Neutral Citation: [2023] UKFTT 752 (TC)

Case Number: TC08932

FIRST-TIER TRIBUNAL
TAX CHAMBER

In public by remote video hearing

Appeal reference: TC/2021/13432

INCOME TAX – High Income Child Benefit Charge – liability for the charge? – yes – appeal against charge dismissed - penalties for failure to notify – appeal against penalties allowed

Heard on: 24 August 2023
Judgment date: 05 September 2023

Before

TRIBUNAL JUDGE NIGEL POPPLEWELL
MR JAMES ROBERTSON

Between

RICHARD CHATTAWAY

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: In person

For the Respondents: Miss Maria Serdari litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. This appeal concerns the High Income Child Benefit Charge ("**HICBC**"). The appellant has been assessed to HICBC for the tax years 2014/2015, 2018/2019 and 2019/2020 ("**the tax years in question**") together with penalties ("**the penalties**") for failing to notify chargeability under section 7 Taxes Management Act 1970 ("**TMA**"). The penalties have been assessed pursuant to Schedule 41 Finance Act 2008 ("**Schedule 41**"). The tax assessments amount in total to £3,530. The penalty assessments amount in total to £527.20.

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. The assessment to HICBC has 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.

5. 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.

6. 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 because 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.

7. Section 7 TMA provides that if a person is chargeable to income tax he must notify HMRC of that fact within 6 months after the end of the tax year. But if his income consists of PAYE income and he has no chargeable gains he is not required to notify his chargeability to income tax unless he is liable to the HICBC.

8. 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. Paragraph 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), the penalty is 30% of the "potential lost revenue"; but paras 12 and 13 provide for a reduction in that percentage in the case of prompted disclosure 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.

9. 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 he had a reasonable excuse for the failure.

THE EVIDENCE AND THE FACTS

10. 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. Oral evidence on behalf of HMRC was given by Officer Steven Thomas and Officer Liam Storer. The appellant gave oral evidence on his own behalf. From this evidence we find as follows:

(1) The appellant's spouse has claimed child benefit since 1997. At that time, and up to and including the tax year 2019/2020, the appellant was an employee and was not required to, nor did he, complete a self-assessment tax return. He received no notices to do so.

(2) In 2012, prior to the introduction of the HICBC, HMRC issued several 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. In 2018 and 2019 HMRC, in response to misgivings raised in connection with reasonable excuse defences issued a further round of press releases dealing with that issue. There is considerable information about the charge on HMRC's website.

(3) The appellant's income as recorded on his P60's for each of the tax years 2012/2013 to 2018/2019 was less than £50,000. For 2019/2020 it was more than £50,000.

(4) HMRC's records purportedly show that on 17 August 2013, a letter SA 252 was sent to the appellant at his then home address. That letter was sent to a number of higher rate taxpayers, shortly after the introduction of the HICBC and explained that an individual earning more than £50,000 a year might be liable to the charge and that that person should check the charge applied by going on to the appropriate government website. The letter was not returned undelivered.

(5) The appellant's evidence was that he could not recall receiving that letter, and even if he had done so, it would not have affected him as in that year he was earning considerably less than £50,000. He would, therefore, have treated it as irrelevant.

(6) On 5 December 2019, HMRC purportedly issued a "nudge" letter ("**the nudge letter**") to the appellant. That letter was addressed to the appellant at his home address. The appellant's evidence is that he did not receive that letter. It was not, however, returned to HMRC as undelivered. The evidence that the nudge letter was sent to the appellant is solely a copy of the letter. HMRC provided no corroborating evidence, for example their PAYE records, showing that it had been sent to the appellant on that date.

(7) The nudge letter explained that HMRC wanted to help the taxpayer to understand whether he needed to pay the HICBC. It explained the financial circumstances in which a taxpayer might be liable to pay the charge, what to do next, and that if a taxpayer is not sure if he or she needed to pay the charge, the taxpayer should go onto an HMRC website or telephone HMRC for assistance.

(8) On 4 March 2021 Officer Storer selected the appellant for an in-depth review to check whether he had failed to notify HMRC of his liability to HICBC. He interrogated data provided by the Child Benefit Office. He checked HMRC's PAYE and Employer Compliance System ("**ECS**") records. He checked the self-assessment system.

(9) He found that as well as the income recorded on the appellant's P60 for the relevant years, the appellant had also received benefits, such as car benefit and medical insurance, which were not recorded on the appellant's P60's, but which are taken into account when calculating an individual's adjusted net income. He fed all of the financial information that he had obtained into the HMRC online calculator.

