Neutral Citation: [2023] UKFTT 545 (TC)

Case Number: TC08845

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video

Appeal reference: TC/2022/11174

HIGH INCOME CHILD BENEFIT CHARGE – tax and penalty assessments – whether reasonable excuse – initially yes – unreasonable delay after reasonable excuse ceased – yes – appeal dismissed

LATE FILING PENALTY – whether reasonable excuse – no – appeal dismissed

Heard on: 12 May 2023
Judgment date: 21 June 2023

Before

TRIBUNAL JUDGE AMANDA BROWN KC
MR JAMES ROBERTON

Between

NAILA HUSSAIN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Ms Hussain

For the Respondents: Mr P Jones, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was Video using the Tribunal video hearing system. A face-to-face hearing was not held because it was expedient not to do so. We were provided with a court bundle and a substantial generic bundle which contained much information about the "advertising campaign" conducted by HMRC in relation to the High Income Child Benefit Charge ("**HICBC**").

2. 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.

BACKGROUND

3. This appeal concerns the HICBC. Ms Hussain ("**Appellant**") has been assessed to HICBC for tax years 2014/15 to 2019/20 inclusive, together with a penalty for failing to notify chargeability under section 7 Taxes Management Act 1970 ("**TMA**"). The penalty has been assessed pursuant to Schedule 41 Finance Act 2008 ("**Schedule 41**"). The tax assessments are for the sum of £5,682. The penalties are calculated by reference to the potential lost revenue which is the subject of the assessment and on the basis that the behaviour resulting in the failure to notify was not deliberate but that the disclosure was prompted. The penalties for tax years 2014/14 – 2018/19 have been assessed at 20% and for 2019/20 at 10%. The amount of the penalties in total is £1,028.80.

4. The Appellant has also been assessed to late filing penalties issued pursuant to Schedule 55 Finance Act 2009 ("**Schedule 55**") in respect of the tax return for tax year 2020/21 which, as at the date of the hearing, remained unfiled. HMRC have issued three penalties regarding this return: £100 issued on 8 March 2022 (as the return was not filed on the due date); £900 daily penalties for the failure to file within 3 months of the due date and £300 6-month late filing penalty. Only the first £100 penalty is the subject of this appeal.

THE LAW

5. There was no dispute between the parties as to the relevant legislation which is summarised below.

6. 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) their adjusted net income for the year is greater than £50,000;

   (2) their partner's ("partner" is defined in section 681G) adjusted net income is less than theirs, and

   (3) they or their partner received child benefit in the relevant tax year.

7. The assessments to HICBC have been raised pursuant to HMRC's discovery assessment powers as provided in s29 TMA. Accordingly, 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 the case of *HMRC v Jason Wilkes* [2020] UKUT 0150 (TCC) ("***Wilkes***") the UT determined that HMRC had no power to make a discovery assessment in respect of the HICBC on the basis that the child benefit was not an amount of income which should have been assessed to income tax. The HICBC is a free-standing charge to tax.

8. Following the decision in *Wilkes* the provisions of section 97 Finance Act 2022 ("**Section 97**") were enacted such that section 29 TMA was amended providing for a discovery

assessment to be issued where "an amount of income tax … ought to have been assessed but has not been assessed" thereby providing for HICBC to be assessed by way of discovery assessment. Whilst the provision is generally only prospective s97 also provides that where a discovery assessment has been made to collect HICBC prior to tax year 2021/22 the provision is retrospective unless 1) pursuant to section 97(5) a notice of appeal was given to HMRC in respect of the assessment prior to 30 June 2021 and the Wilkes basis of challenge was asserted in that appeal on a date prior to 30 June 2021; or 2) pursuant to section 97(6) a notice of appeal was given to HMRC in respect of the assessment prior to 30 June 2021, the appeal was the subject of a temporary pause which occurred prior to 27 October 2021 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". The appeals which are subject to the retrospective statutory amendment are defined as "protected appeals". In this regard the protection offered is to HMRC and not the taxpayer.

