which the ANI of the person liable to HICBC exceeded £50,000.00. Accordingly, where the person's ANI reached £60,000.00 in a tax year, the HICBC amounts to 100% of the Child Benefit received. A taxpayer whose ANI in a tax year exceeded £50,000.00, but who chose to continue to receive Child Benefit payments in that tax year has a legal obligation to notify chargeability to income tax under s.7 TMA if they have not received a notice to file a tax return under s.8 TMA, or to file a tax return if they received a notice to file under s.8 TMA.

11. Prior to the 2014/15 tax year, Mrs Manzi's earnings were below £50,000.00. Mrs Manzi's ANI was as set out in the table at paragraph 2 (1) above. Mrs Manzi was neither notified to make a Self-Assessment Tax Return ("SAR") under s.8 TMA nor did she make a voluntary SAR under s.12D TMA. Accordingly, Mrs Manzi did not notify her chargeability to HICBC.

12. On 4 November 2019, the Respondents issued a 'nudge letter' to Mrs Manzi asking her to check if she was liable to the HICBC in the 2017/18 tax year and to check previous tax years. If the HICBC was due, the letter set out instructions for declaring the chargeability. It is agreed between the parties that, due to moving house, Mrs Manzi did not receive this letter.

13. On 3 December 2019, the Respondents issued a 'final reminder letter'("FRL"). This letter again invited Mrs Manzi to check if she was liable to the HICBC in the 2017/18 tax year and to check previous tax years. If the HICBC was due, the letter set out instructions for declaring the chargeability. Mrs Manzi received this letter via postal re-direction. This was the first point at which Mrs Manzi was alerted to her potential liability to the HICBC.

14. On 9 December 2019, Mrs Manzi telephoned the number on the FRL and spoke to Alex. Mrs Manzi was distressed by the FRL. She wanted to speak to an individual in order to receive reliable and up to date information. Alex told her not to worry because the FRL could be an error. I do not accept, as Mrs Manzi suggested, that Alex explained this error by reference to *HMRC v Jason Wilkes* [2020] UKFTT 256 (TC) ("*Wilkes FTT*"), as this appeal was not heard by the First-tier Tribunal until 12 March 2020, being three months later. However, I do accept that he informed her that the most important thing to do was to deregister for Child Benefit. He provided Mrs Manzi with the web address to deregister for Child Benefit and helped her with the login details. Mrs Manzi asked Alex about the next steps. He told her that she did not need to do anything further and that she would hear from the Respondents in due course. Alex did not tell Mrs Manzi that she needed to file a SAR or take any further steps to notify her chargeability to HICBC. To the extent that the advice

from Alex was inconsistent with the FRL, Mrs Manzi understandably relied on Alex's advice believing that advice from a human being was superior to and more up to date than that in the FRL. Accordingly, she did not file a SAR.

15. Immediately following the telephone call with Alex, Mrs Manzi set up an account on the Government Gateway and marked that she was no longer entitled to Child Benefit. She did not seek advice from an accountant. She undertook some limited online research so as to understand when the £50,000.00 limit came into force. She also spoke to her partner and friends. However, other than that, she followed Alex's instructions and waited to be contacted by the Respondents. No contact was received. Mrs Manzi, in reliance on her conversation with Alex and, in particular, his statement that the FRL could be an error, assumed that the FRL was an error and that the matter had been resolved by de-registering for Child Benefit. She made no attempt to pursue the matter.

16. For the avoidance of doubt, the Respondents disputed that the telephone call on 9 December 2019 took place, having no record of it. Further, in closing submissions, Ms Serdari disputed that such advice would have been given over the telephone. In the absence of the telephone log, the only first-hand evidence was from Mrs Manzi who informed me that she had made this call and set out the contents of the call. I note that Officer Young's witness statement dealt only with events from 28 May 2021 onwards, so postdating the disputed telephone call. I am satisfied that it is Mrs Manzi's practice to telephone the Respondent on receipt of written communication, see paragraphs 21 and 25 below. Also, it was only with Alex's assistance that Mrs Manzi was able, the same day, to set up her Government Gateway account and de-register for Child Benefit, as detailed in paragraph 15 above. As to Ms Sedari's submission that no such advice would have been given over the telephone, there was no evidence from the Respondents as to what would or would not have been said over the telephone and, consequently, there was no evidential basis for this submission. Also, Ms Serdari had not put the point to Mrs Manzi in cross examination. In all the circumstances, I find that this telephone call took place and that Mrs Manzi was advised in the terms detailed in paragraph 14 above.