(10) He calculated the appellant's adjusted net income for the tax years in question and confirmed that in each of those years it exceeded £50,000. He authorised the issue of an opening letter. We find as a fact that on 4 March 2021 Officer Storer discovered that there was a loss of tax in the tax years in question caused by the appellant's failure to notify liability to HICBC.

(11) That opening letter was dated 8 March 2021 and was addressed to the same address as the nudge letter. In that letter HMRC explained that their records showed that the appellant was liable to the HICBC and that they considered that he was liable to a charge of £3,530 for the tax years in question. It also explained why late payment penalties and interest might be due.

(12) On 11 March 2021, the appellant contacted HMRC by telephone. He disputed the amount of earnings which had been set out in HMRC's letter of 8 March 2021, and was advised to contact his employer and provide evidence to support the figures he believed to be correct.

(13) On 23 March 2021, the appellant telephoned HMRC and asked for a breakdown of HMRCs adjusted net income calculations.

(14) On 30 March 2021, in a further telephone conversation between the appellant and HMRC, the appellant accepted that the charge was due for the tax years in question. HMRC said as regards the penalties they were not prepared to accept that he had a reasonable excuse.

(15) On 7 April 2021, HMRC issued their assessments to the HICBC ("**the charge assessments**"). The amounts assessed were £866 for 2014/2015, £876 for 2018/2019, and £1,788 for 2019/2020.

(16) On 25 April 2021, the appellant wrote to HMRC appealing against the charge assessments.

(17) On 18 May 2021 HMRC issued their assessments for the penalties ("**the penalty assessments**"). These were calculated at 20% of the aforesaid liabilities for 2014/2015 and 2018/2019, and 10% for the liability for 2019/2020. The penalties in total amount of £527.20.

(18) On 19 May 2021, HMRC provided their view of the matter letter in relation to the charge assessments. Their view was that the decision to charge the HICBC should be upheld.

(19) On 16 June 2021, the appellant appealed against the penalty assessments and provided his further view regarding the charge assessments. On 1 July 2021, HMRC provided their view of the matter letter in relation to the penalty assessments in which they upheld their decision to issue the penalties.

(20) On 5 November 2021 HMRC issued their statutory review conclusion letter in which they upheld the charge assessments and the penalty assessments. On 25 November 2021 the appellant lodged an in time appeal against these assessments with the tribunal.

DISCUSSION

11. As we explained to the appellant at the end of the hearing there are two distinct matters which we need to decide. The first is whether the HICBC is properly chargeable. The second is whether, if it is so chargeable, the appellant is liable to the penalties. Different considerations apply to these issues.

12. As regards the first, we find that the charge assessment is a valid in time assessment. We also find, and the appellant does not dispute this, that his adjusted net income for the tax years in question was greater than £50,000.

13. The validity of the charge assessment is also affected by the fact that it was made before 30 June 2021. In order for HMRC to rely on such an assessment, it must be a protected assessment. We find that it is. The appeal made by the appellant to HMRC against the charge assessment on 25 April 2021 was not made on the basis that the assessment was invalid as a result of it not relating to the discovery of income which ought to have been assessed to income tax which had not been so assessed. Nor was the appeal subject to a temporary pause occurring before 27 October 2021.

14. Accordingly, we have no alternative other than to uphold the charge assessment and dismiss the appellant's appeal against it. The fact that the appellant may have had no idea about the liability to the charge is irrelevant when considering his liability to the charge. Similarly, ignorance of his adjusted net income (nor how to calculate it) is not relevant to his liability to the charge. Liability to HICBC operates in a mechanical way, and if an appellant falls within its criteria, as this appellant does for the tax years in question, then neither we nor HMRC have

any wriggle room to alleviate the appellant from the burden of that charge no matter how inequitable it may seem to the appellant.

15. Furthermore, we agree with HMRC that there is no obligation on them to notify an appellant of, or continue to monitor, his adjusted net income. The appellant has suggested that if HMRC knew, in the tax year 2014/2015 that his adjusted net income was greater than £50,000, then they should have told him so at that time. In these circumstances the appellant would have monitored his adjusted net income and would have been able to notify liability to the charge for the tax years 2018/2019 and 2019/2020 (and so avoiding a penalty). But, as we say, there is no obligation on HMRC to do this. And indeed, it became apparent during the hearing that HMRC's systems would not enable them to do so, even if there was any such obligation. Whilst both we and HMRC have sympathy for the appellant's submission in this regard, it does not exonerate him from his liability to the HICBC for the tax years in question.

16. So, we now turn to the penalties. If the appellant can establish that he had a reasonable excuse for not notifying his liability to the HICBC, then he can be excused from his liability to the penalties.