9. By virtue of section 34(1) TMA, HMRC may raise a HICBC discovery assessment at any time within 4 years of the end of the tax year to which it relates. They also have the power, in consequence of section 36(1A) TMA, to raise the assessment within a period of 20 years of the year of assessment where the loss of tax arises as a consequence of a failure to notify liability to a charge to tax under section 7 TMA. That section provides that if a person is chargeable to income tax they must notify HMRC of that fact within 6 months after the end of the tax year. But if their income consists of PAYE income and they have no chargeable gains they are not required to notify their chargeability to income tax unless they are liable to the HICBC. In consequence of the provisions of section 118(2) TMA, the 20-year assessment provisions do not apply where the taxpayer establishes a reasonable excuse for the failure to notify their liability under section 7. However, HMRC will always have a period of 4 years in which to make a discovery assessment for a protected assessment.

10. Paragraph 1 Schedule 41 provides that a person who has not been sent a tax return is liable to a penalty if he fails to comply with section 7 TMA. Para 6 Schedule 41 provides that in the case of a "domestic matter" (which this is) where the failure was neither deliberate or concealed (as HMRC accept in the majority of HICBC cases including this one), the penalty is 30% of the "potential lost revenue" ; but paras 12 and 13 provide for a reduction in that percentage where a taxpayer gives HMRC help in quantifying the unpaid tax, but subject to a minimum penalty rate of 10% if HMRC became aware of the failure less than 12 months after the tax "first becomes unpaid by reason of the failure" (paragraph 13(3)(a)) and 20% otherwise.

11. Paragraph 14 Schedule 41 provides that HMRC may reduce a penalty because of special circumstances (and by paragraph 19 the Tribunal may do so where HMRC's decision in this regard is flawed). Paragraph 20 provides that liability to a penalty does not arise if the taxpayer satisfies HMRC or the Tribunal on an appeal that they have a reasonable excuse for the failure.

12. Paragraph 1 Schedule 55 provides for penalties to be payable where a taxpayer fails to make or deliver a tax return on or before the filing date. Penalties are incurred automatically at the rate of £100 if the return is not filed on the due date (in this case 31 January 2022), daily penalties of £10 per day (to a maximum of £900) if the return continues to be delayed over the subsequent 90 days and a further £300 penalty is imposed after 6 months. Paragraph 23 Schedule 55 provides that a penalty does not arise if the taxpayer satisfied HMRC or the Tribunal on appeal that they have a reasonable excuse. For the purposes of Schedule 55 the reasonable excuse defence precludes an excuse for late filing based on an insufficiency of funds (unless attributable to events outside the taxpayer's control and/or reliance on a third party. Paragraph 16 Schedule 55 provides for a reduction in the penalty in special circumstances.

13. Subject to the statutory exclusions (applicable in this case to the Schedule 55 reasonable excuse) there is no statutory definition of what constitutes a reasonable excuse however, section 118(2) does provide that a default for which a reasonable excuse has been established shall not excuse the default where the reasonable excuse has ceased, and the underlying default has not been remedied without unreasonable delay.

EVIDENCE AND FACTS

14. On the basis of the bundle of documents and the evidence given by the Appellant, Mr Guy Alderson and Mr Steven Thomas (both officers of HMRC). We make the following findings of fact:

(1) The Appellant had been in receipt of Child Benefit from 4 June 2007 in respect of her only daughter.

(2) The Appellant did not start working immediately following the birth of her child but took up a position on 13 November 2010. At that time she was earning approx. £35,000 pa and had no other source of income. Her income increased gradually over time and did not exceed £50,000 until the tax year 2014/15.

(3) In 2012, prior to the introduction of the HICBC, HMRC issued a number of press releases which detailed the introduction of the charge and advised high income Child Benefit parents to register for self-assessment. Similar press releases came out in 2014. There is considerable information about the charge on HMRC's website.

(4) We find on the evidence that the Appellant was unaware of HICBC as a consequence of any of this HMRC activity.