17. On 12 March 2020, the First-tier Tribunal heard Mr Wilkes appeal against income tax assessments raised under s.29 TMA in respect of the HICBC. On 15 June 2020, the First-tier Tribunal released its decision in *Wilkes FTT*.

18. On 26 May 2021, the Upper Tribunal heard the appeal in *HMRC v Jason Wilkes* [2021] UKUT 0150 (TCC) ("*Wilkes UT*"). The decision was released on 30 June 2021.

19. On 28 May 2021, Officer Young undertook a compliance check on Mrs Manzi and discovered that Mrs Manzi had not notified chargeability to the HICBC for the tax years 2014/15 to 2019/20 and that there was a loss of tax in these tax years.

20. On 1 June 2021, the Respondents wrote to Mrs Manzi stating that the HICBC may apply to her, that she had not registered to receive a SAR for the tax years ended 5 April 2015, 2016, 2017, 2018, 2019 and 2020 and that she owed HICBC in the sum of £10,480.00. The Respondents did not invite Mrs Manzi to complete a SAR as this was now a discovery position. This was the first communication Mrs Manzi had received from the Respondents since the telephone call with Alex on 9 December 2019.

21. On 10 June 2021, Mrs Manzi telephoned the Respondents. In this conversation, she disclosed her ANI for the relevant years. She disagreed with the Child Benefit calculation as she had deregistered on 9 December 2019. Accordingly, the Respondents recalculated Mrs Manzi's liability to the HICBC for the tax year ending 5 April 2020 reducing the total to £9,930.00. The Respondents arranged to call Mrs Manzi back on 14 June 2021 to explain their findings and issue a new opening letter.

22. On 16 June 2021, the Respondents tried, unsuccessfully, to contact Mrs Manzi by telephone. They left a voicemail stating that they would try to call again on 17 June 2021 and, in default of making contact, updated correspondence would be issued, no such correspondence is in the Hearing Bundle.

23. Between 16 June 2021 and 18 October 2022, HMRC paused all work on HICBC due to the Upper Tribunal decision in *Wilkes UT*, which found that the Respondents had no power to make a discovery assessment in respect of the HICBC as Child Benefit was not an amount of income which should have been assessed to income tax. Instead, the HICBC is a free-standing charge to tax. In response, s.97 of the Finance Act 2022 was enacted amending s.29 TMA such that a discovery assessment can be issued for *"an amount of income tax ... [that] ought to have been assessed but has not been assessed."* Thereby, enabling HICBC to be assessed via discovery assessment. At no stage, did the Respondents inform Mrs Manzi in writing or at all either that her case was on hold or the reasons for that hold. In short, there was radio silence from the Respondents during this period.

24. On 10 October 2022, the Respondents wrote two letters to Mrs Manzi:

(1) The first letter opened with an apology for the delay in replying to Mrs Manzi's call on 10 June 2021. The letter asserted that the Respondents told Mrs Manzi that her case was on hold. No evidence was provided to substantiate that assertion and as detailed above; I do not accept that Mrs Manzi was notified that her case was on hold. This letter set out the revised calculation for HICBC factoring in Mrs Manzi's opt out date. I find that this letter is the updating correspondence referred to on 10 and 16 June 2021.

(2) The second letter explained, in brief, the ***Wilkes UT*** decision and the change in the law effected by s.97 of the Finance Act 2022.

25. On 31 October 2022, Mrs Manzi telephoned the Respondents who informed her of the penalties. Mrs Manzi disputed the penalties and indicated her desire to appeal. The Respondents explained to Mrs Manzi that any appeal would need to challenge (i) the Assessments, (ii) the interest and (iii) the Penalties. Also, during this call Mrs Manzi confirmed that she had previously telephoned the Respondents in response to the FRL.

26. On 1 November 2022, the Respondents sent a closure letter to Mrs Manzi, six Notices of Assessment for the amounts set out in the table at Paragraph 2 (1) above, a SA Statement and a Notice of Penalty Assessment for the amounts set out in the table at Paragraph 2 (3) above.

27. On 28 November 2022, Mrs Manzi wrote to the Respondents appealing (i) the Assessments, (ii) the interest and (iii) the Penalties. In summary, the basis of Mrs Manzi's appeal was that she was innocent as she was, until December 2019, ignorant of the law relating to the HICBC. In addition, she highlighted the precarious nature of her family's finances, certain personal medical matters and the stress of the situation.