17. The onus is on the appellant to show that, on the balance of probabilities, the facts show that he had a reasonable excuse.

18. The legal principles which we must consider when an appellant submits that he has a reasonable excuse are set out in the Upper Tribunal decision in *Christine Perrin v HMRC* [2018] UKUT 156 ("***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:
>
> (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 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".

19. The test we adopt in determining whether the appellant has an objectively reasonable excuse is that set out in *The Clean Car Co Ltd v C&E Commissioners* [1991] VATTR 234, in which Judge Medd QC said:

> "The test of whether or not there is a reasonable excuse is an objective one. In my judgment it is an objective test in this sense. One must ask oneself: was what the taxpayer did a reasonable thing for a responsible trader conscious of and intending to comply with his obligations regarding tax, but having the experience and other relevant attributes of the taxpayer and placed in the situation that the taxpayer found himself at the relevant time, a reasonable thing to do?"

20. 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**").

21. It is clear from the foregoing extract from Perrin that ignorance of the law can, in certain circumstances, comprise a reasonable excuse. It is a matter of judgment for us as to whether it is objectively reasonable for the appellant in the circumstances of this case to have been ignorant of the requirement to complete a self-assessment tax return in light of his liability to the HICBC.

22. In her decision in *Naila Hussain* [2023] UKFTT 00545 Judge Brown reviewed a number of HICBC cases relating to ignorance of the law defences and said this:

> "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 favorably 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.
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> 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".

23. We confirm that the foregoing is an accurate reflection of Judge Popplewell's view of when a taxpayer might have a reasonable excuse in HICBC penalty cases.

24. When tested against the foregoing criteria, we are of the view that the appellant in this case satisfied (1)-(2). This is clear from the facts. The appellant was under no obligation to complete a self-assessment tax return for the tax years in question in this appeal. His spouse was in receipt of child benefit well before the introduction of HICBC.

25. However, the main question is whether he satisfies criterion (3). It is HMRC's assertion that the appellant had received two specific communications which should have put him on notice that he might be liable to pay the HICBC. The first is the letter SA 252 which HMRC's records suggest was sent to the appellant on 17 August 2013. The second is the nudge letter which HMRC contended was sent to the appellant on 5 December 2019.

26. It is our view that if the appellant in this appeal had received the nudge letter, then he has no reasonable excuse for failure to notify chargeability to HICBC. The reason we say this is a subtle one. The nudge letter explained to the appellant that he may have to pay the charge if (inter alia) "you have taxable income and <u>benefits</u> of over £50,000 in a tax year…." (emphasis added). This makes it expressly clear that it is not just income which is brought into account when considering the £50,000 threshold, but also that benefits must be considered too.

27. And it is the benefits in the case of this particular taxpayer which have caused the problem. As far as the appellant was concerned, whilst in one year his income, derived from his P60's, was more than £50,000, in the other years that threshold was only breached by virtue of benefits as to which his evidence was that he was unaware (not of the benefits per se but of their monetary value). So that even if he had known about the way in which adjusted net income is calculated, he was not able to do that himself.

28. But if he had received the nudge letter, he was on notice that benefits were taken into account when considering the £50,000 threshold. At that stage a reasonable taxpayer would, in our view, have gone on to HMRC's website or telephoned them, at which stage he would no doubt have been made aware of how his adjusted net income would have been calculated. And if he had known that in December 2019, any reasonable excuse which he might have had by dint of ignorance of the way in which the adjusted net income is calculated prior thereto (as to which see below) would only have remained a reasonable excuse if he had sought to correct it within a reasonable time. And given it was not until 2021 that the appellant contacted HMRC to attempt to rectify the position, is our view that that would not have been a reasonable time.

29. So did the appellant receive the nudge letter?

30. Under section 7 of the Interpretation Act 1978, which applies to service of documents authorised or required by legislation, "service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

31. Clearly the nudge letter is not a document authorised or required by legislation. But we intend to adopt the same approach towards service set out above. It seems to us common sense. If HMRC are alleging that the nudge letter was sent to the appellant (and thus he was on notice that someone whose income and benefits were more than £50,000 was liable to the HICBC) they need to show that they had sent it to him. If the appellant then alleges reasonable excuse on the basis that he did not receive it, he needs to establish non-receipt.

32. We are not satisfied that HMRC did send the nudge letter to the correct address and that it was actually sent to the appellant. Whilst we do not believe that the copy letter in the documents bundle was some form of "ghost" letter, created by HMRC for the purposes of this appeal, HMRC have not produced any evidence indicating that it was sent on or around the date which it bears. Miss Serdari was apologetic that no such corroborating evidence had been supplied by way of the PAYE records, and we accept that apology. But its practical effect is that HMRC cannot establish, that, on balance, the letter was actually sent to the appellant.