(5) For each tax year the Appellant was an employee and paid tax through PAYE. She had no further source of income. In all tax years prior to the 2014/15 tax year the Appellant's adjusted net income did not exceed £50,000. However, for all tax years from 2014/15 her adjusted net income exceeded £50,000.

(6) The Appellant had not been required to submit a self-assessment tax return for any of the years in question or for any previous tax year nor was she issued with an SA252 letter.

(7) However, on 4 November 2019 HMRC issued a "nudge" letter to the Appellant advising her to check whether she was liable to the charge. The Appellant accepts that she was in receipt of this letter, following receipt of which, on 5 December 2019 she contacted HMRC and was informed how she could determine if she was liable to the HICBC. She did not consider the call assisted her in understanding what action she needed to take and in January 2020 made a further call to HMRC. Following that call the Appellant visited HMRC's web site to more fully understand why she was liable to the charge. She did not, at that time, either contact the Child Benefit Agency to stop receipt of the child benefit payment of notify her liability to additional tax to HMRC.

(8) In March 2021 the Appellant was unwell and required a series of medical investigations which caused her significant anxiety. This was significantly compounded when her daughter became seriously unwell fully diverting her attention to her concerns about her daughter.

(9) Mr Alderson was allocated the Appellant's case on 27 May 2021. He undertook various checks establishing that the Appellants adjusted net income for each of the tax years exceeded £50,000; that she was in receipt of child benefit in each of the years; she was the highest earner registered at her addresses; and that she had been issued with a

nudge letter and had called HMRC but had not notified her liability to HICBC following those interactions.

(10) Based on this information Mr Alderson "discovered" in the relevant statutory sense, that the HICBC had not been bought into the charge to income tax.

(11) Mr Alderson issued an "opening letter" setting out his findings on 28 May 2021. Following receipt of the letter, on 7 June 2021, the Appellant contacted HMRC. As a result of that call, HMRC concluded that there was no reasonable excuse for the failure to notify liability and that therefore the Appellant was liable to failure to notify penalties under Schedule 41.

(12) On 11 June 2021 HMRC issued tax and penalty assessments for the HICBC for the tax years 2014/15 – 2019/20 inclusive. As set out above the penalties were calculated at 20% of the value of the tax assessments for all years other than 2019/20. The penalty for that period was calculated at 10%.

(13) The Appellant ceased to claim child benefit from sometime in June 2021.

(14) The Appellant was issued with a requirement to file a tax return for the tax year ended 5 April 2021 on 6 June 2021.

(15) HMRC received an appeal from the Appellant in respect of the penalties on 6 July 2021. A further appeal was notified in respect of the tax assessments on 3 August 2021. The appeals were not processed immediately as consideration of all HICBC appeals were suspended by HMRC whilst they considered their position on *Wilkes* and pending the legislative change referred to at paragraph [8] above. The Appellant's appeal was rejected with the issue of HMRC's view of the matter letter dated 4 May 2022.

(16) A request for review was made by the Appellant on 26 May 2022 but was directed to the wrong recipient in HMRC such that HMRC did not understand that the matter had been progressed. HMRC treated the matter as settled but subsequently accepted that a valid review had been requested. The review conclusion upheld he original decision.

(17) As at the date of the hearing the Appellant had not filed her 2020/21 tax return but had filed her 2021/22 tax return.

BURDEN OF PROOF

15. The burden of establishing that valid in time assessments for both the tax and the penalty in the correct amount lies with HMRC. The standard of proof is the balance of probabilities.

16. If HMRC can establish this then the burden shifts to the Appellant who must then establish that the tax is overstated and, in respect of the periods exceeding 4 years and in respect of the penalties, that she has a reasonable excuse for failure to notify her liability to HICBC. In respect of the penalties, if she can show that there are special circumstances the penalties may cancelled. The standard of proof is the same namely the balance of probabilities.

PROTECTED ASSESSMENT

17. As the appeal in this case was not made until 6 July 2021 the assessment is a protected assessment for the purposes of section 97 FA 22 and the Appellant cannot challenge the tax assessments on the basis of *Wilkes*.