28. On 7 December 2022, the Court of Appeal released its decision in *HMRC v Jason Wilkes* [2022] EWCA Civ 1612 ("*Wilkes CA*").

29. On 16 December 2022, the Respondents issued their View of the Matter letter upholding the Assessments and the Penalties.

30. On 12 January 2023, Mrs Manzi appealed to the Tribunal. The Respondents accept that the appeal is in time.

31. On 30 January 2023, the Respondents sent a Notice of amended Penalty Assessment, albeit the total sum claimed in penalties remained the same, £1,862.60.

32. On 19 July 2023, Mrs Manzi telephoned the Respondents and it was agreed to put Mrs Manzi's account on hold pending determination of her appeal.

THE LAW

33. The relevant statutory provisions and authorities are not in dispute and, so far as relevant, are included as an Annex to this decision.

34. HMRC bears the burden of proof. This means that they must show that the assessments and the penalties are valid, in time and for the correct amounts. The standard of proof is the balance of probabilities. If they do so, the burden then shifts to Mrs Manzi to prove, also on the balance of probabilities, that:

(1) As to the assessments, she has been overcharged, s.50(6) TMA.

(2) As to any assessments raised outside the 4-year period, but (i) within the 6-year period that she took reasonable care, s.118 (5) TMA and within the 20-year period that she has a reasonable excuse, s.118 (2) TMA.

(3) As to the penalties, that she has a reasonable excuse, Paragraph 20, Sch. 41 FA 08.

DECISION

i) THE ASSESSMENTS:

35. The Assessments have been raised pursuant to s.29 TMA, being HMRC's discovery assessment powers. Following *Wilkes CA*, s.97 Finance Act 2022 ("**s.97"**) was enacted which amended s. 29 TMA. Specifically, s.29 TMA as amended provides for HICBC to be assessed by way of a discovery assessment where *"an amount of income tax ... ought to have been assessed but has not been assessed"*. Further, s.97 provides that where a discovery assessment has been made to collect HICBC prior to tax year 2021/22 the provision is retrospective and the assessments are 'protected assessments', the protection is afforded to HMRC not the taxpayer. However, any such appeals, being those referable to tax years prior to 2021/22, are not protected if either, on a date prior to 30 June 2021, a notice of appeal was given to HMRC in respect of the assessment and the *Wilkes* basis of challenge was asserted in that appeal, s.97 (5), or, prior to 30 June 2021, a notice of appeal was given to HMRC in respect of the assessment, the appeal was the subject of a temporary pause which occurred prior to 27 October 2021, that temporary pause was notified to the tax payer in writing and *"it is reasonable to conclude that the temporary pausing of the appeal occurred (wholly or partly) on the basis that [the Wilkes issue] is, or might be, relevant to the determination of the appeal",* s.97 (6, 8-9). In this case, the Assessments are protected assessments as the requirements in s.97 (5) and/or s.97 (6, 8-9) are not met.

36. As to the Validity Issue, HMRC bear the burden of establishing that they have discovered that an amount of income which ought to have been assessed to income tax has not been so assessed. *In HMRC v Tooth* [2021] UKSC 17, the Supreme Court held that s.29 (1) TMA operates by reference to the state of mind of a specific HMRC officer not by reference to HMRC's collective knowledge. Accordingly, a discovery must be made by an individual officer. I am satisfied that on 28 May 2021 Officer Young made a discovery. In consequence thereof, s.29 (1) TMA allows Officer Young to make an assessment, see *Tooth* at [69 & 82]. However, Officer Young did not make the Assessments. Her involvement ceased following the letter dated 1 June 2021. In light of HMRC's written submission, I am satisfied that the Assessments were made by Officer Markiewka on 1 November 2022. I am

also satisfied that the Assessments were delegated actions pursuant to Officer Young's discovery and in accordance with s.2(4) of the Commissioners for Revenue and Customs Act 2005 ("CRCA"). I note that the operation of s.2(4) CRCA was clearly considered in *Tooth* at [79]. Further and, in light of the case of *David Beadle v HMRC* [2019] UKUT 0101 (TCC), which considered s.30A TMA and I apply by analogy, I am satisfied that the fact that the Assessments identified the HICBC Team and not Officer Markiewka does not invalidate the Assessments. Therefore, I am satisfied that the Assessments are valid.

