Neutral Citation: [2025] UKFTT 00065 (TC)

Case Number: TC09410

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2023/16069

INCOME TAX – High Income Child Benefit Charge – liability for the charge? – yes – appeal against charge dismissed

Heard on: 10 January 2025
Judgment date: 24 January 2025

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MRS JANE SHILLAKER

Between

DAVID THOMPSON

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: In person

For the Respondents: Miss Anika Aziz litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This appeal concerns the High Income Child Benefit Charge ("**HICBC**" or "**the charge**"). The appellant has appealed against HMRC's conclusion in their closure notice dated 17 May 2023 in which they amended his tax return for the year ended 5 April 2018 and assessed additional tax to pay of £1,076 by way of adjustment to that return.

THE LAW

2. There was no dispute between the parties as to the relevant legislation which we summarise below.

3. By section 681B Income Tax (Earnings and Pensions) Act 2003 (which was inserted by Finance Act 2012 with effect for child benefit payments made after 7 January 2013) a person is liable to a charge to income tax, the HICBC, for a tax year if:

(1) His adjusted net income for the year is greater than £50,000.

(2) His partner's ("partner" is defined in section 681G) adjusted net income is less than his.

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

4. By section 8 Taxes Management Act 1970 ("**TMA**") HMRC have power to issue a notice to file to a person for the purpose of establishing the amount to which that person is chargeable to income tax. That notice must be made and delivered at any time within four years following the end of the year of assessment to which it relates.

5. Section 9A TMA gives HMRC the power to enquire into a self-assessment tax return, and section 28A(1B) and (2) TMA provide that an enquiry is completed when an HMRC officer issues a final closure notice which states the officer's conclusions and makes amendments to the tax return which are required to give effect to those conclusions.

6. A taxpayer has a right of appeal against any such conclusions or amendments under section 31 TMA.

THE EVIDENCE AND THE FACTS

7. We were provided with a bundle of documents which was specific to this appeal as well as a substantial generic bundle which contained much information about the "advertising campaign" conducted by HMRC in relation to the HICBC. No oral evidence was tendered by HMRC. The appellant gave oral evidence on his own behalf. From this evidence we find as follows:

(1) The appellant's partner has been in receipt of child benefit since December 2013.

(2) During the 2017/2018 tax year, the appellant had an adjusted net income of more than £60,000.

(3) The appellant has been impugned for the HICBC for 5 tax years. HMRC issued discovery assessments for the tax years 2015/2016 and 2016/2017. The appellant appealed against these. Following the decision in *HMRC v Jason Wilkes* [2020] UKUT 0150 (TCC),

the discovery assessments were treated as being invalid and thus the appellant had no liability for those tax years.

(4) The appellant has also submitted tax returns for the tax years 2018/2019 and 2019/2020, which in his view was submitted "under duress" (more of which later) and has paid HICBC for those periods of £2,760.15.

(5) Following acceptance by HMRC that the discovery assessments for the earlier years were invalid, they wrote to the appellant offering him the opportunity to settle his appeal for 2017/2018, failing which HMRC would issue him with a notice to file for that tax year. The appellant didn't settle.

(6) On 3 March 2022 HMRC sent a notice to file to the appellant in respect of the 2017/2018 tax year. The appellant filed his return on 18 July 2022. In that return he included more than £60,000 in taxed interest but did not complete the HICBC boxes. However, in the white space disclosure, the appellant noted that "Child Benefit-This sum and supplementary info was not disclosed by my partner-as per outstanding appeal".

(7) On 15 March 2023 HMRC opened an enquiry into this aspect of the appellant's tax return and on 17 May 2023 issued a closure notice to him amending his self-assessment return and assessing him to HICBC of £1,076.

(8) The appellant appealed to HMRC against this amendment on 20 June 2023. Following HMRC's view of the matter letter and a subsequent independent review which upheld the decision, on 25 October 2023 the appellant submitted an appeal to the tribunal.

DISCUSSION

Submissions

8. In summary the appellant submitted as follows:

(1) HMRC should have informed him that the fact that his earnings were more than £60,000 rendered him liable to the charge. HMRC had a general duty to notify. But more importantly, HMRC were fully aware of the appellant's income as they had his employer's PAYE returns and his P60 in their possession in respect of the year in question.

(2) HMRC therefore knew that even if his salary in 2013 had been below £50,000, it was more than that for the tax year 2017/2018. Yet there was no notification either in their published literature or given specifically to the appellant or his partner that he had an obligation to tell HMRC about increases in salary.

(3) Indeed, in conversations with himself and his partner concerning continued eligibility for child benefit alongside free childcare hours, HMRC staff assured them that they would still qualify for child benefit.

(4) The appellant works in sales and thus his pay fluctuates depending on his success. It is difficult therefore to keep abreast of his adjusted net income for any tax year.

(5) The appellant received no information from HMRC apart from a nudge letter on 14 November 2019 advising him to check whether he was liable to the HICBC. This was too little too late.

(6) He has already paid £2,760.15 for the later tax years. He made this payment under duress. He telephoned HMRC to discuss HMRC's assertions that he owed the charge and was told that if he did not disclose it for those tax years and pay the tax, HMRC would send bailiffs round to seize his belongings. This intimidation was extremely stressful.

(7) It is entirely unjust to request repayment of all the child benefit received over several years, in a single lump sum. HMRC have failed to act upon information they have received on many occasions, and he should not be punished for HMRC's failure to act on that information. Finding this money in one lump sum has caused him considerable stress.