SUBMISSIONS

18. As regards the assessments to tax HMRC submit that they made a discovery and have assessed accordingly; 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 and

all prior periods were within the 20 years provided by section 36 TMA as the Appellant did not have a reasonable excuse for failing to notify her liability for those years.

19. HMRC contend that there is no dispute regarding the adjusted net income for the relevant tax years; the fact that the Appellant received Child Benefit during those tax years; that the Appellant was not issued with a notice to file a self-assessment tax return for the tax years in question; nor that the Appellant failed to notify HMRC of his liability to the HICBC for those tax years.

20. They do not consider that the Appellant has a reasonable excuse for failing to notify chargeability. They accept that the Appellant was not aware of the change in legislation but contend that HMRC is not obliged to notify every person of every change to legislation that might affect them. Individuals need to take steps to understand the law and how it applies in their circumstances. They do not consider that ignorance of the law nor the fact that the Appellant was not personally notified of the requirement to complete a self-assessment return comprises a reasonable excuse. They cite a variety of extracts from case law to justify this, including paragraph [81] and [82] from the Upper Tribunal decision in *Christine Perrin v HMRC* [2018] UKUT 156 ("***Perrin***").

21. HMRC contend that even if a reasonable excuse could be made out prior to 4 November 2019 it came to an end when HMRC notified the Appellant directly and personally of her potential liability and as she had not acted without undue delay after that date no reasonable excuse defence is made out.

22. It is HMRC's view that the Appellant's circumstances do not give rise special circumstances or to render the penalties unfair.

23. As regards the late filing penalties, and applying the same test for reasonable excuse as set out in *Perrin* HMRC contend that the Appellant has no reasonable excuse for failing to file the 2020/21 return.

24. Ms Hussain contends that it is reasonable that she was unaware of the HICBC campaign when it was run in 2012/13 as it would have been irrelevant to her given her earnings at the time and accordingly her position is similar to a those in a series of decision in which the Tribunal has allowed appeals on the basis of reasonable excuse. The effect of allowing a reasonable excuse in her case is to determine that the tax years 2014/15 to 2016/17 are out of time and she should be relieved of the failure to notify penalties.

25. As regards the late filing penalties she contends that her personal health condition and the concerns regarding her daughter provide a reasonable excuse for having not filed her 2020/21 tax return.

DISCUSSION

Tax assessments

26. Although there is an appeal against the tax assessments there is, in fact, no dispute as to the liability to the HICBC or its calculation. Whilst the Appellant considers that assessments for such a long period issued so far after the event are unfair such that the tax should not be collected, there is no jurisdiction for the Tribunal to consider such challenges.

27. The Tribunal does have jurisdiction to determine that the assessments for tax years which are issued more than 4 years from the end of the tax year in question are out of time and therefore invalid on the basis that the Appellant can establish the reasonable excuse defence for failing to notify.

Reasonable excuse

28. As noted by HMRC the legal principles which we must consider when an Appellant submits that they haves a reasonable excuse is set out in *Perrin*. The relevant extract is set out below:

> "81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:
>
> 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).
>
> Second, decide which of those facts are proven.
>
> 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?"
>
> 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 taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long. The Clean Car Co itself provides an example of such a situation."

29. That this is the correct approach has also recently been confirmed by the Court of Appeal in *William Archer v HMRC* [2023] EWCA Civ 626 (***"Archer"***).

30. The basis of the Appellant's reasonable excuse, as regards the tax assessments, is that, at the relevant time at which the liability to notify arose, and in respect of each of the tax years to which the defence might apply i.e. 2014/15 – 2016/17, she was unaware of the liability to so notify. As such there is no basis on which to extend the period for which HMRC are entitled to issue tax assessments beyond 4 years. Whilst in many areas of the law ignorance of the law is no defence in the context of a reasonable excuse, as set out in *Perrin,* it can be. In order to prove that excuse the taxpayer must show firstly that they were, as a matter of fact, ignorant of the relevant obligation and then, and more significantly, that such ignorance was objectively reasonable i.e. that a taxpayer generally, in the same position as the Appellant but otherwise

alive to their taxing obligations, would similarly have failed to notify. Finally, if a reasonable excuse can be established for any period it much then be determined when it came to an end and if the Appellant then remediated the failure without undue delay.