(II) THE TIME LIMITS:

37. As to time limits, s. 34(1) TMA provides that HMRC may raise a HICBC discovery assessment at any time within 4 years of the end of the tax year to which it relates. However, HMRC can raise assessments within an extended period of 6 years of the year of assessment if the tax payer fails to take reasonable care to avoid not paying the HICBC, s.36(1) TMA. S..118 (5) TMA provides that *"...,a loss of tax ...is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss or situation."* Further, HMRC can raise assessments within an extended period of 20 years of the year of assessment. However, s.118(2) TMA provides that the 20-year assessment provisions do not apply where the taxpayer establishes a reasonable excuse for the failure to notify their liability under s.7 TMA. Nonetheless, if the assessment is protected then HMRC will always have a period of 4 years in which to make a discovery assessment.

38. In this case, the Assessments cover the tax years from 2015/15 to 2019/20. HMRC submit that the assessments are made within the statutory time limits: those for 2018/19 to 2019/20 were made within the 4 years permitted by virtue of section 34 TMA, those for 2016/17 and 2017/18 were made within the 6 years permitted by s.36 (1) TMA subject to s.118 (5) TMA and those for 2014/15 and 2015/16 were made within the 20 years permitted by s.36 (1A) TMA subject to s.118 (2) TMA. I accept that the assessments for 2018/19 to 2019/20 were made within the 4 years permitted by s.34 TMA and, accordingly, they are valid assessments. The question for my consideration is whether or not, in light of s.118 (2) and/or (5) TMA, the remaining assessments were made in time.

39. I agree with the decision in *Hextall v HMRC* [2023] UKFTT 390 at [74] that no meaningful distinction can be drawn between 'reasonable care' and 'reasonable excuse'. I also agree with the analysis in *Brown v HMRC* [2024] UKFTT 245 at [78] and adopt it here. Accordingly, in determining whether Mrs Manzi was careless, I assess her conduct by reference to what would be expected of a prudent and reasonable taxpayer in the same position as Mrs Manzi, that is to say considering Mrs Manzi's ability and circumstances, *HMRC v Hicks* [2020] UKUT 12 TCC [120] (not cited to me). In considering whether Mrs Manzi had a reasonable excuse for her failure to notify her liability to HICBC, I must consider whether she had an excuse that is objectively reasonable, considering her attributes and circumstances. If Mrs Manzi satisfies me that she took reasonable care, then she will also have satisfied me that she had a reasonable excuse in the circumstances of this case and vice versa.

40. As to 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 the circumstances of the particular case" Rowland v HMRC* (2006) STC (SCD)("*Rowland*") 536 at paragraph 18.

41. In *The Clean Car Company v C&E Commissioners* [1991] VATTR 234*,* Medd QC set out the test to be applied when considering whether there is a reasonable excuse as follows:

"The test of whether or not there is a reasonable excuse is an objective one. In my judgement it is an objective test in this sense. One must ask oneself: was what the taxpayer did a reasonable thing for a responsible taxpayer 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?"

42. In *Perrin v HMRC* [2018] UKUT 156 (*"Perrin")* at paragraph 81, the Upper Tribunal provided guidance as to the correct approach to a reasonable excuse defence as follows:

> *"81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:*
>
> *(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).*
>
> (2) *Second, decide which of those facts are proven.*
>
> (3) *Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"*
>
> (4) *Fourth, having decided when any reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time (unless, exceptionally, the failure was remedied before the reasonable excuse ceased). In doing so, the FTT should again decide the matter objectively, but taking into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times.*
>
> *82. One situation that can sometimes cause difficulties is when the taxpayers 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 judgement 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.'"*

43. In summary, whether there is a reasonable excuse or not depends on the particular circumstances in which the failure occurred and the abilities of the person who failed. 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: *David Collis v HMRC* [2011] UKFTT 588 (TC) *("Collis")*. What is a reasonable excuse for one person may not be a reasonable excuse for another. Finally, in respect of beliefs, I remind myself that the Upper Tribunal in *Perrin* concluded that for an honestly held belief to constitute a reasonable excuse, it must also be objectively reasonable for that belief to be held.