33. But even if it had been, the appellant says that he did not receive it.

34. We accept the appellant's evidence. It is our view from the appellant's evidence, his actions, and his demeanour, that he is telling the truth.

35. Firstly, the appellant's evidence that he had not received the letter was not seriously or forensically challenged by HMRC. Secondly, the way in which the appellant gave evidence suggested to us that he was a truthful person and indeed once he found out that he was liable to the HICBC, following receipt of the letter of 8 March 2021, he acted as a conscientious taxpayer, conscious of and intending to comply with his obligations regarding tax.

36. On 11 March 2021 he contacted HMRC by telephone after which he endeavoured to ascertain his adjusted net income from information which he sought from his previous employers. He maintained contact with HMRC during March 2021 and indeed accepted his liability to the HICBC during a telephone conversation on 30 March 2021. He then engaged with HMRC in relation to the formal assessments.

37. We think it is more likely than not that if the appellant had received the nudge letter which put him on notice that benefits were to be taken into account when considering the £50,000 threshold, he would have contacted HMRC and sought to clarify the position.

38. So, if the only specific contact with this appellant notifying him of the possibility that he might be liable to the HICBC had been the nudge letter, it would have been our decision that he would have had a reasonable excuse for not having contacted HMRC until 11 March 2021 by dint of his ignorance of the way in which the adjusted net income is calculated.

39. However, HMRC submit that there was an earlier communication (namely the letter SA 252) which had been sent to the appellant on 17 August 2013.

40. The appellant's evidence is that he cannot remember receiving this letter but even if he had, and read it, it is unlikely that he would have considered it relevant given that his income at that time was well below the £50,000 threshold.

41. Unlike the nudge letter, is our view that the appellant was sent SA 252 by HMRC and that he received it. We say this for two reasons. Firstly, the appellant is much less equivocal about receipt of the SA 252. This is unsurprising given that it was sent to him 10 years ago, and whilst his acceptance that he cannot remember receiving it but that he might have done is a credit to his integrity, it is not a flat denial of receipt. Secondly, HMRC have produced, as evidence of sending, not just a pro forma copy of the letter (which of itself would have been inadequate) but also an extract from their PAYE records showing that it was sent on 17 August 2013 and that it was not returned undelivered. On this basis we find as a fact that the SA 252 was sent to, and received by, the appellant in August 2013.

42. So, would SA 252 have put the appellant on notice of the fact that he might become liable to the HICBC so that he cannot plead ignorance of the law up until he received the notification of charge on 8 March 2021?

43. On balance, we think not. We say this because unlike the nudge letter, SA 252 makes no reference to "benefits" being taken into account when assessing the £50,000 threshold. It simply says that the charge would apply if the recipient has "individual income of over £50,000 a year". There is nothing here which would put this appellant on notice that the benefits which might have taken his adjusted net income above the £50,000 threshold needed to be considered. It is true that the SA 252 then points a taxpayer in the direction of an HMRC website. But HMRC have not provided any evidence as to what a taxpayer, clicking onto the website, would have found. We simply cannot say whether or not, by clicking onto the website, the appellant would have been told that benefits needed to be taken into account.

44. The same is true of course of the evidence as to what a taxpayer would have found when accessing the website to which he or she was directed by a nudge letter. HMRC have not produced the website page to which the appellant would have been directed. But for two reasons we think that this is more likely to have included details of how adjusted net income is calculated and the importance of benefits in the calculation. Firstly, because the nudge letter specifically refers to benefits when considering the £50,000 threshold. Secondly, by 2019, it is likely that HMRC's website would have been more sophisticated and have included details of how adjusted net income is calculated.

45. The unchallenged evidence in this case is that even if the appellant had received and read the SA 252, he would not have considered relevant to him since his income is less than £50,000 at that time. This is a wholly rational position. And whilst the appellant was clearly on notice of the existence of the HICBC with effect from August 2013, he was still ignorant of the way in which benefits were taken into account when calculating adjusted net income. It is ignorance of this facet of the law, rather than of the charge itself, which provides the appellant with a reasonable excuse in this case.

46. That ignorance would have ceased had he received the nudge letter. He did not. So his ignorance did not actually cease until he received the letter of 8 March 2021. He responded to that letter with commendable alacrity and without unreasonable delay.

47. Accordingly, we allow his appeal against the penalties.

DECISION

48. It is our decision that the appeal against the HICBC is dismissed, but the appeal against the penalties is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

49. 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: 05th SEPTEMBER 2023