31. It is for us to determine whether the reasonable excuse is made out on the facts and whether it is objectively reasonable for the Appellant, in all the circumstances of this case, to have been ignorant of the requirement to complete a self-assessment tax return when she was as a matter of fact liable to the HICBC, and to so fail to complete a tax return notifying her liability. If it was, did the excuse cease prior to the failure being remediated and was there an unreasonable delay between the cessation of the reasonable excuse and notification of liability.

32. On the evidence (particularly that contained in the generic bundle) it is clear that prior to the introduction of the HICBC, HMRC launched an extensive information campaign to make the general public aware of the introduction of the charge.

33. It is apparent from the information available, and the evidence given by Mr Thomas that in November 2012 HMRC issued a briefing to over a million higher rate taxpayers about the charge. And in September 2013 self-assessment letters known as "SA 252" letters were sent to a number of higher rate taxpayers. A pro forma SA252 letter is in the generic bundle which HMRC have provided for this appeal.

34. It is not contended that a SA 252 letter was sent to the Appellant nor indeed that she was one of the million or so higher rate taxpayers notified about the introduction of the charge in 2012. That is unsurprising as, at that time, she was not earning a figure anywhere near the £50,000 threshold for the HICBC to apply.

35. In any event we have found as a fact that notwithstanding HMRC's advertising campaign, this Appellant was unaware of the HICBC until November 2019.

36. As in the vast majority of HICBC cases coming through to hearing and being decided by the Tribunal, the Appellant is essentially contending that as she was unaware of the liability to notify she could hardly be expected to have complied with it. HMRC's response is: as income tax is now subject to self-assessment, it is not for them to notify individual taxpayers. That is plainly right, but there is then a factual assessment as to whether in the individual facts of each case whether the ignorance claimed is reasonable and whether other taxpayers in the same position would have similarly failed to notify.

37. 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.

38. In each of the judgments Judge Poppelwell has concluded that a taxpayer is likely to have a reasonable excuse where they were:

(1) 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) in receipt of child benefit payments prior to the introduction of 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) 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.

39. However, in *Goodall* Judge Popplewell also noted that where a taxpayer had received a nudge letter then the taxpayer would have no reasonable excuse but went on to decide that in that case, by reference to the evidence, to determine that no nudge letter had been received. As such, and on the facts the first point at which Mr Goodall became aware of the risk of a HICBC liability he acted without unreasonable delay.

40. The present case does not meet the four criteria applied in *Jacques* and the following cases. The Appellant in this case received a "nudge" letter on 4 November 2019, she contacted HMRC but did not progress her enquiry further at that time. She made a further call in January 2020 but again did not notify HMRC that she had exceeded the income threshold, nor did she contact the Child Benefit Agency to stop receipt of child benefit. Like Judge Popplewell, we consider that ignorance of the introduction of HICBC is, depending on the facts, capable of representing a reasonable excuse in the circumstances listed in paragraph [37] above but they are, rightly, a narrow set of circumstances. What is critical is that as soon as the taxpayer has a reason to be aware that there is a risk that the HICBC may apply they must act promptly to establish definitively if the charge is payable and notify HMRC of the liability. That is, after all, precisely what the nudge letter invites the taxpayer to do.

41. Therefore, we accept that until 4 November 2019, or shortly thereafter, the Appellant had a reasonable excuse but that it ceased on receipt of the nudge letter.

42. We must therefore consider whether the Appellant acted without undue delay after her reasonable excuse ended. The Appellant contends that shortly after the second call to HMRC in January 2020 the country went into covid lockdown, HMRC were difficult to contact and there were simply other priorities. This then ran into her own period of ill health and that of her daughter.