44. Further, in *Ashe v HMRC* [2023] UKFTT 538 TC at [32-33] Judge Brown KC and Mr McBride summarised Judge Popplewell's approach in *Mark Goodall v HMRC* [2023] UKFTT 18 (TC)) (*"Goodall"*) and in *Leigh Jacques v HMRC* [2020] UKFTT 331 (TC) as follows:

> *"32. There are a great many HICBC cases being considered by the Tribunal at present. Many are determined against the taxpayer and a handful have been determined in the taxpayer's favour. Judge Popplewell in particular appears to have determined a number of cases favourably to the taxpayer and it is on these judgments that the Appellant relies (the most recent is Mark Goodall v HMRC [2023] UKFTT 18 (TC)) (**"Goodall"**). In that judgment Judge Poppelwell references his prior decision in Leigh Jacques v HMRC [2020] UKFTT 331 (TC) in which he reviewed the extensive case list on which HMRC rely in HICBC cases.*
>
> *33. In each of the judgments Judge Poppelwell has concluded that a taxpayer is likely to have a reasonable excuse where:*
>
> > *(1) The taxpayer was not under an obligation to complete a tax return up to the tax years prior to that in which the HICBC applied because, primarily, they were paid through PAYE and had no other income justifying a need to notify;*
> >
> > *(2) child benefit payments were received (either by the taxpayer or their partner) prior to the introduction of HICBC with no children being born post the introduction of the HICBC with the consequence that the application itself made no reference to HICBC (the child benefit claim form post the introduction of HICBC clearly sets out when the charge applies);*
> >
> > *(3) the taxpayer had not received notification from HMRC directly at any point prior to the contact which led to the issues of the tax assessment; but*
> >
> > *(4) acted promptly in ceasing to claim child benefit and engaged actively with resolving the historic tax liabilities as soon as HMRC did make contact."*

45. I apply the *Perrin* approach in considering whether or not Mrs Manzi had a reasonable excuse.

46. First, the relevant facts are that Mrs Manzi was an employee paid PAYE. She was not within the Self-assessment regime. At the time she applied for Child Benefit, the HICBC did not exist. She did not pay attention to the 2012 media campaign because her earnings were below £50,000. The 2014 media campaign did not come to her attention. She was not notified to make a SAR under s.8 TNA 1970. She was unaware of the requirement to notify her liability to HICBC and, consequently, did not make a voluntary SAR under s.12D TMA 1970.

47. Second, I accept that the facts relied on by Mrs Manzi are proven. In short, Mrs Manzi's position is that her reasonable excuse is 'ignorance of the law'.

48. Third, I must decide whether, viewed objectively, those proven facts amount to an objectively reasonable excuse and the time that reasonable excuse ceased. In so doing, I should ask myself *"was what [Mrs Manzi] did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"* I have not found this an easy question to answer. I have given the question anxious consideration. On balance, I have decided that there was an objectively reasonable excuse namely that Mrs Manzi, in the circumstances of this case, was ignorant of the requirement to notify chargeability to HICBC and, as a result, failed to notify her chargeability. I find that that reasonable excuse ceased on receipt of the FRL which alerted Mrs Manzi to the possibility that she was required to notify chargeability

to HICBC. Without undue delay, on 9 December 2019 Mrs Manzi telephoned the Respondents. I do not think that anything turns on the intervening 6-day period. Mrs Manzi would not have received the letter on the day it was dated, being 2 December 2019. A short period to digest the FRL and take actions is not unreasonable. As a result of the telephone call with Alex on 9 December 2019, Mrs Manzi had a further or additional reasonable excuse. Specifically, Alex advised her that she did not need to do anything else and that she would hear from the Respondents in due course. For the avoidance of doubt, she was not advised of the need to notify chargeability to HICBC. Quite the opposite. She was advised to do nothing and wait. Mrs Manzi was entitled to and did rely on this contemporaneous advice from a human being. This reasonable excuse continued until at least 1 June 2021 and, as a result, Mrs Manzi has a further or additional objectively reasonable excuse for failing to notify her chargeability through to 1 June 2021.

49. Fourth, this step is not applicable on the facts of this case as at 1 June 2021 the Respondents no longer required Mrs Manzi to complete a SAR. They did not invite her to do so because this was now a discovery position.

50. In all the circumstances, I am satisfied that Mrs Manzi had a reasonable excuse(s) for failing to notify her liability to HICBC. Accordingly, I am also satisfied that Mrs Manzi did not fail to take reasonable care as a prudent and reasonable tax payer, having the same state of knowledge and in the same circumstances, would have behaved the same way. As a result, the assessment for tax years 2014/15, 2015/16, 2016/17 and 2017/18 were made out of time.

(III) THE PENALTIES:

51. As to the Penalties, Mrs Manzi failed to give notice of her chargeability to the HICBC as required by s.7 (1) (a) TMA. By so doing, she failed to comply with a relevant obligation and is liable to a penalty in accordance with Paragraph 1, Sch 41 FA08.