(8) The HICBC rules operate in an unfair way, penalising a family in which one partner earns more than £50,000 per year, while not imposing a charge where both partners earn only £49,000 per year.

(9) Payments had been made in his wife's bank account, and he was not aware, until HMRC issued the nudge letter in November 2019, how much his wife had been paid.

(10) The impact of the charge has taken a massive toll not just on his family but on others who have claimed child benefit. He has acted in good faith, and it is unfair to penalise his family for systemic issues which are beyond his control. HMRC have been guilty of failings in communications and conduct and in adopting a fair approach towards him.

9. In summary Miss Aziz submitted as follows:

(1) The appellant does not challenge the issuance of the notice to file, the enquiry which HMRC opened into the tax return submitted by the appellant in response to that notice to file, the closure notice in respect of that enquiry nor the conclusion or assessment to the charge in their closure notice.

(2) The notice to file was given to the appellant on 3 March 2022 which was within four years of the end of the year of assessment.

(3) There is no doubt that the appellant had an adjusted net income exceeding £60,000 for the tax year 2017/2018. There is no doubt that the appellant's partner claimed child benefit for that tax year.

(4) As a matter of law, therefore, the appellant is liable to the charge.

Our view

10. The burden of establishing that HMRC have opened a valid enquiry into the appellant's tax return and that they have issued a valid closure notice stating their conclusion and amending that return, rests with HMRC.

11. Although the appellant has not challenged these, we have considered them and have concluded that: The notice to file was served within the four year limitation period; the enquiry was valid, as was the closure notice; HMRC have stated a valid conclusion and have made an appropriate amendment to the appellant's tax return. Prima facie, therefore, he is liable to the charge.

12. The burden now switches to the appellant to show that the conclusion and amendment overcharge him.

13. Unfortunately for the appellant, he has not discharged that burden.

14. Miss Aziz is entirely correct that, as a matter of law, the appellant is liable to the charge. It is clear that during the 2017/2018 tax year he had an adjusted net income exceeding £60,000 and during that year, his partner claimed child benefit.

15. The appellant accepts this. What he does not accept is the fairness and proportionality of the legislation either generally or in its application towards him. It is his view that HMRC have a duty to inform of any changes to his salary which would render him liable to the charge, and indeed HMRC knew of his salary for the relevant tax year yet explicitly told him that he was entitled to claim child benefit (the implication being that he would not be liable to the charge). He is also justifiably upset that HMRC have threatened him with the bailiffs and that he now has to find a substantial capital sum to repay benefits that he and his partner were only paid over a period of years.

16. As we said at the hearing, we have no jurisdiction to police HMRC's behaviour towards a taxpayer. Miss Aziz, very fairly and properly, apologised for this behaviour as reported by the appellant, and in particular regarding the duress and threat of the bailiffs should the appellant not pay the charge for the later years. She reminded him of the HMRC complaints procedure, and we would endorse that as the appropriate channel to seek redress.

17. We also explained at the hearing that we have no jurisdiction to decide whether primary legislation is "right or wrong" or "fair or proportionate". Nor does HMRC. They must collect tax in accordance with the law, and we must apply the law to the particular facts of a case.

18. The appellant is not the first taxpayer to point out that the charge penalises a household with a single high earner, but not with two more modest earners. That might be the case, but it is not a legal ground on which the appellant might be excused liability to the charge.

19. And whilst the appellant believes the law is both unfair and unjust not only in its general application but also in its specific application to his circumstances, unfortunately for him the Upper Tribunal in *HMRC v Hok* [2012] UKUT 363 made it clear that this tribunal cannot consider whether the law is fair or not.

20. HMRC have no general duty to inform a taxpayer whether they are liable to the charge, and to monitor their income and notify them if they tip over the adjusted net income threshold. It is up to the taxpayer to monitor his or her financial situation. This is the case even if, as is invariably the case where a taxpayer is on PAYE, HMRC have a record of the taxpayer's income.

21. In this case, however, HMRC appear to have gone further than that. And have impliedly, if not expressly stated, that the appellant and his partner were entitled to continue to receive child benefit, notwithstanding that the appellant's income exceeded £60,000, when they made enquiries to HMRC regarding free childcare hours.

22. This is something which might be highly relevant had HMRC impugned the appellant to a penalty, for example for failing to take reasonable care in reporting his liability for the charge. In those circumstances he could have repudiated a charge of carelessness on the basis that HMRC had impliedly or explicitly said that notwithstanding his partner was claiming child benefit, he was not liable to the charge.

23. As a challenge to his liability to the charge itself, it would only be feasible if he could establish some form of legitimate expectation; that HMRC, in full knowledge of the facts, had unequivocally told him that they were not going to impose the charge on him, and he relied on that to his detriment.

24. But even if he could establish a legitimate expectation and detrimental reliance, this tribunal has no jurisdiction to consider that challenge. He would have to bring it by way of judicial review in the High Court.

25. It is clear that the appellant is wholly dissatisfied by the way in which he has been treated by HMRC. As mentioned above, the appropriate forum for redress is HMRC's complaints procedure. These failings in HMRC's behaviour towards the appellant are not a defence to his liability to the charge.

DECISION

26. For the foregoing reasons we dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

27. 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.

NIGEL POPPLEWELL
TRIBUNAL JUDGE

Release date: 24th JANUARY 2025