43. We firstly note that 31 days elapsed between receipt of the nudge letter and the initial call to HMRC on 5 December 2019. Whilst the Appellant contends that the call was unsatisfactory because HMRC were unable to assist her greatly it is clear that she then did not take any further action until more than a month later. She contends that HMRC said they would call her back but that they did not. The national lockdown did not happen until 23 March 2020. We take the view that a reasonable taxpayer conscious of their taxing obligations who had been in receipt of a nudge letter would not simply have let matters lie and would have more proactively sought to establish the position and would, at the very least, reasonably have stopped the child benefit payments. The Appellant did not do that and left it for HMRC to contact her again. They did do so over 12 months later at which point she did then actively engage.

44. It is our view the delay from 4 November 2019 though to 8 June 2021 when full engagement with the issue took place is too long to be considered "without an unreasonable delay" given the explanation provided. We note that despite her ill health and the concerns about her daughter the Appellant did engage in June 2021 and so could have done so sooner.

45. We are confirmed in this conclusion by reference to the analysis undertaken by the Court of Appeal in *Archer* at paragraphs 87 – 91.

46. As a consequence we conclude that there is no reasonable excuse and HMRC are therefore entitled to assess for a period of 20 years and the 2014/15 to 2017/18 periods are in time.

Failure to notify penalty assessments

47. We find that the penalty assessments dated 11 June 2021 have been properly and accurately calculated in accordance with the correct legal principles and were served on the Appellant.

48. So the pendulum now swings to the Appellant to establish that he has a reasonable excuse or that there are special circumstances which warrant a reduction in the penalty.

49. For all the reasons stated above we do not consider that there was a reasonable excuse throughout the period in which the Appellant failed to notify her liability and/or that she failed to act without unreasonable delay once the reasonable excuse (rooted in her ignorance of the law) ceased with the receipt of the nudge letter on 4 November 2019.

Special circumstances

50. In their view of the matter letter HMRC state that they did not consider there were any special circumstances. Their statement of case is silent on their position.

51. By reference to the judgment of the Upper Tribunal decision in *Barry Edwards v HMRC* [2019] UKUT 131 (TCC) the test for determining whether there are special circumstances that Parliament has set is simply whether there are circumstances which are "sufficiently special that it is right to reduce the amount of the penalty."

52. We do not consider that any such circumstances are made out in the present case. The Appellant received a nudge letter and did not give it sufficient priority those are not special circumstances.

Late filing penalties

53. The test for reasonable excuse is the same under Schedule 55 as it is for Schedule 41 though, of course, we must determine what excuse is asserted for late filing was and whether that excuse, if made out on the facts, was objectively reasonable.

54. On 17 June 2021, shortly after the tax and penalty assessments for 2014/15 – 2019/20 had been issued, the Appellant was notified of a requirement to file a tax return for the tax year ended 5 April 2021. At this time the Appellant was unwell as was her daughter, but she was, by then, fully engaged with HMRC and the appeal process. She could have rendered the tax return at any point after receipt by reference to her P60 information, but it only became due on 31 January 2022. We have carefully considered the medical records provided in respect of the health conditions of both the Appellant and her daughter. It is plain from those records that the period from June 2021 through to July 2022 (i.e. the period between the receipt of the notice to file and its due date) was; an extremely difficult time for the Appellant and for the majority of that period she was signed off work. She had further periods of time off work through to the early part of 2023. Had the Appellant rendered the return immediately beyond the end of this period we would have had to consider what a reasonable person alive to their taxing obligations would have done in such circumstances.

55. However, the Appellant explained that she is now on a return-to-work arrangement. She has also filed her 2021/22 tax return. Despite this the return for 2020/21 still had not been filed. Accordingly, any reasonable excuse that we might have considered to have been established would most certainly have ceased some considerable time ago and therefore there has been an unreasonable delay prior to filing and that delay continues. In such a situation the reasonable excuse defence is not made out.

56. We have considered whether special circumstances exist but for the same reasons as above have concluded there is nothing sufficiently special to justify that the penalties be relieved.

DECISION

57. For the reasons given the appeal is refused.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

58. 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.

AMANDA BROWN KC
TRIBUNAL JUDGE

Release date: 21st JUNE 2023