52. The Penalties have been correctly calculated on the basis that the behaviour was non-deliberate but prompted, Paragraph 5, Sch 41 FA 08. The standard amount of such a penalty is 30% of the potential lost revenue ("PLR"), Paragraph 6 (1) (c), Sch 41 FA 08. The PLR equates to the figures in the HICBC due column in the table at Paragraph 2 (1) above. The Penalties have been charged at the minimum percentages provided for by Paragraphs 12 and 13, Sch 41 FA 08 to reflect the timing and quality of Mrs Manzi's disclosures.

53. Accordingly, the burden of proof passes to Mrs Manzi to prove, on the balance of probabilities, that she has a reasonable excuse such that liability to the Penalties does not arise, Paragraph 20, Sch 41 FA.

54. Save that Paragraph 20 (2) (a-c), Sch 41 FA 08 sets out three situations that are incapable of constituting a reasonable excuse, there is no statutory definition of what constitutes a reasonable excuse.

55. For the purpose of the Assessment time limits, I have found that Mrs Manzi had a reasonable excuse for her failure to notify HMRC of her liability to HICBC. Accordingly and for the same reasons, I also find that Mrs Manzi had a reasonable excuse for the purposes of Schedule 41 and the penalty provisions. Therefore no penalties arise.

56. As to special reduction, in light of my decision on reasonable excuse no penalties arise and, consequently, it is unnecessary to proceed to consider special reduction, Paragraph 14(1), Sch 41 FA 08.

(IV) THE INTEREST:

57. As to interest, at the outset of the hearing I explained to Mrs Manzi that there is no legal right of appeal against interest, which is chargeable under s.101 (3) and Sch 53, Paragraph 3

of the Finance Act 2009 from the date tax should have been paid and continues to accrue until the date the tax is paid in full. I informed Mrs Manzi that I had no discretion to determine that interest should not be payable, *HMRC v Neil and Megan Gretton* [2012] UKUT 261 (TCC) ("*Gretton*"). Also, by analogy with the position of penalties, I had no power to discharge or adjust the interest on the grounds of unfairness**,** *HMRC v Hok Ltd* [2012] UKUT 363 (TCC) ("*Hok*"). I noted (and the Respondents did not disagree) that any interest referable to an assessment that was successfully appealed, would fall away. Accordingly, there is no interest on the assessments for tax years 2014/15 - 2017/18 inclusive as they are out of time, but the assessments for 2018/19 and 2019/20 carry (and continue to carry) interest. I refer Mrs Manzi to HMRC's View of the Matter Letter, dated 16 December 2022, and the possibility of making an 'interest objection' once all the tax owed is paid.

CONCLUSION:

58. In summary:

(1) The assessments for tax years 2014/15, 2015/16, 2016/17 and 2017/18 are out of time and the appeal against these assessments is allowed.

(2) The assessments for tax years 2018/19 and 2019/20 are valid and in time. The appeal against these assessments is dismissed. These assessments stand in the sum of £1,788 and £1,238 respectively plus interest.

(3) The appeal against the Penalties is allowed. The Penalties are discharged.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

59. 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.

JENNIFER NEWSTEAD TAYLOR
TRIBUNAL JUDGE

Release date: 24th JUNE 2024

ANNEX
LEGISLATION

A. Discovery Assessments

1. S.7 (1-1A) Taxes Management Act ("TMA") 1970 details the requirement of an individual who is liable to income tax for a year of assessment to notify HMRC of that fact within six months of the end of that year:

> *"s.7(1) Every person who–*
>
> *(a)is chargeable to income tax or capital gains tax for any year of assessment, and*
> *(b)falls within subsection (1A) or (1B),*
> *shall, subject to subsection (3) below, within the notification period, give notice to an officer of the Board that he is so chargeable.*
>
> *7(1A) A person falls within this subsection if the person has not received a notice under section 8 requiring a return for the year of assessment of the person's total income and chargeable gains…*
>
> *7(3) A person shall not be required to give notice under subsection (1) above in respect of a year of assessment if for that year –…*
> *(c)the person is not liable to a high income child benefit charge."*

2. S.29 TMA (as amended by s,97 Finance Act 2022) governs discovery assessments as follows:

> *"(1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a year of assessment—*
>
> *(a) that an amount of income tax or capital gains tax ought to have been assessed but has not been assessed, or*
> *(b) that an assessment to tax is or has become insufficient, or*
> *(c) that any relief which has been given is or has become excessive,*
>
> *the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax…"*

3. All assessments, including those issued under s.29 TMA 1970, are subject to statutory time limits. S.34 TMA 1970 provides as follows:

> *"(1) Subject to the following provisions of this Act, and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case, an assessment to income tax, … may be made at any time not more than four years after the end of the year of assessment to which it relates."*

4. Further, s.36 TMA extends the time limit to not more than 6 years where a loss of income tax has been brought about carelessly and not more than 20 years in cases where loss of income tax has been brought about deliberately:

> *"36 (1)An assessment on a person in a case involving a loss of income tax or capital gains tax brought about carelessly by the person may be made at any time not more than 6 years after the end of the year of assessment to which it relates (subject to subsection (1A) and any other provision of the Taxes Acts allowing a longer period).*
>
> *36(1A) An assessment on a person in a case involving a loss of income tax or capital gains tax –*
>
> *(a) brought about deliberately by the person,*
> *(b) attributable to a failure by the person to comply with an obligation under section 7…*
> *(…)*
> *may be made at any time not more than 20 years after the end of the year of assessment to which it relates…"*

5. S.118 (2 & (5) TMA provide that:

> *"s.118(2) For the purposes of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Board or the tribunal or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it unless the excuse ceased and, after the excuse ceased, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased…*
>
> *s.118 (5) For the purposes of this Act a loss of tax or a situation is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss or situation."*

6. S.8 and Sch 1 of the Finance Act 2012 introduced the HICBC under Part 10, Section 681B of the Income Tax (Earnings and Pensions) Act 2003 **("ITEPA 2003")** with effect from 7 January 2013. S.681B provides as follows:

> *"681B(1) A person ("P") is liable to a charge to income tax for a tax year if–*
>
> *(a)P's adjusted net income for the year exceeds £50,000, and*
> *(b)one or both of conditions A and B are met.*
>
> *681B(2) The charge is to be known as a "high income child benefit charge" .*
>
> *681B(3) Condition A is that–*
>
> *(a)P is entitled to an amount in respect of child benefit for a week in the tax year, and*
> *(b)there is no other person who is a partner of P throughout the week and has an adjusted net income for the year which exceeds that of P.*

681B(4) Condition B is that–
(a)a person ("Q") other than P is entitled to an amount in respect of child benefit for a week in the tax year,
(b)Q is a partner of P throughout the week, and
(c)P has an adjusted net income for the year which exceeds that of Q."

7. Section 97 of the Finance Act 2022 establishes that an appeal against an assessment made on or after 30 June 2021 cannot challenge the assessment on the basis of the findings determined in *HMRC v Jason Wilkes* [2021] UKUT 150 ("*Wilkes UT*"). It then further sets out where an appeal is made on or before 30 June 2021 that the assessments are "protected", subject to certain conditions as follows:

"(1) In section 29 of TMA 1970 (assessment where loss of tax discovered), subsection (1), for paragraph (a) substitute"(a) that an amount of income tax or capital gains tax ought to have been assessed but has not been assessed,"...

(3) The amendments made by this section(a) have effect in relation to the tax year 2021-22 and subsequent tax years, and (b) also have effect in relation to the tax year 2020-21 and earlier tax years but only if the discovery assessment is a relevant protected assessment (see subsections (4) to (6))...

(4) A discovery assessment is a relevant protected assessment if it is in respect of an amount of tax chargeable under
(a) Chapter 8 of Part 10 of ITEPA 2003 (high income child benefit charge),...

(5) But a discovery assessment is not a relevant protected assessment if it is subject to an appeal notice of which was given to HMRC on or before 30 June 2021 where-

(a) an issue in the appeal is that the assessment is invalid as a result of its not relating to the discovery of income which ought to have been assessed to income tax but which had not been so assessed, and
(b) the issue was raised on or before 30 June 2021 (whether by [Mrs Manzi] or in a decision given by the tribunal).

(6) In addition, a discovery assessment is not a relevant protected assessment if—

(a) it is subject to an appeal notice of which was given to HMRC on or before 30 June 2021,
(b) the appeal is subject to a temporary pause which occurred before 27 October 2021,and
(c) it is reasonable to conclude that the temporary pausing of the appeal occurred (wholly or partly) on the basis that an issue of a kind mentioned in subsection (5)(a) is, or might be, relevant to the determination of the appeal.

(7) For the purposes of this section the cases where notice of an appeal was given to HMRC on or before 30 June 2021 include a case where-

(a) notice of an appeal is given after that date as a result of section 49 of TMA 1970, but

(b) a request in writing was made to HMRC on or before that date seeking HMRC's agreement to the notice being given after the relevant time limit (within the meaning of that section).

(8) For the purposes of this section an appeal is subject to a temporary pause which occurred before 27 October 2021 if—

(a) the appeal has been stayed by the tribunal before that date,
(b) the parties to the appeal have agreed before that date to stay the appeal, or (c) HMRC have notified [Mrs Manzi] (" A") before that date that they are suspending work on the appeal pending the determination of another appeal the details of which have been notified to A.

(9) In this section" discovery assessment" means an assessment under section 29(1)(a) of TMA 1970, and " HMRC" means Her Majesty's Revenue and Customs, and " notified" means notified in writing."

B. Penalties:

8. Paragraph 1, Sch 41 Finance Act 2008 ("FA08") states that a *"...penalty is payable by a person (P) where P fails to comply with an obligation specified in the Table below (a "relevant obligation")..."* The relevant table stipulates that the obligation under section 7 of TMA 1970 (obligation to give notice of liability to income tax or capital gains tax) is a relevant obligation.

9. Paragraph 5(1), Sch 41 FA 08 addresses degrees of culpability as follows:

"(1) A failure by P to comply with a relevant obligation is—

(a) "deliberate and concealed" if the failure is deliberate and P makes arrangements to conceal the situation giving rise to the obligation, and

(b) "deliberate but not concealed" if the failure is deliberate but P does not make arrangements to conceal the situation giving rise to the obligation..."

10. Paragraph 6, Sch 41 FA 08 stipulates the amount of the penalty as follows:

"(1) The penalty payable under any of paragraphs 1, 2, 3(1) and 4 is—
...
(c) for any other case, 30% of the potential lost revenue.

(2) The penalty payable under paragraph 3(2) is 100% of the potential lost revenue.

(3) Paragraphs 7 to 11 define "the potential lost revenue"."

11. Paragraphs 12-13, Sch 41 FA 08 provide for the following reductions for disclosure:

"12 (1) Paragraph 13 provides for reductions in penalties under paragraphs 1 to 4 where P discloses a relevant act or failure

(2) P discloses a relevant act or failure by—

(a) telling HMRC about it,
(b) giving HMRC reasonable help in quantifying the tax unpaid by reason of it, and
(c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid.

(3) Disclosure of a relevant act or failure—
(a) is "unprompted" if made at a time when the person making it has no reason to believe that HMRC have discovered or are about to discover the relevant act or failure, and
(b) otherwise, is "prompted".

(4) In relation to disclosure "quality" includes timing, nature and extent.

13 (1) Where a person who would otherwise be liable to a 100% penalty has made an unprompted disclosure, HMRC shall reduce the 100% to a percentage, not below 30%, which reflects the quality of the disclosure.

(2) Where a person who would otherwise be liable to a 100% penalty has made a prompted disclosure, HMRC shall reduce the 100% to a percentage, not below 50%, which reflects the quality of the disclosure.

(3) Where a person who would otherwise be liable to a 70% penalty has made an unprompted disclosure, HMRC shall reduce the 70% to a percentage, not below 20%, which reflects the quality of the disclosure.

(4) Where a person who would otherwise be liable to a 70% penalty has made a prompted disclosure, HMRC shall reduce the 70% to a percentage, not below 35%, which reflects the quality of the disclosure.

(5) Where a person who would otherwise be liable to a 30% penalty has made an unprompted disclosure, HMRC shall reduce the 30%—
(a) if the penalty is under paragraph 1 and HMRC become aware of the failure less than 12 months after the time when tax first becomes unpaid by reason of the failure, to a percentage (which may be 0%), or
(b) in any other case, to a percentage not below 10%,
which reflects the quality of the disclosure.

(6) Where a person who would otherwise be liable to a 30% penalty has made a prompted disclosure, HMRC shall reduce the 30% —
(a) if the penalty is under paragraph 1 and HMRC become aware of the failure less than 12 months after the time when tax first becomes unpaid by reason of the failure, to a percentage not below 10%, or
(b) in any other case, to a percentage not below 20%,
which reflects the quality of the disclosure…"

12. Paragraph 20, Sch 41 FA 08 provides a defence of reasonable excuse in the following circumstances:

"20(1) Liability to a penalty under any of paragraphs 1, 2, 3(1) and 4 does not arise in relation to an act or failure which is not deliberate if P satisfies HMRC or (on appeal) the First-tier Tribunal that there is a reasonable excuse for the act or 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 relevant act or failure, and
(c) where P had a reasonable excuse for the relevant act or failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the relevant act or failure is remedied without unreasonable delay after the excuse ceased."